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FERC Addresses Uncertainty Around Simultaneous Locational Exchanges

FERC determines that simultaneous locational exchanges that involve a merchant function's affiliated transmission provider's transmission system require prior approval.

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On February 16, the Federal Energy Regulatory Commission (FERC) determined that simultaneous locational exchanges of wholesale electric power require prior FERC approval when the exchange involves the merchant function of a public utility transmission provider and its affiliated transmission provider's transmission system.[1] FERC's decision addresses uncertainty with respect to whether simultaneous locational exchanges include the provision of transmission service or are instead solely wholesale power sales. FERC determined that simultaneous locational exchanges that involve a merchant function's affiliated transmission system may enable the merchant function to perform transmission functions. For that reason, such exchanges require prior FERC approval following a case-by-case evaluation; exchanges that do not involve an affiliated transmission system are considered wholesale power sales that do not require such an evaluation.

Background

The case originated when Puget Sound Energy, Inc. (Puget Sound) filed a petition for declaratory order requesting that FERC find that simultaneous locational exchanges of electric power are wholesale power sales rather than transmission transactions subject to the terms and conditions of an Open Access Transmission Tariff (OATT). In its petition, Puget Sound defined simultaneous locational exchanges of electric power as:

> A pair of simultaneously arranged wholesale power transactions between the same counterparties in which party A sells electricity to party B at one location, and party B sells the same volume of electricity to party A at a different location with the same delivery period, but not necessarily at the same price.

Puget Sound stated that such transactions are common in the electric industry and allow for entities selling energy to avoid transmission constraints. Puget Sound further argued that FERC has never clearly explained whether simultaneous locational exchanges, as a general rule, constitute transmission transactions that must comply with an OATT.

1. *Puget Sound Energy, Inc.*, 138 FERC ¶ 61,121 (2012).

In February 2011, FERC issued an order deferring action on Puget Sound's petition.[2] FERC explained that Puget Sound's request raised policy issues that were best addressed through a separate proceeding. Accordingly, FERC issued a Notice of Inquiry seeking comments regarding the extent to which simultaneous locational exchanges should be permitted and how those transactions should be characterized.[3]

FERC's Decision

In its February 16 decision, FERC addressed the merits of Puget Sound's petition. Additionally, FERC issued a notice terminating the proceeding established through the Notice of Inquiry.[4]

Addressing Puget Sound's petition, FERC first revised Puget Sound's definition of a simultaneous locational exchange. FERC's revised definition encompasses transactions with *overlapping* delivery periods instead of only transactions with the same delivery period. Under FERC's definition:

> Simultaneous exchanges occur when a pair of simultaneously arranged (i.e., part of the same negotiations) wholesale power transactions between the same counterparties in which party A sells an electricity product to party B at one location and party B sells a similar electricity product to party A at a different location have an overlapping delivery period. The simultaneous exchange is the overlapping portion (both in volume and delivery period) of these wholesale power transactions.

FERC next determined that simultaneous locational exchanges require prior FERC approval when the transaction involves the merchant function of a public utility transmission provider and its affiliate transmission provider's system. In that regard, a simultaneous locational exchange is considered to "involve" the affiliated transmission provider's system when at least one point of the locational exchange is either within or on the border of the transmission provider's system. If such a circumstance exists, prior FERC approval of the transaction is required and requests for that approval will be evaluated on a case-by-case basis. When seeking authorization, an entity should provide the following information to FERC:

- Identity of all parties to the transaction
- Identity of the delivery and receipt points
- A description of the terms and conditions of the transaction, including any charges and compensation
- Details of ultimate power sources and sinks
- Identity of available competitive alternatives
- Identity of the power levels of the exchange
- Desired dates and times for the exchange

2. *Puget Sound Energy, Inc.*, 134 FERC ¶ 61,122 (2011).
3. *Locational Exchanges of Wholesale Electric Power*, 134 FERC ¶ 61,123 (2011).
4. *Locational Exchanges of Wholesale Electric Power*, 138 FERC ¶ 61,122 (2012).

For transactions that do not involve a merchant function's affiliated transmission provider's system, FERC determined that simultaneous locational exchanges are permissible without prior FERC authorization beyond the authorization required under Section 205 of the Federal Power Act for the sale for resale of energy. Those instances qualify as wholesale power sales that, because an affiliated transmission system is not involved, do not raise a concern at FERC that the merchant function has an opportunity to effectively provide transmission service.

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