



KIRSTIN S. DODGE  
Direct: (425) 635-1407  
Internet: KSDodge@perkinscoie.com

The PSE Building  
10885 N.E. Fourth Street, Suite 700  
Bellevue, WA 98004-5579  
PHONE: 425.635.1400  
FAX: 425.635.2400  
www.perkinscoie.com

January 21, 2004

**VIA HAND DELIVERY & EMAIL**

Carole J. Washburn  
Office of the Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Drive SW  
Olympia, WA 98504-7250

**Re: Docket No. UE-031353  
Puget Sound Energy, Inc.'s Response to Comments on its Draft  
Request for Proposals from All Generation Sources**

Dear Ms. Washburn:

Enclosed for filing are an original and 12 copies of Puget Sound Energy, Inc.'s ("PSE") response to comments that were submitted regarding PSE's draft Request for Proposals from All Generation Sources ("All-Source RFP") that PSE filed in this docket on November 25, 2003. We have also provided an electronic copy of this filing via email.

Exhibit A to this letter contains excerpts of PSE's All-Source RFP that PSE proposes to revise in light of the comments described in this letter. Changes to PSE's original All-Source RFP have been blacklined for ease of reference.

**Summary of Comments**

Commenters asked for seven changes to be made to PSE's All-Source RFP. Concerns raised in different comment letters overlapped with concerns raised by other letters, as summarized below:

Request	Public Counsel	NW Energy Coalition	Energy Project	Trans Alta	Sempra Energy
Ask for fixed price fuel.	X	X	X		
Ask for firm fuel supply.	X	X	X		
Ask proposer to assume risk of future environmental costs.	X	X	X		
Limit disclosure requirements for PPAs.				X	X
Clarify protections provided in Confidentiality Agreement.					X
Accept WSPP Agreement rather than prototype PPA.				X	
Do not impute debt associated with acquisition of a PPA.					X

### **Fixed Price Fuel, Firm Fuel Supply and Risk of Future Environmental Costs**

Several commenters asked that proposers be either required or requested to submit proposals that include firm and fixed-price fuel supply. The same commenters also asked that proposers be either required or requested to assume the risk of future environmental costs (specifically future costs associated with regulation of carbon emissions) associated with their resource. Some commenters asked that proposers be requested to submit alternate proposals with and without these features.

As set forth in its All-Source RFP, PSE is interested in obtaining proposals that mitigate fuel supply and cost risks, to the extent that the price and other terms for such mitigation appear reasonable. PSE believes it could be valuable to obtain alternative proposals for the same resource and/or from the same entity in which the proposer sets forth different prices with or without fixed price fuel supply, with or without firm fuel supply, and with or without the proposer assuming the risk of future environmental costs. Such proposals could help quantify the risks associated with

different resource alternatives and provide insight into market terms and conditions. However, PSE is concerned that the availability of such information, though helpful, will not necessarily permit "apples-to-apples" comparisons between different proposals or resource types. For example, any long-term fixed price, firm fuel supply, or assumption of future environmental costs would only be as good as the continued solvency of the entity that has undertaken the obligation to provide the electricity and/or gas to PSE under these terms. Thus, credit and other considerations set forth in PSE's evaluation criteria will also need to be considered in analyzing and ranking proposals.

PSE does not believe that its All-Source RFP should *require* proposals to include firm and fixed-price fuels supply or to assume the risks of future environmental costs. PSE is concerned that such a requirement would reduce the number and variety of proposals it receives under the All-Source RFP and thereby conflict with a fundamental purpose of the WAC Chapter 480-107 process, which is to provide price discovery such that PSE and others gain an understanding of PSE's avoided costs and the costs and risks of various resource alternatives.

For the reasons described above, it might be valuable to request that commenters who decline to provide such alternative proposals explain why they are not willing or able to quantify or assume the risks of these future costs. PSE therefore proposes to request commenters to provide such alternative proposals or to explain why they are not doing so.

PSE believes that its original All-Source RFP already requests information and sets forth evaluation criteria that will elicit information about the costs and risks of fuel supply and future environmental requirements. *See, e.g.,* All-Source RFP, Sections 3.4, 5.3, 5.8.3. However, PSE is proposing additional language to its original draft All-Source RFP to specifically request alternative proposals. A blacklined version of the excerpts PSE proposes to change for the final All-Source RFP is attached as Exhibit A to this letter.

