

**Examining Regulation of Electric Utilities  
in the Face of Change  
in the Electric Industry**

**Docket No. UE-940932**

**Reference Volume 3: Written Comments  
on First Draft of Policy Principles**

Table of Contents  
Reference Volume 3: Third Phase Written Comments  
Docket No. UE-940932

Status of the Notice of Inquiry and Policy Statement  
Establishing Interim Principles for Regulation of Electric  
Utilities

Written Comments:

1. Air Liquide
2. Energy & Economic Development
3. Enron
4. King County Department of Metropolitan Services
5. NW Conservation Act Coalition
6. NW Independent Power Coalition
7. PacifiCorp
8. Public Counsel
9. Puget Power
10. Puget Power Shareholders
11. Renewable Northwest Project & American Wind Energy Assn.
12. Rogers, Henry C.
13. Seattle City Light
14. Washington Public Utility Districts
15. Washington State Energy Office
16. Washington Water Power
17. Wolch, John H.



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STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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(206) 753-6423 • (SCAN) 234-6423 • TDD (206) 586-8203

August 14, 1995

Re: Examining Regulation of Electric Utilities in the Face  
of Change in the Electric Industry  
Docket No. UE-940932

Status of the Notice of Inquiry and Policy Statement Establishing  
Interim Principles for Regulation of Electric Utilities

To All Parties and Interested Persons:

SUMMARY

By this letter, the Commission informs interested persons of the status of its Inquiry on the regulation of electric utilities in the face of change in the electric industry. The pace of change and activities which profoundly affect the environment of the electricity industry in Washington has accelerated in recent months. These circumstances have lead the Commission to conclude that it does not yet have sufficient information to refine existing, or to develop new, regulatory tools to address resource planning, resource bidding, and prudence determination. Decisions concerning these tools will be deferred until a clearer picture has emerged of the structure of the industry, and the domain over which Washington state regulation will have authority. The Commission's immediate focus will be on external factors and processes, particularly the Federal Energy Regulatory Commission (FERC) notice of proposed rulemaking (NOPR) (RM95-8-000 and RM94-7-001) on transmission access and stranded investment, and developments affecting the future role and structure of the Bonneville Power Administration (BPA). In the meantime, Commission staff will evaluate studies of market conditions in the electric industry, and undertake a survey of customer views concerning electricity competition and service.

The Commission anticipates that challenging regulatory issues will arise as the electricity industry adapts to a greater degree of competition and to changes in both customer expectations and the national and regional industry environment. Accordingly, the Commission issues an interim policy statement pursuant to RCW 34.05.230 and WAC 480.09.200 and invites comments on this draft statement from interested parties. The draft policy statement consists of a set of principles and objectives to help guide the transition to a more competitive electricity industry.

The Commission intends to use this set of principles to guide decisions about specific filings made by regulated companies in response to competitive circumstances.

#### STATUS OF THE INQUIRY PROCESS

On December, 16, 1994, the Commission undertook an Inquiry into changes in the electric industry and consequences that such changes might have for current regulatory tools, such as least cost planning, competitive bidding, and prudence review of utility electricity resource decisions.

Two rounds of written comment have been completed. A total of 41 parties have submitted 506 pages of comments. The interested party list now contains more than 300 names. The Commission thanks all parties for their time, attention, and thoughts. Copies of all sets of comments have been published, and continue to be available on request from the Commission's Records Center.

The Commission and its staff have reviewed the comments, and found them constructive statements of views and positions held by the diverse range of electric industry stakeholders. Two themes emerged from the initial rounds of comments. The Commission concludes that these key themes should form the basis for interim principles to guide utility policy as the industry evolves.

The first theme is the broadening of the array of choices made available to customers to meet their electricity service needs. Broadening the choices available to customers may involve expanding the array of service products offered by utilities, or broadening opportunities to choose the provider of unbundled products, or both.

The second theme is the preservation, under changing competitive circumstances, of the benefits of the existing electricity supply system. Among these benefits are: equity among customers, long-term reliability and efficiency, universal access, affordable service, environmental stewardship, and public involvement in electricity resource planning and development.

The few months since the Inquiry began have seen substantial and accelerating change in the electricity industry.

1. Low natural gas prices, increased transmission access, the rise of power marketers, and enhanced electricity price transparency have led to the development of a substantial surplus of bulk power in the West. This, in turn, has led to a vigorous market of attractively priced wholesale power products.

2. The FERC issued its NOPR on restructuring the wholesale power market to ensure healthy competition in the generation market. The NOPR raises a number of questions concerning state/federal jurisdiction. While the FERC makes no direct assertion of authority over retail service, the transmission system through and over which supply competition takes place is ambiguously partitioned into state and federal jurisdiction.

3. The BPA is faced with significant price competition from the wholesale surplus (see #1, above) and may undergo substantial restructuring through federal legislation. In particular, the access that investor-owned utility (IOU) residential customers have to federal power system benefits, primarily through the residential exchange program, has been proposed by BPA in its 1996 rate case to undergo significant change. In addition, BPA has recently proposed significant changes in transmission services and pricing.

4. Industrial customers, reacting to the declining price of wholesale power, are pressuring some utilities for rate concessions. The Commission recently approved a special contract between Puget Power and ARCO in Whatcom County. Some utilities are adding new retail industrial loads through attractively priced power deals. Washington Water Power has negotiated a contract to serve an industrial customer formerly served exclusively by BPA as a direct service industry. Puget Power has filed an exit fee tariff, WWP has indicated interest in filing a "competitive service" tariff, and some industrial customers have expressed interest in unbundled local distribution services.

Since the Inquiry was initiated in December, the electricity industry has seen an expansion in the available supply of wholesale electricity, an expansion in the number of participants and the roles they play in the wholesale electricity market, and greatly enhanced market price transparency. The 20 to 30 mill prices now available in the wholesale market are below many of the new resource cost estimates made over the last few years. For the near term, at least, supply is up and prices are low.

The initial Inquiry was primarily focused on issues surrounding regulatory tools which affect planning for new resources and new resource acquisition and the application of these tools for centrally provided, monopoly, retail electricity service.

The developments in the wholesale power market have changed the environment for the Inquiry by shifting emphasis from development of new resources to the accommodation of greater competition. Consequently, the focus of the Inquiry must change, at least for the near-term.

At this point, the Commission has yet to form an opinion on the nature or extent of competition that would be beneficial and fair in the retail market, or what actions, if any, it can or should take to facilitate such competition. A comprehensive approach to the retail service and regulatory process must await greater clarity on the circumstances and need for regulation that grows out of the FERC's actions, and any restructuring affecting BPA.

The tools for facilitating retail service competition (for example, unbundled service tariffs) cannot be effectively developed without resolution of the structural and jurisdictional issues raised in the NOPR. Moreover, proposals to restructure BPA and its transmission system could significantly affect the basic framework for competition in Washington. Similarly, questions about resource planning, bidding, and prudence review cannot be resolved until it can be determined for whom -- for which customers -- such regulatory oversight is needed and appropriate.

We anticipate the FERC process yielding results by spring 1996. For the time being, existing Washington regulatory rules governing least-cost planning, and resource bidding will remain in place, and prudence of utility expenditures will be handled in general rate cases.

Comments submitted by Inquiry participants will help inform the Commission in its response to FERC and BPA/regional issues. In addition, to address the call for greater analysis made by some commentors, Commission staff will collect and evaluate research on the nature of the evolving electricity market and conduct a survey of consumer views about electricity service and competition. Analyzing market characteristics and consumer viewpoints will prepare the Commission to address both benefits and implications of expanding the service choices available to retail customers once FERC and BPA playing fields are better understood.

Given the uncertain institutional context, the Commission believes that fair and efficient competition would benefit from common rules and principles guiding the competitive relationships between and among Washington's various retail service utilities, regardless of history or ownership form. For those utilities under its jurisdiction, the Commission anticipates that regulatory issues prompted by adaptation to changing competitive circumstances and situations are likely to arise in the near term. We expect that the special contract rule (WAC 480-80-335),

banded rate tariff authority (RCW 80.28.075), and the Commission's general authority to regulate in the public interest (RCW 80.01.040) will provide sufficient flexibility to address many of these situations. In addition, the Commission will use a set of general principles to provide guidance in the consideration of specific regulatory issues as they arise.

The following set of principles comprise an interim policy statement made pursuant to WAC 480-09-200. The Commission invites comments on these interim principles and will make appropriate revisions to the principles subsequent to the review and analysis of comments received.

Parties wishing to comment should submit comments bearing the caption Guiding Principles for an Evolving Electricity Industry and reference Docket No. UE-940932 to Steve McLellan, Commission Secretary, no later than September 18, 1995.

The Commission requests that commentors file an original and ten (10) copies of their written reply comments. The Commission also requests that an electronic version of your comments be provided on a 3 1/2 inch, high density diskette, with the format identified, or in ASCII text format.

INTERIM POLICY STATEMENT: GUIDING PRINCIPLES FOR AN EVOLVING ELECTRICITY INDUSTRY

1. The Commission's fundamental responsibility is to ensure that the electricity service needs of customers are met at a cost that is fair, just, reasonable, and not unduly or unjustly discriminatory. Where competition can serve to accomplish results that are fair and efficient for all customers, it should be accommodated and encouraged.
2. Non-economic bypass and the inappropriate shifting of the fixed cost of the electrical system between or among customers are not fair and efficient competition, are contrary to the public interest, and should be avoided. Customers of continuing monopoly service should benefit, or at least not be harmed, by choices made by customers with competitive options.
3. The long-term integrity, safety, reliability, and quality of the bulk electric system and retail electricity service should not be jeopardized.
4. Consumers should be afforded the broadest possible range of choice in electricity service and pricing options. Customer service and pricing options should reflect customer needs, as

well as differences among electricity providers. All classes of customers should have access to a basic level of reasonably priced and reliable service.

5. Competitive markets should not undermine public policies favoring environmental protection, energy efficiency, resource diversity, and technological innovation. If these policies are to be realized, the utilities, new market entrants, and electricity customers, as well as institutions not directly a part of the electricity industry, will all have important roles to play. Approaches that encourage development of markets for energy efficient equipment (e.g. market transformation), or which are otherwise market-based and competitively neutral should be emphasized.

6. Transitional regulatory decisions concerning specific situations and responses to competitive circumstances should be made carefully in a manner that does not advantage or disadvantage any group of competitors or the "natural" evolution of efficient markets.

7. The opportunity for members of the public to voice their views in the planning, choice of resources, siting, and impacts of the electricity system should be preserved and enhanced.

8. Regulation serves its responsibility for protecting customer interests by acting as a surrogate for competition. Regulation cannot and should not ensure that utilities are, in all circumstances, made entirely whole for generation or other costs that are determined through actual and fair competition to be stranded or uneconomic.

Signed at Olympia, Washington, this 14th day of August 1995.



Sharon L. Nelson  
Chairman



Richard Hemstad  
Commissioner



William R. Gillis  
Commissioner



# Air Liquide





**AIR LIQUIDE**

September 18, 1995

\*\*\* BY FAX & FEDERAL EXPRESS \*\*\*

Mr. Steve McLellan, Executive Secretary  
Washington Utilities and Transportation Commission  
Chandler Plaza Bldg.  
1300 S. Evergreen Park Dr. S.W.  
P.O. Box 47250  
Olympia, Washington 98504-7250

Re: Docket No. UE-~~950570~~ 940932

Dear Mr. McLellan:

Air Liquide America Corporation ("Air Liquide") respectfully submits to the Washington Utilities and Transportation Commission ("Commission") comments pursuant to the Commission's guiding principles issued on August 14, 1995.

Yours truly,

William K. Edwards  
Manager, Power Planning

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WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

GUIDING PRINCIPLES FOR AN )  
EVOLVING ELECTRICITY INDUSTRY )

DOCKET NO. UE-940932

COMMENTS OF  
AIR LIQUIDE AMERICA CORPORATION  
TO THE  
WASHINGTON UTILITY AND TRANSPORTATION COMMISSION'S  
GUIDING PRINCIPLES FOR AN EVOLVING  
ELECTRICITY INDUSTRY  
(SEPTEMBER 18, 1995)

STATE OF WASHINGTON  
UTILITY AND TRANSPORTATION  
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Air Liquide America Corporation ("Air Liquide") applauds the Washington Utilities and Transportation Commission's ("Washington Commission's" or "Commission's") efforts to investigate and encourage competitive forces in the electric industry. Air Liquide is appreciative of the opportunity afforded it by the Commission to make comments on its guiding principles. Air Liquide wishes to complement the Commission and Staff for taking these important steps to examine competition in the electric utility industry in Washington. Air Liquide believes these efforts can

substantially move the industry toward a goal of competition and subsequently reduce costs.

Although the current Inquiry could produce concrete results, Air Liquide respectfully requests that the Commission remain open to other vehicles for advancing competition in the electric industry. In particular, the Commission should not preclude the use of more focused proceeding, such as complaints or ratemaking cases, to resolve specific issues.

