

## MEMORANDUM

December 16, 2003

To: Chairwoman Showalter  
Commissioner Hemstad  
Commissioner Oshie

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Subject: Dockets: UE-030311/UE-030423/UG-030312. Rulemaking Procedures to review WAC 480-100-238, Least Cost Planning (Electric Companies) and WAC 480-90-238, Least Cost Planning (Gas Companies), and Chapter 480-107 WAC "Electric companies purchases of electricity from qualifying facilities and independent power producers and purchases of electrical savings from conservation suppliers"

### **I. Introduction.**

The purpose of our meeting is to seek guidance from the Commission on several important policy issues with the overall objective of narrowing the scope of issues in this rulemaking. In addition, Staff summarized all the comments submitted to the Commission from interested stakeholders and provided Staff's response to those comments.

## **II. Background**

On April 15, 2003, the Commission filed its Preproposal Statements of Inquiry (CR-101s) in Dockets UE-030311/UG-030312 to review WAC 480-100-238 and WAC 480-90-238, rules relating to least cost planning (LCP) by electric and gas companies, and in Docket UE-030423 to review Chapter 480-107 WAC, Electric companies purchases of electricity from qualifying facilities and independent power producers and purchases of electrical savings from conservation suppliers.

During April and May, the Rulemaking Team received comments from a broad group of stakeholders. These comments were discussed during a workshop held on June 13, 2003. Some of these comments are in conflict, and it would be impossible for the Commission to adopt many of them due to these conflicts. Furthermore, many of the recommendations would require substantial changes in policy and possibly legislative changes.

## **III. Main issues raised by stakeholders**

### **1. Least Cost Planning rules (WAC 480-90/100-238)**

#### **(a) Subsection (1) - Process initiation**

- Avista considered that the commission letter is not necessary to begin the planning cycle.

#### **Staff's response:**

Staff believes this suggestion has merit. The rule should specify that the utility is obligated to produce a biennial resource plan, and each utility should be required to file with the Commission its intent to meet that requirement.

#### **(b) Subsection (1) - Public Involvement/process**

- Avista suggested establishing and involving a Technical Advisory Committee in the resource planning process in order to involve more interested stakeholders.
- The Northwest Energy Coalition (NWECC) stated that the current rule does not provide assurances that a public comment period, including a public hearing, will be implemented following the utility's filing of the plan. The Coalition suggested modifying the rule to ensure the public has adequate

notice, opportunity, and time to comment on the final plan prior to any Commission action.

**Staff's response:**

Staff believes that the underlying intent of the current rule is to ensure public input to the traditional responsibility of management to acquire least cost resources. This policy should continue. The current rule requiring public involvement should not place additional burdens on any utility, and the current rule can be construed as broad enough to provide the utility with the flexibility to manage the public involvement process as it sees fit.

**(c) Subsection (2) - Name of the process**

- Avista and Public Counsel recommended renaming the process because integrated resource planning better reflects the balancing of costs and risks.

**Staff's response:**

Staff agrees. We do not believe that renaming the rule implies any change in the meaning in the language of the rule. Staff's view of the current content of the rule and of its revision is independent of a change in the name.

**(d) Subsection (3) - Role of risk and uncertainty**

- PacifiCorp, Puget Sound Energy (PSE), Public Counsel, and the Department of Community, Trade and Economic Development (DCTED) recommended incorporating some measure of risk as a part of the definition of "least-cost plan." Public Counsel and DCTED further suggested including in this rule how risks will be shared between ratepayers and shareholders.

**Staff's response:**

The notion of risk is imbedded in the language of subsection (3)(a) of the current rule. Staff believes that it's clear that the notion of risk is of equal importance and should be considered in conjunction with that of cost in these plans.

**(e) Subsection (3) - Include and quantify externalities**

- DCTED, NWECA, and The Energy Project suggested quantifying all reasonably known health and environmental costs associated with a site specific or generic electricity power plant and including them in cost analyses. Possible societal benefits should also be included in analysis comparing supply and demand resources, according to DCTED.

