

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Puget Sound Energy, Inc.

Project Nos. 2493-025 and
029

ORDER GRANTING LATE INTERVENTION AND ON REHEARING

(Issued July 25, 2005)

1. On February 4, 2005, the Director, Division of Hydropower Administration and Compliance, issued an order approving a spill prevention, control, and countermeasures plan filed by Puget Sound Energy, Inc. (Puget) for Powerhouse No. 1 of Puget's Snoqualmie Falls Project No. 2493 (Snoqualmie Falls).¹ The project is located on the Snoqualmie River in King County, Washington. The plan was filed and approved pursuant to the requirements of Article 401 of the project's license.²

2. On March 7, 2005, the Snoqualmie Tribe (Tribe) filed a timely request for rehearing of the order, but failed to file a motion to intervene in order to become a party to the proceeding. Accordingly, by Secretary's notice issued April 5, 2005, the Tribe's rehearing request was rejected.³

3. The Tribe timely requested rehearing of the rejection notice and, as part of its submission, requested to intervene in the proceeding concerning the plan.

¹ The plan was filed on December 28, 2004.

² 107 FERC ¶ 61,331 (2004).

³ See Section 313 of the Federal Power Act, 16 U.S.C. § 8251, which only provides an opportunity for rehearing to parties to a proceeding.

4. For the reasons discussed below, we: (1) grant rehearing of the April 5, 2005 rejection notice; (2) grant late intervention in the post-license proceeding concerning the plan, and reinstate the Tribe's request for rehearing of the plan approval; and (3) deny rehearing of the February 5, 2005 Order approving the plan.

Late Intervention

5. The Tribe makes alternative arguments that: (1) by virtue of its intervention in the project's relicense proceeding, it was a party to the post-license proceeding regardless of whether it intervened; and (2) that the Commission should waive the time limit for filing an intervention and treat the Tribe's request for rehearing of the notice rejection, along with its earlier request for rehearing of the order approving the plan, as the Tribe's motion to intervene in the proceeding concerning the plan.

6. For a request for rehearing to be considered by the Commission, the petitioner must be a party to the proceeding. Although the Tribe was a party to the relicense proceeding, the Tribe's party status terminated when that license was issued and became final. Each post-licensing proceeding is a distinct matter, requiring intervention (if allowed) by those who wish to participate.⁴ The Commission only entertains such motions to intervene where the filing entails a material change in the plan of project development or in the terms and conditions of the license, or could adversely affect the rights of a property holder in a manner not contemplated by the license, or is being appealed by an agency or entity specifically given a consultation role with respect to the filing.⁵

7. Here, the Tribe was named in Article 401(a) as an entity to be consulted concerning the plan, but failed to intervene when it sought rehearing. However, the Tribe did timely file its rehearing request concerning the plan within the 30-day deadline for rehearing requests, and it subsequently submitted an intervention request (as part of its timely filed request for rehearing of the rejection notice). Therefore, in this instance, we will grant rehearing on the rejection notice, permit late intervention⁶ in the post-license

⁴ See *City of Tacoma, Washington*, 109 FERC ¶ 61,318 at 62,519 (2004).

⁵ *Id.* at 62,519. See also, *City of Tacoma*, 89 FERC ¶ 61,058 at 61,193 (1999); *Pacific Gas and Electric Company*, 40 FERC ¶ 61,035 at 61,099 (1987).

⁶ Had the Tribe filed an intervention motion with its request for rehearing on the plan, the intervention would have been timely.

proceeding concerning the plan, and entertain the Tribe's rehearing request concerning the plan.⁷

Adequacy Of The Plan

A. Background

8. Oil is located above ground in the project's 15-megawatt (MW) transformer; 15-kilovolt (kV) circuit breaker; transformer house (containing 9 switches, 8 transformers, and an oil storage room); machine shop/office building; carpenter shed; and garage.⁸ Oil is located underground in a cavity which is part of Powerhouse No. 1's generation station,⁹ and in the project's sub-basement.¹⁰

9. To protect against the possibility of oil spills at these project works, Article 401 (a) of the license required the licensee, after consultation with the National Marine Fisheries Service (NOAA), U.S. Fish and Wildlife Service (FWS), Washington Department of Fish and Wildlife (Washington DFW), Washington Department of

⁷The Tribe also argues that it qualifies as a party because the Commission is required to consult with the Tribe, on a government-to-government basis, concerning all activities relating to or affecting tribal resources. The action to which government-to-government consultation applies is the issuance of the license. Once that consultation is concluded and the license is issued, the terms of the license govern the project's operations. Where a Tribe has not been included as a party to be consulted under a particular license article, and where the matters involved are not specifically related to tribal issues, we are not required to consult.

