

123 FERC ¶ 62,097  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Puget Sound Energy, Inc.

Docket No. EC08-42-000

ORDER AUTHORIZING ACQUISITION OF  
GENERATION FACILITY

(Issued May 5, 2008)

On February 7, 2008, Puget Sound Energy, Inc. (Puget or Applicant) submitted an application pursuant to section 203 of the Federal Power Act (FPA)<sup>1</sup> requesting Commission authorization for the acquisition by Puget of Sumas Cogeneration Company L.P.'s (Sumas) existing cogeneration facility.

Sumas is a limited partnership company and an indirect, wholly-owned subsidiary of the Estates of Darrell M.P. Jones and Cynthia Jones (Estates). Sumas is an exempt wholesale generator and a qualifying cogeneration facility with market-based rates. Sumas owns the approximately 125 megawatt cogeneration facility located in Sumas, Washington.

Puget is a wholly-owned subsidiary of Puget Energy, Inc. (Puget Energy) and is a vertically-integrated utility that provides retail electric and natural gas service in the Puget Sound region of the State of Washington. Puget owns facilities used for the sale and transmission of electricity in interstate commerce and owns natural gas distribution facilities located within the State of Washington. Puget is authorized to make wholesale power sales at market-based rates and operates its transmission system pursuant to an Open Access Transmission Tariff (OATT) on file with the Commission.

Pursuant to a Membership Interest Purchase and Sale Agreement between Puget and Sumas, dated December 7, 2007, the acquisition by Puget will consist of three steps: (1) Sumas creates a special purpose entity (SPE) and transfers the facility to the SPE, (2) Puget acquires 100 percent of the membership interests in the SPE, and (3) Puget administratively dissolves the SPE resulting in the facility being owned and directly held by Puget.

Applicant states that the transaction is consistent with the public interest and will not adversely affect competition, rates or regulation, and it does not raise any cross-

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<sup>1</sup> 16 U.S.C. § 824b (2000), as amended by the Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stat. 594, 982-83 (2005).

subsidization issues. With respect to competition, Applicant states that the proposed transfer raises no horizontal market power concerns. Under a Power Purchase Agreement between Puget and Sumas, Puget has dispatched and controlled the output of the facility since 1993, although deliveries of power to Puget stopped in June 2007. Applicant states that the change in ownership of the facility will have no effect on Puget's share of the relevant market since Puget has treated the facility as a controlled resource since the time the facility has been in operation, and the facility is physically within Puget's balancing authority area. In addition, Applicant states that there is no adverse effect on competition since the facility's output has been committed under the above long-term agreement.

Applicant states that the transaction raises no vertical market power concerns. Applicant states that the transaction does not involve any transmission facilities because Puget already owns the interconnection equipment associated with the facility. Applicant states that there are no wholesale customers in Puget's control area, except for Puget's *de minimis* requirement customers and Bonneville Power Administration's power customers. Applicant asserts that it cannot impair the access of wholesale competitors or customers to other customers or suppliers. Applicant states that the acquisition of a joint ownership interest in a natural gas pipeline currently owned by Sumas does not raise vertical market power concerns because the pipeline terminates at the facility. Furthermore, because the pipeline does not serve any other generation, Applicant states that Puget cannot use its partial ownership of pipeline capacity to exercise market power against any competitors. Applicant contends that it has no ability or incentive to exercise vertical market power in delivered gas services because Puget does not serve any non-affiliated gas generators. Applicant states that since the transaction will not change Puget's downstream generation market share or market concentration, the transaction does not provide any incentive for Puget to exert vertical market power in natural gas markets or through electric or natural gas transmission.

Applicant states that the transaction will have no adverse effect on rates. Applicant contends that its market-based rates will not be affected by the transaction. In addition, Applicant states that the transaction will not affect Puget's cost-based rates for the sale of wholesale power sales because those rates will not be modified unless Puget files for Commission approval of a tariff amendment. Applicant notes that because the transaction does not include transmission facilities, it will have no effect on transmission rates. Applicant notes that its retail rates are subject to the jurisdiction of the Washington Utilities and Transportation Commission.

Applicant states that the transaction will not affect the manner or extent to which the Commission, any state, or any federal agency may regulate Applicant. Applicant contends that Puget will continue to be subject to Commission regulation, and the transaction will not affect the extent to which the Commission or any state authority can regulate Puget's rates.

Applicant states that the transaction does not raise any cross-subsidization concerns. Furthermore, Applicant contends that because the transaction involves a transfer of assets between Puget, a public utility, and Sumas, a non-affiliated entity, the transaction qualifies as a safe harbor transaction involving non-affiliates.<sup>2</sup> In addition, Applicant provides affirmative statements that the proposed transaction will not result in improper cross-subsidization, or the pledge or encumbrance of utility assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional facilities.

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.<sup>3</sup> 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, to implement the transaction.

This filing was noticed on February 13, 2008, with comments, protests or interventions due on or before February 28, 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 provision of Rule 214.

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,

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<sup>2</sup> 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).

<sup>3</sup> *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).

accounts, valuation, estimates or determination 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 supplemental orders as appropriate;
- (5) If the transaction results in changes in the status or the upstream ownership of Applicant' affiliated Qualifying Facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made;
- (6) Applicant shall account for the transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. Applicant shall submit its final accounting entries within six months of the date that the transaction is consummated, and the accounting submissions shall provide all the accounting entries related to the transfer along with narrative explanations describing the basis for the entries;
- (7) Applicant shall make appropriate filings under section 205 of the FPA, as necessary, to implement the transaction;
- (8) 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
- (9) Applicant shall notify the Commission within 10 days of the date that the transaction 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

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