Air Liquide is a large consumer of retail energy from a number of utilities across the country. Air Liquide has 33 large air separation plants and 15 Carbon Dioxide plants. It operates these facilities in over forty states. In 1994, Air Liquide consumed in excess of 3,600 Gwh's. Additionally, Air Liquide owns and operates two highly efficient cogeneration plants in Texas (one in ERCOT) totaling approximately 310 Mw. In the state of Washington, Air Liquide operates a 13 Mw air separation facility in Kent, Washington that consumes approximately 100 Gwh per year. While Air Liquide desires to expand its core industrial gas business, it also seeks to expand its presence in the wholesale generating market when the synergies associated with operations provide adequate economic incentives. Therefore any subsequent rulemaking(s) in

this area will affect Air Liquide both in its present operations as well as its future plans and as both a buyer and a seller.

#### SIGNIFICANT HISTORY

There have been two pieces of legislation that merit recognition before comments on the Commission's guiding can be placed in context. First is the Public Utilities Regulatory Policies Act ("PURPA"), and second the Energy Policy Act of 1992 ("EPA").<sup>1</sup> These two pieces of legislation define a fundamental and developing change in the nation's energy policy toward competition.

The enactment of PURPA provided a means of testing the theory that the generation function of a vertically integrated electric utility is a natural monopoly. Although lessons from PURPA are still being learned, there are at least two that deserve to be considered as the Commission proceeds with its consideration of competition.

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<sup>1</sup> PL 95-617, (November 9, 1978), as amended by PL 96-294 (June 30, 1980), PL 98-620 (November 8, 1984), PL 99-495 (October 16, 1986), PL 101-575 (November 15, 1990), and PL 102-486 (October 24, 1992). Federal Power Act as amended.

First, the emergence of a strong and growing non-utility generation industry, which is frequently able to provide energy at costs below those of a utility, strongly suggests that the generation function of a vertically integrated utility is not a natural monopoly. Some may say that the market for qualified facilities is protected by Congress with favored legislation; and absent PURPA, qualified facilities would not survive. What is clear now and what was clear to Congress in 1978 is that, absent PURPA regulations, vertically integrated utilities would have been free to exercise monopoly power to prevent the emergence of a market for qualified cogeneration facilities. Consequently, such attitudes do not seem to be consistent with the emergence of non-utility generators and more recently, the exempt wholesale generators ("EWG") that have had the opportunity to construct and operate new generating assets at costs that are frequently less than those of a utility and during a period where the utilities were reluctant to construct those assets themselves. It is now clear that the market for non-utility generation is an established market that represents a substantial amount of the United States' generating capacity.

Second, cost studies pursuant to the PURPA requirements in 1980 and again in 1982 as well as the literature from the 'great rate debates' from the late 1970's and early 1980's suggest that many vertically integrated

electric utilities are increasing cost entities with respect to generation. The electric utility industry was originally granted monopoly status in part because it had an "inherent tendency to decreasing unit cost."<sup>2</sup> In other words, it may be desirable for society to allow monopolies to exist if, among other things, the monopolist can serve the market more efficiently than multiple entities could. The characteristics associated with an increasing cost industry are particularly disturbing to regulators who set electric utilities' rates based on average embedded costs. An increasing cost industry, like electric generation, is also characterized by the marginal cost of production exceeding the average cost. These characteristics are present for many vertically integrated utilities today. So long as the generation function of the electric utility industry remains an increasing cost industry, regulators will likely see new generation plant enter rate base that is appreciably more expensive than older plants, thereby driving up the rate base, and ultimately, the unit cost to all ratepayers. Clearly, many of the actions by this Commission are motivated, in part, by the rising cost of electricity over the last 20 years.

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<sup>2</sup> The Economics of Regulation, by Alfred E. Kahn (page II:119).



For these reasons, the Commission's examination of the need to maintain the sanctioned vertically integrated monopoly status of suppliers of electric generation and methods to permit competitive generators to participate fairly in those markets is meritorious. Indeed, if generation by vertically integrated utilities is an increasing cost business, then the protection of monopolies for electric generation promotes economic inefficiency, or higher costs.

#### GUIDING PRINCIPLES

Air Liquide applauds the Commission's decision to develop guiding principles as a first step in defining the appropriate boundaries for competition. Although, we are in general agreement with the principles as stated in the Commission August 14, 1995 Status Report, we do wish to comment on several of these principles.

Principle 1: The Commission's fundamental responsibility is to ensure that the electricity service needs of customers are met at a cost that is fair and reasonable, and not unduly or unjustly discriminatory. Where competition can serve to accomplish results that are fair and efficient for all customers, it should be accommodated and encouraged.

Air Liquide supports the concept behind the Commission's first principle. However, it respectfully suggests that this principle should be modified

to reflect that the electric service needs of customers should be met at a minimum cost as opposed to fair and reasonable cost. Presuming that regulation is, in fact, a surrogate for competition<sup>3</sup>, then we respectfully submit that such competition [regulation] should manifest itself in lower prices than would otherwise be the case.

We believe that competition in the generation function can be made available to all customers and would not be unjustly or unduly discriminatory.

We believe that an electric utility performs basically three major functions. These functions are:

- o generation,
- o transmission, and
- o distribution.

The growth in non-utility generation that has occurred since the enactment of PURPA has demonstrated that generation is not a natural monopoly. Likewise, both transmission and distribution are "essential facilities" for the transportation of electricity to end users. Absent comparable access to both transmission and distribution by third party generators, severe restrictions are placed on the ability of third party

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<sup>3</sup> The Washington Commission's Guiding Principles (principle 8).

generators to execute agreements that provide more efficient transactions.

In the long-run, all generation sources (utility and non-utility) should compete for load based on the price of new construction and on the relative prices of fuels. In the short-run where existing excess capacity or contractual purchase power agreements exist, competition could reduce returns on those assets below the incremental cost of money that the Commission would normally consider in the course of rate of return regulation. Such reductions are consistent with court decisions<sup>4</sup> which provide for commensurate returns since the market would set the clearing price for capacity and energy. By definition, if the market operates efficiently to set generation prices, commensurate returns are made de facto.

The argument put forward by some utilities that existing assets are "stranded" is only partly true. If the allegedly stranded asset is an expensive generator (e.g. nuclear) whose busbar cost is considerably higher than the market price, it is probably unlikely that the asset owner will be able to sell the output from the plant at prices that

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<sup>4</sup> For instance: FPC v. Hope Natural Gas Co., 320 U.S. 591 (1944); Bluefield Water Works v. PSC 262 U.S. 679 (1923).

produce an adequate return on an embedded cost basis. Likewise, purchase power agreements that are considerably above the market price are unlikely to trade in a competitive market. These units would not be stranded unless their incremental cost of operation exceeds the market price. Alternatively, utilities who have advocated recovery of "stranded" costs do not typically discuss the potential for better returns on efficient low cost units, or purchase power agreements, that may trade at prices that exceed the efficient units busbar costs plus the expected return under rate of return regulation.

Principle 2: Non-economic bypass and the inappropriate shifting of the fixed cost of the electrical system between or among customers are not fair and efficient competition, are contrary to the public interest, and should be avoided. Customers of continuing monopoly service should benefit, or at least not be harmed, by choices made by customers with competitive options.

Air Liquide believes that the problem of cost shifting is a problem implicitly associated with average embedded cost ratemaking where cost allocation is a zero sum game (i.e. someone will win only at the expense of another). Cost shifting is likely minimized for the transmission and distribution functions since the utility is being compensated for its use regardless of whether it is supplying the end-use customer with generation service. If the generation asset is uneconomic and subsequently stranded, then it is the responsibility of the company's

management on behalf of its stockholders to write down the value of the assets to levels that are competitive, or to divest itself of such uneconomic assets. It is therefore generally inappropriate for utilities to expect to recover their stranded costs from customers. In every case it is appropriate to require utilities proposing to collect stranded costs from customers to provide substantial evidence regarding the public interest of such collection as well as the effect on competition, because stranded costs could easily be viewed as anticompetitive.

The risk of generation construction and ownership rests with the asset's owner, not its customers. In a competitive generation market, uneconomic generation assets are not awarded returns that are commensurate with the average market return.

For many years regulators and utility generation planners have been unable to forecast changes in capital and fuel costs associated with future units. When these units are ultimately constructed, regulators and ratepayers are sometimes faced with expensive additions to the rate base. Often courts have forced regulators to accept, and customers to pay for, high cost units in rate base. Competition may provide for an alternative to such market anomalies. It certainly places the responsibility/risk of generation where it belongs, on the owners of that

generation. In unregulated industries, the stockholders accept a far higher level of responsibility for uneconomic assets than does the electric utility industry.

Principle 4: Consumers should be afforded the broadest possible range of choice in electricity service and pricing options. Customer service and pricing options should reflect customer needs, as well as differences among electricity providers. All classes of customers should have access to a basic level of reasonably priced and reliable service.

Impediments associated with bringing generation competition to all customers appears to be accounting related. Specifically, unbundling rates, tracking unbundled transactions through customer information systems, and the allocation of common costs between functions are the real impediments to competition.

The role of the Commission in a competitive generation market differs from the heretofore rate of return regulation. It is our view, transmission and distribution remains regulated on a rate of return basis; however, the need for comparable access is fundamental. The transmission and distribution utility therefore earns a return on the transmission and distribution assets regardless of who supplies the electrons. The Commission's role in the competitive generation market becomes one that protects competition by regulating the operation of the competitive market and mitigating market power. Another role is

protecting the competitive market from non-competitive players by promoting reciprocity. We believe that competition in the generation market will necessarily involve the Commission in the role of monitoring and protecting competition as well as the rate of return regulation of the transmission and distribution functions. These roles seemingly involve the Commission in the electric generation market more so than it is presently.

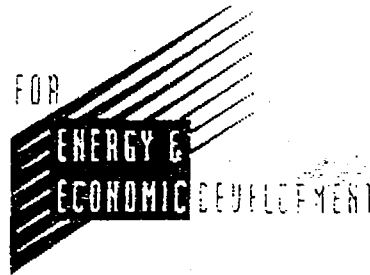




# Energy & Economic Development



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U.S. DEPARTMENT OF ENERGY  
WASHINGTON, DC

September 19, 1995

Mr. Steve McLellan  
Commission Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive, S.W.  
PO Box 47250  
Olympia, WA 98504-7250

VIA FACSIMILE: (206) 586-1150

Re: Comments on Examining Regulation of Electric Utilities in the Face of Change in the Electric Industry; Docket No. UE-940932

Dear Mr. McLellan:

Due to my travel schedule I was unable to get the following comments to the above referenced draft policy statement to you by yesterday. I hope you will accept them today.

Regarding Section 5, page 6, I offer environmental regulation of electricity generation sources should be the responsibility of state agencies with environmental expertise and not be a responsibility of this Commission in a competitive market. Since all electricity generators must meet or exceed all federal and state environmental requirements, the decisions regarding new resource acquisition should be made using traditional criteria such as price, reliability, fuel supply, and security.

If you have any questions or concerns, please feel free to call me at (303) 694-4244.

Sincerely,

Terry Ross  
Vice President  
West Region

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TELEPHONE (303) 694-4244 FACSIMILE (303) 694-4299

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**Enron**



September 15, 1995

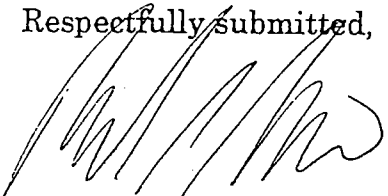
Mr. Steve McLellan, Commission Secretary  
Washington Utilities and Transportation Commission  
Chandler Plaza Building  
P. O. Box 47250  
Olympia, WA 98504-7250

via overnight courier

Dear Secretary McLellan

On behalf of Enron Power Marketing, Inc., an affiliate of Enron Capital & Trade Resources, please find enclosed one original and 10 copies of comments in response to the Commission's interim policy statement in Docket No. UE-940932, Guiding Principles for an Evolving Electric Industry. This document is also found on the enclosed 3.5" diskette using Microsoft Word 6.0 and named comments.doc. Copies have been served upon all parties who have previously filed comments in this proceeding.

Respectfully submitted,



Richard S. Shapiro  
Regulatory Director

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REGULATORY DIVISION  
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BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Guiding Principles for an )  
Evolving Electric Industry )

UE-940932

COMMENTS OF ENRON POWER MARKETING, INC.

Enron Power Marketing, Inc. (EPMI) submits these comments in response to the Commission's interim policy statement. EPMI commends the Commission for its efforts thus far in this proceeding and hopes that the following comments assist the Commission in finalizing its recommended policy decision.

DESCRIPTION OF COMMENTOR

EPMI is a part of Enron Capital & Trade Resources (ECT) and was formed to develop a North American merchant services business in electric power. EPMI has been authorized by the Federal Energy Regulatory Commission (FERC) to make wholesale sales of power in interstate commerce on negotiated rates and terms of service (see Enron Power Marketing, Inc., 65 FERC para. 61.305 (1993), *rehearing granted in part and denied in part* 66 FERC para. 61.244 (1994)). Currently, EPMI is the nation's leading power marketer.

ECT is affiliated with entities that own or operate generation facilities with domestic generation capacity of over 1,200 megawatts and worldwide



generation capacity of nearly 4,000 megawatts. Drawing from ECT's experience in the development of a commodity market for natural gas, EPMI has developed a range of products and services related to the purchase, sale, and delivery of electric power and the management of associated price risks. EPMI is actively marketing these products in Washington and anticipates that it will play a significant long-term role in Washington's electric services market to the benefit of its industry and its citizens.