⁸ At some of these locations, the oil is stored; at others it is inside equipment at the location.

⁹ The cavity, located approximately 270 feet below grade, contains the project's turbine oil lubrication and operation system. In the cavity, pressurized oil is pumped to turbine bearings and bearings on other rotating machinery, and oil is stored in three pressure vessels located on the cavity's northeast side. *See* section 3.3.1 of plan, at 10. The floor of the cavity contains drainage outlets which discharge into the project tailrace, and enter the Snoqualmie River a short distance downstream from Snoqualmie Falls. *See* section 3.4.2 of the plan, at 13.

¹⁰ The sub-basement is a closed vault with no exterior drainage, is located below ground, and is accessed through a locked steel door. It contains nine 2,400 volt transformers, which contain mineral oil. *See* section 3.3.3 of the plan, at 11.

Ecology (Washington DOE), the Tribe, and the City of Snoqualmie, to prepare and file for Commission approval an oil spill prevention, control, containment, and countermeasure plan. The plan was filed and, as noted above, was approved on February 5, 2005.

10. The plan lists the project equipment and storage facilities containing oil; describes the drainage pathways and distance to navigable waters, as well as the potential spills that could occur; and proposes measures to prevent spills and to make sure the oil stays contained in the event of a spill. It also sets out a regimen for inspections, as well as procedures for containment, countermeasures, and clean-up, in the event that a spill should occur.

11. On rehearing, the Tribe argues that the plan's prevention and containment measures are inadequate. It questions whether the material (CI-Agent) the plan proposes to use to prevent and treat oil spills will effectively prevent harm to river resources or may itself constitute a pollutant. In addition, it argues that the plan fails to provide adequate monitoring necessary to prevent spills.¹¹

¹¹The Tribe also argues that: (1) the plan fails to provide for natural resource damage assessment in the event of a spill as, allegedly, is required by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); and (2) approving the plan was improper because the Final Environmental Impact Statement (FEIS) developed in the project's relicense proceeding failed to consider the Corps of Engineers (Corps) section 205 flood mitigation project as a connected and cumulative action.

These arguments are inapposite. CERCLA authorizes the performance of a natural resource damage assessment to determine whether natural resources have been injured when there has been a release of a hazardous substance and, if so, the appropriate monetary damages to compensate for such injuries. CERCLA excludes petroleum from the definition of "hazardous substance." 42 U.S.C. 9601(14). Therefore, it does not appear that CERCLA is implicated here. To the extent that it is, the statute does not require that the party responsible for the release perform a natural resource damage assessment. *See* 42 U.S.C. 9607(f). Rather, the statute authorizes designated natural resource trustees to conduct a natural resource damage assessment and to use that assessment to bring a suit for damages against the responsible party. Thus, we conclude that discussion of natural resource damage assessment is beyond the scope of this plan.

Furthermore, the propriety of the FEIS analysis of the Corps project was previously raised by the Tribe on rehearing of the Commission's order relicensing the project and was fully addressed there. *See* 110 FERC ¶ 61,200 at 61,746-47 (2005).

B. Discussion**1. The Plan's Prevention and Containment Measures Are Adequate**

12. The Tribe argues that the various oil-holding facilities and equipment do not have sufficient storage capacity to contain the oil within them, and expresses concern that, in the event of an oil spill – especially one in which a number of pieces of equipment fail simultaneously – the resulting fluid will exceed the capacity of any back-up containment structures, and oil or contaminated water will flow toward and into the Snoqualmie River, and pass downstream. But, the plan provides adequate protection against this occurring.

