

129 FERC ¶ 62,148
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Puget Sound Energy, Inc.

Docket No.
EC10-5-000

ORDER AUTHORIZING THE ACQUISITION OF JURISDICTIONAL FACILITIES

(Issued November 23, 2009)

On October 15, 2009, Puget Sound Energy Inc. (Puget Sound Energy or Applicant) filed an application pursuant to section 203(a)(1) of the Federal Power Act (FPA)¹ requesting authorization for the acquisition of jurisdictional facilities by Puget Sound Energy from GE Capital Commercial Inc. (GE Capital) (Proposed Transaction). The facilities for which disposition authorization is requested include generator facilities with a value in excess of \$10 million.

GE Capital owns all of the interests in Units 3 and 4 of the Fredonia Combustion Turbine Electric Generating Facility (Fredonia Facility), with a combined generating capacity of 108 megawatts (MW). GE Capital currently leases the Fredonia Facility to Applicant.

Puget Sound Energy is a public utility wholly-owned by Puget Energy, Inc. (Puget Energy) and provides retail electric service in the Puget Sound area in the State of Washington. Puget Sound Energy owns facilities used for the sale and transmission of electricity in interstate commerce. Puget Sound Energy is authorized to sell electricity at market-based rates² and operates its transmission system pursuant to an Open Access Transmission Tariff. Puget Sound Energy serves wholesale load pursuant to cost-based rates.

Puget Sound Energy is the parent company of Hydro Energy Development Corporation, which owns Black Creek Hydro, Inc. (Black Creek). Black Creek is an exempt wholesale generator (EWG) which owns a 3.7 MW hydroelectric generating

¹ 16 U.S.C. § 824b (2006).

² *Puget Sound Energy Inc.*, 86 FERC ¶ 61,088 (1999).

facility and sells its entire output to Avista Corporation.

Puget Energy is indirectly owned by a consortium of investors consisting of Macquarie Infrastructure Partners, Macquarie-FSS Infrastructure Trust, Macquarie Capital Group Limited, Macquarie Infrastructure Partners II, Canada Pension Plan Investment Board, British Columbia Investment Management Corporation, and Alberta Investment Management (collectively, Investors). The energy affiliates of the of the Investors include entities in which Macquarie Group Limited owns or controls, directly or indirectly, a greater than 10 percent interest: Macquarie Cook Power, Inc., a power marketer; Macquarie Cook Energy, LLC a natural gas trading and marketing company; The Gas Company, LLC, a retail gas distribution company in Hawaii; Duquesne Keystone LLC, an EWG; Duquesne Conemaugh LLC, an EWG; Duquesne Power LLC, a provider of power to Duquesne Light Company; Duquesne Light Company, a company that purchases, transmits, and distributes electric energy; and Duquesne Light Energy, a retail electric generation supplier.

GE Capital elected to terminate the lease of the Fredonia Facility, which will terminate on January 13, 2010. Pursuant to the lease agreement, Puget Sound Energy opted to acquire the Fredonia Facility from GE Capital. The Proposed Transaction is scheduled to close prior to January 13, 2010. Upon completion of the Proposed Transaction, Puget Sound Energy will own all of the interests in the Fredonia Facility. Control and operation will not change as a result of the Proposed Transaction.

Applicant argues that the Proposed Transaction will not adversely affect horizontal competition or vertical competition in any relevant market because the Proposed Transaction will not result in any change in control over, or operation of the Fredonia Facility, which will continue to be operated by Applicant. Applicant states the Proposed Transaction will have no effect on the generating capacity Puget Sound Energy controls, or on Puget Sound Energy's share of the relevant market. The Proposed Transaction does not involve any transmission facilities because Puget Sound Energy already owns the interconnection facilities associated with the Fredonia Facility.

Applicant argues that the Proposed Transaction will not adversely affect rates. Applicant states that sales of electric energy at market-based rates authorized by the Commission will not be affected by the Proposed Transaction. Applicant states that the Proposed Transaction does not involve any transmission facilities and will have no effect on transmission rates.

Applicant asserts that the Proposed Transaction will not adversely affect federal or state regulation. Applicant states that the Commission will maintain jurisdiction over the Fredonia Facility and the Proposed Transaction will not affect the extent to which the Commission or any state authority can regulate its rates.

Applicant contends that the Proposed Transaction will not result in any cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company. Applicant notes that the Proposed Transaction involves only non-affiliates. Therefore, Applicant asserts, the Proposed Transaction is within “safe harbors” created by the Commission and is unlikely to raise any issues with respect to cross-subsidization.³ Additionally, Applicant states that based on known or reasonably foreseeable information, the transaction will not result in, at the time of the transaction or in the future: (1) 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 (Public Utility), and an associate company; (2) any new issuance of securities by a Public Utility, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a Public Utility, for the benefit of an associate company; or (4) any new affiliate contracts between a non-utility associate company and a Public Utility, other than non-power goods and services agreements subject to review under sections 205 and 206 of the FPA.⁴

The filing was noticed on October 19, 2009. Comments, protests or interventions were due on or before November 5, 2009. None were 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 (2009)). Any opposed or untimely filed motion to intervene is governed by the provision of Rule 214.

Order No. 652 requires that sellers with market-based rate authority 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.⁵ The foregoing authorization may result in a change in status. Accordingly, Applicant is advised that it must comply with the requirements of Order No. 652. In addition, Applicant shall make appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

³ See *FPA Section 203 Supplemental Policy Statement*, 72 Fed. Reg. 42,277 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 31,253 (2007), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008).

⁴ Application at Exhibit M.

⁵ *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).

Puget Sound Energy shall account for the Proposed Transaction when completed, in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. Puget Sound Energy shall submit its final accounting entries within 6 months of the date that the Proposed Transaction is consummated, and the accounting submissions shall provide all the accounting entries and amounts related to the Proposed Transaction along with narrative explanations describing the basis for the entries.

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

- (1) The Proposed 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 become 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 supplemental orders as appropriate;
- (5) If the Proposed Transaction results in changes in the status or the upstream ownership of Applicant's affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 (2009) shall be made;
- (6) Applicant shall make appropriate filings under section 205 of the FPA, as necessary, to implement the proposed transaction;
- (7) Applicant 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) Applicant shall notify the Commission within 10 days of the date that the disposition and acquisition of the jurisdictional facility has been consummated.

This action is taken pursuant to the authority delegated to the Director, Division of Electric Power Regulation -- 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
Director, Division of Electric Power Regulation -- West

Document Content(s)

EC10-5-000.DOC.....1-5