BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Least Cost Planning Rulemaking, WAC 480-100-238, 480-90-238, Preproposal Inquiry (CR 101).	Docket Nos. UE-030311; UG-030312

Initial Comments of Public Counsel
May 16, 2003

Public Counsel files these comments in response to the Commission's Preproposal Statement of Inquiry (CR 101) and the Notices of April 18, 2003.

We appreciate the opportunity to offer these comments. Pursuant to the descriptions in the CR-101 documents that initiated the rulemaking, our comments relate to Washington Administrative Code (WAC) sections 480-100-238 and 480-90-238, regarding the least cost planning processes for electric and gas utilities, respectively. Most comments below relate to both WAC sections, though one is confined to electric utilities only, as indicated.

I. INTRODUCTION

Public Counsel supports the Commission's goal of reviewing the rules governing the least cost planning process. The principles behind least cost planning are important ones for consumers. Public Counsel was instrumental in the original adoption of this type of resource planning in Washington. The Commission's order in Docket U-85-53, after reviewing the testimony of Public Counsel and Staff witnesses held:

> We require the company to develop as part of the [least cost] plan an analysis of alternative ways of providing energy to customers at the least practical life cycle cost and treating investments in end use efficiency and new supply on an equal and balanced basis.

WUTC v. Puget Sound Power & Light, U-85-53, Second Supplemental Order, p. 65 (excerpt from order attached).

Unfortunately, for a number of reasons, after an early period when the Commission, the companies, and other stakeholders committed resources to implementation of the rule, the least cost planning process has been honored in the breach in many cases in latter years. The recent events in the western energy markets have refocused our attention on the need for and value of resource planning. This review is timely. It provides an opportunity both to update the methodologies and analysis required, and to reform the process itself to find ways to ensure that resource planning requirements are not neglected in the future.

II. COMMENTS APPLYING TO BOTH UE-030311 AND UG-030312

Risk and Uncertainty

Least cost planning as contemplated in the current rule does not include a component for energy portfolio risk management, something that may have merit. This rulemaking is an appropriate place to determine whether and how to add risk issues to the planning process. Historically, the "least cost" mix of resources was that mix that produced the lowest present value of system costs. There was no specific consideration of the relative risk of different types of resources, or of the relative reliability of different types of resources. This was probably too narrow an interpretation of the concept of "Least Cost" planning, since customers value stability and reliability, and since fuel price volatility has become an important component of cost.

In its current Least Cost Plan filing, Puget has addressed a portion of this through a very creative set of tools to measure volatility and risk. Unfortunately, the analysis is in its infancy, and does not adequately address the relative risks that different strategies impose on customers versus shareholders. Under the Puget analytical approach, the total volatility in expected system

costs (sensitivity of system costs to certain variables) is measured, and that is the measure that guides Puget's "Application of Judgment" discussed in Chapter XI of the Plan.

One example of a volatility risk allocation mechanism is Puget's current Power Cost Adjustment (PCA) mechanism. As the PCA is structured, the most severe potential volatility is borne by ratepayers, not by shareholders. Because ratepayers value stability, and this type of PCA increases risk to ratepayers of volatility, it is appropriate to examine options within the least cost planning process to equitably distribute the risk of volatility, and the recovery of volatility-driven costs to meet the objectives of ratepayers and shareholders. Examples of this might be:

a) To define the period of time over which surcharges or refunds would be flowed through;

b) To cap the maximum surcharge that could be in effect any any time;

c) To develop rate design tools to provide stability in the price of energy for essential services (as California did with it's power crisis surcharges); or

d) Other tools.

Public Counsel recommends that a new provision should be added to the least cost planning rule to require the assessment of alternative tools and strategies for managing and sharing the risk of volatility, both from the perspective of ratepayers and shareholders.

<u>Other States</u>

Approximately thirty states have implemented least cost planning, as a result of requirements in the 1992 Energy Policy Act. Part of the process in this rulemaking should be a review of other state substantive and procedural requirements, and results, for good ideas that can be used in Washington. Public Counsel will assist in this effort through its own research, and is hopeful that other parties and the Commission staff will also look to other jurisdictions' experience in developing their recommendations.

Clarify Timelines and Establish Incentives for Compliance

As noted in the Introduction, least cost planning has not always received the attention it should have in recent years. Puget's 2001 plan (due 12/31/01 for 2002-03), for example, was not filed until April 30, 2003, and even that plan does not include all components required by the current rule. Clearly there is a need for new procedural incentives to ensure that the rule is complied with and that the planning process occurs on schedule.