13. As the plan sets out in detail, containment capacity has been built into each of the sites and, in each case, the containment capacity is greater than the amount of oil stored. The above-ground transformer and circuit breaker are each located inside poured concrete containment structures with concrete sides and bottoms sufficiently impervious to contain oil spills. The volume of the containment structures for the transformer and circuit breaker is 150 percent of the rated fluid capacity of the transformers.¹²

14. Both the upper/lower transformer house and the oil storage room located within it have concrete flooring and brick walls. Doors into the building and into the oil storage room are each fitted with elevated sills that permit the entire floor area to function as a spill containment area. While the transformer house can hold up to 1,500 gallons, the maximum fluid capacity for each transformer is only 75 gallons, and the total capacity for all the switches is about 100 gallons. In addition, the volume of spill containment for the oil storage room -- about 200 gallons -- is substantially greater than the volume of oil stored in that area.

¹² See section 4.2.2 of the plan, at 15. The Tribe noted the plan's statement that leakage from this equipment would be contained on the concrete pad and in the concrete containment area that the transformer is mounted on, but that in the event of a larger spill, the oil would likely soak into the soil surrounding the concrete mounting pad. The Tribe expresses concern that because surface drainage at the project flows north to northeast toward the Snoqualmie River, such a spill might drain into the river. However, since, as explained in the text above, the volume of containment structures for the transformer is 150 percent of the rated fluid capacity for the transformer, it is extremely unlikely that an uncontainable spill would occur. Furthermore, as the plan notes, a loss of fluid that great would likely cause a loss of power to the facility, resulting in quick detection of the problem and a response in accordance with section 6 of the plan.

15. The machine shop/office building also has concrete flooring and brick walls, and its doors are likewise fitted with elevated sills that permit the entire floor area of the building to function as a spill containment area. The floor's containment capacity is approximately 1,000 gallons, while the actual maximum fluid capacity used in the building is only 55 gallons.
16. The flammable stores cabinet in the carpenter shed has a sealed bottom with raised sides that creates seven gallons of spill capacity and is sufficiently impermeable to contain any spilled oil. The garage has a concrete floor, and its walls are sealed to the floor with oil- and fuel- resistant sealant impermeable to oil.
17. The sub-basement is an underground room with concrete floors and walls, sufficiently impervious to contain oil. Transformers in the sub-basement are located behind an angle-iron spill structure bolted and glued to the concrete floor that will contain small leaks. For larger spills and/or catastrophic failures, if they should occur, the entire sub-basement will adequately function as a spill containment structure. The sub-basement can contain several thousand gallons, while the actual combined fluid for all transformers located within it is only 100 gallons.
18. Finally, the cavity, as described above,¹³ is located approximately 270 feet below grade. The floor of the cavity has the capacity to retain several thousand gallons of fluid,¹⁴ but there are only 480 gallons of fluid in the lubrication system located there.
19. The floor of the cavity contains drainage outlets which lead to the project tailrace and into the Snoqualmie River. However, the floor is made of poured concrete and sufficiently impervious to control small spills of lubrication oil or used oil that could occur during operations. Under the plan, these small spills will be contained and cleaned up by the facility's personnel before they enter the drainage system. To deal with larger spills, the drainage outlets in the floor are plugged with CI-Agent pillows, an oil-sorptive material that is permeable to water. Upon exposure to oil, CI-Agent swells and becomes impermeable to water and oil. Any spills large enough to reach the drains will be absorbed by these CI-Agent pillows, which in turn will block the drains in the cavity floor, preventing any discharge of oil from the cavity.¹⁵

¹³ See n.9.

¹⁴ The floor of the cavity has this capacity because it is recessed approximately five feet relative to the walkways and turbines.

¹⁵ See section 4.2.1 of the plan, at page 15.

2. CI-Agent is an Appropriate Product for Use in Oil Spill Prevention and Containment

20. The Tribe argues that the plan fails to define CI-Agent or show that it will effectively prevent harm to river resources. Specifically, it argues that the plan fails to provide information on whether CI-Agent is approved by the U.S. Environmental Protection Agency (EPA), and that an entity who owns or operates facilities that discharge or propose to discharge pollutants into surface waters must, pursuant to 40 C.F.R. § 122.21, apply for a national pollution discharge elimination system permit.