- Along similar lines, Public Counsel suggested adopting a specific, default non-zero value, such as the \$15/ton adopted by the Northwest Power Planning Council Regional Technical Forum.
- The Industrial Customers of Northwest Utilities (ICNU) on the other hand, are concerned that these issues will detract from the central purpose of least cost planning (“the mix of generating resources and improvements in the efficient use of electricity that will meet current and future needs at the lowest cost to the utility and its ratepayers.”) at a very bad economic time for the state. They believe that it is not appropriate to consider environmental externalities in Least Cost Plans.
- DCTED recommended that bids and plant development by utilities include the costs of compliance by the project with environmental laws, rules, and regulations in effect at the time of the bid and those reasonably anticipated to be in effect during the term of the project.
- NWEAC recommended that an updated LCP rule must specify how utilities should account for the cost of mitigating of CO<sub>2</sub> emissions. The Natural Resources Defense Council (NRDC) agreed with this suggestion and further suggested shifting the risk of possible future regulation of carbon dioxide emissions to the sponsors of resources that create them.

**Staff’s response:**

Some externalities are now addressed and these should be included in integrated resource plans. Revising the language to compel inclusion of other more controversial issues, which have yet to be generally accepted, is not necessary. There is no compelling need to introduce additional issues and complexities at this time.

**(f) Subsection (3) - Integration of demand-side management and renewable resources**

- The Energy Project and NWEAC considered important to include conservation acquisition as a resource acquisition, as a way to meet loads, rather than simply as a decrement to loads.
- NWEAC suggested that the least cost plan rule should define the term “renewable resources” (e.g., in accordance with RCW 19.29A.10) and specify how renewable resources would be evaluated in comparison to each other and to other generating and demand-side resources.

**Staff’s response:**

Staff is concerned about including specific evaluation criteria in the rules. More specifically, Staff believes that the evaluation of any specific resources is too

complex to be captured in rules. Further, any evaluation of a specific resource is part of management's responsibility. No rule can capture all the complexities of this decision making process and to suggest a formula for decision making would imply a shift in responsibility from management to the Commission.

**(g) Subsection (3) - Resource Alternatives**

- ICNU believes that the Commission's rules related to least cost planning for electric utilities should provide for consideration of all available resources, including customer choice and Westside projects with combined heat and power cogeneration.

**Staff's response:**

Subsection (3) of the current rule requires assessments of all technically feasible generation technologies and efficiency improvements. Nothing more is needed.

**(h) Subsection (3)(f) - Planning horizons**

- Avista provided separate comments for the gas and for the electric rules. For the gas rule, the company suggested that a range of forecasts for future gas demand for firm and interruptible markets by customer class should include one, five, and ten years rather than one, five, and twenty years horizons. The rationale behind this is that the twenty-year forecast has little meaning for natural gas resource acquisition because contracts of such length are not industry standards. For electric resources, Avista suggested that a long-range plan be defined as a ten-year time horizon rather than twenty years. According to the company, a ten-year planning horizon will be as accurate as a twenty-year forecast, which is little more than a shorter forecast factored with a linear modifier.
- Public Counsel on the other hand, suggested that short-term plans specifically should be required to address demand- and supply-side management during the two-year period beginning at the due date of the finalized plan. The long-term forecast should address a minimum of 20 full years, measured from a date certain. However, the Counsel agreed that, in order to preserve flexibility, the rule should allow the utility to include alternative short-term and long-term periods, if the utility feels a different time period is appropriate.

**Staff's response:**

Planning horizons should be specified as minimum requirements. Nothing in the rule prohibits the Company from evaluating different planning horizons.

The purpose of specifying a minimum number of years for planning horizons is to create a baseline common to all regulated companies. Staff believes that recommending a specific time frame is not appropriate. The current language needs not be changed.

**(i) Subsection (3) - Timelines for filing and related incentives/disincentives**

- Public Counsel and the Northwest Independent Power Producers Coalition (NIPPC) recommended that the rules provide a mechanism for each utility to adhere to its assigned schedule, establishing consequences for failure to meet filing obligations.

