



RECEIVED  
RECORDS MANAGEMENT  
03 OCT 24 PM 4:30  
STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

**VIA FAX AND FIRST-CLASS MAIL**

October 24, 2003

Ms. Carole J. Washburn  
Executive Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, WA 98504-7250

**Re: Docket Nos. UE-031353 and UE-030594, Notice of Opportunity to File Comments Regarding Puget Sound Energy's Draft Request For Proposals and Least Cost Plan Update**

Dear Ms. Washburn:

On August 25, 2003, Kristin Dodge sent a letter to the WUTC, enclosing the proposed RFP of Puget Sound Energy, Inc. (PSE") for wind-power resources. On August 29, 2003, George Pohndorf, PSE Director of Regulatory Initiatives, sent the WUTC certain revisions and updates to PSE's least cost plan. This letter is submitted jointly on behalf of BP West Coast Products and TransCanada PipeLines Ltd., in response to the WUTC Secretary's solicitation of public comments on these documents.

PSE's written materials address a need for hundreds of mega-Watts of new resources. Page 3 of PSE's "resource acquisition program" documentation (August 25, 2003), lists a need for 1,000 MW in 2004 growing to 2,950 MW by 2013. Having defined such a need, WAC 480-107-001, *et seq.*, then requires PSE to satisfy it through an all-source competitive bid. Despite the existence of the competitive bidding rules, PSE's written materials repeatedly refer to an informal solicitation process that has been undertaken outside the regulations. This informal solicitation demonstrates that PSE is seeking to obtain ownership of unspecified new power resources to meet its resource needs (i.e., PSE intends to build, rather than buy). While utility ownership of new resources is an option contemplated under the rules, that option must stand the test of competitive bidding to ensure that it would fulfill the goals of least-cost planning.

PSE's apparent circumvention of all-source bidding rules is found in Ms. Dodge's letter, which cites WAC 480-107-001(1) as an exception allowing PSE some latitude to go outside competitive-bidding rules by constructing utility owned generating and executing bilaterally negotiated power contracts. However, PSE's informal solicitation

began sometime in 2002, well before it developed its current least cost plan. It appears that the plan was drafted, in part, to justify this pre-existing, irregular process. Any resource acquisition process should serve the least cost plan, not the other way around.

It seems clear that PSE intends to acquire ownership of a power resource in the immediate future and that it intends to make this acquisition less objectionable by conducting a competitive bidding process for wind-power resources or output. Specifically, the only clearly announced intention to following the WUTC's competitive-bidding rules relates to a proposed purchase of 150 MW from wind-power resources. This is to be a single-source bid, not the all-source bidding contemplated by the WUTC regulations. Even here, the wind-power RFP indicates a preference for PSE taking ownership of resources developed on a turn-key basis and bidding is, thus, tilted in favor of PSE ownership.

Page 3 of Ms. Dodge's letter mentions "two or more RFPs for Resources with Stable Variable Costs, Including but not Limited to Coal and Large PURPA projects (Fall 2003/Winter 2004)." However, the letter and materials identify no need for such resources until no earlier than 2010 – about the time PSE's existing QF contracts start to expire. Given the timing of the solicitation vis a vis the timing of the need for resources, the additional RFPs would appear to be little more than a solicitation of indicative price bids from developers for prudence review purposes.<sup>1</sup> Since resource developers will have no serious opportunity to satisfy PSE's power needs before 2010, even if those developers could do so at a total cost to ratepayers less than PSE, independent developers will be unlikely to submit bids. It is, therefore, unlikely that a record of such cost savings will ever be assembled for future prudence review.

PSE should not mistake approval of a least cost plan as a determination of prudence. The WUTC has clearly stated that a planning document cannot substitute for well-reasoned, well-documented implementation:

Although a least-cost plan may contain information helpful in determining the prudence of resource selection, this is only one consideration in the evaluation. Additional information is required to prove prudence, as indicated in the least-cost planning rule itself. The Commission's acceptance of a

---

<sup>1</sup> An RFP conducted in 2003 or early 2004 for resource needs that do not materialize until 2010 might possibly attract the attention of some developers of coal-fired plants, which traditionally have had very long lead times. However, coal-plant development seems unlikely. The Oregon PUC recently admonished PacifiCorp to remove from its least cost plan, or at least, reconsider, the thought of acquiring any new coal-fired resource. Order No. 03-508, In the Matter of PacifiCorp Resource and Market Planning Program, Oregon PUC (August 25, 2003).

company's least-cost plan does not represent a finding of prudence of a particular resource. The least-cost planning process is not sufficiently rigorous or specific to support an independent finding of prudence.

Petition of Puget Sound Power & Light Company, Docket No. UE-920433, et al., Nineteenth Supplemental Order, slip op. at 12 (September 24, 1994).

In a future rate proceeding, PSE will be called upon to justify its resource acquisitions:

Puget must make an affirmative showing of the reasonableness and prudence of the expenses under review. This is true even in the absence of a challenge by another party. The Commission concludes that Puget has not carried its burden of demonstrating that its new resource acquisitions were prudent.

Id., slip op. at 5. Of course, PSE could still argue in a future rate case that the WUTC tacitly approved PSE's informal solicitation, outside the bounds of WAC 480-107-001. The most definitive way to forestall such an excuse would be to make PSE to follow WAC 480-107-001 from the start. PSE should not be allowed to build, rather than buy, unless and until it can document that resource-ownership has won the test of all-source bidding, thereby demonstrating it to be the least-cost option for PSE's ratepayers.

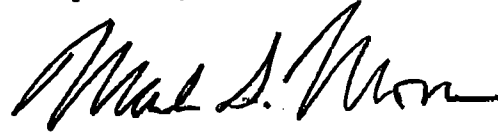
PSE's plan to add to its rate base also appears to avoid its Public Utility Regulatory Policies Act ("PURPA") obligations and the QF rights of the Cherry Point Project. Any RFP for QF resources will likely only include resources left unfilled by new rate-based assets or with long-range resource needs arising only after 2010. Thus far, PSE has declined to negotiate a near term QF contract regarding the Cherry Point Project, even after a willingness was expressed by the developer to entertain PSE equity participation.

In summary, TransCanada and BP urge the WUTC to do the following:

1. Direct PSE not to proceed with the acquisition of any new power resource as a rate-base asset outside the all-source competitive bidding process prescribed by WAC 480-107-001. PSE should be directed to exercise this option, if at all, only upon a showing that it is superior to the resources offered by all other bidders – just as PSE would demand of any independent, third party bidder.
2. Direct PSE not to acquire any new resource in violation of PURPA

Thank you for providing this opportunity to comment.

Respectfully submitted,



Mark S. Moore  
Project General Manager  
BP



Angela R. Avery  
Senior Legal Counsel  
TransCanada

cc

John Cameron, Davis Wright Tremaine  
Karl Johannson, TransCanada  
Craig Martin, TransCanada  
Rick Porter, BP  
Doug Shaigec, TransCanada  
Jeanne Zaiontz, BP