Paragraph (3) of the existing rule indicates that least cost plans shall be submitted "...on a biennial basis..." with no further specification and paragraph (1) indicates that "Each planning cycle must begin with a letter to the utility from the commission secretary." This leads both to lack of clarity regarding procedural schedules, and to the opportunity for the utility to postpone initiation of the process in cases where the initiating letter is absent or late. As noted above stakeholders, and the Commission itself, are currently struggling with Puget Sound Energy's 2002-2003 least cost plan, still incomplete 19½ months after the initiating letter of October 1, 2001. Simply put, the rule needs more "teeth."

We recommend that the requirement for an initiating letter be replaced by the requirement for a single statement from the UTC to each affected utility, indicating the specific month and day of either odd- or even-numbered years in which finalized, least cost plans will be due, indefinitely. We further recommend that the rules provide an incentive to each utility to adhere to its assigned schedule establishing consequences for failure to meet required filing obligations. Public Counsel suggests consideration of the following options, as either stand-alone or cumulative incentives:

- $1,000 fine per day late, in accordance with RCW 80.04.380,
- Petitions for power cost adjustments will not be considered until LCP plan is filed,

- No company petition considered until LCP plan filed.
- Any resource acquisition which occurs when a utility does not have an approved plan in effect would carry a rebuttable presumption of imprudency.[1]

While the first option, the monetary penalty, is already law, the new rules could specifically reference the penalty to emphasize that it would be pursued by the Commission in cases of non-compliance.

An additional component of least cost planning contemplated by the rules is the use of competitive bidding under WAC Chapter 480-107. By their terms, the rules are expressly made applicable to the least cost planning process. WAC 480-107-001(2). The least cost plan rule should also reference this requirement. This rulemaking should consider the degree to which this rule is being complied with, and what provisions might be adopted to establish consequences for non-compliance, along the lines of those set out above.

Enforcement of Accepted Final Plans

Under the current rule, a utility's least cost plan is unenforceable. It is advisory, not mandatory. Acceptance of a plan does not constitute approval of any particular resource acquisition. By the same token, departure from the plan is not treated as imprudent, or as otherwise violating Commission rules or orders. It is the "advisory" nature of the plan that may, at least in part, be responsible for the recent neglect of the process. The potential for enforcement would increase utility motivation for accuracy and reasonableness.

One valid policy reason for the "advisory" approach has been a concern by regulators to avoid preapproval of resource acquisitions, preserving the ability to review prudence in the ratemaking setting. Utilities for their part have been concerned about the loss of flexibility under

[1] In U-85-23, Staff recommended that if a company failed to provide the least cost plan, inclusion of additional thermal or hydroelectric facilities in rate base should be denied. *WUTC v. Puget Power &Light*, U-85-23, Second Supplemental Order, p. 63.

a preapproval regime. While these remain important considerations, Public Counsel believes the time is right to revisit these assumptions. Financial markets and utilities themselves have a strong interest in stability and predictability, as do ratepayers. Insertion of some level of advance "approval" for a resource acquisition plan, coupled with real and enforceable consequences for departure from the plan, might be an appropriate change. Public Counsel suggests discussion in this rulemaking of the following ideas:

- The Commission "approves" rather than "accepts" the least cost plan.
- Approval of a plan is defined to mean approval of the plan for acquisition of resources within a category, rather than acquisition of a particular resource.
- Acquisition of a resource within a category would be "pre-approved" as to the type of resource, but prudency would remain an issue as to the specific acquisition. Example: The approved plan allows acquisition of 500 mW of coal-fired generation as part of the resource mix. The utility acquires a 200 mW coal plant. The Commission or other stakeholders could not challenge as imprudent the acquisition of coal, as opposed to another type of resource. The Commission would retain the right to review whether the decision to acquire this particular coal plant, at the specific cost, was prudent.
- Adoption of this approach would likely require additional procedural mechanisms: for example, a provision for early guidance from the Commission during plan development (interaction between the LCP collaborative and the Commission with respect to a draft plan), and an evidentiary hearing to establish a record for approval.
- The "approval" approach may be most appropriate as to the short-term components of the plan.