### **Disclosure Requirements for Power Purchase Agreements (PPAs)**

Sempra and TransAlta object to the breadth and depth of information that PSE has requested in Sections 5.1, 5.2, 5.3 and 5.4 and Exhibit VIII of its All-Source RFP. They complain that this information either is not applicable to a PPA or is too sensitive to disclose.

PSE disagrees with the proposition that power purchase agreements intrinsically pose less risk than facility ownership. Industry experience has shown that there are significant risks associated with power purchase agreements on a

number of fronts, including significant changes in the industry not contemplated at the time of the agreement, reduced flexibility of the resource, counterparty risk, etc. For example, PSE understands that NRG has attempted to terminate its supply contract with CL&P and Mirant has attempted to terminate its purchase agreement with PEPCO. It is unclear how bankruptcy courts will resolve such matters and gives a flavor of "heads we win, tails you lose" to the PPA arrangement. PSE does not believe that proposals that provide information only about *pricing* will contain sufficient information or detail for PSE to adequately understand and evaluate the overall costs and risks (present and future) associated with a potential resource. More complete information is anticipated to enhance the credibility of the deals that are proposed in response to the All-Source RFP and to reduce the possibility that an entity will distort or "game" its proposal to make the short list through a price that does not fully reflect the costs associated with the resource.

Sempra claims that PSE has no need for significant information about Sempra (even if PSE might need additional information from a "financially insubstantial bidder") because of Sempra's "strong credit rating and ready access to capital markets" and its addition of 2500 mW of new generating capacity over the past two years. Recent events in the industry have demonstrated that even entities that appear to be strong and to control significant generation still may pose significant risk. PSE believes that it needs to have specific information about the resources backing a power purchase agreement as well as the full range of other information it has requested in order to adequately understand and weigh the costs and risks associated with a proposal.

TransAlta also states that Section 5.8 "may be appropriate for facilities that are to be submitted to PSE for ownership or equity participation, but does not appear to be appropriate for a simple power purchase agreement." TransAlta letter at 3. TransAlta may or may not be correct with respect to construction and similar information if the PPA at issue relates to a facility that has already been constructed. However, information about environmental impacts (Section 5.8.3), O&M (5.8.8) and other requested information will assist PSE in understanding the costs and risk associated with the proposal, even with respect to a facility that has already been constructed. In any event, it is possible that an entity might propose a PPA tied to a facility that is not yet on line.

PSE does not propose to reject automatically proposals as "non-responsive" if they do not include all of the requested information, and PSE would not eliminate such proposals from consideration merely because some requested information was not supplied. Thus, rather than not submitting a proposal, Sempra, TransAlta, or other potential respondents may submit proposals that they believe provide essential

information but do not reveal information they believe is too sensitive to disclose even under a confidentiality agreement. In addition, to the extent a proposer believes that a particular item of requested information is truly "not applicable" to its proposal, it should so state and explain why.

However, lack of information to support a proposal may become an issue during the evaluation process, and PSE anticipates preferring proposals that contain more rather than less information so that it is better able to analyze, evaluate and weigh various proposals. While PSE may decide to request additional information from proposers, PSE does not believe it should be required to suspend or delay its evaluation and ranking process to obtain additional information from proposers who have chosen to provide incomplete information about their resource.

Finally, in response to Sempra's comment regarding PSE's request for information about primary fuel supplies and sources (Sempra letter at pp. 3-4), PSE believes it needs information about fuel sources requested in the All-Source RFP regarding fuel for the resources that back proposals in order to evaluate risks associated with a potential resource. Indeed, the North American Electric Reliability Council (NERC) has raised a concern about the linkage between the reliability of gas supply and its impact on electric reliability. PSE's All-Source RFP does permit proposals for tolling arrangements. *See* Sections 3.4 and 5.3.

### **Confidentiality Agreement**

In connection with its objection to providing the information requested in PSE's All-Source RFP, Sempra raised a concern that the Mutual Confidentiality Agreement attached to the All-Source RFP as Exhibit VII ("CA") might not require PSE to maintain the confidentiality of proprietary information provided by proposers for a long enough time period, particularly since PSE may need to retain the materials for seven years or longer.