**Staff's response:**

Staff agrees that established timelines for complying with the rule should be clear, and subject to penalties if deadlines are not met.

**(j) Subsection (5) - Approval/Enforcement of Plans**

- DCTED and The Energy Project suggested establishing a mechanism that would hold companies accountable for implementing their Least Cost Plans. They believe such a mechanism will increase the relevance of the resource plans. NIPPC supports a revision along these lines too.
- Public Counsel recommended revising the Commission enforcement authority. The NWECC supported this recommendation and added the suggestion of using the LCP to evaluate utilities' performance.
- Public Counsel and PacifiCorp recommended inserting some level of formal "approval" for a resource plan, approval that Public Counsel suggests should be coupled with real and enforceable consequences for departure from the plan.

**Staff's response:**

The Commission should continue to "acknowledge" any plan filed pursuant to these rules and determine whether the least cost plan presented by the utility meets the minimum requirements stated in the rule. Any actions by the Commission in acknowledging a plan should not be construed as pre-approval for any specific resource strategy mentioned in the plan. The current rule establishes how plans will be used in the context of rate proceedings to evaluate the prudence of resource decisions made by utility management. This practice should continue.

**(k) Performance-based Procurement Incentives**

- NRDC stated that there is need for emphasis from the Commission on the importance of providing better portfolio management incentives, and specific timetables and procedures for creating them.

**Staff's response:**

Staff believes that any plan should summarize the company's intentions. The introduction of performance based incentive mechanisms creates the potential for additional complexity and controversy and should not be pursued at this time.

**(l) Integration of electric and gas plans**

- Public Counsel recommended that combined utilities be required to offer an analysis of effects of fuel switching in the long-range forecasts. A plan should also 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.
- Avista recommended keeping separate gas and electric plans because independent work groups within the Company and different stakeholders participate in the Company's technical advisory committees that develop the plans. Avista believes that there is sufficient flexibility in the current rules to allow a combination utility to have joint LCPs at the utility's option. The Company suggests that, if the Commission concludes that further overlap is appropriate, it be addressed through specific IRP requirements.

**Staff's response:**

Staff believes that separate electric and gas planning is adequate. On the recommendation of the technical advisory committee, combination utilities may consider fuel switching as a potential resource. No changes to the current rule are required.

**(m) Consistency of LCP standards and guidelines across states**

- Avista and PacifiCorp recommended preserving the consistency that currently exists among the states with respect to IRP rules.

**Staff's response:**

The Commission should continue to enforce its rules recognizing the need to be flexible to accommodate the difficulty multi-state utilities experience. Currently, Staff takes the practical difficulty of simultaneously satisfying the different

policies and schedules of different states into consideration. Staff believes that no changes need to be made to the current rule.

**(n) Consistency of LCP with state, regional, and federal policies and laws**

- DCTED refers to the State Energy Strategy: “encourage all load-serving entities to adopt and implement integrated resource plans to ensure that they meet their obligation to serve their customers’ projected long term energy and capacity needs.”

**Staff’s response:**

The current rule is consistent with this comment.

**(o) Develop avoided costs**

- PacifiCorp recommended that each utility’s avoided costs should be determined in a manner that is consistent with the analysis and methodology followed in its IRP.

**Staff’s response:**

Staff agrees that elements for determining avoided costs may be based on the data developed in the plan. However, Staff notes that the Commission enforces its obligations for determining avoided costs in competitive bids. (Chapter 107 WAC)

**(p) Emphasize electric resource portfolio management**

- NWECC expressed that electric resource portfolio management focuses on assembling a mix of demand- and supply-side resources designed to minimize economic and environmental costs. Enhanced portfolio management may be accomplished through establishing benchmarks in conjunction with rewards and penalties tied to a utility’s overall performance as a resource portfolio manager. The LCP rulemaking provides a forum for discussing and establishing portfolio management benchmarks and incentives for achieving benchmarks.

