

KIRSTIN S. DODGE
Direct: (425) 635-1407
Internet: KSDodge@perkinscoie.com

November 12, 2003

VIA HAND DELIVERY & EMAIL

Carole J. Washburn
Office of the Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
Olympia, WA 98504-7250

**Re: Docket No. UE-031353
Response to Comments and Proposed Revisions to Draft
Request for Proposals for Wind Power Resources**

Dear Ms. Washburn:

Enclosed for filing are an original and 19 copies of Puget Sound Energy, Inc.'s ("PSE") responses to comments that have been filed in this docket regarding PSE's draft Request for Proposals for Wind Power Resources ("Wind RFP"). We have also provided an electronic copy of this filing via email.

In response to comments that interested persons have submitted on specific provisions of the draft Wind RFP, PSE is hereby proposing that certain revisions be made to the text of the RFP prior to issuance. One set of comments also raised issues that do not relate to the form of the draft Wind RFP, but rather concern PSE's broader plans to acquire resources and the place of the Wind RFP in those plans. In order to address those concerns and concerns raised by Commission Staff, PSE plans to accelerate and consolidate a number of the RFPs described in the Resource Acquisition Program dated August 25, 2003 that was attached to the Wind RFP filing and to file a draft "all-source" RFP with the Commission during the week of December 8, 2003, for review and approval under WAC 480-107. In the meantime, PSE requests that the Commission approve its revised draft Wind RFP for issuance under WAC 480-107-020(2) and 060(2) because PSE's proposed revisions have incorporated all comments specific to the Wind RFP and it would not be in the public interest to delay issuance of the Wind RFP.

Response to Comments from Zilkha dated Oct. 21, 2003 and from FPL Energy, LLC dated Oct. 23, 2003

PSE received two sets of comments setting forth specific questions and suggestions regarding its draft Wind RFP: comments from Zilkha dated October 21, 2003 and comments from FPL Energy, LLC dated October 23, 2003. Because the comments appear to have been sent directly to PSE and not filed with the Commission, PSE has attached copies of the comments as Exhibits A and B to this letter.

In response to these comments, PSE proposes to revise certain provisions of its draft Wind RFP, as described in the matrix attached as Exhibit C. Excerpts of PSE's draft Wind RFP and Exhibit 1 to the Wind RFP (prototype Wind Power Purchase Agreement) with proposed revisions shown in blackline are attached to this letter as Exhibits D and E.

Response to Comments from BP and TransCanada dated Oct. 24, 2003

Acquisitions outside the WAC 480-107 process:

BP/TC first state that PSE sets forth "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." BP/TC object to any effort by PSE to acquire assets outside the WAC 480-107 process. BP/TC Comments at 1.

As BP/TC acknowledge, the Commission's regulations specifically permit PSE to pursue resource acquisition outside the WAC 480-107 process. *See* WAC 480-107-001(1). Moreover, the WAC 480-107 process is triggered only after a utility files its least cost plan ("LCP") under WAC 480-100-238. *See* WAC 480-107-060(2)(a). PSE commenced the competitive solicitation process that BP/TC criticize in the Fall of 2002, well before PSE filed its current LCP on April 30, 2003. PSE's LCP was not drafted to "justify this pre-existing, irregular process." BP/TC Comments at 2. Long before PSE filed its April 2003 LCP, PSE and others understood that PSE would have significant resource needs in the near and longer term. PSE initiated a public resource planning process in the Summer of 2002, showed interested parties its preliminary load/resource analysis, and presented a draft LCP outlining its significant needs in December 2002.

Although PSE's solicitations outside the WAC 480-107 bidding process have been appropriate, PSE is not seeking to "circumvent" the WAC 480-107 process or to limit its use of the process to the Wind RFP that is currently before the Commission.

As PSE explained in its August 25, 2003 filing, the Wind RFP was just the first RFP PSE planned to issue through the WAC 480-107 process, followed quickly by no less than four other sets of RFPs for a variety of types of resources and timelines. *See* August 25, 2003 Letter at 3 and Ex. A at 6. PSE's acquisition of an ownership interest in Epcor's Frederickson I generation facility, announced the day before BP/TC filed their comments, is anticipated to supply only approximately 125 MW of PSE's needs. *See generally* Docket No. UE-031725. That acquisition will not preclude PSE from pursuing additional resource acquisitions as described in its Resource Acquisition Program, including future acquisitions through the WAC 480-107 process.