21. These arguments are without merit. As discussed above, the plan does explain what CI-Agent is and how it works. CI-Agent is not a pollutant, but is used to contain a pollutant (oil). Indeed, CI-Agent is listed on the EPA's National Oil and Hazardous Substances Pollution Control Plan's product schedule as a substance that may be authorized for use on oil discharges.¹⁶ Furthermore, CI-Agent, as used in the project's cavity, will not be discharged into the river. Nor does the licensee otherwise discharge or propose to discharge pollutants into surface waters.

3. The Plan's Monitoring Provisions Are Adequate

22. The Tribe argues that the plan's proposed monitoring is inadequate because it consists only of "regular inspections," and "being observant," and that these terms are left undefined by the plan. However, the plan sets out specific timing for inspections, actions to be taken based on the inspections in order to prevent leaks, and a protocol for action to be taken if a leak occurs.

23. Under the plan, the lubrication system in the project's cavity is to be visually inspected daily for leaks and oil levels. Damage or deterioration of mounting systems is to be reported to the maintenance planner for the facility, and repaired or replaced. Leakage from the system is to be noted and cleaned up with absorbent pads. The losses and any oil added to the system are to be recorded on a daily/weekly inspection form in

¹⁶ Section 311(d)(2) of the Clean Water Act and section 4201(a) of the Oil Pollution Act of 1990 require the preparation of a schedule of spill mitigating devices and substances that may be authorized for use on oil discharges. Subpart J (40 C.F.R. Part 300.910) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) governs the use of agents that may be listed on the schedule. EPA prepares and maintains the schedule (known as the NCP Product Schedule). While listing on this schedule does not constitute EPA approval, it does mean that data concerning the product has been submitted to EPA as required by subpart J of the NCP, 40 C.F.R. § 300.915.

order to evaluate whether oil may be leaking from the turbine lubrication system at some unseen location.

24. The CI-Agent pillows used to plug the cavity's drains are to be inspected every two weeks for staining, discoloration, or hardening that would indicate that oil is being absorbed by the CI-Agent in the pillow. If any of these conditions is observed, the pillow will be replaced and the location and time of replacement noted. The pillows will be replaced every six months regardless of whether they pass visual inspection. Finally, pressure vessels that hold reserve oil in the turbine system will be pressure-tested every 10 years in accordance with the guidelines of the American Petroleum Institute.

25. Oil-filled electrical equipment,¹⁷ as well as other oil-filled equipment and oil storage areas¹⁸ are to be visually inspected on a weekly basis, for overall condition, including any leaks, damage, or other conditions that could contribute to a release.¹⁹ As with the project cavity, damage or deterioration of mounting systems is to be reported, and repaired or replaced. Leakage is to be noted and cleaned up with absorbent pads, and any oil losses and/or oil added is to be recorded on a daily/weekly inspection form in order to evaluate whether oil may be leaking from some unseen location. If leaks, corrosion dents or other indications of potential leakage are observed in the stored oil or oil-filled equipment, the containers will be placed on secondary containment and replaced as soon as possible. Any oil will be cleaned up using the procedures described in the licensee's standards and forms for cleanup of oil spills, set out in appendix B to the plan.²⁰

¹⁷ Oil-filled electrical equipment includes: the 15 MW aboveground transformer; the 15 kV aboveground circuit breaker; the sub-basement transformers; and the transformer house (upper and lower transformers, and switches).

¹⁸ These include: the transformer house oil storage area; the machine shop and office building's oil storage area; the carpenter shed; the oil storage facility; and the garage.

¹⁹ In addition, water accumulated in the secondary containment for the 15-MW aboveground transformer and the 15-kV aboveground circuit breaker will be inspected for sheens before it is discharged from the containment.

²⁰ See the plan's appendix B, Form 0150.3100, Cleanup of Oil Spills.

26. Based on the foregoing, we find that Puget's spill prevention, control, and countermeasures plan is adequate, and we therefore deny the Tribe's request for rehearing.

The Commission orders:

(A) The request of the Snoqualmie Tribe for rehearing of the Commission's notice issued April 5, 2005 (rejecting the Snoqualmie Tribe's request for rehearing), is granted.

(B) The Snoqualmie Tribe's motion to intervene late is granted.

(C) The Snoqualmie Tribe's request for rehearing of the Commission staff order issued February 4, 2005, is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.