**Staff’s response:**

Staff notes that current rule (subsections (1) and (3)) mandates utilities to acquire least cost resources, which may include the use of portfolio management tools. No additional rules or amendments are necessary at this time.

**(q) Decoupling**



- ICNU expressed concern about decoupling and performance-based ratemaking because these programs may result in higher costs and inappropriate incentives for utilities. In particular, for business customers, decoupling severs the link between the success of the utility and the success of the customer. ICNU recommended that the Commission approach decoupling with great caution.

**Staff's response:**

Decoupling is a ratemaking issue, and an evaluation of any such proposal belongs within a rate case where company specific issues can be considered or is issue that baseline must be set on current conditions.

**2. Chapter 480-107 WAC – Electric companies purchases of electricity from qualifying facilities and independent power producers and purchases of electrical savings from conservation suppliers**

**(a) WAC 480-107-010 Filing requirements for prototype contracts**

- Avista stated that prototype contracts should not be required. The Company offered to provide standard agreements for reference in case the Commission desires contract templates. Avista's rationale is that, given that the types of energy products requested can be diverse, to require prototype contracts for each product is impractical.

**Staff's response:**

Staff emphasizes that our bidding rules are this state response to a responsibility to implement the requirements of PURPA. The original intent of prototype contracts were to ensure that the Commission had a firm foundation for ensuring that avoided costs were determined at the conclusion of the bidding process. As long as the bidding process produces an avoided cost, the Commission has fulfilled its obligations under Federal law. Prototype contracts may not be necessary, but Staff recommends no substantive changes at this time.

**(b) WAC 480-107-020(1) Eligibility for long-run generating facility purchase rates**

- Avista suggested that all contract terms and conditions be subject to negotiations, including negotiations on price, so as to ensure least cost resource acquisition.

**Staff's response:**

Staff believes current language to be generally adequate but would agree to allow price negotiation.

**(c) WAC 480-107-050 Avoided costs schedules**

- This section requires the utility to determine its avoided costs and file an avoided cost schedule and supporting documentation with its proposed RFP. PacifiCorp commented that there is no need to link an obligation imposed on the utility to file an avoided cost estimate every 2 years—which is a requirement based on the FERC rule (18 CFR § 292.302(b))—with a requirement to issue an RFP at the same interval (every 2 years). The Company recommended that the Commission revise the rule to separate both requirements, and to retain the 2-year interval only with respect to the filing of avoided cost information. The issuance of a Commission-approved RFP would be an option for the utility, but a utility choosing not to issue a Commission-approved RFP would nonetheless have the obligation to file the required avoided cost information every 2 years.
- Avista recommended that the avoided cost schedule be eliminated in the bidding process and be set up instead after the bidding information becomes available to the utility. The Company’s rationale behind this suggestion is that when an avoided cost schedule is included in the RFP it effectively becomes a price ceiling and bidders submit proposals that are not based on the actual cost of resources, but are aimed at being as close to the price ceiling as possible. Without the avoided cost schedule, bidders are likely to submit their best estimate of actual costs that should result in lower cost bids for the utility and consequently for the customers. If it is decided that the RFP will no longer be triggered by the IRP, Avista recommends that an alternative process meet the requirements of PURPA.

**Staff’ response:**

The Commission should have a minimum two year cycle for bidding in order to carry out its obligation under PURPA for purposes of determining avoided costs. If the IRP is filed at a minimum two-year cycle, it contains sufficient data to determine resource needs and the costs of alternative resources to meet these needs. There is little to gain from a specific schedule of computed avoided costs. This is because the notion of “avoided cost” is replaced by the results of the bidding process.