Preference to build rather than buy

BP/TC claim that PSE's solicitation of proposals outside of WAC 480-107 demonstrates that "PSE intends to build, rather than buy" and that its Wind RFP is "tilted in favor of PSE ownership." BP/TC Comments at 1-2. In fact, PSE solicited proposals in the Fall of 2002 not only for proposed asset sales but also for proposed power purchase agreements ("PPAs"). *See* Wind RFP, Ex. A, pp. 5-6. PSE's Wind RFP also clearly calls for proposals for PPAs as well as PSE ownership arrangements. *See, e.g.,* Wind RFP at 3 and Ex. 1 (prototype PPA). BP/TC do not take issue with any proposed evaluation criteria or any other specific provisions of the Wind RFP.

"All-source" RFPs

BP/TC do not cite to any authority in support of their proposition that PSE's Wind RFP is a "single-source bid" while WAC 480-107 contemplates "all-source bidding." The only provision in WAC 480-107 that remotely addresses this subject is WAC 480-107-020(1), which provides that "[a]ny developer of a potential generating facility may participate in the bidding process." This section of the rule does not prohibit issuance of an RFP for a specific type of technology. The word "any" requires that the bidding process be open to all potential types of bidders (*e.g.* independent power producers (IPPs) as well as QFs). Consistent with opening the bidding process to IPPs as well as QFs, WAC 480-107-020(2) and (3) go on to permit participation by other utilities or an electric utility's affiliated subsidiaries as well, if appropriate.¹ PSE's Wind RFP fully complies with the Commission's rules because PSE is not, for example, proposing to exclude either QFs or non-QFs from the

¹ Similarly, in declaring that California's competitive bidding process violated PURPA, FERC ruled that "*bidding cannot be limited to certain sellers (QFs)*; rather, it must be all-source bidding." *Southern California Edison Co.*, 70 F.E.R.C. ¶ 61,215, p. 61,677 (1995) ("*Edison*") (emphasis added). At the time, California's system only permitted QFs to submit responses to utilities' requests for proposals. *Id.* at pp. 61,666-67, 61,672.

process. PSE has also asked the Commission to expand the scope of potential bidders to other utilities to provide for more robust competition. *See* PSE's Aug. 25, 2003 Letter at 4.

Furthermore, as explained in PSE's Resource Acquisition Program and LCP, PSE does not have only "a need" to acquire a single resource; PSE has a current and growing need for resources in the near and longer term and has good reasons to fill those needs with a variety of types of resources over time. *See* Wind RFP, Ex. A. Under these circumstances, WAC 480-107 does not require PSE to issue one RFP in the Fall of 2003 for all of its various needs between now and 2013. Given recent experience with volatile prices in the electric and natural gas markets, long-term forward price projections that turn out (in hindsight) to have been far from accurate, and rapid changes in the direction of the industry as a whole, PSE does not believe this Commission would look with favor on such an approach to PSE's resource acquisition. The Commission's rules recognize that it might be appropriate for a utility to issue more than a single RFP after each LCP cycle. *See* WAC 480-107-060(2)(a) (in addition to the draft proposal due ninety days after the LCP, "[m]ore frequent solicitations shall be allowed at the discretion of the utility.")²

Even if the Commission were inclined to interpret WAC 480-107-020(1) to require broader participation with respect to types of generating facilities, PSE is proposing to issue its Wind RFP the context of broader resource acquisition activities including an additional WAC 480-107 RFP. In light of PSE's overall resource acquisition activities, the Commission should approve the issuance of PSE's Wind RFP as in compliance with WAC 480-107 and the public interest.

Acceleration of RFP Schedule for Additional Resources

Although PSE does not believe that the comments of BP/TC regarding "all source" bidding have any merit, in the spirit of compromise and good faith, PSE has decided to modify the schedule for issuance of future WAC 480-107 RFPs that is set forth in its Resource Acquisition Program to accelerate and consolidate those RFPs into an "all source" RFP. PSE is currently developing a draft RFP that will call for proposals for generation resources that are not limited to a specific resource type or technology. PSE anticipates that the draft RFP will call for proposals to meet its near and medium-term needs (2004 to approximately the Winter of 2007-08). PSE intends

² BP/TC's comments with respect to "all-source bidding" also appear to be inconsistent with their subsequent criticism of the timeline of PSE's Resource Acquisition Program. *See* BP/TC Comments at 2.

to file that draft RFP during the week of December 8, 2003. In that filing, PSE will be asking the Commission to shorten the time for comment on the draft RFP to thirty days, in light of the background and information that has been provided with the Wind RFP filing and anticipated overlap of the structure and many of the provisions of the two RFPs.