#### COMMENTS RELATING TO GUIDING PRINCIPLES

1. *The Commission's fundamental responsibility is to ensure that the electricity service needs of customers are met at a cost that is fair, just, reasonable, and not unduly or unjustly discriminatory. Where competition can serve to accomplish results that are fair and efficient for all customers, it should be accommodated and encouraged.*

EPMI agrees with the principle that electric customers should receive electricity services at "fair, just, reasonable, and not unduly or unjustly discriminatory" costs. In addition, EPMI would urge the Commission to recognize that electricity price is not the only issue in this proceeding. As other energy industries have moved towards more competitive market structures, customers and suppliers have developed a multitude of contractual arrangements to meet the many needs of energy users. It is only with retail competition that the full range of price and quality arrangements can be allowed to develop.

As regards the second part of this principle, EPMI would recommend that the Commission consider using instead the following principle:

**All electric industry functions which can be subject to market forces should be subject to market forces.**

The question faced today by the Commission is to determine if markets can be relied upon to provide consumers with efficient and equitable outcomes. Trust in markets is fundamental to the society we live in. Given this trust, the burden of proof for continuing economic regulation of the generation and merchant functions within the electric industry should be on those who would assert that markets do not work, as opposed to those who advocate deregulation and unleashing competitive market forces.

This discussion of removing government regulation and using markets is not simply a theoretical exercise; it has been applied with great success in other regulated industries. In the natural gas industry, for example, the production and merchant functions are entirely unregulated. Transmission, which remains a natural monopoly, is provided by pipelines at regulated rates, but customers can resell those rights in a secondary market, thereby creating competition for new customers seeking transmission service. The results of deregulation of the natural gas industry have been:

- a substantial net cost reduction (even after taking stranded investment into account),
- an increased diversity of products and services, and
- increased reliability of delivery.

In one regulated industry after another, government policy makers have come to rely on market forces to perform as many functions as possible, retaining economic regulation over only those functions which continue to be natural monopolies. In the electric services industry, this implies that the generation of power and the merchant function are tasks which are best left to competitive markets. Decisions about which resources to invest in, where to allocate capital, the cost of that capital, the pricing, terms, and conditions of transactions between parties and the form of those transactions are economic functions which are the tasks markets perform best.

In conclusion, EPMI would argue that regulation is poor proxy for competition in setting "fair, just, and reasonable" prices. Where effective competition exists, the WUTC should utilize the market to ensure that all participants are treated in a non-discriminatory fashion.

2. *Non-economic bypass and the inappropriate shifting of the fixed cost of the electrical system between or among customers are not fair and efficient competition, are contrary to the public interest, and should be avoided. Customers of continuing monopoly service should benefit, or at least not be harmed, by choices made by customers with competitive options.*

EPMI agrees with this principle in general, but has reservations regarding the implied assumptions. While cost shifting is a valid concern for the Commission, EPMI believes that both in the short-term and the long-term there will be large net benefits for all customers -- even with stranded

costs taken into account<sup>1</sup>. These benefits accrue from the constant cost pressure placed on generation and merchant companies as they compete to serve load in a retail competition environment. In the short-term, costs will be squeezed from the system as companies work to serve new and retain old load. In the long-term, the benefits arise from the improvements in capital financing and the management of price volatility. Specifically, competition will create the following benefits for consumers:

- customers will receive the best product for the best price as suppliers compete constantly with new and innovative solutions,
- risk allocation will be made more efficiently, as price risk managers are able to develop the risk mitigation products and services necessary to manage electricity price volatility,
- provides an effective tool to mitigate generation market power by importing power from distant generation sources, and
- improves efficiency in capital utilization by allowing the development of a deep and broad forward market for electricity.

Finally, EPMI would like to emphasize that these benefits can only be achieved through competition, i.e., through numerous buyers and sellers meeting in the marketplace and bringing all of their ingenuity and creativity to bear. The most benevolent monopoly laboring under the most enlightened, omniscient regulation cannot produce these benefits. Many of these benefits are associated with competition between merchants, not merely competition between generators. Merchants, such as EPMI, are the intermediaries which

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<sup>1</sup> Stranded costs are exposed, not created by competition and are not an incremental set of costs.

create the product diversification, the price risk management capabilities, and the efficiencies in capital markets that lead to significant benefits for consumers.

3. *The long-term integrity, safety, reliability, and quality of the bulk electric system and retail electricity service should not be jeopardized.*

EPMI agrees fully with this principle. EPMI understands and appreciates the serious reliability concerns that are associated with any electric industry restructuring. To ensure system stability and security, EPMI favors the creation of an Independent System Operator (ISO) who will manage the transmission system and ensure that power is moved from generators to end-users reliably and safely. This entity must be separate from all utility generation and merchant functions. The ISO should have access to flexible generation and information from users of the system to ensure reliable delivery, but should not be engaged in a merchant function.

In terms of additional impacts, EPMI argues that competition improves reliability in the following two ways. First, short-term reliability is improved because (i) competitors seek out new paths between supplies and markets, effectively making better use of existing reserves, and (ii) transmission system users are much better predictors of their loads and supplies than utilities making aggregate forecasts. These principles were demonstrated in the natural gas industry where industry restructuring under Federal Energy Regulatory Commission (FERC) Order 636 was

followed almost immediately by record cold temperatures. The natural gas transmission system performed more reliably than ever. Second, long-term reliability is improved as new investment is made more efficiently. In the natural gas industry prior to deregulation, the industry lurched from surplus to shortage under the regulatory oversight of resource decisions. In a competitive market, the system has come into better balance.

4. *Consumers should be afforded the broadest possible range of choice in electricity service and pricing options. Customer service and pricing options should reflect customer needs, as well as differences among electricity providers. All classes of customers should have access to a basic level of reasonably priced and reliable service.*

EPMI agrees with this principle. Our only comment would be simply to remind the Commission that the most efficient and effective method of ensuring that "customer service and pricing options should reflect customer needs" is through the implementation of retail competition. By allowing additional competitors (buyers and sellers ) to meet in a marketplace to transact business along all stages in the value chain of electricity supply, from fuel sourcing to retail sales, customers can choose from a diverse set of suppliers and supplies. A retail competition environment creates a customer-driven marketplace, where the range of potential products and services will expand rapidly and continually.

5. *Competitive markets should not undermine public policies favoring environmental protection, energy efficiency, resource diversity, and technological innovation. If these policies are to be realized, the utilities, new market entrants, and electricity customers, as well as institutions not directly a part of the*

*electricity industry, will all have important roles to play. Approaches that encourage development of markets for energy efficient equipment (e.g. market transformation), or which are otherwise market-based and competitively neutral should be emphasized.*

EPMI is aware that many parties are concerned that subjecting environmental and social programs to market forces as a result of electric industry restructuring may weaken these programs. This concern results from the uncertainty of how these environmental and social programs which were designed to operate within the current industry structure will operate under competition.

EPMI believes that market mechanisms should be utilized at every possible point when attempting to implement non-electric priorities. With retail competition, these programs will need to operate under market conditions, but in no way does this imply that the goals behind these programs should change. Competition does not eliminate these programs, rather competition changes the incentives under which these programs operate, reducing program costs and improving efficiency. Under retail competition, the Commission will help to define the environmental and social goals and ensure that these goals are met in concert with other stakeholders.

6. *Transitional regulatory decisions concerning specific situations and responses to competitive circumstances should be made carefully in a manner that does not advantage or disadvantage any group of competitors or the "natural" evolution of efficient markets.*

EPMI agrees that the Commission should not impact the "natural evolution of efficient markets". As the Commission is unquestionably aware, it is impossible to design the "best" electricity market structure for Washington. Rather, EPMI believes that Washington customers would receive increased choices and additional price certainty if the Commission were to support a competitive market for electricity supply premised on bilateral transactions between many buyers and sellers, coupled with comparable access to the monopoly transmission and distribution facilities. The Commission should recognize that the exact form or structure of the competitive market will evolve; it need not and should not be designed in advance.

EPMI's only other concern relating to the transitional policies involves the potential for abuse as utilities attempt to "lock up" large industrial customers with special rates. Clearly, cost shifting has already occurred in electric markets as utilities engage in selective discounting for certain customers. The Commission should ensure that any special rate contracts signed today do not have a penalty clause that would restrict these customers from choosing an alternative supplier at the time that retail competition is implemented in Washington. These special rates are discriminatory in that only one supplier is able to "compete" for these customers, and these practices should not limit the choices that will be available to those customers when the Commission permits retail competition.



7. *The opportunity for members of the public to voice their views in the planning, choice of resources, siting, and impacts of the electricity system should be preserved and enhanced.*

EPMI would ask the Commission to clarify this principle as it relates to "resources". In terms of transmission and distribution resources, which will remain natural monopolies regulated by the FERC and this Commission respectively, the public, through the two western regional transmission groups and state siting and ratemaking agencies, will have the ability to provide input on the appropriateness of new construction. With respect to generation resources which will no longer face price regulation in a competitive market structure, interested parties will need to voice their opinions through the marketplace and/or through local zoning and siting agencies. There should be no question that the Public's right to provide input on these decisions can be preserved and even enhanced, where necessary, in a competitive market structure.

8. *Regulation serves its responsibility of protecting customer interests by acting as a surrogate for competition. Regulation cannot and should not ensure that utilities are, in all circumstances, made entirely whole for generation or other costs that are determined through actual and fair competition to be stranded or uneconomic.*

EPMI agrees with the Commission that regulation is only a surrogate for competition. While certain forms of competition, such as self-generation and municipalization, have always been competitive threats to vertically integrated electric utilities, EPMI would argue that equitable transitional

policies should be endorsed by this Commission which allow retail competition and its other restructuring efforts to be implemented quickly.

EPMI offers the following comments relating to stranded costs: stranded costs are already in consumer rates; they are being collected today and will continue to be charged to consumers even if no industry restructuring is undertaken. Stranded costs are not new or incremental costs created by competition; rather, competition reveals these stranded costs as costs that would not have been incurred (or at least not recovered from consumers) in a competitive market. Further, stranded costs should not be used as a reason to go slow in transition; they are one of the reasons the Commission should proceed expeditiously. The only stranded costs the Commission can help avoid are future costs, not past investments. Therefore, the Commission should move to a market structure which subjects new investment decisions to the discipline of the market and removes the expectation of guaranteed recovery as quickly as possible. Future stranded costs are avoided by implementing a competitive restructuring as soon as possible. Finally, the recovery of stranded investment must be predictable and certain, thereby allowing consumers and producers to make rational economic decisions regarding future investments and purchases. As regards the recovery mechanism, EPMI argues strongly against any mechanism that can become a barrier for customers to choose alternative suppliers. The Commission should not permit "exit fees" or similar mechanisms which

assess stranded costs only on customers who choose nonutility suppliers. Instead, such costs should be allocated to all consumers equitably and without regard to whom they choose as a supplier. In this approach, all consumers pay their "fair share" of stranded costs, but are then free to choose their suppliers based solely on the relative competitive merit of those suppliers.

### ADDITIONAL PRINCIPLES

9. *The Commission should precede as quickly as possible with its restructuring efforts.*

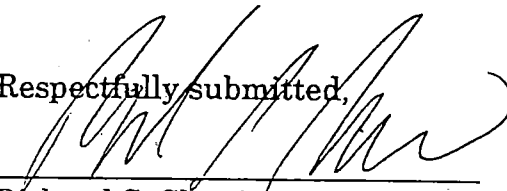
Finally, EPMI would ask the Commission to include an additional principle in their recommendations relating to timing and process. Based on our experience in the natural gas deregulation, EPMI would recommend that the Commission proceed as rapidly as possible with the implementation of retail competition, thereby minimizing the dislocation effects. If the industry is required to move rapidly and uniformly to an unbundled, retail competition environment, no one customer or supplier should be "left holding the bag" due to the transition. While interim modifications to utility regulation may appear to provide a "fix" for later competition, these changes are simply delays to full competition and full choice, and only add additional costs to the transition.

EPMI also believes that the transition should occur rapidly across all customer groups. From a practical standpoint, EPMI understands that the

Commission may facilitate the transition to stagger the implementation, first for larger, non-core customers, and then other customers. Whatever timetable chosen, the goal must be to provide direct access for all customers as soon as possible.

In conclusion, the Commission should overcome the controversy which can be generated by entrenched interests by aggressively taking charge of the restructuring process by setting firm standards and firm timelines. In the absence of this accelerated implementation by this Commission, the process will drag on unnecessarily, to the detriment of incumbent firms, new competitors, and consumers alike.

Respectfully submitted,



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# King County Department of Metropolitan Services



OFFICE OF THE PROSECUTING ATTORNEY  
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September 18, 1995

Mr. Steve McLellan  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, Washington 98504-7250

Re: Docket No. UE-940932; Guiding Principles For an Evolving  
Electricity Industry

Dear Mr. McLellan:

The following comments are submitted on behalf of King County Department of Metropolitan Services (DMS) to the Washington Utilities and Transportation Commission (WUTC) regarding Interim Policy Statement: Guiding Principles For An Evolving Electricity Industry, dated August 14, 1995.

DMS agrees with the goal set forth in the Guiding Principles that competition should be accommodated and encouraged. It is through a competitive industry that DMS hopes to contain the cost of sewage treatment to the residential and commercial ratepayers within the DMS service area. As a public agency, DMS believes it bears a responsibility to contain those costs through long-range planning, including planning for obtaining its power supply.

