

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Rulemaking to Consider Possible
Corrections and Changes in Rules in
Chapter 480-107 WAC, Relating to
Procedural Rules

DOCKET NO. UE-030423

COMMENTS OF
PUGET SOUND ENERGY, INC.

I. INTRODUCTION

1. Puget Sound Energy, Inc. ("PSE") respectfully submits the following comments in response to the Commission's Notice of Proposed Rulemaking (CR-102) issued by the Commission in this docket on October 5, 2005.

2. In submitting these comments, PSE notes that it has had significant direct experience over the past several years implementing and applying the Commission's existing competitive bidding rules. PSE has also had extensive experience in seeking out and acquiring new resources and in understanding the costs and risks associated with potential acquisitions.

3. PSE's representative for purposes of this proceeding is:

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II. COMMENTS

A. Revisions to the Proposed Rules

4. PSE submits as Attachment A to these comments its proposed revisions to the form of rules issued with the CR-102. In developing Attachment A, PSE first "accepted" the changes to the current rules proposed in the CR-102, then blacklined PSE's suggested changes. PSE explains the reasons for its suggested changes in the footnotes to Attachment A.

5. One of the primary goals of PSE's proposed changes is to make Chapter 480-107 consistent with PURPA and related regulations with respect to a utility's obligation to purchase energy and capacity from qualifying facilities ("QFs") on terms no higher than the utility's avoided costs. *See* 16 U.S.C.A. § 824a-3(a)(1), § 824a-3(b), § 824a-3(d) and 18 C.F.R. § 292.101(b)(6). Under the structure of the proposed rules, subsection -095 sets forth that general obligation and subsection -007 defines the term "avoided costs" as this Commission has determined for the utilities it regulates.

6. Particular attention should be paid to the "avoided costs" definition in subsection -007 because it will set the price, terms and conditions that utilities and their customers are forced to pay to QFs for purchases of energy and capacity. (By contrast, the avoided cost schedules required to be filed under subsection -055 merely provide guidance to potential bidders in the form of an estimate of the utility's avoided costs).

7. In this regard, PSE believes that it would be a mistake for the Commission to determine that a utility's "avoided costs" are represented by the least cost project proposal that is submitted to a utility in response to a request for proposals. The contract negotiation

and finalization process may result in an outcome of the competitive bidding process that is less costly than the most attractive proposal as submitted. Alternatively, none of the proposals may be least costly than other alternatives available to a utility, including wholesale market purchases. This latter option was not generally available at the time PURPA was enacted, but it seems wise for this Commission to take such current industry information into account in updating WAC Chapter 480-107.

8. PSE has attempted in its attached comments to propose language that addresses the above concerns, as well as a variety of other concerns as set forth in the footnotes to Attachment A.

9. PSE recognizes that its comments are extensive, and that the Commission and other stakeholders may need additional time to consider them. PSE has joined with other stakeholders in submitting a letter to the Commission urging the Commission to permit an additional round of informal comments – and perhaps hold another workshop focused on detailed sections of the rule – before proposed rules are formally submitted to the Code Reviser.

B. Absence of Proposed Ex Ante Prudence Review Process

10. PSE notes the absence in the CR-102 of any discussion regarding the potential new optional process proposed by PSE in earlier rounds of comment in this docket and in Docket No. UE-030311 (the Least Cost Planning/Integrated Resource Planning Rulemaking) by which a utility could obtain Commission approval prior to committing to investing in a new energy resource. The absence of any such discussion in the CR-102 or in the Commission Staff memo supporting issuance of the CR-102 is surprising, given the extensive discussion of the concept that took place at the June 9, 2005 workshop for these dockets.

11. PSE initially discussed this proposal in its May 13, 2005 letter in Docket No. UE-030311. PSE clarified at the June 9, 2005 workshop that PSE had in mind a process through which a utility could obtain a determination from the Commission that it is prudent to move forward with acquisition or development of a resource prior to finally committing the utility to that course of action. The utility's implementation of any such acquisition or development would continue to be subject to a prudence review in an appropriate future proceeding; however, the prudence of the initial decision to proceed would not be revisited in such future proceedings. For a multi-year or multi-phase project, a utility might return to the Commission at subsequent stages of project development to obtain a determination that moving forward with the next phase of the project is prudent. PSE stated that it was unaware of any legal impediment to including in the Commission's rules explicit authority for making such filings or obtaining such approvals.

12. These ex ante prudence determinations would not include incorporating into rates the funds that are anticipated to be invested in the new resource. However, utilities would still have the ability to request – as part of a ratemaking proceeding -- inclusion in rates of funds that have already been invested in a project (Construction Work In Progress) prior to final project completion. *See* RCW 80.04.250.

13. As discussed in PSE's May 13, 2005 letter, PSE believes that the proper timing for the initial prudence determination would be after a utility conducts a WAC Chapter 480-107 RFP process or similar resource alternative analysis.

14. PSE suggested the following new WAC rule subsections to accomplish the purposes described above:

WAC 480-107-XXX—Prudence Determination Filings:

(1) Prior to finally committing to acquire or develop a new electric resource, an electric utility may file a petition with the commission requesting that the commission determine whether the decision to acquire or develop the resource is prudent.

(2) In addition, or in the alternative, an electric utility may file a petition with the commission requesting that the commission determine whether the decision to continue forward with the acquisition or development of an electric resource is prudent.

(3) The commission will initiate an adjudicative proceeding in response to such a petition within thirty days after the petition is filed.

15. PSE continues to believe that including explicit authority for such filings in the new RFP rule would benefit regulated companies, their customers, and other stakeholders. Among other things, it would permit concerns about a potential resource acquisition to be raised while there is still an opportunity to impact the company's acquisition decision.

DATED: October 26, 2005.

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By _____
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