



April 19, 2013

Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Re: Rulemaking to Consider Possible Corrections and Changes in Rules in
WAC 480-07, Relating to Procedural Rules, Docket A-130355

Dear Chairman Danner:

These comments are submitted on behalf of Sierra Club and its 600,000 members, including over 21,000 members in Washington. Sierra Club has participated extensively in proceedings before the Washington Utilities and Transportation Commission (Commission), including most recently in Puget Sound Energy's 2012 general rate case. (Dockets UE-111048 and UG-111049) Sierra Club has also participated in all of Puget Sound Energy's 2013 integrated resource plan (IRP) stakeholder meetings.

I. INTRODUCTION

One of Sierra Club primary concerns is the continued reliance by Washington utilities on old and dirty coal-fired power plants. Puget Sound Energy and PacifiCorp in particular rely on electric generation from coal plants that expose customers to an extraordinary amount of risk. Customers will increasingly bear the capital and operational costs that result from heightened environmental regulation. As the Northwest, and indeed the entire United States, move toward a more aggressive approach to regulating harmful greenhouse gas emissions, coal plants will bear a disproportionate impact of future environmental requirements. Washington and other states have implemented measures to partially account for the risk of greenhouse gas regulation by including estimated carbon prices in the evaluation of energy resources. However, the current suite of environmental regulations that will impact coal plants like Colstrip and Jim Bridger will curtail other harmful pollutants such as mercury, acid gases, particulates, nitrous oxides (NO_x) and sulfur dioxide (SO₂). Regulating these pollutants is not within the jurisdiction of this Commission, but Puget Sound Energy, PacifiCorp, and other utilities that rely on coal

must face the substantial economic consequences that will result from regulatory compliance by other state and federal agencies.

These utilities are facing decision today about whether to spend extraordinary amounts of capital to extend the lives of these dirty coal plants. For example, PacifiCorp plans to begin a capital expense project next month (May 2013) that will require hundreds of millions dollars to install NOx pollution controls on units 3 and 4 of the Jim Bridger coal plant. Similarly, Puget Sound Energy revealed in its 2013 IRP process that it may face up to \$130 million in capital expenses as early as 2015 in order to control mercury and other air toxics. These expenses are just the beginning of a series of massive capital investments that will be required. There is also a substantial risk that future regulations will impose costs associated with the emission of carbon dioxide.

Currently, the Commission's practices are not well adapted to rigorously planning for these major capital expenses at existing electric generating facilities. General rate cases look at capital expenses after the utility makes the decision and spends the money. By this time, the first opportunity that the public has to scrutinize the detailed – and often confidential – information provided by the utility, it is too late to influence the utility to make a better decision for rate payers and the environment.

II. REVISIONS TO THE IRP PROCESS ARE NECESSARY

The IRP process is an important planning tool that allows the Commission and the public an opportunity to engage with a utility in the development of its long term resource strategy. Sierra Club has participated in past IRP proceedings with Puget Sound Energy and PacifiCorp, and intends to participate in the upcoming future IRP proceedings as well.

In Puget Sound Energy's 2011 IRP, the Commission directed the utility to conduct a broad examination of the cost of continuing the operation of Colstrip over the 20-year planning horizon, including a range of anticipated costs associated with EPA regulations on coal-fired generation. The 2013 IRP process is ongoing; however, it is evident that Puget Sound Energy will not be providing the level of analysis and documentation that is necessary to thoroughly review its decisions related to Colstrip. In response to a request from Sierra Club to provide detailed data, assumptions and modeling files that are necessary to evaluate resource decisions, Puget Sound Energy responded as follows:

The Commission's rules regarding Integrated Resource Planning are provided in WAC 480-100-238. The Commission's rules regarding the procedures utilities must use to acquire new resources are provided in WAC 480-107. These are separate rules and separate processes. The submission of the IRP is a compliance filing which the Commission acknowledges receipt of and confirms that the IRP meet [sic] the requirements of the rule; the

RFP that is filed as part of WAC 480-107 must be approved by the Commission.

(Attachment A.) Puget Sound Energy's response demonstrates that the relying on utilities to voluntarily provide information necessary to critically evaluate existing resources is problematic. The current Commission rules do not require that utilities seek any type of preapproval or thorough review of the massive capital expenditures that will be required at coal plants in the coming years.