Toward the objective of containing costs, DMS continually reviews its options for obtaining power. For example, it is currently studying the feasibility of a project under which a third party would install and own co-generation facilities using carbonate fuel cells fueled by renewable digester gas produced in the wastewater treatment process. The ability to develop and utilize innovative power production technologies should not be jeopardized either by the Guiding Principles or any later-developed formal rules. In addition, if any other options are developed for power at a lower cost than DMS's current power sources, DMS believes it is crucial that those options be available to it.

The Guiding Principles provide that "customers of continuing monopoly service should benefit, or at least not be harmed, by choices made by customers with competitive options." DMS understands that this principle formed the backdrop for the tariff revision recently proposed and withdrawn by Puget Power and Light Company. Puget Power stated it was attempting to save its remaining customers from the costs associated with investments left stranded by customers departing for more competitive power suppliers.

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Steve McLellan  
September 18, 1995  
Page 2

DMS opposed that "exit fee" and urges the WUTC not to follow a similarly narrow-focused inquiry in determining how to protect "captured customers" from competition. The choices made by departing customers with competitive options should be viewed by the WUTC in the totality of that customer's power utilization history. For instance, the fact that DMS or its predecessor has been a customer of Puget Power for over 30 years should be factored into any determination as to whether DMS has already paid for investments made by Puget Power on its behalf. An inquiry should also include analysis of what portion of its business investment the utility should be made whole for and of the prudence of specific investments made by the utility "on behalf of" the departing customer.<sup>1</sup>

DMS urges that criteria for addressing the issue of whether remaining customers will be harmed by a customer's departure should be developed with input from customers and should take into consideration the Notice of Proposed Rulemaking on stranded costs current before the Federal Energy Regulatory Commission.

In conclusion, DMS urges the WUTC to adopt principles that encourage competition. Responding to the demands of its sewer ratepayers, DMS is reviewing options to maintain its facilities as environmentally protective and energy and cost efficient. DMS believes that competitive options, rather than protective regulation, will promote resource diversity and technologic innovation in the energy market in the State of Washington.

Thank you for this opportunity to comment.

Very truly yours,

For NORM MALENG, King County Prosecuting Attorney:



T.C. RICHMOND  
Senior Deputy Prosecuting Attorney

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<sup>1</sup> These inquiries may determine that neither the departing nor remaining customers should bear further costs. This is a particularly crucial inquiry in circumstances such as exist in King County where the remaining utility customers are also DMS sewer ratepayers whose electrical rates should not be negatively impacted by DMS's departure from a utility system.



# NW Conservation Act Coalition



Comments of the Northwest Conservation Act Coalition (NCAC)  
on WUTC "Guiding Principles for an Evolving Electricity  
Industry," Docket No. UE-940932

September 18, 1995

NCAC appreciates this opportunity to provide comments on the set of interim principles contained in the Commission's August 14th statement of policy. These guiding principles provide a useful outline for how to safeguard and promote key policy objectives — such as resource diversity, environmental quality, reliability, fairness, and meaningful public involvement — in the face of an evolving industry. In addition, they contemplate a role for appropriately structured competition and customer choice to further these goals. The degree to which the Commission's principles are realized in practice depends on the mechanisms designed to secure them. We look forward to working with Washington's regulated utilities in the development of proposals for meeting the Commission's stated objectives in innovative, forward-looking ways.

In the meantime, we would like to raise a few specific questions and considerations about the principles themselves. The sections that follow briefly address each in turn.

**1. Where competition can serve to accomplish results that are fair and efficient for all customers, it should be accommodated and encouraged.**

In order to be consistent with the public interest, competition must be both fair and efficient for all customers. This principle should be the starting point for any examination of restructuring proposals. However, certain potential byproducts of competition — such as increased air emissions — are broader than the universe of customers. The Commission should therefore consider the net results of competition from a societal standpoint, as well as from the perspective of all customers.

A related issue is the timeframe over which fairness and efficiency are to be understood. A competitive option that costs less over the first five years may cost appreciably more over its last ten years as compared to a given alternative. In a limited way, it may appear to meet the above test, but over its life would entail higher costs for customers in the future.

**2. Customers of continuing monopoly service should benefit, or at least not be harmed, by choices made by customers with competitive options.**

To varying degrees, nearly all customers have access to competitive options. Billpayers of Washington's regulated electric utilities by and large have the opportunity to switch their heating requirements to direct use of natural gas, to invest in energy efficiency or contract with an energy services company for the same, and potentially to municipalize. For certain industrial customers, cogeneration is a competitive option they may be able to exercise. Any of these arrangements may provide benefits to the sponsoring customers — and, if the project/measure costs are lower than the utility's actual avoided costs, to society — but not necessarily to the utility and its remaining customers. Cogeneration that is demonstrated to be economic should not be discouraged by Commission policies. Nor should economic demand-side options be constrained on equity grounds.

The intent of this principle seems to be retail wheeling arrangements, under which given utility customers designate an energy supplier other than the utility for some or all of their

service. In this case, the Commission's principle is precisely on point. Implementing it requires a better understanding of stranded costs and their appropriate treatment.

It would be helpful if the Commission could further specify what constitutes "monopoly service." Is this meant to encompass only continuing, bundled service to distribution customers? Is long-term resource portfolio management a monopoly function?

**3. The long-term integrity, safety, reliability, and quality of the bulk electric system and retail electricity service should not be jeopardized.**

This principle sounds self-evident, but is important to call out as the industry undergoes institutional and economic changes. There may be strong financial pressures to defer or avoid maintenance, which may translate into reduced safety and reliability. Under performance-based ratemaking designs, these factors can be incorporated explicitly. Such steps would help to ensure that customer service does not give way to short-term price minimization.

**4. Consumers should be afforded the broadest possible range of choice in electricity services and pricing options. All classes of customers should have access to a basic level of reasonably priced and reliable service.**

Universal access to basic energy services is a fundamental tenet in the regulatory compact. Continuing monopoly service must embody this principle. The potential for competition to undermine this objective has already been observed in California; it's important that regulators in Washington not only voice the principle but consider how it will be realized in practice.

Expanding the range of choices available to customers is a worthy goal. Facilitating this goal is possible in part through specific tariffs on interruptibility, time of use and green pricing. Fuller implementation will require appropriately unbundled service schedules and resolution of the stranded cost question.

**5. Competitive markets should not undermine public policies favoring environmental protection, energy efficiency, resource diversity and technological innovation.**

Eventual competition may take many forms. Under any them, environmental protection, energy efficiency, resource diversity and technological innovation should be encouraged. This is particularly the case where markets are unlikely to deliver these benefits, due to specific market failures (e.g., externalities, public goods, or the exercise of market power). Depending on how competition is structured, markets may deliver some of the above benefits more effectively than by conventional means. In other cases, the competitive outcome may be worse, especially as one competitor is able to gain advantage by shifting or avoiding costs.

More than declaring that these several benefits not be undermined by competition, the Commission should endeavor to make competition serve these ends. The above policy statement is a good first step; carving out a competitively-neutral place for these functions will require the Commission's support for specific mechanisms, such as non-bypassable charges at the distribution level.

**6. Transitional regulatory decisions concerning specific situations and responses to competitive circumstances should be made carefully in a**

**manner that does not advantage or disadvantage any group of competitors or the "natural" evolution of efficient markets.**

Transitional steps should not impose on utilities or other parties indelible requirements that may become counterproductive or moot by changes in the industry. However, successful transitional policies must provide predictable, transparent guidelines — guidelines that will remain in place until a successor arrangement is shown to be superior.

- 7. The opportunity for members of the public to voice their views in the planning, choice of resources, siting, and impacts of the electricity system should be preserved and enhanced.**

Providing opportunities for the public to "voice its views" is an important but potentially hollow promise. As long as customers are expected to shoulder the costs and risks of resources acquired to serve them, they should have a meaningful say in how such decisions get made. Yet, because utility managers are ultimately accountable for resource choices they make, a disproportionate amount of decision-making power falls to them. As utilities react to perceived competitive threats, the goal of substantial customer and stakeholder involvement has come increasingly under siege.

For example, in the face of potential retail wheeling, a particular utility may elect to suspend investments in energy efficiency and renewable resources in order to drive down its near-term prices. If customers of that same utility support continuing investments in DSM and renewables, how do these competing desires get reconciled? Least cost plans are acknowledged or rejected as a whole; tariff filings, if suspended, enter an expensive and complex proceeding; public hearings and comment opportunities are frequently overlooked or avoided by members of the public, due to the complexity of the issues. If input from customers and stakeholders is to register, the Commission must help to facilitate and support accessible venues for it to occur. Meaningful public involvement is a key element of a successful transition and one that must be encouraged by this Commission and the utilities it regulates.

- 8. Regulation cannot and should not ensure that utilities are, in all circumstances, made entirely whole for generation or other costs that are determined through actual and fair competition to be stranded or uneconomic.**

The question of how stranded costs should be recovered has profound implications for the character and timing of retail competition. Coming up with a satisfying answer to this questions requires: 1) a demonstration of what costs may appropriately be considered stranded, and 2) a consistent, principled formula for allocating costs among departing customers, remaining customers and shareholders. NCAC agrees that utilities (i.e., shareholders) should not, in all circumstances, be made entirely whole for uneconomic generation and other costs. However, under this principle, recovery could range between 0% and 99% of stranded costs. The point chose on that range will either cause customers to remain on the system or encourage departures, perhaps uneconomic bypass. Unless addressed prospectively, uncertainty about stranded cost recovery will cause schizophrenia for utility managers and opportunism among their largest customers.

It would be useful for the Commission to sponsor a generic investigation into stranded cost accounting. Once reasonable assessments of stranded costs are made, it makes sense to discuss how those costs — if any — should be recovered from departing customers, remaining customers, and shareholders.

A measure of predictability is important for all concerned — utilities should understand their proper competitive position and customers should be informed about their actual costs of alternatives. Part of this discussion is addressed in the fair unbundling of products and services, without which accurate comparisons cannot be made between retail prices and bulk power products.

### **Conclusion**

In publishing these guiding principles, the Commission has helped to inform ongoing discussions about what objectives a restructured industry should serve. It is against these principles — access to basic energy services, environmental protection, economic efficiency, reliability and equity — that we will measure the benefits of different approaches. This template will help the Commission and other stakeholders to harness market forces toward least-cost ends.

Thank you for your consideration of these comments. Although there remains some balancing to do among potentially competing principles, taken as a whole they suggest the intent of the Commission for what a successful transition should accomplish.

# NW Independent Power Coalition





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September 18, 1995  
*by messenger delivery*

Mr. Steve McLellan  
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Olympia, WA 98504-7250

SEP 19 1995  
10:59 AM  
COMMUNICATIONS SECTION

Re: Guiding Principles for an Evolving Electricity Industry,  
Docket UE-940932

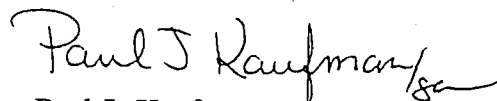
Dear Mr. McLellan:

Enclosed are an original and ten copies of the comments of the Northwest Independent Power Coalition, responsive to the status report dated August 14, 1995.

Also enclosed is a diskette containing the Comments document in WordPerfect 5.1 format.

Due to the fact that this is an uncontested proceeding, no service of documents has been made.

Sincerely,

  
Paul J. Kaufman

Enclosures

Portland, Oregon  
(503) 226-1191  
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San Francisco, California  
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Fax (415) 989-1263

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Examining Regulation of Electric )  
Utilities in the Face of Change ) UE-940932  
in the Electric Industry. )

COMMENTS OF THE  
NORTHWEST INDEPENDENT POWER COALITION

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September 18, 1995

ORIGINAL

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

Examining Regulation of Electric            )  
Utilities in the Face of Change            )     UE-940932  
in the Electric Industry.                    )

**COMMENTS OF THE  
NORTHWEST INDEPENDENT POWER COALITION**

The Northwest Independent Power Coalition<sup>1</sup> ("NIPC") submits these comments in response to the recent request for comments on the Commission's Policy Statement Establishing Interim Principles for Regulation of Electric Utilities (the "Status Report").

**I. INTRODUCTION**

The Status Report indicates that the Commission is deferring action on restructuring issues until a clearer picture of the industry has emerged. The Commission expects greater definition from the Federal Energy Regulatory Commission ("FERC"), as it evaluates transmission comparability issues in its GigaNOPR, Bonneville Power Administration's unbundling of power supplies and services and its future role in the

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<sup>1</sup> NIPC is an ad hoc trade association and the successor organization to the Northwest Cogeneration and Industrial Power Coalition. For the purposes of these comments, NIPC includes Cogentrix Energy, CalPine Corporation, Enserch Northwest, March Point Cogeneration Company, United Cogeneration and U.S. Generating/JMC Northwest Ventures.

Northwest, and through the actions of other state commissions currently embroiled in restructuring efforts.

While NIPC generally supports the findings of the Status Report, it does not agree with the Commission's "wait and see" approach to restructuring. Deregulation efforts are currently underway, and changes to the existing form of regulation are being proposed in both federal and state forums. Clinging to the current imperfect model of regulation may prove to be counterproductive and hinder the "natural evolution" of a competitive market.