**(d) WAC 480-107-060 The solicitation process**

- PacifiCorp suggested that the RFP process should be streamlined to enable the utility to act expeditiously to respond to constantly changing market circumstances. The Company also recommended making the RFP process sufficiently flexible to accommodate utility-specific policies such as the provision of adequate credit assurances or the customization of contractual terms and conditions for circumstances unique to the transaction and counter parties. PacifiCorp considers the existing rule's requirement of a 60-day comment period and a 90-day review period too lengthy to allow the desired responsiveness on the utility's part. If a resource acquired pursuant to a Commission-approved RFP is presumptively prudent, then it is reasonable to expect a more thorough process associated with approval of the RFP solicitation.
- Along similar lines, Avista suggested that a 30-day notice (instead of the current 60-day requirement) for public comment is sufficient because the Commission has the authority to extend this time period in the event of an inadequate proposed RFP.
- PSE also suggested the need to shortening the procedure.

**Staff's response:**

Staff believes that the solicitation process described in the current rule is reasonable but that a shorter comment period could be afforded in the interest of efficiency. Staff and the companies discuss the filings to ensure that interested parties have sufficient time to comment on the proposed solicitations.

**(e) WAC 480-107-060 (1) The solicitation process - Resources with long lead-times**

- Avista suggested that specific consideration be provided in Chapter 480-107 WAC for RFPs relating to resources with long lead-times. The Company stated that the longest "lead-time" resource bid under the existing rule has been a combined cycle combustion turbine (CCCT), with a lead-time of approximately 30 months. Avista questioned how a longer lead-time resource would be considered and processed under the existing rule because the rule does not take into consideration that a large project begins with a Request for Qualifications (RFQs) and preliminary discussions with potential contractors.

**Staff's response:**

Staff has no specific comments about this issue other than to note that this is an element of the current least cost planning rule requiring utilities to consider all feasible resource technologies. The current rule also requires a ranking

procedure be specified and how a utility integrates differing technologies into an evaluation process is the responsibility of management.

**(f) WAC 480-107-060 (2)(a). The solicitation process - Conditions triggering Request for Proposals (RFPs)**

- Avista, PacifiCorp, and PSE suggested that the competitive bidding process should be initiated at a utility's discretion and triggered by the utility's need to acquire new resources rather than in conjunction with a LCP. Avista further elaborated that the current rule assumes that the electric utility is always in resource deficit from load growth and resource retirements and has the effect of preparing a RFP that will generate time-consuming effort by bidders with an uncertain chance of selection or the preparation of a waiver filing. Furthermore, issuing an RFP to meet a WAC rule may not garner serious consideration by generation developers and compromise future relationships with the companies.
- ICNU stated that utilities should rely on market forces to minimize costs; both supply and demand side resources should be allowed to bid into competitive solicitations. ICNU also recommended that large customers be allowed to bid on load reduction in exchange for market access.

**Staff's response:**

The solicitation process is refreshed at least every two years in order for the Commission to carry out its obligation under PURPA. The Commission intended to connect this federal statutory requirement with its planning rule. The Commission should not amend this requirement as suggested by the utilities. The current rule requiring simultaneously the evaluation of demand and supply side resources is sufficient to accommodate ICNU's comments, and the current rule enables any large customer to offer any reasonable resource.

**(g) WAC 480-107-060 (2)(a). The solicitation process - Resource-specific RFPs**

- Avista proposed that a utility should have the option to issue resource-specific RFPs because there are technologies, such as wind and coal that would benefit from being scoped through a resource-specific RFP process.
- PSE suggested discussing the wisdom of periodic or occasional renewable RFP processes. This would need "pre-approval" of the notion that such resources may cost more than non-renewable resources.

**Staff's response:**

Staff sees no prohibition in developing solicitations to acquire a specific technology. However, the current process is flexible enough for the utility to develop ranking criteria that considers specific technologies. Since the Commission must take action with respect to the RFP, such action may include acknowledging specific resources the utility wishes to evaluate. Finally, there is the issue with respect to the Commission's obligations under PURPA. The intent of the rule is to provide a foundation for all resources to compete. Without requesting proposals from all available sources, the Commission may be left with incomplete information concerning least cost options. At this time, Staff recommends no changes to the current rule.