PSE believes it has addressed Sempra's concern by revising Section 10 of its draft CA to lengthen the term of the agreement, as shown in Exhibit A to this letter. To offset the potential burden caused to PSE by the extended term, PSE has also revised Section 2 of the CA. PSE has also revised Section 4 of its draft CA to reflect recent changes in IRS regulations.

Due to a recent experience with respect to its Wind RFP, PSE is also proposing to revise its All-Source RFP to require respondents to submit executed CAs one week prior to submitting proposals. This will avoid delays in reviewing and evaluating the proposals in the event there is a need to follow up on matters concerning the CAs.

## **Western Systems Power Pool ("WSPP") Agreement versus Draft PPA**

TransAlta states that certain provisions of the draft PPA (attached to the All-Source RFP as Exhibit III) may not be applicable if PSE acquires only a portion of the output of a generation facility. TransAlta suggests that it would be more difficult to make changes to the draft PPA than to add language to a standard WSPP confirmation.

PSE does not anticipate that using the WSPP Agreement will meet its concerns or needs with respect to the resource(s) to be acquired through the All-Source RFP. (In that regard, it is noted that transactions under the WSPP Agreement originally did not exceed a year's duration.) The WSPP Agreement typically provides for a liquidation payment based on market for non-delivery of power and does not readily address -- in the same manner as in the draft PPA -- displacement or termination under various circumstances. PSE does not believe it is appropriate to base the RFP on the liquidation payment and a number of other approaches reflected in the WSPP Agreement.

That being said, PSE recognizes the possibility that its draft PPA may be revised to take into account various acquisition scenarios. However, PSE sought to err on the side of providing notice to potential respondents to its All-Source RFP of the types of contractual provisions that PSE anticipates requiring or according preference with respect to PPAs. In the event TransAlta or others object to provisions of PSE's draft PPA, or in the event any such provisions would affect the price, terms or conditions of a proposal, the proposer should so indicate in its proposal and suggest language the proposer would find acceptable.

## **Imputation of Debt for PPAs**

Sempra states that it "could not find mention of debt imputations related to power purchase agreements for any regulated utility operating in the State of Washington, indicating that the financial community in fact has yet to find concern with respect to the State's regulatory treatment of power purchase agreements." Sempra comment letter at 4-5. Sempra therefore suggests that there will be no additional costs associated with acquisition of PPAs as opposed to PSE-owned resources.

Sempra's premise, that PSE is not subject to imputed debt for its PPAs, is incorrect. In 2003, the financial community imputed approximately \$300 million in additional debt to PSE because of its existing PPAs. It may be that Sempra was unable to find information regarding debt imputed to PSE for its PPAs because rating agencies speak in terms of "adjustments" or "adjusted ratios" when addressing this

topic and comparing PSE to industry benchmarks. As Sempra acknowledges, imputation of debt is a recognized issue in the financial community. Indeed, PSE's review of rating agency research on Sempra Energy indicates that Standard & Poor's excludes Sempra's cash flow and imputes hundreds of millions of dollars of imputed debt in analyzing its financial position. Finally, the Commission has instructed PSE to consider imputed debt when it compares purchased power agreements with other options. *See* Docket Nos. UE-920433, UE-920499, UE-921262 (consolidated), Nineteenth Supplemental Order (Sept. 27, 1994) at 34-36.

Thus, PSE does not propose to make any changes to its All-Source RFP in response to this comment.

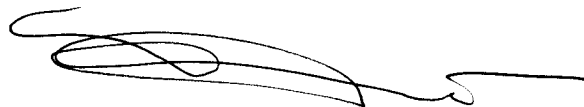
### **Conclusion**

PSE respectfully requests that the Commission issue an order approving PSE's All-Source RFP, with the revisions set forth in Exhibit A to this letter, pursuant to WAC 480-107-060(2)(b).

Questions regarding this letter should be addressed to the undersigned or to George Pohndorf, 425-462-3272. Questions regarding PSE's LCP, resource acquisition plan, or All-Source RFP should be addressed to Wayman Robinett, 425-462-3144.