Actions at the state and federal levels indicate strongly that the question for this Commission is not whether restructuring will occur, but rather how it will occur. A Memorandum of Understanding has been filed in California's restructuring proceeding that is expected to further the debate in that state. A final decision by that Commission is expected by the close of October. Delaying further consideration of restructuring will not make it go away or make the Commission's dilemma, *i.e.*, the balancing of market forces (characterized by lack of regulation) with regulation, any easier. If the ultimate goal is to promote efficiency, and foster affordable, safe, and reliable power for all users, NIPC recommends that the Commission not interrupt its investigation, but continue to sort out the "right" answers for Washington state.

## II. COMMUNICATIONS

Communications pertaining to these comments and the NOI should be directed

to:

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Ater Wynne Hewitt Dodson & Skerritt  
222 SW Columbia, Suite 1800  
Portland, Oregon 97201  
503/226-8441 (phone)  
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with copies to:

Wayne Meek  
Executive Director  
Northwest Independent Power Coalition  
2101 E Crescent Drive  
Seattle, WA 98112

## III. COMMENTS ON GUIDING PRINCIPLES

The Commission has indicated in its Status Report that the principles may help to smooth the transition to a more competitive environment by providing guidance to industry stakeholders. NIPC is not entirely certain that development of principles will achieve the goal intended.

An interim policy statement does not have the full force and effect of regulations. No one is obligated to abide by the principles, nor can they use the principles as the basis for a contractual arrangement. NIPC believes that while the drafting of principles may be a useful exercise in distilling the Commission's thoughts, the Commission must go further in addressing restructuring issues.

The goal in developing a transition policy to direct and open access should be to move quickly. Uncertainty is never a good thing. It creates doubt, increases costs and can prevent transactions—even those that normally occur under the current utility structure, from taking place. If the Commission feels sufficiently confident about its position on the issues (so much that guiding principles are in order), progress in the NOI should continue in order to formulate these principles into regulation.

NIPC provides the following comments on the eight guiding principles:

1. *The Commission's fundamental responsibility is to ensure that the electricity service needs of customers are met at a cost that is fair, just, reasonable, and not unduly or unjustly discriminatory. Where competition can serve to accomplish results that are fair and efficient for all customers, it should be accommodated and encouraged.*

NIPC agrees that the Commission's responsibility is to protect utility consumers.

Investor-owned utilities engage in a type of monopoly enterprise that requires Commission oversight to ensure that the utilities serve fairly and without discrimination. To the extent that competition can supplant monopoly functions with a variety of services and customer choice, it should be encouraged.

2. *Non-economic bypass and the inappropriate shifting of the fixed cost of the electrical system between or among customers are not fair and efficient competition, are contrary to the public interest, and should be avoided. Customers of continuing monopoly service should benefit, or at least not be harmed, by choices made by customers with competitive options.*

NIPC agrees that "inappropriate" cost-shifting should be avoided. However, the Commission must recognize that some cost-shifting may be inevitable as the industry moves from its existing structure to a more competitive environment. Experience shows that during the interim or transition period, certain customer classes may be asked to shoulder direct costs

from which they have been insulated in the past. This principle also brings up the question of transition costs associated with stranded assets. The Commission must take an active role in reviewing these transition costs to ensure that they are broadly-based and not inappropriately shifted to one customer or customer class. The transition period should be limited in duration so that the market forces can emerge with the appropriate market signals.

3. *The long-term integrity, safety, reliability, and quality of the bulk electric system and retail electricity service should not be jeopardized.*

NIPC agrees. There should be no question that the integrity, safety, reliability and quality of the electric system must be maintained.

4. *Consumers should be afforded the broadest possible range of choice in electricity service and pricing options. Customer service and pricing options should reflect customer needs, as well as differences among electricity providers. All classes of customers should have access to a basic level of reasonably priced and reliable service.*

NIPC agrees. NIPC's comments support the view that this guideline can only be met through Direct Access.

5. *Competitive markets should not undermine public policies favoring environmental protection, energy efficiency, resource diversity, and technological innovation. If these policies are to be realized, the utilities, new market entrants, and electricity customers, as well as institutions not directly a part of the electricity industry, will all have important roles to play. Approaches that encourage development of markets for energy efficient equipment (e.g., market transformation), or which are otherwise market-based and competitively neutral should be emphasized.*

There are certain sectors of the electric industry that may require encouragement, such as investment in conservation measures and renewable resource development. NIPC views the electric industry's near-term future not as an either/or proposition (e.g., either the market is completely open or it is fully regulated), but as a continuum. Holding down one end are the

traditional monopolies regulated and controlled by state commissions, and at the other, a nonregulation competitive open market. In the near-term, the best position is some point along this continuum. Competition and public policy can both be accommodated through a coordination of legislation and regulatory initiatives.

6. *Transitional regulatory decisions concerning specific situations and responses to competitive circumstances should be made carefully in a manner that does not advantage or disadvantage any group of competitors or the "natural" evolution of efficient markets.*

Ideally, a transition would not disadvantage or create advantages for customer groups. The best insurance against this result, however, is to move quickly to a decision on deregulation and to implement that decision.

7. *The opportunity for members of the public to voice their views in the planning, choice of resources, siting, and impacts of the electricity system should be preserved and enhanced.*

NIPC agrees.

8. *Regulation serves its responsibility for protecting customer interests by acting as a surrogate for competition. Regulation cannot and should not ensure that utilities are, in all circumstances, made entirely whole for generation or other costs that are determined through actual and fair competition to be stranded or uneconomic.*

Many valid opinions have been expressed on the nature and state of the industry, and the impact of restructuring policies on future operations. It can be difficult however, to envision just how these theories will translate into practice. FERC is expected to produce decisions on how to proceed in an interstate competitive market. Even under new FERC rules, this Commission will need to address issues in the context of retail markets in the state of Washington.



Rather than wait, NIPC recommends that the Commission begin to sort out the problems in a pilot direct access program. The program would be of limited duration, and participation would be voluntary and limited to industrial customers. Under the program, the industrial customer would be allowed to seek out new energy supplies, rather than relying on a traditional serving utility. Suitable arrangements for transmission service, stranded investment charges, and standby power would be negotiated by the parties with oversight by the Commission to ensure that equity and reliability concerns were met. At the conclusion of the program, the Commission would have a unique body of knowledge with which to draft or revise regulations.

Washington would not be alone in developing a pilot direct access program. The New Hampshire Commission is currently developing a framework for such a pilot retail direct access program. If supported by a November legislative report, the pilot program will move forward. Similarly, in Michigan, the Commission authorized Detroit Edison and Consumers Power to open up 1% of its peak load to direct access, as an experimental pilot program. The program will begin when the utilities declare a need for new capacity.

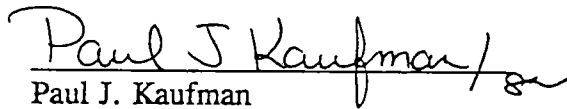
Even if the Commission concludes that a pilot direct access program is not appropriate at this time, at a minimum, regulators should allow a form of wheeling called "self-wheeling." Self-wheeling would allow companies that produce power to wheel this power to other company-owned facilities over utility-owned transmission lines. This form of wheeling would immediately increase the competitiveness of certain industries with power generation capabilities by reducing their cost of power. NIPC is willing to work with the Commission on developing the framework for such a program.

#### IV. CONCLUSION

The Coalition applauds the Commission's efforts in opening this investigation. The common voice among the parties submitting comments is that the status quo is dead. NIPC urges the Commission to continue to give the NOI its full attention, in order to move quickly to a competitive market structure.

In the Status Report, the Commission indicated that Staff would continue to evaluate studies of market conditions and undertake a survey of customer views concerning electricity competition and service. NIPC would like to participate in such a survey and asks that the group be included in the process.

Respectfully submitted,



Paul J. Kaufman  
Ater Wynne Hewitt Dodson & Skerritt  
222 SW Columbia, Suite 1800  
Portland, Oregon 97201-6618  
(503) 226-1191  
(503) 226-0079 facsimile

Counsel to the Northwest Independent Power Coalition

Dated: September 18, 1995

**PacifiCorp**





September 18, 1995

Steve McLellan  
Commission Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, WA 98504-7250

STATE OF WASH  
UTIL. & TRANSP  
COMMISSION

95 SEP 18 A10:00

RECEIVED

RE: Docket No. UE-940932  
Comments on Guiding Principles for an Evolving Electricity Industry

Dear Mr. McLellan:

PacifiCorp wishes to applaud the Commission's efforts in this docket. The pace of change in the electric industry is indeed accelerating. This Notice of Inquiry has served to focus interested parties on the issues and has provided the Commission an opportunity to compile the thoughts and concerns of the parties into a concise reference.

The Interim Policy Statement guidelines will serve well as standards by which to measure decisions in the current environment. The Company especially appreciates the Commission's recognition of customer choice and options in service and pricing as guiding principles.

PacifiCorp looks forward to ongoing discussions as these issues evolve.

Sincerely,

Anne E. Eakin  
Assistant Vice President  
Regulation



# Public Counsel







Christine O. Gregoire

# ATTORNEY GENERAL OF WASHINGTON

900 Fourth Avenue #2000 • Seattle WA 98164-1012

September 18, 1995

Steve McLellan, Secretary  
Washington Utilities and  
Transportation Commission  
Chandler Plaza Building  
1300 S. Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, WA 98054-7250

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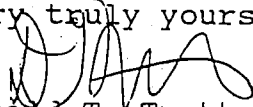
Re: Docket UE-940932; Electric Industry Notice of  
Inquiry; Public Counsel Reply Comments on  
Commission's Interim Policy Statement

Dear Mr. McLellan:

Enclosed for filing are an original and ten copies of the Reply Comments of the Public Counsel Section of the Attorney General's Office, addressing the Commission's August 14, 1995 draft Interim Policy Statement.

A copy of our comments on disk is also provided, in Wordperfect 5.1 format.

Very truly yours,

  
Donald T. Trotter  
Assistant Attorney General  
Public Counsel Section

BEFORE THE WASHINGTON UTILITIES & TRANSPORTATION COMMISSION

Examining Regulation of Electric  
Utilities in the Face of Change  
in the Electric Industry

DOCKET NO. UE-940932  
PUBLIC COUNSEL COMMENTS  
IN REPLY TO DRAFT  
POLICY STATEMENT

RECEIVED  
PUBLIC COUNSEL  
JUL 13 1995  
10:00 AM

I. Introduction

The Commission's August 14, 1995 letter addresses the status of the NOI, and provides the Commission's current views of the sources and pace of industry change. A draft "Interim Policy Statement" is then offered, to be used to guide Commission decision-making when faced with the impacts of change in the electric industry.

In these Reply Comments, we provide our response to certain observations made by the Commission in its discussion. We then provide specific comment on the Interim Policy Statement of principles. We generally agree with the principles as described in then draft policy statement, but it is important to express our understanding of them, and to note where further clarification may be necessary and helpful.

II. Comments on the "Status of the Inquiry"

- A. It is essential that the Commission understand the distinction between temporary market conditions and fundamental market changes as it responds to specific proposals before it

While it was plainly not the intent of the Commission to make findings of fact regarding the state of competition or the failure or success of specific regulatory policies and/or mechanisms, the Commission does discuss certain issues related to competition. The Commission refers to what it views as "substantial and accelerating change" occurring since this Inquiry's was initiated just last December. The increased availability of low cost wholesale power is characterized by the Commission as an important factor in the evolving industry.

We agree with the Commission that increased availability of low cost wholesale power is an important development, at least in the near term. But as we have discussed in both our initial comments and reply comments in this docket, there is an important distinction between a short term phenomenon and the presence of long term fundamental structural change in the industry. It is not apparent what changes are structural, and what changes will be sustainable.

The Commission has been provided anecdotes, and many bare assertions of the nature of changes in the electric industry. It has also been presented with actual analysis (from NWPPC) indicating that the prospects for economic bypass may be quite limited. The challenge will be to peel the veneer from the anecdotes and bare assertions and insist on a true understanding of industry structure and its development. This is not easy, and it is not made

any easier by the "case by case" policy to be implemented. Nonetheless, it is and will be vital for the Commission to recognize the nature and implications of industry structure as it continues to regulate in this area.

#### B. Using flexibility in a manner consistent with Commission-articulated policies

The Commission's letter notes that at the outset, the NOI primarily targeted specific regulatory tools that had been developed in the context of a centrally provided, monopoly, retail electricity service, while in the wholesale market changes have shifted the focus to accommodation of greater competition. Citing the potential impacts of possible changes in the federal regulatory structure and BPA restructuring, the Commission defers comprehensive exploration of these questions. Nonetheless, the Commission recognizes that it will, in effect, be dealing with alleged competitive situations on a case by case basis. It identifies the contract rules and the banded rate tariff as tools to facilitate this.

It is true that the special contract and banded tariff provisions provide the Commission regulatory flexibility. However, such flexibility needs to be utilized in a manner that is consistent with the principles established by the Commission. For example, the contract rule can be used to provide a customer with service at less than tariff rates. It is important that the Commission apply its principles relating to protection of captive ratepayers, so that costs and/or revenue responsibility are not shifted to such customers, as "payers of last resort."

The Commission observes that the electric industry is in a state of flux, and its future is uncertain. Our concern is that "flexibility," if unrestrained by rational application of principles that are fair to all customers, can lead to ad hoc development of policy that reflects only short term conditions, and/or advantages one customer or class over another. The Commission should strive to closely match its general principles with approval of any special arrangements under the contract and banded tariff procedures.

