



Via electronic mail

September 22, 2008

David Danner, Executive Secretary
Washington Utilities and Transportation Commission
1300 Evergreen Park Drive, SW
Olympia, WA 98504

Subject: Docket No. UE-080111
Rulemaking to Implement Greenhouse Gases Emissions Performance Standard
Comments of Puget Sound Energy, Inc.

Dear Mr. Danner:

Puget Sound Energy, Inc. ("PSE") appreciates the opportunity to participate in the Commission's rulemaking to implement the requirements of RCW 80.80.060 regarding electrical company compliance with the greenhouse gases emissions performance standard contained in RCW 80.80.040 ("EPS"). In response to the Commission's Notice of Opportunity to File Written Comments dated August 22, 2008 in Docket No. UE-080111 and Discussion Draft II August 5, 2008 Revision, PSE offers the following additional comments and suggested rule language:

WAC 480-100-400

The Commission proposes the following sentences regarding burden of proof with respect to compliance with the greenhouse gases emissions performance standard:

Electrical companies bear the burden to prove compliance with the greenhouse gases emissions performance standard under the requirements of WAC 480-100-405 or as part of a general rate case. For electrical companies that fail to carry their burden of proof, the Commission may disallow recovery of some or all costs in rates, impose penalties, or take such other action as is consistent with law.

PSE recommends the Commission remove the above-stated language and any language that implies that electrical companies have the burden of proof in establishing compliance with

the EPS. Such language conflicts with the provisions of RCW 80.80, which places the burden for determining compliance or noncompliance with the EPS on the Washington State Department of Ecology ("Ecology") and the Commission. For example, RCW 80.80.060(7) states, "The department [of Ecology] shall report to the commission whether baseload electric generation will comply with the greenhouse gases emission performance standard...". RCW 80.80.060(7) states, "The commission shall consult with the department to apply the procedures adopted by the department to verify the emission of green house gases...". Further, RCW 80.80.060(5) states, "[T]he commission shall determine whether the company's proposed decision to acquire electric generation...complies with the greenhouse gases emissions performance standard...". Thus, the statute requires Ecology to "report", the Commission to "consult" with Ecology and "apply [Ecology's] procedures", and further requires the Commission to "determine" compliance. Taken together, these statutory provisions demonstrate that it is the electrical company's responsibility to file an application seeking a determination of whether a proposed acquisition meets the EPS, and Ecology and the Commission, working together, must determine whether the proposed acquisition complies with the law.

This statute is distinguishable from statutes governing a general rate proceeding, for example,¹ which explicitly places the burden of proof on the applicant utility. Unlike RCW 80.04.130(4), RCW 80.80 is silent with regard to burden of proof. Additionally, the burden of proof is already on a utility to show that any long-term financial commitment is prudent.² Such burden is appropriate in a prudence determination because the utility is in the best position to conduct due diligence, review alternatives and determine the best course of action with regard to acquiring a resource. In the case of RCW 80.80, Ecology is in the best position to determine that any baseload electric generation complies or does not comply with emission standards and its own procedures. Further, the Commission's duty to consult with Ecology effectively removes the utility from any specific review, analyses and verification of baseload electric generation emissions, such that placing the burden of proof on the utility would be inappropriate.

Definition of "new ownership interest"

PSE interprets the word "ownership" as used in the term "new ownership interest" to mean that the provisions of RCW 80.80 apply to changes in a controlling interest of a generation asset, rather than a minority interest. PSE recognizes that Ecology adopted a definition of "new ownership interest" to include a change in minority interest (5%) of a generation asset. However, PSE believes Ecology's definition 1) will create a substantial administrative burden on all parties and 2) does not reflect the intent of RCW 80.80. Accordingly, PSE recommends that the Commission define "new ownership interest" in a manner that complies with the scope and intent of RCW 80.80, as follows:

¹ "At any hearing involving any change in any schedule, classification, rule, or regulation the effect of which is to increase any rate, charge, rental, or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company." RCW 80.04.130(4)

² *WUTC v. Puget Sound Power & Light Co.*, Docket No. UE-921262, *et al.*, Nineteenth Supplemental Order (September 27, 1994) at 10 (citing *WUTC v. Puget Sound Power & Light Co.*, Cause No. U-85-53, Second Supplemental Order (May 16, 1986) and *WUTC v. Washington Water Power Co.*, Cause No. U-83-26, Fifth Supplemental Order (January 19, 1984)).

Suggested Rule Language

"New ownership interest" means the acquisition by an electric utility of more than 50 percent of the assets, or more than 50 percent of the equity interests in the owner of the assets, of a baseload power plant or a cogeneration facility or the electrical generation portion of a cogeneration facility. In no event shall any direct or indirect change in ownership of an electric utility constitute a new ownership interest.

Definition of "power plant"

PSE agrees with Commission Staff's comments from the August 5, 2008 rulemaking workshop that the definition of "power plant" needs no amplification or clarification. PSE interprets the current definition of "power plant" in the statute, to exclude power plants outside of Washington State, and PSE does not believe any additional or revised language is necessary.

Summary of Rulemaking Inquiry and Comments Clarification

In the August 20, 2008 Memorandum entitled "Summary of Rulemaking Inquiry and Comments", Commission Staff made the following statement regarding the August 5, 2008, Rulemaking Workshop:

"No party participating in the workshop objected to the rules as drafted."

PSE acknowledges that it did not object to the rules drafted at that time, but it did have numerous questions regarding the recently-changed draft rules and the basis for such rules and changes. In particular, PSE had specific questions regarding the basis for shifting the burden of proof to the electrical company. PSE provides the comments above in response to information gathered at the Rulemaking Workshop regarding such issue.

PSE appreciates the opportunity to further present its viewpoint on the Commission's Rulemaking to Implement Greenhouse Gases Emissions Performance Standard. Please direct any questions regarding these comments to Eric Englert at (425) 456-2312 or the undersigned at (425) 462-3495.

Sincerely,

E = E. Englert
for *Manager, Regulatory Initiatives and Tariffs*

/s/ Tom DeBoer

Tom DeBoer
Director – Federal & State Regulatory Affairs