**(h) WAC 480-107-070 Project ranking procedure – Relationship to plans and market conditions**

- Avista suggested that resource proposal evaluations should not rely exclusively on the IRP and market conditions at the time of its most recently filed IRP but allow current information where this can be shown to better represent market conditions at the time of evaluation. The Commission, in its approval process [480-107-060(2)(a)], has the authority to review any such update without the need to have a formally updated IRP.

**Staff's response:**

Staff believes the current rule is flexible enough to accommodate new information and no changes are necessary at this time. Indeed, the Commission has on several occasions determined that the utility has the obligation to actively monitor changing developments in meeting its public service obligation to acquire least cost resources.

**(i) WAC 480-107-070 Project ranking procedure – Confidentiality of bids**

- Avista suggested that RFP submittals must be confidential. The bidders expect such in order to ensure that their market information is not available to their competitors. To do otherwise may limit the number of bidders. The RFP should outline how confidentiality will be addressed as the bids are processed.

**Staff's response:**

A balance is needed between the requirements of bidders and the value of information. At this time, we believe the current rule is adequate; it allows for commercially sensitive information to be handled on a case-by-case basis. It is

worth discussing the need for the public to be able to see proposals and comment on the merits of any specific resource offered in the solicitation process.

**(j) WAC 480-107-070 Project ranking procedure – Prioritize acquisition of cost-effective conservation**

- DCTED recommended giving preference first to acquire all cost-effective conservation prior to making any purchases of thermal generating plants (consistent with the Northwest Electric Power Planning and Conservation Act - Public Law 96-501 Section 4(e) 1 and the State Energy Strategy).

**Staff's response:**

No language change is required. Demand and supply side resources must compete on equal footing, based on the least cost planning rule.

**(k) WAC 480-107-070 Project ranking procedure - Externalities**

- NWECC suggested specifying, in the case of long-term contracts, which risks the utility and its ratepayers will bear and which risks the power provider will bear. The Coalition recommended including considerations of the cost to the utility of bearing these risks versus the cost of the utility as a result of the developer bearing these risks in the ranking procedures. Additionally, the Coalition recommended reviewing WAC 480-107-001 and WAC 480-107-020 provisions to include the costs of compliance by the projects with environmental laws, rules, and regulations in effect at the time of the bid and those reasonably anticipated to be in effect during the term of the project. They specifically referred to how CO<sub>2</sub> emissions mitigation costs, risks, and environmental implications will be treated in the ranking.

**Staff's response:**

It is not appropriate to specify what externalities must be considered and evaluated. The current process provides significant flexibility to the project ranking criteria. Staff believes that no change is required.

**Comments that relate to the whole Chapter 480-107 WAC**

**(l) Consistency with Chapter 480-146 WAC (Affiliated Interests)**

- ICNU recommended addressing the issue of potential bias toward projects sponsored by a utility or its affiliates in competitive solicitations.
- PacifiCorp suggested that the Commission provide flexibility to accommodate responding to industry changes. The Company

recommended that any rules or guidelines relating to affiliates participation should: (i) be specific in their applications, (ii) not result in a process that involves lengthy approval delays, (iii) not duplicate or contradict Federal law, and (iv) provide specific guidance for multi-state utilities in the event rules or guidelines in another state are contradictory. PacifiCorp also suggested that whether or not affiliates are allowed to bid into a given competitive solicitation should be determined on a case-by-case basis. If participation is allowed, PacifiCorp proposes that an independent 3<sup>rd</sup> party be retained to either perform the bid evaluations or to validate that the evaluations were completed without discrimination.

**Staff's response:**

Staff notes that WAC 480-107-160 currently addresses the issue with affiliated interests. No change is required.

**(m) Connection between LCPs & RFPs**

- PSE recommended that the Commission true up the current LCP and RFP rules to its current thinking in order to reduce potential disputes among parties with varying interests and to maximize the ability of regulated companies to conduct business in a manner prudent for future cost recovery.