### III. Comments on the Commission's Statement of Principles

#### A. Introduction

Public Counsel generally supports the broad principles set forth by the Commission in its draft Interim Policy Statement (pp. 5-6 of the August 14, 1995 letter). The principles incorporate many of the statutory and other policy goals noted in our earlier comments in this docket, and begin to address several issues directly related to the increase of competition in the wholesale market and for some customers at retail. The following comments address specific principles that need additional clarification.

We interpret the broad nature of the Commission's draft statement of principles as an effort by the Commission not to prejudge what is specifically required to implement them, at least until the impact of FERC and BPA actions are evident. Consequently, in our comments we also note where it would be helpful for the Commission to provide more specificity regarding its policy declarations, and their underlying rationale, without the need to address how they would be actually implemented.

**B. Principle Number 1 - Fair, just, reasonable and non-discriminatory regulation**

In this principle, the Commission reiterates the goals and policies included in the Commission's statutory mandate, noting that competition can accomplish these goals. We take no exception to this principle, with the understanding that it be read in connection with other policies which aim to protect captive customers.

**C. Principle Number 2 - Inappropriate shifting of costs**

We are encouraged by the Commission's explicit recognition that captive customers should benefit, or at least not be harmed, by the choices of customers with competitive alternatives, and that inappropriate shifting of fixed costs will be avoided. We understand "inappropriate cost shifting" as referring to a re-allocation to captive customers the costs of serving customers with competitive choices.

It is unclear why the issue of cost shifting is limited to "fixed costs" in the draft. There may be circumstances where variable costs are at issue. For example, a utility may attempt to offer a customer the output of a specific low cost resource, in effect shifting the variable cost of other resources to the remaining customer base. There may be many other ways variable costs could be implicated in a cost-shifting issue. The policy statement should not limit Principle Number 2 to just fixed costs; it should apply to any costs of providing service. Principle Number 2 should be amended to refer to "fixed and/or variable costs."

**D. Principle Number 3 - Maintain integrity of the system**

We agree with this principle as stated in the draft.

**E. Principle Number 4 - Consumer choice for electric service**

The Commission indicates that all customer classes should have access to a basic level of reasonably priced and reliable service, and have a range of price and service options.

It is unclear whether the Commission means that customers who can and do engage in economic bypass should retain the option to return to the public utility's system under the same terms and conditions as captive customers. This is an important point to clarify. We suggest the Commission clarify the policy to support reasonable restrictions on customers who leave the system for alternative suppliers. Customer notice provisions, both to leave and return, are important aspects of this issue that should be examined in an appropriate context.

In short, there is a connection between Principle Number 4 and policies regarding a utility's obligation to serve. The Commission recently approved natural gas transportation tariffs that require any customer electing to take transportation serve also agree not to return to the sales schedule unless it gives two years notice. Similar requirements on the electric side may be appropriate.

There are also implications of this principle for the future pricing of unbundled services purchased by customers with competitive choices. Should such services be priced on a cost of service or value of service basis? We submit that a value of service basis may be appropriate. If it is an historic role of regulation to protect captive consumers from the abuse of monopoly power, and a customer is not at risk of monopoly abuse, then should a different sort of regulatory intervention apply? We submit it should.

The Commission needs to be clear that its policies can take into account the inherent differences between captive and non-captive customers.

**F. Principle Number 5 - Competitive markets and energy efficiency, environmental protection, resource diversity and technical innovation**

The Commission appropriately reiterates the importance of pursuing the above public policy goals, and correctly notes that they should be applicable to all participants in the electric industry, independent of changes in industry structure. The development of increased competition in some markets may have implications for how these goals are actually achieved.

In Principle Number 5, the Commission notes that approaches for improving energy efficiency should be market-based and competitively neutral. Our concern is that "competitively neutral" can be interpreted by some as meaning many things, including "no rate impact." If so interpreted, this principle appears to set demand side management activities apart from other resources. We are concerned that without a specific definition of the term "competitively neutral," there is room for this misinterpretation.

The Commission should continue to hold that rate impact is not envisioned by the term "competitively neutral," and that DSM should continue to have status as a legitimate resource in a utility's portfolio, subject to the total resource cost test.

The language of Principle Number 5 also appears to endorse market transformation programs over other cost-effective energy efficiency options. Washington Water Power Company has noted in a recent DSM filing (in which it revived a low income weatherization program) that its reliance on a market transformation effort over direct measure funding programs effectively closed out low income consumers from participating in cost effective energy conservation.

Our point here is that there can be many policy goals to be balanced. As written, it appears that Principle Number 5 prioritizes certain goals over others. That implication should be removed.

**G. Principle Number 6 - Transitional regulatory decisions**

This statement of principle implicates the potential problem of "individual case basis" regulation. We addressed this issue as one of our major concerns in Part II above. We adopt that analysis here. The bottom line is that in the absence of a more specific development of policies and accompanying rules, the Commission must apply its principles to these individual

cases, and not be swayed by the alleged exigencies of each individual "crisis." This will require dedication, clear-headed thinking, and strong analysis.

The Commission should commit itself to that process.

**H. Principle Number 7 - Customer participation**

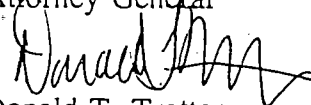
We support this statement of principle. Customers need to be a part of this process; not just those large users, but small commercial and residential customers. Customer education and involvement can only further legitimize the Commission's work.

**I. Principle Number 8 - No ratepayer funding for stranded or uneconomic costs**

We support the Commission's statement that there will be no guarantee that utilities are made whole for generation or other costs that are determined to be stranded or uneconomic by the forces of actual and fair competition. Competitive markets can and do exact a price from inefficient or improvident market participants, no matter how "prudent" their decision may have been initially. Captive ratepayers should not be called upon to pay that price.

Respectfully submitted,

CHRISTINE O. GREGOIRE  
Attorney General



Donald T. Trotter  
Assistant Attorney General  
Public Counsel Section

September 18, 1995

# Puget Power





# PUGET SOUND POWER & LIGHT COMPANY

P.O. BOX 97034, OBC-15  
BELLEVUE, WASHINGTON 98009-9734  
(206) 454-6363

September 18, 1995

## HAND-DELIVERED

Mr. Steve McLellan, Executive Secretary  
Washington Utilities and  
Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250

RECEIVED  
WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION  
SEP 19 1995 PM 2:59

**Re: Docket No. UE-940932  
Response to Notice of Inquiry, "Status of the Notice of Inquiry  
and Policy Statement Establishing Interim Principles for  
Regulation of Electric Utilities"**

Dear Mr. McLellan:

Puget Power appreciates this opportunity to provide comment on the principles set forth in the WUTC's interim policy statement in this proceeding. We generally agree with the two themes identified by the Commission after the initial round of comments and the "guiding principles" established. These two themes are: broadening the array of choices made available to customers and preservation of the benefits of the existing electricity supply system. However, we believe it is absolutely necessary for the Commission to provide clear and detailed policy guidance, in a timely manner, especially related to critical issues of stranded investment recovery.

The Commission has recognized that "the pace of change and activities which profoundly affect the environment of the electricity industry in Washington has accelerated in recent months." As a result, the Commission has slowed the pace of this Inquiry. We believe that the rapid pace of change in the industry will continue for some time. The need to set forth clear policies for the transition is immediate. An unguided transition can have disastrous repercussions. For instance, investor-owned utilities are

increasingly open to loss of their most profitable customers to uneconomic and inefficient competition, leaving those utilities and their customers to bear stranded costs, increased financing costs and the higher costs of serving less profitable customers. If we do not move forward in designing a clear framework to address the transition, the problems in retaining the public policy goals identified in this Inquiry will only be exacerbated.

An area that we encourage the Commission to provide clear policy statement is with respect to stranded investment. Puget Power has a continuing need to attract necessary capital to provide infrastructure to support growth and the economic vitality of the State of Washington. The ability of investor-owned utilities to attract capital on reasonable terms is currently threatened by the risks seen by the financial community related to stranded cost recovery. If prior commitments are not honored, it will be impossible for any provider to secure financing on reasonable terms. Uncertainty and risk are very costly to investors and, ultimately, customers.

Equity, fairness, law and efficient economics demand that investor-owned utilities have the opportunity to recover net, non-mitigatable stranded costs. The rates of return established when potentially stranded investments were made under the premise of a duty to serve did not contemplate, or at all reflect, the risks of the fundamental changes in industry structure and regulation we are seeing today. Access to capital on reasonable terms will not be attainable for investor-owned utilities in the future if the opportunity for stranded costs recovery is not provided. Further, efficient competitive markets do not operate without clearly defined property rights.

### Specific Comments on "Guiding Principles"

Specifically, rather than focus on the particular points included in the Commission's "guiding principles," our comments primarily address what was **not** included in the principles. Noteworthy by its absence is any mention of the Commission's obligation to utility investors or to preserve a utility's financial integrity during the transition to a more competitive electric utility industry. Principle No. 8, for example, discusses only the "responsibility for protecting customer interests," and suggests that utilities need not be made whole for costs determined under competition to be stranded or uneconomic. Principle No. 1 refers to the requirement that rates be "fair, just, reasonable" and, notably, omits the statutory requirement that rates also be "sufficient." RCW 80.28.010. The failure to recognize the interests of investors or any obligation to honor past commitments is disturbing and, if not corrected, is

likely to result in significant negative repercussions on the ability of investor-owned utilities within this state to attract capital on reasonable terms.

This omission in the Commission's "guiding principles" is in sharp contrast to the policies which other commissions have developed in similar contexts. The New York Public Service Commission in its "Principles to Guide the Transition to Competition" stated that:

Utilities should have a reasonable opportunity to recover prudent and verifiable expenditures and commitments made pursuant to their legal obligations.<sup>1</sup>

The California PUC, stated that it "also intends implementing restructuring in a manner that honors past commitments, provides utilities with the opportunity to earn a fair profit, and does not compromise utility financial integrity."<sup>2</sup> The Massachusetts D.P.U., in its restructuring investigation, stated:

Utilities should have a reasonable opportunity to recover net, non-mitigatable, stranded costs associated with commitments previously incurred pursuant to their legal obligations to provide electric service.<sup>3</sup>

The Federal Energy Regulatory Commission in its Mega-NOPR stated:

Public utilities have invested billions of dollars in facilities built in a regulatory regime in which they have been permitted to recover all prudently incurred costs, plus the opportunity to earn a reasonable rate of return on their investment. . . . We believe that utilities should be allowed to recover the costs incurred under the old regulatory regime

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<sup>1</sup>Opinion and Order Adopting Principles to Guide the Transition to Competition, Opinion No. 95-7.

<sup>2</sup>Proposed Policy Decision Adopting a Preferred Industry Structure, Docket R. 94-04-031 and I. 94-04-032.

<sup>3</sup>Massachusetts D.P.U. 95-30

according to the expectations of cost recovery established under that regime.<sup>4</sup>

As apparently recognized by these regulatory agencies, the obligation to consider the interests of investors and to provide for recovery of prudently incurred costs is not a matter about which there is any discretion. Rather, it is an obligation grounded in the U.S. Constitution, as described in Bluefield Water Works and Improvement Co. v. Public Service Comm'n, 262 U.S. 679, 692-93 (1923) and Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591 (1943). The Washington State Supreme Court recognized and applied these principles in POWER v. Utilities and Transportation Commission, 104 Wn.2d 798, 711 P.2d 319 (1985), where it stated:

This is based on the prohibitions in the 5th and 14th amendments to the United States Constitution against taking private property for a public use without just compensation. Put distinctly, the "power to regulate is not a power to destroy . . ."<sup>5</sup>

In previous decisions, this Commission has recognized its obligation to balance the interests of investors alongside that of consumers. In Cause No. U-82-38, for example, the Commission recognized that the interests of both shareholders and customers must be considered " in order for the company to serve its customers at the most economical level and the shareholders to receive a reasonable return on their investment."<sup>6</sup>

Similarly, the Commission has recognized the legal framework under which utilities within this jurisdiction have made substantial investments to fulfill their obligations to customers. In Cause U-83-54, the Commission stated the following with respect to the "social and economic compact of utility regulation":

A note on the concept in existence of the social and economic compact of utility regulation is necessary to in part help communicate the reasons for the decisions made by the Commission in this order. The social and economic compact of utility regulation

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<sup>4</sup>60 FR 17690 (April 7, 1995)

<sup>5</sup>104 Wn.2d at 812 (citations omitted).

<sup>6</sup>Third Supplemental Order, p. 35.

begins with the premise that a regulated utility has an obligation to serve the public. In a decision by an earlier Commission an effort was made to put a limit on that obligation by enacting a moratorium on new electrical hookups to Puget's system. That effort was rejected in a King County Superior Court decision, Seattle Master Builders v. Commission, No. 80-2-11632-1. This leaves the state of the law as a utility possesses an unending obligation to provide service to anyone within the service territory of that utility who demands service in accordance with approved tariffs.

However, in order for the social duty to serve to be viable, the compact must also provide for a utility to recover expenses it prudently undertakes to meet that obligation.<sup>7</sup>

These clearly enunciated and consistently followed policies have been disregarded in the "guiding principles." The "principles" go beyond the notion of changing the rules in the middle of a game and seem to suggest that the rules never even existed, or certainly that they need not be acknowledged. As a matter of law, however, the rules do exist, for they are firmly grounded in constitutional principles. And there is a long history of following them in previous court and Commission decisions in this jurisdiction, which must continue to be acknowledged and followed.