A typical IRP process does not allow the public to engage in discovery or have access to confidential information. In particular, the modeling runs and the assumptions that support the inputs for those modeling runs have a significant impact on the relative cost of various generation sources. Access to the data inputs for modeling runs and the assumptions underlying those inputs is a vital part of any study on the economics of major capital expenditures, but this type of data may not be provided in a typical IRP proceeding.

Puget Sound Energy's most recent rate case demonstrated the importance of access to confidential information in evaluating the potential cost of environmental regulations. Through discovery, PSE produced a confidential document, Exhibit No. MLJ-7C CX, that addressed a range of potential costs related to the MATS Rule and the Regional Haze Rule. PSE did not disclose this document during the 2013 IRP process, and instead the public must rely on the representations made by the utility without the ability to review the assumptions supporting those representations.

The Commission previously looked at the role of the IRP compared to the rate case in 1998 in the context of deregulation. With respect to the IRP, the Commission stated:

In this context, the least-cost planning [“integrated resource planning”¹] process **provides an opportunity for the utility's monopoly customers, along with the public and Commission Staff, to influence utility decisions.** As the monopoly service provider, the utility acts as an exclusive agent for its customers. The [integrated resource planning] process provides a means for the customers and the public to provide input on decisions made by the utility on their behalf. The rule also creates a ‘level playing field’ for evaluating investments in energy efficiency and investments in supply-side resources, and a context for the utility to evaluate the relative environmental characteristics of competing resource choices. (Docket No. UE-940932, *Re Regulation of Electric Utilities in the Face of Change in the Electric Industry*, 184 P.U.R.4th 409, 1998 WL 223219.)

The Commission's acknowledgement of the IRP process as a means for the public to play a role in utility decision making is clear. However, the Commission similarly

¹ The Commission amended the least cost planning process WAC 480-100-238 in 2001 to reflect the change of focus from “least-cost” to “integrated resource”. See Final Order, Docket No. UE-030311.

recognized that the level of scrutiny applied in a typical IRP case does not raise to the level of scrutiny available in a rate case:

The Commission continues to believe that prudence evaluation remains an important tool to ensure that utilities are not indifferent to cost or to the consequences of poor decision-making. General rate increase proceedings were established as the forum in which to evaluate prudence, because issues pertaining to the need and price of a resource acquisition can only be determined in a forum where each decision can be viewed in conjunction with all other of the company's resource decisions. The **Commission believes there is no other currently available forum, sufficient in both rigor and scope, within which to make this determination.** (Docket No. UE-940932, *Re Regulation of Electric Utilities in the Face of Change in the Electric Industry*, 184 P.U.R.4th 409, 1998 WL 223219.)

Relying solely on a rate case to consider the prudence of emerging utility expenditures creates problems. Under general ratemaking principles, “an uncompleted utility plant is neither employed for service nor capable of being put to use for service; therefore, such a plant is not ‘used and useful’ for service as required by RCW 80.04.250.” *People's Org. for Washington Energy Res. v. Washington Utilities & Transp. Comm'n*, 104 Wash. 2d 798, 815 (1985). Under typical rate base practices, no prudence review of these substantial costs is allowed until the utility seeks to include the pollution controls in rate base, which in turn only occurs after the controls are built and operational (i.e. used and useful). The Commission would similarly be precluded from taking an *a priori* look at non-capital operating expenses because those expenses would not be sufficiently known and measurable until after they were incurred. “Expenses...are facts. They are not to be ascertained, not created, by the regulatory authorities.” *People's Org. for Washington Energy Res. v. Washington Utilities & Transp. Comm'n*, 104 Wash. 2d 798, 817 (1985) (quoting A. Priest, *Public Utilities Regulation* 49 (1969)).

The gap in review between the IRP and the rate case creates a substantial problems for review of existing utility generating assets that face major capital expenses. As noted above, the IRP is insufficient to provide the level of detailed review necessary to determine the prudence of a utility's decision to spend huge amounts of money on old and risky coal plants. On the other hand, review in a rate case occurs too late. By the time the utility puts on its case to the Commission and the public, the money has been spent, and the utility will likely continue to run the coal plant for years or decades in order to recoup the expense.

Sierra Club therefore recommends that the Commission address in this docket changes to the IRP rules that would require utilities to provide more detailed analyses

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about future costs at existing generating resources, and in particular at coal plants. Sierra Club appreciates the opportunity to participate in this docket to explore the best options for achieving these goals.

Sincerely,

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