Thank you for your assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kirstin S. Dodge', with a long horizontal flourish extending to the right.

Kirstin S. Dodge

### **Enclosures**

cc: Robert Cedarbaum (via email and U.S. mail)  
Simon ffitich (via email and U.S. mail)  
Leesa Nayudu (via email and U.S. mail)  
Richard T. Barnette (via email and U.S. mail)  
Danielle Dixon (via email and U.S. mail)  
Ann Gravatt (via email and U.S. mail)  
Matt Steuerwalt (via email and U.S. mail)  
Charles Eberdt (via email and U.S. mail)

**EXHIBIT A**

**Proposed Revisions to All-Source RFP**



**REQUEST FOR PROPOSALS**  
**From**  
**All Generation Sources**

Draft RFP for Public Comment  
November 25, 2003

Puget Sound Energy, Inc.  
10885 N.E. Fourth Street  
Bellevue, WA 98004-5731

electric energy resource's production, the ability of PSE to control the output of the project to match PSE's needs (up to and including real-time dispatch and displacement), and contractual mechanisms to shape project output to need.

Another important consideration for meeting PSE's energy requirement is timing. PSE will place significant emphasis on acquiring resources which are already in commercial operation or that can demonstrate that they can meet a commercial operation date beginning in 2005.

### 1.2.2 Management of Risk

An important consideration for PSE is exposure to long-term and short-term risks and project costs in light of such risks. Within the broad category of risk management related to resource acquisition, several key elements stand out. These include stability of an acquired energy resource in PSE's portfolio over time, the ability to adjust PSE's position in a resource in the long-term, and the financial impacts and risk associated with the addition of a resource to its portfolio.

Longer lived resources can provide relative stability in resource supply and cost, which can help to provide rate stability. Resources that provide PSE with the ability to adjust its position in the asset in the longer term help protect against changes in the market place, tax laws or the regulatory environment. Resources that adversely impact PSE's financial position – by requiring PSE to impute debt, by adversely affecting PSE's financial leverage, operating leverage, credit rating, cash flow, income statement or balance sheet, or by imposing credit requirements – present increased near-term costs and risks to PSE and its customers and will have long-term effects on PSE's ability to attract capital to meet the needs of its customer base (or increase the cost of that capital), creating pressure on rates and financial risk for the Company.

With respect to proposals for facility ownership and power purchase proposals submitted in response to this RFP, opportunities that provide a cost-effective, long-term stable resource base while minimizing long-term market, regulatory, operational, technological, fuel source, environmental and financial risks are preferred. For this reason, PSE is interested in proposals which assume the risk of fuel supply, fuel price, and future environmental costs (Section 3).

## 2 PSE's Least Cost Plan

This RFP is intended to be consistent with the guidance provided by PSE's most recent LCP. PSE filed its LCP with the Washington Utilities and Transportation Commission (WUTC) on April 30, 2003. An update to the April LCP was filed by PSE on August 31, 2003 to incorporate a comprehensive analysis of conservation programs and update other planning assumptions. Complete versions of the April 2003 LCP and the August 2003 update may be found on the PSE web site at <http://www.pse.com/account/rates/rates.html>.

The Least Cost Plan examines PSE's electric and gas resource needs over the next 20 years, and through analysis and consideration of such factors as price, supply and risk, analyzes the mix of conservation programs and supply resources that might best meet electric or gas resource needs. PSE's LCP provides the strategic direction guiding the Company's long-term resource acquisition process. The LCP identifies key factors related to various resource decisions and provides a method for evaluating a resource acquisition in terms of cost, risk, and other factors at the time a decision needs to be made. It does not commit to or preclude the acquisition of a specific resource type, project or facility.

The overall strategy for least cost resource planning at PSE is to develop a diversified, balanced electric resource portfolio that meets customer needs, results in reasonable energy supply costs and mitigates market risks, such as those recently experienced in the region. PSE's resource needs (prior to recent acquisition activities) were for an estimated 400+ aMW of new electric resources in 2004 growing to over 1,700 aMW in 2013 due to growing load in its service territory, the loss of existing resources, and the expiration of power purchase and non utility generation contracts. A portion of those needs have been met through the prospective acquisition of the Frederickson 1 combined cycle generation project. Another portion will be met through conservation. PSE's planning standards call for adequate energy resources to serve each month's electric load under average hydro conditions, and having sufficient capacity resources to meet customer peak loads at 16 degrees Fahrenheit. Both energy and capacity resources will be shaped through various means to fill winter deficiencies, while minimizing summer surpluses.