The "guiding principles" suggest that past commitments need not be honored because it is "actual and fair competition" which may determine certain costs to be stranded or uneconomic (Principle 8, page 6). The Commission should consider, however, whether it is "actual and fair competition,":

- when some of the participants in the competition have to pay income and property taxes, while others do not;
- when some of the participants in the competition have made significant investment in noneconomic goods, such as pursuit of conservation and other environmental goals, while others have not;

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<sup>7</sup>Fourth Supplemental Order, pages 28-29 (emphasis in original).

- when some of the participants in the competition have preferential access to low-priced Federal power, while others do not;
- when some of the participants in the competition are able to issue tax-exempt securities, while others cannot; and
- when uneconomic bypass is allowed to occur when some participants can serve retail customers at wholesale prices.

The significant competitive advantages possessed by some participants must be taken into account when consideration is made by the Commission or state legislature as to whether competition is "actual and fair." It is unlawful abandonment of the Commission's obligations to investors to suggest that only "customer interests" need be protected or that a means need not be provided for recovering costs found to be "stranded or uneconomic" by competition which fails to address the competitive advantages of some participants.

The Commission's "guiding principles" should be amended to recognize an obligation to investors and to honor past commitments. Failure to do so will have serious implications on the ability of investor-owned utilities within this State to raise capital on reasonable terms. The "guiding principles," as currently written, create unnecessary uncertainty, for they suggest to investors that no well-defined set of property rights exists or is followed in this jurisdiction. This creates risk, which translates into higher capital costs that ultimately are passed on to customers in the form of higher rates.

We suggest that the eighth "guiding principle" be revised to read:

8. Regulation serves its responsibility for protecting customer interests by acting as a surrogate for competition. At the same time, however, utilities should have a reasonable opportunity to recover net, non-mitigatable, stranded costs associated with previous commitments in order that utility financial integrity not be compromised.

We also suggest that the first "guiding principle" be revised to include the statutory requirement that rates be "sufficient" in addition to "fair, just, reasonable."

In summary, we strongly believe the Commission should establish a clearly defined set of principles for this transitional period with close

attention to the critical need to respect past obligations. This need must be addressed for the potential benefits of increased competition in the industry to be realized. We applaud the Commission for its initial effort in the establishment of a set of principles and urge that the critical omissions called out in these comments be corrected. We urge the Commission to be proactive in determining the manner in which competition will evolve in the State of Washington.

Sincerely,

PUGET SOUND POWER & LIGHT  
COMPANY

By: Christy A. Ambrose, for  
Sheila Manus Vortman  
Senior Vice President Corporate and  
Regulatory Relations





# Puget Power Shareholders



## Puget Power Shareholders For Fairness

September 13, 1995

Mr. Steve McLellan, Commission Secretary  
Washington Utilities and Transportation Commission  
1800 Evergreen Park Dr. SW  
P.O. Box 47250  
Olympia, WA 98504-7250

Dear Secretary:

Subject: Response to NOTICE OF INQUIRY (NOI) - Docket No. UE-940932  
(Examining Regulation of Electric Utilities in the Face of Change in the  
Electric Industry) - dated August 14, 1995.

After all the months of inquiry, we are astonished that your Interim Policy Statement: GUIDING PRINCIPLES FOR AN EVOLVING ELECTRICITY INDUSTRY calls for two sets of rules - one for customers:

“Where competition can serve to accomplish results that are fair and efficient for all customers, it should be accommodated and encouraged.”

and another for investors:

“Regulation cannot and should not ensure that utilities are, in all circumstances, made entirely whole for generation or other costs that are determined through actual and fair competition to be stranded or uneconomic.”

Given this, it will be quite a trick for anyone to pull off Guiding Principle 3:

“The long term integrity, safety, reliability, and quality of the bulk electric system and retail electricity service should not be jeopardized.”

when the investor owned utilities are scratching to pay their bills for stranded investments. What's with the statutory requirement for just, reasonable and compensatory rates embodied in WAC 80.28.020? Will it now be part of history?

We recommend that the Commission revise the interim policy statement to acknowledge that, in addition to the customer, it will also be fair to those who invest in the utilities which provide the service.

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OFFICE OF THE  
COMMISSIONER  
WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

Guiding Principle 5 could stand some clarification. We laud the public policy with respect to environmental protection. Because consumers will be the major beneficiaries they should bear the costs of environmental measures imposed by public policy. This should be stated explicitly in the guiding principle.

Yours very truly,

                  /s/                    
Mr. Robert Hayek  
18425 NE 95th, #144  
Redmond, WA 98052

                  /s/                    
Mr. Robert Hettinger  
18653 NE 146th Way  
Woodinville, WA 98072

                  /s/                    
Ms. Yvonne Kelly  
20823 NE 150th St  
Woodinville, WA 98072

                  /s/                    
Dr. Allan G. Osborne  
5829 NE 198th Place  
Seattle WA 98155

                  /s/                    
Mr. John H. Wolch  
12526 SE 25th Place  
Bellevue, WA 98005

                  /s/                    
Mr. Fred A. Zelonka  
4236 88th Ave. SE  
Mercer Island, WA 98040

# Renewable Northwest Project

&

# American Wind Energy Association





Renewable Northwest Project

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WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

September 15, 1995

Steve McLellan, Secretary  
Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive, SW  
Olympia, WA 98504-7250

RE: Docket No. UE-940932  
Guiding Principles for an Evolving Electricity Industry

Dear Secretary McLellan,

On behalf of the Renewable Northwest Project (RNP) and the American Wind Energy Association (AWEA), I wish to commend the Commission on the proposed interim principles regarding electric industry structure. We support these principles because they seek to ensure fairness, equity, and environmental quality as the industry evolves, and are consistent with the February, 1995 comments filed jointly by RNP and AWEA in this docket.

We urge the Commission, however, to take specific actions on these principles to ensure that system benefits, particularly progress toward developing renewable resources, are not lost during this critical interim period. While progress is being made on renewable projects in the region, continuing the momentum will require the Commission to provide assurances to the investing utilities that those projects will have value in restructured markets. In addition, the Commission should adopt mechanisms to ensure that meaningful investments in renewable energy continue during the transition period. Ensuring continued development of renewables is even more crucial in light of the recent identification, by the Intergovernmental Panel on Climate Change, that human activities (such as fossil-fuel combustion) have a significant role in the Earth's increasing atmospheric carbon concentration.

We suggest that the Commission work with other regulators and stakeholders in the region, to devise and agree upon mechanisms that could be applied uniformly to all competitors and or consumers within the region. These mechanisms should aim at meeting the goals of the 1980 Northwest Power Act, which established conservation and renewable resources as the resource priorities for the region. (These priorities apply to the regions investor-owned utilities as well as the Bonneville Power Administration and its utility customers.) Mechanisms could include uniform, tradable renewable resource requirements and or non-bypassable system benefits charges.

**Renewable Northwest Project**

*A project of the Northwest Conservation Act Coalition*

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Project Director

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*Founding Cosponsors*

Northwest Conservation Act Coalition

American Wind Energy Association  
CE Exploration

Center for Energy Efficiency and Renewable Technologies

Citizens Utility Board

Natural Resources Defense Council

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Oregon State Public Interest Research Group

Portland Energy Conservation Inc.

Proven Alternatives, Inc.

Sierra Club

Solar Energy Association of Oregon

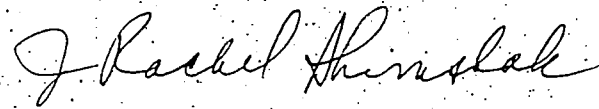
KENETECH Windpower

Washington Environmental Council

Without safeguards in place to preserve existing benefits and resource priorities, the Commission may be ill-positioned to respond to specific filings made by regulated companies in response to competitive circumstances. Therefore, we urge the Commission to immediately pursue the creation of regional policy to ensure that the region's resource priorities are not lost.

RNP and AWEA commend the Commission for a set of guidelines that seek to guide utilities toward a fair, equitable, and environmentally sensitive electric system. We hope that the Commission will also take more concrete steps that are necessary to accomplish these goals.

Sincerely,

A handwritten signature in cursive script that reads "J. Rachel Shimshak".

J. Rachel Shimshak  
Project Director

Enclosures: 10 paper copies and files on 3.5" HD DOS disk.



**Rogers, Henry C.**



HENRY C. ROGERS  
150 OLD FERRY ROAD  
HADLOCK, WA 98339  
(360) ~~298~~ 385-7616

August 18, 1995  
Mr. Steve McLellan, Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr., S.W.  
P.O. Box 47250  
Olympia, Washington 98504-7250

STATE OF WASH  
UTIL & TRANSP  
COMMISSION

95 AUG 25 10:23

RECEIVED

Re: Guiding Principles for an Evolving Electric  
Industry--Docket No. UE-940932

Dear Mr. McLellan:

I congratulate the Commission on establishing an interim policy in dealing with the general discombobulation that currently is occurring in the electric industry. As your caption says, it is an "evolving" one.

One thing is certain, the "stability" that was once the industry's keystone is a thing of the past. However, the very genesis for coping with the volatility of the new industry is circumscribed in your eight principles. In particular, #8.

As I stated in my letter of February 16, 1995 (#29 in the NOI), the Commission can and must play the key role in stabilizing the market here in Washington. To do otherwise would go counter to the basic tenet of the Commission's being, namely: acting as the competitive surrogate in the marketplace.

Specifically, the key areas that will stabilize the marketplace long term, are transmission and distribution. Therefore, it is very important that the Commission start immediately to determine ways it can bring all transmission and distribution grids within the State under its jurisdiction--including all P.U.D.s. If this is not done, regardless of the way the market concept develops, chaos will become a key ingredient.

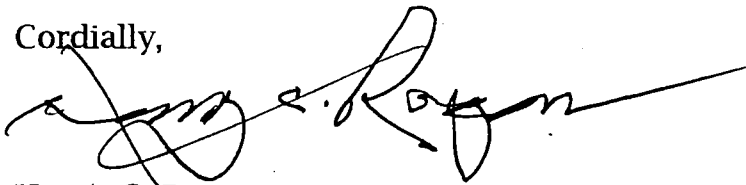
For any electric system to be successful all elements must subscribe to and believe in the "faith" of the system. The electric industry has prospered because of the marketplace balance provided under the commission

concept, i.e., a "faith" supported by all elements. History alone proves that the "Free Market" principle is not necessarily the electric industry's green pasture. Witness the State of Massachusetts Department of Public Utilities' de-regulation directive, wherein they recognize the basic need for balance in order for the market to be truly free; in other words, all elements having "faith" in the system. Here in Washington the key to that balance is jurisdiction over the transmission and distribution grids.

The eight principles in your interim policy provide an excellent vehicle to do what I have outlined above.

As always, I stand ready to explain further any or all of my comments.

Cordially,

A handwritten signature in black ink, appearing to read "Henry C. Rogers". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Henry C. Rogers  
Encl.

# Seattle City Light



# Seattle City Light



Gary Zarker, Superintendent  
Norman B. Rice, Mayor

September 18, 1995

Steve McLellan  
Commission Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. S.W.  
P.O. Box 47250  
Olympia, Washington 98504-7250

Dear Mr. McLellan:

Re: Guiding Principles for an Evolving Electricity Industry - Docket # UE-940932

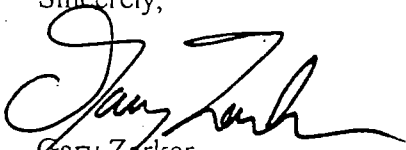
Seattle City Light (SCL) has reviewed the August 14 Commission document which reports the status of the previously issued Notice of Inquiry "Examining Regulation of Electric Utilities in the Face of Change in the Electric Industry" and which proposes principles that provide guidance for the consideration of specific regulatory issues as they arise. We would like to compliment the Commission on what we believe to be an excellent set of principles. Although not within the jurisdiction of the Commission, SCL, the Mayor of Seattle and the Seattle City Council strongly believe that there are overarching public policy issues which must be fully considered as we move forward into a more competitive industry structure, particularly from the perspective of a municipally owned utility. The Commission has done an admirable job in identifying those issues within its "principles".

The industry is evolving quickly. Seattle, along with the WUTC and other publicly regulated electric utilities must be constantly mindful of change and act deliberately to set policy and law so as to protect the interests of the public at large. In that spirit, SCL will continue to follow the Commission's actions as it reexamines its role and the role of regulation in general.

Steve McLellan  
Page 2  
September 18, 1995

Thank you for the opportunity to comment. SCL believes that the Commission has taken an important step in providing a set of principles which can serve the interests of the public well as the electric industry evolves. As requested, we are providing 10 additional copies and an electronic version of this letter in Word 6.0 format. Please continue to keep us informed as you proceed with your deliberations.