Clarify Forecasting and Planning Horizons

The scope of the long-range forecast is loosely indicated in paragraph 3(e) to be 20 years. The scope of the short-term plan is generally indicated in paragraph 3(f) to be two years. In neither case is the scope specifically required to be the indicated length. Furthermore, due to the lack of clear scheduling for the process as a whole (see above), no concrete termini are set for either the forecast or the plan.

We recommend that the short-term plan specifically be required to address demand- and supply-side management during the two-year period beginning at the due date of the finalized plan. We also recommend that the long-term forecast specifically address a minimum of 20 full years, measured from a date certain.[2] The use of clear two year and twenty year time periods would allow for better ability to compare plans between companies, and to compare company plans over time, one to another.

In order to preserve flexibility, however, the rule should allow the utility to also include alternative short term and long term periods, if the utility feels a different time period is appropriate.

Rename the Process Integrated Resource Planning

The term "least cost planning" has lost favor over time, nationwide, and is gradually being replaced by the term Integrated Resource Planning (IRP). "Least cost planning" has the misleading character of appearing to address dollar costs only (because the word "cost" means only dollar costs to many people), when in fact the process is intended to address environmental and social costs as well. Further, the intent of the process is to institutionalize a significant

[2] For example, the 20 years could be measured from the due date of the filed plan.

public policy decision to integrate the demand and supply side resource acquisition strategies of the utility. IRP, thus , properly captures the breadth of the process' goals.

Encourage Integration Of Electric And Natural Gas Plans

We recommend that utilities offering electric, gas service or both be required to offer an analysis of effects of fuel-switching in the long-range forecasts, especially as affected by anticipated penalties on greenhouse gas emissions (see below).   A plan also should be required to evaluate the savings from potential fuel-choice/switching in new and retrofit single and multi-family housing units in all parts of the utility service territory.

III. COMMENTS APPLYING ONLY TO UE-030311

Assign A Defined Cost To Anticipated Emissions Penalties

Financial risks associated with resources include those due to anticipated penalties on future emissions. Presumably the utility will account for these in its risk assessment, but one particular pollutant shows so much potential for future regulation it should be treated specifically in the rules.

Impending passage of the Kyoto Protocol under the United Nations Framework Convention on Climate Change will result in financial liability, in an international market, associated with emissions of greenhouse gases. Though the United States is not a party to the Protocol, its passage will exert pressure on the U.S. to begin regulating greenhouse gas emissions. Furthermore, in the absence of federal action, state and local governments are regulating greenhouse gas emissions – Oregon, Portland and Seattle being examples in the

Northwest.[3] Washington State is currently party to a lawsuit[4] demanding that the U.S. EPA regulate carbon dioxide, the most prevalent greenhouse gas, under provisions of the Clean Air Act.

The quantity of political and financial pressure on the United States, and on Washington State directly, to regulate greenhouse gas emissions implies that some financial penalty will be associated with such emissions within the next three to ten years. Least cost plans are intended to forecast demand and resources over a period of roughly twenty years, and furthermore fossil fueled generation resources have typical useful lifetimes between twenty and forty years.

We, therefore, recommend that the commission adopt a specific, non-zero value to be associated with greenhouse gas emissions of existing and projected resources. The number would be a default number, and the utility could propose and justify an alternative cost in addition. The Northwest Power Planning Council Regional Technical Forum has adopted a default value of $15/ton for these emissions. Public Counsel proposes that this value be adopted in the WAC as the default to be used in the least cost planning process.

IV. CONCLUSION

Thank you for your consideration of these comments. Public Counsel looks forward to further participation through comments and workshops in this important rulemaking.

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[3] The State of Oregon limits emissions of the greenhouse gas carbon dioxide from new electric power plants (Oregon Administrative Rule 345-24). Portland was the first city in the U.S. to adopt a carbon dioxide reduction plan (Carbon Dioxide Reduction Strategy, 1993) and plans to achieve greenhouse gas emissions 10% below 1990 levels by the year 2010. Seattle's municipal utility is required by city law (Resolution 30144) to deliver electricity to residents with no net greenhouse gas emissions.

[4] Eliot Spitzer (NY), Richard Blumenthal (CT), G. Steven Rowe (ME), Thomas F. Reilly (MA), Peter C. Harvey (NJ), Patrick Lynch (RI), Christine O. Gregoire (WA), "Notice of Intent to Sue Under Clean Air Act § 304(b)(2)." February 20, 2003.