The PSE LCP set forth a strategy for the acquisition of a diversified portfolio of energy resources. Thus, PSE has established a target of serving 10 percent of its customers' energy needs through renewable resources by 2013. The intent of this RFP is to solicit proposals representative of a broad set of resource technologies and fuel types.

PSE has also committed to continue, as part of its analysis, the on-going process of evaluating all new resource options through the integrated resource portfolio modeling approach used to develop its LCP.

### **3 Products Requested**

This RFP seeks electric generation proposals from a wide variety of technologies and fuel sources consistent with PSE's Least Cost Plan and Key Considerations (see Sections 1.2 and 2) and Evaluation Criteria (Section 9). PSE will consider the acquisition of generation from such proposals under two potential mechanisms: (1) long-term Power Purchase Agreements (20 + years) or 2) ownership arrangements, including co-ownership arrangements in which PSE retains adequate dispatchability and rights of control.

When submitting proposals for either a Power Purchase Agreement or ownership arrangement, PSE is interested in alternatives in which the respondent fully assumes the risk of fuel supply, fuel price, and environmental cost and which quantify the cost for assuming those risk factors. Failure to provide such an alternative will not disqualify the

respondent; however, if the respondent elects not to provide a proposal for assuming such risks, PSE requests that an explanation as to the reason be provided.

### **3.1 Power Purchase Agreements**

Any proposal for a Power Purchase Agreement must specify the generation asset underlying the agreement and provide assurances of its commercial availability within PSE's time frame requirement as defined previously in this document.

In considering Power Purchase Agreements, PSE requires proposals pursuant to which the respondent would acquire, construct, own and operate the generation asset, with PSE purchasing the output (energy and capacity) at an agreed upon delivery point and any Environmental Attributes<sup>2</sup> (see Section 6.6). A prototype Power Purchase Agreement is included as Exhibit III to this RFP.

### **3.2 PSE Ownership**

The PSE ownership mechanism anticipates a proposal pursuant to which PSE would ultimately own the resource or a significant interest in the resource. This may be accomplished at various stages of development and using a variety of approaches such as joint development by the respondent and PSE, development by the respondent and then transfer to PSE, initial purchase of power by PSE with transfer of ownership later, or other approaches which may be mutually beneficial. Although PSE is willing to consider a wide range of arrangements, the term sheet included as Exhibit IV to this RFP presumes that PSE would acquire its ownership interest in the project prior to the commencement of construction and would fund its ownership share on a pro rata basis.

### **3.3 Shaping**

PSE will also consider contractual or other proposals for shaping resource output to meet PSE seasonality requirements. If the respondent includes a shaping proposal, such proposal must be in conjunction with a proposal for an underlying generation asset. PSE is interested in shaping proposals that provide a stable price (e.g., are not tied to a market price index), are associated with an underlying resource proposal and are for arrangements for a term of 3 or more years. Any proposal to shape resource output contractually must be made in conjunction with a specific proposal that satisfies the criteria of this RFP (i.e., stand-alone or separate shaping proposals do not meet such criteria). Also, any such shaping provisions should be optional, to be included at PSE's election.

### **3.4 Fuel Supply**

For proposals that are dependent upon a fuel source such as natural gas, coal, biomass or others, respondents may be requested to propose, as an alternative, a long-term stable price (e.g., not tied to a market price index) and firm supply of fuel. Any proposal for fuel supply must be made in conjunction with a specific proposal that satisfies the criteria of this RFP (i.e., stand-alone or independent fuel supply proposals do not meet such

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<sup>2</sup> "Environmental Attributes" means generally credits, benefits, reductions, offsets and other beneficial allowances with respect to fuel, emissions, air quality, or other environmental characteristics, resulting from the use of certain resource generation or the avoidance of emissions.

criteria). Failure to provide such an alternative will not disqualify the respondent; however, if the respondent elects not to provide a proposal for assuming such risks, PSE requests that an explanation as to the reason be provided. Also, any such fuel supply provisions should be optional, to be included at PSE's election.

