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Via Electronic Mail

May 16, 2003

Ms. Carole J. Washburn, Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. S.W.
Olympia, WA 98504-7250

Re: Chapter 480-107 WAC Rulemaking
Docket No. UE-030423

Dear Ms. Washburn:

The Washington Utilities and Transportation Commission issued a Notice of Opportunity to File Written Comments on April 18, 2003. The focus of the comments is the consideration of revisions to Chapter 480-107 of the Washington Administrative Code (WAC), *"Electric Companies-purchases of electricity from qualifying facilities and independent power producers and purchases of electric savings from conservation suppliers."* The purpose of that chapter is to establish rules for determining the rates, terms and conditions governing the purchases of electricity from several sources, including Qualifying Facilities (QFs).

The Cogeneration Coalition of Washington (CCW) is a group of Qualifying Facilities located in Washington State -- the March Point Cogeneration Company, Sumas Cogeneration Company, L.P., and Tenaska, Inc. From its perspective as QFs currently operating in Washington State, CCW recommends no changes to the current administrative code sections applicable to QFs.

Long-Standing Policy Encourages Cogeneration Technology

In 1978, the Public Utility Regulatory Policies Act[1] was passed to encourage the conservation and efficient use of energy and to spur development of alternative power supplies. At that time, electric utilities were forecasting that additional generation was needed to meet demand. PURPA calls for utilities to buy power from Qualifying Facilities, provided that the cost to do so is no more than what the utility would have paid to supply the power itself.

PURPA required the Federal Energy Regulatory Commission (FERC) to prescribe rules necessary to encourage cogeneration. Among the adopted rules was a

[1] Pub. L. No. 95-617, 92 Stat. 3117 (codified in U.S.C. sections 15, 16, 26, 30, 42 and 43).

mandatory purchase obligation requiring electric utilities to purchase electric power from and sell electric power to cogeneration facilities. The rules provide that QFs may provide energy to the utility as it is available at the purchasing utility's avoided costs, calculated at the time of delivery.[2] Additionally, PURPA authorized the FERC to exempt QFs from certain federal and state laws and regulations.[3]

Washington's role in implementing these rules is memorialized in WAC Section 480-107-001, *"[t]hese rules are consistent with the provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA), Title II, Sections 201 and 210, and regulations promulgated by the Federal Energy Regulatory Commission (FERC) in 18 C.F.R. Part 292…."* States are required under the federal statutory scheme to implement the federal rules. State regulators act as delegates of FERC in administering QF contracts and must act consistent with FERC guidelines.[4] Under the Supremacy Clause of the United States Constitution, a federal agency acting within the scope of its congressionally delegated authority has the power to preempt state regulation and render unenforceable, state or local laws which are otherwise not inconsistent with federal law.[5]

CCW recommends no change to the WAC Section 480-107 as many of the provisions pertaining to QFs are a result of federal laws and FERC rules. Changes at the state level would be inappropriate.

Cogeneration Technology Benefits the State and Electric Industry

Even if PURPA did not exist,[6] Washington would be prudent to embrace the regulations that were promulgated under PURPA to further the State's energy security and future. Washington benefits from cogeneration development and operation in numerous ways. Some of these benefits are unique to cogeneration, while other benefits are shared with other forms of independent power generation. Notably:

Cogeneration enables companies to manage and stabilize energy costs. Cogeneration, as an alternative to utility or market energy purchases, serves as an important check on market prices. It provides a "hedge" for the company against market volatility and is the financial cushion necessary to keep the business profitable and employing workers.

Cogeneration efficiently and cleanly uses fuel. CCW cogeneration projects use natural gas as the fuel to run their turbines. Natural gas is cleaner-burning than coal or oil. By using the heat that was formerly considered a waste product, the combined cycle units result in greater efficiencies. This means more power is produced per unit of fuel. Cogeneration facilities also employ sophisticated air

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2 18 CFR § 392.304(d)(1).

3 16 USC § 824a-3(a).

4 *Independent Energy Producers Association, Inc. v. California Public Utilities Commission*, 36 F.3d 848 (9th Cir. 1994).

5 *Louisiana Public Service Com. V. FCC*, 46 U.S. 355, 368-369 (1986).

6 PURPA has been subject to challenge in recent years with bills in Congress to effectuate its repeal. To date however, no such bill has garnered sufficient support to enact the repeal, and proposals for repeal are typically conditioned.

emissions control systems that meet and often exceed local and federal air quality standards.

Cogeneration increases electricity dedicated to serve Washington. This supply – unlike other merchant generation – is committed to serve load within the State and reduces reliance on imports.

Cogeneration enhances the reliability of the State's transmission grid. The diversity of supply locations of CCW facilities in Whatcom and Skagit Counties is a significant operating benefit to the electric transmission grid. It relieves congestion on the transmission system and forestalls costly grid expansions. Cogeneration may also provide voltage support to grid operations and reduce transmission line losses that would otherwise result if the power had to be imported from a distant generator. The "distributed" nature of cogeneration results in a more reliable system, compared with a system consisting of a few large generating units.

Cogeneration results in customer self-sufficiency and creates private investment, jobs and tax revenues for Washington. When the State relies on out-of-state generation rather than encouraging in-state investment, the opportunities for an increased tax base and employment are lost. The CCW cogeneration facilities support the economic base of the communities in which they are located, paying taxes, purchasing parts and equipment, hiring labor and using other support services.

Cogenerators assume the risk. There are risks in building any generating facility – risks in construction, cost overruns, and operations. Private companies take on this risk, rather than the utility's ratepayers or shareholders. This enhances the financial stability of the utility.

Conclusion

FERC has prescribed certain rules requiring utilities to purchase electric energy from Qualifying Facilities. The current WAC sections implementing these rules are consistent with the FERC rules, as well as the WUTC's policies and advances in technology.

Moreover, the WAC, in implementing the rules, has achieved the intended result of encouraging QF development. CCW member facilities have been operating in Washington State since the early to mid-1990s and have produced substantial benefits for the State and electric industry.

CCW recommends no changes to the existing WAC 480-107.

Sincerely,

/s/

Michael P. Alcantar
Counsel to the Cogeneration Coalition of Washington