In the meantime, PSE urges the Commission to approve issuance of its Wind RFP, with the modifications proposed in this letter. PSE has fully responded to the comments on its Wind RFP. Several parties have pointed out the potential cost advantages of expediting development of a wind resource. PSE's LCP documents the advantages of adding wind resources to its portfolio. Even if the Wind RFP results in acquisition of 150 MW of nameplate capacity, that will result in only 50 aMW of energy, leaving plenty of "room" for additional acquisition(s) through an "all-source" RFP commenced in late 2003.

Least cost plans and prudence

BP/TC argue that "PSE should not mistake approval of a least cost plan as a determination of prudence" and that "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." BP/TC Comments at 2-3.

This Commission has made it abundantly clear that its acceptance of a least cost plan under WAC 480-100-238 is not a prudence determination. PSE fully expects to demonstrate the prudence of its resource acquisitions.

PURPA obligations and QF rights

BP/TC state that "PSE's plan to add to its rate base also appears to avoid its [PURPA] obligations and the QF rights of the Cherry Point Project." BP/TC Comments at 3. BP/TC fail to explain this statement or cite any authority that could support a claim that PSE's resource acquisition plan violates PURPA or its implementing regulations. BP/TC's statement is all the more puzzling because, after having challenged PSE's solicitations outside the WAC 480-107 process, they complain that "PSE has declined to negotiate a near term QF contract regarding the Cherry Point Project." Similarly, after claiming that PSE inappropriately intends to own new assets rather than purchase power from other entities, BP/TC speak of having offered PSE equity participation in the Cherry Point Project.

BP/TC and the Cherry Point Project developers had the opportunity to participate in PSE's Fall 2002 solicitation process and will have the opportunity to participate in the "all source" RFP to be filed with the Commission on December 1, 2003. They will also likely have the opportunity to participate in future resource acquisition processes to address PSE's needs after approximately 2008. However, like all other developers, they must be prepared to compete with other QFs and non-QFs in those processes, and with other developers offering PPAs and equity ownership proposals. *See, e.g. Edison*, 70 F.E.R.C. at p. 61,678 (Commissioner Massey, concurring) ("[I]n today's wholesale market, QFs should compete head-on with other power suppliers. . . . The QF industry has matured sufficiently that QFs can and should compete on the merits with other supply options."); WAC 480-107-020 (permitting "[a]ny developer of a potential generating facility," not just QFs, to participate in the bidding process).

Request for relief

BP/TC ask the Commission to "[d]irect PSE not to proceed with the acquisition of any new power resource as a rate-base asset" outside of the WAC 480-107 process unless PSE makes "a showing that it is superior to the resources offered by all other bidders." BP/TC Comment at 3. This request for relief is improper because, as described above, the Commission's regulations explicitly permit acquisitions outside the Chapter 480-107 process.

BP/TC also ask the Commission to "[d]irect PSE not to acquire any new resource in violation of PURPA." BP/TC Comments at 3. PSE has no intention of acquiring resources in violation of PURPA, and BP/TC have failed to articulate why PURPA allegedly prohibits PSE from acquiring an ownership interest in new power

resources, or from otherwise moving forward with its resource acquisition plans or Wind RFP.

PSE hopes that these comments have been helpful to the Commission. Questions regarding this filing should be addressed to the undersigned or George Pohndorf, 425-462-3272. Questions regarding PSE's LCP, resource acquisition plan, Wind RFP or forthcoming all-source RFP should be addressed to Wayman Robinett, 425-362-3144.

Very truly yours,

Kirstin S. Dodge

Enclosures

cc: Robert Cedarbaum (via hand delivery)
Simon ffitc (via hand delivery)
John Cameron (via Federal Express)
Ann English Gravatt (via Federal Express)
Dean Gosselin and Denny George (via Federal Express)
Michael Skelly (via Federal Express)
Andrew Young (via Federal Express)

EXHIBIT A

Comments from Zilkha dated October 21, 2003

EXHIBIT B

Comments from FPL Energy, LLC dated October 23, 2003

EXHIBIT C

Description of Comments and PSE's Responses

EXHIBIT D

Proposed Revisions to Wind RFP

EXHIBIT E

**Proposed Revisions to Exhibit 1 of the Wind RFP
(prototype Wind Power Purchase Agreement)**