### **3.5 Environmental Costs**

Respondents are requested, as an alternative, to provide a proposal which fully assumes the present and future costs of environmental mitigation required under existing or future local, state, or federal law. If provided, such proposal should specify the environmental risks which the respondent is assuming and the cost for assuming each one. Failure to provide such an alternative will not disqualify the respondent; however, if the respondent elects not to provide a proposal for assuming such risks, PSE requests that an explanation as to the reason be provided. Also, any such environmental risk provisions should be optional, to be included at PSE's election.

## **4 Eligible Respondents**

This RFP will accept proposals from all third party project developers or owners that meet the project requirements and comply with the process guidelines described herein. Affiliated generating companies of PSE are not eligible to respond to this RFP. However, PSE will consider proposals from other utilities or utility subsidiaries. PSE believes that consideration of proposals from other utilities and/or their affiliates may increase the number of qualified respondents and thus increase the overall creativity and competitiveness of responses to this RFP.

## **5 Proposal Requirements**

PSE is requesting that respondents conform to the following format for presenting their bid information:

- Summary Data (Summary material to be provided as per Exhibit X of this RFP)
- Project Summary
- Resource Description
- Fuel Supply
- Legal and Financial Information
- Price
- Transmission
- Experience and Qualifications of the Project Team
- Development Status and Schedule
- Response to RFP Section 6 Requirements
- Completed RFP Exhibits or proposed modifications to RFP Exhibits, as applicable (see Section 13 of this RFP).

Information requirements for each of the above subjects is further detailed below. It is expected that respondents will provide complete information in their original submittals. (Please see Section 10 and Exhibit VII for additional requirements regarding confidentiality.) Respondents are to provide one original and seven copies of their

submittals by the submittal due date (see Section 11). Respondents are to provide two signed originals of the Mutual Confidentiality Agreement (Exhibit VII) at least one week prior to the submittal due date.

### **5.1 Project Summary**

Describe the product(s) being offered in response to the RFP. Proposals must clearly specify the contract type (Power Purchase Agreement and/or PSE ownership) and energy delivery type (as produced or shaped) being offered. Proposals may contain multiple options for contract type and/or energy delivery within the same response package. Any proposal that contemplates a Power Purchase Agreement shall indicate the commencement and length of the agreement term. For PSE ownership the proposed date of transfer shall be indicated.

Include a brief description of the proposed delivery schedule, its relationship to the actual production of the project, and, if a shaped resource, the means by which the resource would be shaped. Briefly summarize the project, including key elements such as the location, total nameplate capacity (in megawatts), expected annual output (in megawatt-hours), expected monthly output, type of technology to be used, interconnection plan, transmission arrangements (if applicable), environmental issues, zoning and land use issues, permitting status along with known or probable challenges to permits, planned financing, financing commitments, proposed construction schedule, other participants in the project (such as owners of the project for tax purposes or other passive or financial participants, or other output buyers for project expansions, if any), and current status and schedule for completion of development and construction.

### **5.2 Project Description**

The proposal should include a detailed description of the project including the project's features and the development work completed to date. Include the following information as applicable and indicate if requested information is not known:

- Project location. Identify the site where the project will be located. Provide a map showing the location of key facilities.
- Project Site Control. Provide a list of leases, easements, and/or other ownership documents that demonstrate that the respondent has control of the intended project properties and the legal rights to construct, interconnect and operate the project as described.
- Project layout, showing anticipated placement of all project facilities.
- Project size, in acreage and megawatts. If the project can be expanded, please describe the potential scope and conditions.
- A description of the site including flora and fauna, proximity to inhabited structures, proximity to areas that may be sensitive from an environmental, cultural, commercial, security or other perspective.
- The land area controlled relative to the facilities and the potential for additional development at the site.
- A description of whether the respondent is proposing that PSE take the entire output of the project or whether there are or will be other off-takers of power.

before, during, or after this RFP process is complete. PSE reserves the right to negotiate only with those respondents and other parties who propose transactions that PSE believes, in its sole opinion, to have a reasonable likelihood of being executed substantially as proposed.