Sincerely,



Gary Zarker  
Superintendent

DP:svw

Enclosures

cc: Noland, City Council  
Pageler, City Council  
Reisner, Council Staff  
Sugai, Council Staff  
Johnson, S., OIR  
Barnes, B., OIR  
Reisner, OMP  
Patton, Law



# **WA Public Utility Districts**





Washington  
PUBLIC UTILITY DISTRICTS  
Association

1111 Third Ave., Suite 1870  
Seattle, WA 98101-3207  
(206) 682-3110 • fax (206) 682-3913  
Steve Johnson, Executive Director

September 18, 1995

RECEIVED

Washington Utilities and Transportation Commission SEP 19 A8:23  
Attn: Mr. Steve McLellan, Commission Secretary  
P.O. Box 47250  
Olympia, Washington 98504

STATE OF WASH.  
UTIL. & TRANSP  
COMMISSION

Re: Docket No. UE-940932: Guiding Principles for an Evolving Electricity Industry

The Washington Public Utility Districts ("Association") submits the following comments in response to the WUTC status letter dated August 14, 1995. These comments supplement our previous comments in this docket.

On page four of its status letter, the Commission states:

"Given the uncertain institutional context, the Commission believes that fair and efficient competition would benefit from common rules and principles guiding the competitive relationship between and among Washington's various retail service utilities, regardless of history or ownership form."

The Association has two concerns regarding the above statement. The first is that it may encourage attempts to impose additional and unnecessary regulation upon Public Utility Districts ("PUDs") and other Public Power utilities in the name of "fairness." The second concern is that imposition of any "common rules" may result in the loss of local control and accountability. Either result, if realized, could make PUD's less able to meet the needs of their customers and to respond to market forces.

We concur that the electric industry is rapidly changing and that this transition may require a changing regulatory environment for investor-owned utilities. Public Power and consumer-owned utilities can accommodate these market-driven changes, however, without external intervention, through their elected boards. A key strength of Public Power is local control by the customers of the utility through elected officials. This direct responsibility to the customer insures that PUDs and other Public Power utilities are accountable for their actions.

Like the U.S. economy in general, electric utilities are changing the way they operate and becoming more competitive in response to market forces. These forces are beyond the control of centralized regulatory bodies. The unique regulatory framework of Public Power places these utilities under their customers' control, as the best way of dealing with the rapid change facing our industry.

Regulation that attempts to prevent utility bypass, imposes policies not supported by customers, or distorts the marketplace will ultimately fail. Many customers can now install cogeneration or natural gas-fired generation of their own. In the future, smaller customers may also have the ability to alter the way they purchase energy by investing in enhanced battery storage systems, small scale fuel cells, or other technologies. Attempts to impose artificial restraints upon electric utilities are likely to distort the energy marketplace.

Members:

Asotin County PUD • Benton County PUD • Chehalis County PUD • Clallam County PUD • Clark Public Utilities • Cowlitz County PUD • Douglas County PUD • Ferry County PUD  
Franklin County PUD • Grant County PUD • Grays Harbor County PUD • Jefferson County PUD • Kitsap County PUD • Kittitas County PUD • Klickitat County PUD • Lewis County PUD • Mason County PUD No. 1  
Mason County PUD No. 3 • Okanogan County PUD • Pacific County PUD • Pend Oreille County PUD • Skagit County PUD • Skamania County PUD • Snohomish County PUD • Stevens County PUD  
Thurston County PUD • Wankiam County PUD • Whatcom County PUD • Washington Public Power Supply System • Conservation and Renewable Energy System (CARES)

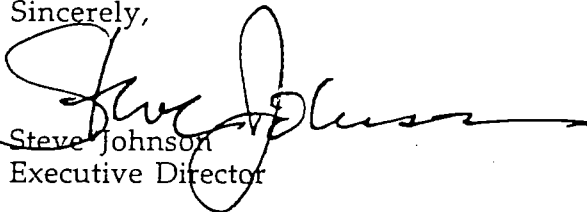
Mr. Steve McLellan  
Page 2  
September 18, 1995

There are those who would add duplicative regulatory requirements upon Public Power utilities in the name of "fairness" or under the guise of creating a "level playing field." It is our hope that the WUTC understands the true motivation behind such efforts. We contend that the need to satisfy their customers will ensure that PUDs continue to provide fair, just, reasonable, and on-discriminatory utility services. The natural evolution of the competitive marketplace will not be enhanced by adding regulation to PUD operations.

Our second area of concern is that any new regulation of PUDs will lessen local control. The Association believes in local control and the right of the public to participate in the decision making process. As such, we concur with the Commission's policy that the public needs to be able to voice their views in planning, resources, siting, and other matters. However, we believe that these public participation requirements are and will continue to be met under our existing organizational forms and legal mandates. Any attempts to impose external requirements upon all electric utilities "...regardless of history or ownership form," could result in a loss of local control by the public. Such a loss of direct public accountability and control is counter to the public interest and unacceptable to our members.

Thank you for this opportunity to comment.

Sincerely,



Steve Johnson  
Executive Director

SJ/sw

# WA State Energy Office





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HARD COPIES RECEIVED \_\_\_\_\_

STATE OF WASHINGTON

WASHINGTON STATE ENERGY OFFICE

925 Plum St. SE, Town Square Bldg #4 • PO Box 43165 • Olympia, Washington 98504-3165

September 18, 1995

Mr. Steve McLellan  
Commission Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, WA 98504

RECEIVED  
WASHINGTON STATE ENERGY OFFICE  
SEP 19 1995

55 SEP 19 PM 12:22

RECORDS SECTION

Subject: Guiding Principles for an Evolving Electricity Industry, Docket No. UE-940932

Dear Mr. McLellan:

Thank you for the opportunity to comment on the Commission's proposed guiding principles. The Washington State Energy Office believes the principles enunciated by the Commission will serve as useful guidance until the resumption of the above-captioned inquiry. The following brief comments serve largely as requests for clarification rather than disagreement. The numbered paragraphs refer to the paragraphs in the proposed guiding principles.

1. We agree with the Commission's description of its "fundamental responsibility." We also believe that the Commission's authorizing environment and the public interest, suggest that the term "cost" should include *all* costs of energy, whether or not incurred by customers or society in general. The term cost should also incorporate the notion of temporal equity: lowering cost today should not come at the expense of unduly high costs tomorrow.
- 1-2. The implication in the last sentence of paragraph 1 is that competition should only be accommodated and encouraged when it benefits *all* customers. This is probably impossible to achieve. This is like a "no losers" test for competition and could erect barriers to economic competition even if the majority of customers benefit. The expansion and rearticulation of this principle in the second paragraph are preferable, where the Commission discourages *non-economic* bypass and *inappropriate* shifting of costs, rather than appearing to bar bypass and cost shifting altogether.
5. We believe the statement of support for public policy goals in paragraph 5 is consistent with, and a part of, the Commission's articulation of its "fundamental responsibility" in paragraph 1. We would, therefore, like to see, in addition to the listed public policies in this paragraph, a discussion of the Commission's own role in and responsibility for promoting these goals. In the case of cost-effective energy efficiency and resource diversity, for example, the Commission clearly has leading responsibilities. (See, for example, RCW 80.28.024 and 80.28.025.) With regard to environmental protection, the Commission's actions should at least be consistent with public policy articulated and fostered by other agencies. We are glad

to see the Commission recognize the importance of market transformation. Again, we would like the Commission to recognize the role the Commission and utility regulation can play in promoting development of efficient markets.

7. We are pleased the Commission recognizes the importance of public input. The Commission should not narrowly construe the number and types of roles the public can play in the decision-making process. To the extent that cost reallocation decisions have repercussions beyond a utility's shareholders and ratepayers, the public should have an opportunity to be involved. We hope this is included in the term "impacts of the electricity system." In particular, as we note in our Notice of Intention (NOI) comments, it does not appear to us to generally be in the public interest to keep special contracts confidential. This is especially true now, as the Commission notes, that the frequency of such contracts is increasing. The special contracts WAC, as well as RCW 80.28.100, contain a number of provisions that require explicit findings that these contracts are not discriminatory. In view of the potentially large cost shifts that could occur, it appears especially important that fellow customers have an opportunity to review and challenge the terms of these contracts as discriminatory. Some clarification of this issue would be welcome.
8. We have some reservations about the eighth principle in a couple of respects. First, we believe the notion that a regulatory body acts as a surrogate for competition has always been imperfect and never been literally applied. The system is no substitute for competitive pressures to reduce costs and improve service. As we transition to a competitive marketplace, ways should be devised to better reflect the benefits of competition without undermining important public policy goals.

Further, as we note in our NOI comments and above, and as the Commission clearly recognizes in paragraph 5, the Commission's role is broader than simply acting as a surrogate for competition. The Commission should also promote public policy goals as articulated elsewhere in Washington statutes, for example, RCW 43.21F.015. Therefore, the Commission is answerable not only to "customer interests" but also to citizen interests. To that extent, the Commission may and does, for example, promote resource acquisitions that are not, strictly speaking, competitive on a direct cost basis. It also promotes resources that would not, in a competitive world, contribute to a company's bottom line (e.g., demand side resources and qualifying facilities). For this type of resource, it is not equitable or in the public interest to expect a utility to absorb a portion of the cost of those resources that are found to be "uneconomic."

We also have reservations about the overall advisability of changing the rules of resource cost recovery through a policy statement issued under WAC 480.09.200. Rather than "remov[ing] a substantial uncertainty," as described in WAC 480.09.200, this statement of principle appears to be creating a new uncertainty. Utilities have understood that the test for cost recovery is whether a prudent manager would have made the investments at issue. The prudence disallowances that occurred during the late 1970s and 1980s were not a



Mr. Steve McLellan  
September 18, 1995  
Page 3 of 3

change in the rules, but simply a more rigorous enforcement of preexisting standards. In paragraph 8, the commission appears to be announcing a dramatically new policy. The policy change could result in massive cost shifts from ratepayers to shareholders. Unless there is an appropriate transitional strategy, this could be disruptive to utilities and hence to the Washington economy. While this new policy may be advisable, in our opinion it should be done after an opportunity for hearing and/or workshops.

We look forward to working with the Commission as it continues to respond to the rapidly changing environment of the electric industry in the Northwest and in the country. We hope to continue working as partners with the Commission in the external proceedings that it and its staff will be focusing on during the next few months.

Sincerely,

A handwritten signature in cursive script that reads "Judith Merchant". The signature is written in dark ink and is positioned to the right of the typed name.

Judith Merchant  
Director

JM/sb  
D-L4-66



# WA Water Power





**Washington Water Power**

September 18, 1995

Washington Utilities & Transportation Commission  
Chandler Plaza Building  
1300 S. Evergreen Park Drive S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

RECEIVED  
WASHINGTON UTILITIES & TRANSPORTATION COMMISSION  
53 SEP 19 AM 10:56

Attention: Steve McLellan, Secretary

**Re: Docket No. UE-940932 -- Interim Policy Statement  
Comments of the Washington Water Power Company**

The Washington Water Power Company submits these comments in response to the Commission's proposed interim policy statement in the above-cited docket, "Examining Regulation of Electric Utilities in the Face of Change in the Electric Industry". Ten copies are included in addition to an electronic version on the enclosed diskette, as requested.

Water Power supports the eight proposed policy guidelines. These guiding principles aptly note that a balance of concerns need to be struck as efficiencies are pursued by companies on behalf of customers.

WWP suggests no changes to the text of the proposed policy statement. We are available to participate in meetings or workshops for further dialogue among parties as the Commission deems appropriate.

We note that these principles are applicable to an evolving market. For example, some customer groups now seek a broad range of choice. Other customer classes are generally satisfied with the type of service currently offered yet they may seek and benefit from greater options in the future.

Sincerely,

*Thomas D. Dukich*  
Thomas D. Dukich, Manager  
Rates and Tariff Administration

enclosures



**Wolch, John H.**





John H. Wolch  
12526 SE 25th Place  
Bellevue, Washington 98005  
(206) 747-1458

RECEIVED

August 18, 1995 <sup>95</sup> AUG 21 A8:52

Washington Utilities & Transportation Commission  
P.O. Box 47250  
Olympia, WA 98504-7250

STATE OF WASH.  
UTIL. & TRANSP  
COMMISSION

Attn: Steve McLellan, Commission Secretary

Guiding Principles for an Evolving Electricity Industry  
Ref: Docket No. UE-940932

I wish to comment on Item 5 of the INTERIM POLICY STATEMENT:  
GUIDING PRINCIPLES FOR AN EVOLVING ELECTRICITY INDUSTRY which  
states in part

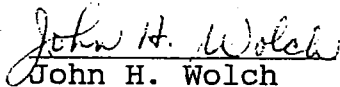
5. Competitive markets should not undermine public policies favoring environmental protection, energy efficiency, resource diversity, and technological innovation. etc.

This strikes me as a continuation of a policy that strongly favors investing in conservation measures that now may be of questionable economic value in order to achieve what is considered by the commission to be good for the public at large. This is in effect a general tax on power users who may not directly benefit from the conservation measures approved. This policy is an infringement on the Legislature which is the body which legally generates taxes. Furthermore, in a competitive environment, power companies cannot afford to pay for uneconomic activities for the benefit of society. If society benefits, then society should pay by legally enacted taxes.

I believe that some of the changing competitive circumstances are caused by the piling on of charges not directly related to the production and distribution of electricity. Ratepayers are becoming aware they are being used to fund many environmental and social objectives which they may or may not embrace. It is time for the electric bill to reflect the cost of electricity and not be used as a surrogate tax.

With the exception of Item 5, the INTERIM POLICY STATEMENT is a good approach and it would serve to provide adequate guidelines until a clearer picture of the structure of the industry has emerged.

Yours truly,

  
John H. Wolch