## 10 Confidentiality/Disclosure

A Mutual Confidentiality Agreement is included as Exhibit VII to this RFP. Respondents must sign the Confidentiality Agreement and include two signed originals with their proposal. PSE will countersign the Confidentiality Agreement and return one fully executed agreement to the respondent.

To the extent required by law or regulatory order, PSE will make available to the public a summary of all proposals received and the final ranking of all such proposals.

PSE may retain all information pertinent to this RFP process for a period of 7 years or until PSE concludes its next general electric rate case, whichever is later. PSE shall have no obligation under this RFP to provide the models and data used by PSE in its evaluation process to respondents or other third parties except to the extent required by law or regulatory order. PSE may provide such models and data to the extent consistent with its business needs.

## 11 Contact Information and Submission of Proposals

A sealed original and seven copies of the proposal, along with all attachments and electronic files shall be submitted via U.S. mail, courier service, or hand delivery to PSE at the address listed below. ***All such proposals must be received by no later than 5:00 PM Pacific Time on March 12, 2004.*** Respondents are to provide two signed originals of the Mutual Confidentiality Agreement (Exhibit VII) at least one week prior to the submittal due date.

Questions and requests for additional information should also be directed to the individual and address listed below.

All costs to participate in this RFP process, including preparation of proposals, negotiations, etc., are the responsibility of the respondent.

Contact for proposal submittals, questions and requests:

Mr. Wayman Robinett, Director of Resource Planning  
425-462-3144  
425-462-3175 Fax  
[Wayman.Robinett@pse.com](mailto:Wayman.Robinett@pse.com)

## MUTUAL CONFIDENTIALITY AGREEMENT

This Agreement, dated as of \_\_\_\_\_, 2004, is entered into between Puget Sound Energy, Inc., ("PSE") and \_\_\_\_\_ ("\_\_\_\_\_"). PSE and \_\_\_\_\_ are sometimes referred to in this Agreement as "Party," and collectively as "Parties."

1. The Parties intend to enter into discussions regarding one or more potential transactions between the Parties involving the acquisition of electrical generation output or an interest in power generation facilities in \_\_\_\_\_ (or both). In the course of these discussions, each Party may disclose Confidential Information to the other. For the purposes of this Agreement, "Confidential Information" means any information or data disclosed in connection with such discussions in any form or media whatsoever by either Party (the "Disclosing Party") to the other Party (the "Receiving Party") which (a) if in tangible form, or other media that can be converted to readable form, is clearly and conspicuously marked as proprietary, confidential or private on each page thereof when disclosed; or (b) if oral or visual, is identified in writing as proprietary, confidential or private at the same time it is disclosed. "Confidential Information" includes all originals, copies, notes, correspondence, conversations and other manifestations, derivations and analysis of the foregoing.

2. Confidential Information shall not include information that (a) is or becomes generally available to the public other than by reason of the Receiving Party's breach of this Agreement; (b) the Receiving Party can reasonably demonstrate (i) was known by the Receiving Party, prior to its disclosure by the Disclosing Party, without any obligation to hold it in confidence, (ii) is received from a third party free to disclose such information without restriction, (iii) is independently developed by the Receiving Party without the use of Confidential Information of the Disclosing Party; (c) is approved for release by written authorization of the Disclosing Party, but only to the extent of such authorization; or (d) is related to the transmission of power, including but not limited to, any information which must be disclosed to the transmission function of a Party as part of any transmission request or information exchange that is required to be made public pursuant to FERC rules and regulations. Notwithstanding anything to the contrary set forth in this Agreement, the Receiving Party shall not be obligated to keep confidential any Confidential Information that (A) is required by law or regulation to be disclosed (including, without limitation, any summary or ranking of any proposal by the Disclosing Party constituting Confidential Information that PSE is required by law to make available to the public), but only to the extent and for the purposes of such required disclosure or (B) is disclosed in response to a valid order or request of a court or other governmental authority having jurisdiction or in pursuance of any procedures for discovery or information gathering in any proceeding before any such court or governmental authority, but only to the extent of and for the purposes of such order, provided that the Receiving Party, who is subject to such order or discovery, give the Disclosing Party reasonable advance notice (e.g., so as to afford the Disclosing Party an opportunity to appear, object and obtain a protective order or other appropriate relief regarding such disclosure). The Receiving Party, who is subject to such order or discovery, shall, at the Disclosing Party's expense, use reasonable efforts to assist the Disclosing Party's efforts to obtain a



protective order or other appropriate relief; provided, that the Disclosing Party acknowledges and agrees that the Receiving Party shall have no obligation or responsibility to appear before, or to make any showing to, any court or any other governmental authority in connection with protecting any Confidential Information from disclosure by such court or governmental authority, and such responsibility shall be solely that of the Disclosing Party.

3. The Parties acknowledge that PSE is a public utility regulated by the Washington Utilities and Transportation Commission ("Commission") and that its decisions regarding one or more potential transactions between the Parties involving the acquisition of electrical generation output or an interest in power generation facilities, together with related Confidential Information, may be subject to review by the Commission. Notwithstanding the provisions of Section 2, in the event that such PSE decisions are at issue in a proceeding before the Commission, PSE will seek, at its own expense, a protective order from the Commission with "highly confidential provisions" to protect against the disclosure of Confidential Information to competitors and the public. Disclosure of Confidential Information by either of the Parties to the Commission, its staff or its advisors in connection with any such proceeding will not violate this Agreement.

~~4. Notwithstanding any other provision of this Agreement, the confidentiality obligations in this Agreement shall not apply to the "tax structure" or "tax treatment" (as these terms are defined in Section 1.6011-4(c)(8) and (9), or any successor provision, of the Treasury Regulations promulgated under the Internal Revenue Code of 1986, as amended (the "Code")) of the potential transactions discussed, and each party (and any Representative of each party) may disclose to any and all persons, without limitation of any kind, the "tax structure" and "tax treatment" (as these terms are defined in Sections 1.6011-4(c)(8) and (9), or any successor provision, of the Treasury Regulations) of the potential transactions discussed; provided that the confidentiality provisions of this Agreement shall continue to apply to Confidential Information irrelevant to understanding the tax structure or tax treatment of the potential transactions discussed. In addition, eEach party acknowledges and agrees that it has no proprietary or exclusive right to any tax matter, or tax idea, tax structure or tax treatment related to the any potential transactions or transaction between the Parties and that no such tax matter, tax idea, tax structure or tax treatment shall be deemed to be the Confidential Information of either Party. Each party recognizes that any privilege it may have with respect to the confidentiality of the discussions, including with respect to confidential communications with an attorney or a federally authorized tax practitioner under Section 7252 of the Code, is not intended to be waived by the foregoing.~~

5. The Receiving Party shall, subject to the other provisions of this Agreement, (a) use the Confidential Information only for purposes of evaluating one or more potential transactions between the Parties involving power generation facilities; (b) restrict disclosure of the Confidential Information to employees, advisors and active or potential investors or lenders of the Receiving Party and affiliates with a "need to know" and not disclose it to any other person or entity without prior written consent of the

10. This Agreement shall be deemed to be effective as of the date first above written, and shall continue thereafter for a period of ~~two~~ seven (27) years or, if later, upon the conclusion of PSE's next general electric rate case.

11. No Party shall be liable to another Party for any consequential, indirect, incidental, special, exemplary or punitive damages arising out of or related to this Agreement.

12. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the state of Washington, without regard to such state's choice of law principles to the contrary. Each of the Parties irrevocably consents to the exclusive jurisdiction and venue of any state or federal court located in King County, Washington, with regard to any legal or equitable action or proceeding related to this Agreement.

13. This Agreement represents the entire understanding between the Parties with respect to the confidentiality, use, control and proprietary nature of any information disclosed by the Disclosing Party to the Receiving Party and the subject matter hereof and supersedes all prior communications, agreements and understandings relating thereto. The provisions of this Agreement shall not be modified, amended or waived, except by a written instrument duly executed by both of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of \_\_\_\_\_, 2004.

PUGET SOUND ENERGY, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

[OTHER PARTY]

By \_\_\_\_\_

Its \_\_\_\_\_