**Staff's response:**

Staff believes that no change is necessary to the current rule. Competitive bidding is designed to implement the requirements of PURPA along with the utility's obligation to acquire least cost resources.

**(n) Compulsory or Optional**

- PacifiCorp interprets the Commission's existing RFP process as being optional and urged retention of this feature. The Company suggests that following a Commission-approved RFP process should be one, but not the exclusive, means for a utility to acquire resources.

**Staff's response:**

It is necessary for the Commission to administer PURPA. The Commission needs to have a process for determining avoided costs: either through competitive bidding or through an administrative process. Therefore, the rule should continue to require reasonably frequent bidding.

**(o) Flexibility**

- As a multi-state utility, PacifiCorp requested to preserve the ability to achieve compliance with various state requirements concerning the resource acquisition process. The Company requested that any requirements imposed in new rules, provide sufficient flexibility to avoid conflict with requirements imposed by other jurisdictions. The Company also requested that specific guidance for multi-state utilities be included in the event rules or guidelines in states are contradictory with Washington rules.
- PSE also talked about preserving a company's flexibility but with respect to the resources in the context of companies' overall portfolio. The Company requested that the rules be flexible enough to respond to actual circumstances and information available at the time of the resource acquisition decision. PSE stated its belief that it is in the public interest to empower regulated companies to take advantage of resource acquisition opportunities as they arise.

**Staff's response:**

Staff recognizes that the issues facing PacifiCorp as a multi-state utility, while challenging, is still its responsibility to manage. Current bidding rules provide each electric utility company with the obligation to exercise its judgment and acquire least cost resources. PSE is not constrained in any way from exercising its managerial prerogatives in order to meet its obligations as a public service company.

**(p) Pre-approval of resource acquisition**

- PacifiCorp stated that if a utility chooses to follow the Commission-approved RFP process, there should be an identifiable benefit deriving from that strategy. The Company recommended that the acquisition of a resource through a Commission-approved RFP process should create a rebuttable presumption that such resource acquisition was prudent, so long as the utility demonstrates that its actions effecting the acquisition were reasonably executed.
- PSE agreed with PacifiCorp's comment. PSE also recommended that the Commission consider instituting a process by which a ratemaking discussion and decision could be made up front as part of the acquisition process. The Company suggested the Commission investigate tools such as power cost only rate cases designed to adjust rates such that they include the new resource as of the time the resource goes into service.



**Staff's response:**

Staff believes that this recommendation by the utilities is inappropriate. The utilities, at times, suggest flexibility and discretion to determine when and what specific resources to acquire, yet on the other hand, continue to request that any resource acquired through bidding be presumed prudent. Staff wishes to emphasize that these rules are necessary to carry out the Commission's obligations under PURPA, and provide an additional tool for utilities in order to fulfill the responsibilities of a public service company. We have been led to believe that without a legal power characterized as a "show-cause" authority, pre-approval would make subsequent review and control of costs extremely unlikely.

**(q) Contract purchase rates**

- Avista recommended that all contract terms and conditions be subject to negotiations

**Staff's response:**

Staff generally agrees with this principle, but how to proceed and refine the elements that are amenable to negotiation given the Commission's action with respect to approving the solicitation is problematic. Staff is willing to explore this further at a later time.

**(r) General comments**

- Avista recommended that the implementation components of Chapter 480-107 WAC be revised to reflect the spirit of the rule, which calls for resources to be procured through a competitive process such that customers benefit from the best possible prices, terms, and conditions. The RFP process is not as effective as other means for obtaining price information for short- to medium-term purchases (defined as up to five years), and procurement of non-standard resource technologies (e.g., coal plants and wind). The Company stated the belief that short- to medium-term power purchases are best procured through the broker market because these markets can change quickly, requiring a nimble acquisition process to ensure the best prices are obtained. Implementing a 90-day review process reduces a utility's ability to get the best price, as market conditions likely will have changed since the original decision to acquire power was made. Although WAC 480-107-001 provides exceptions for events of this nature, the tone of the rule discourages such practices. Avista believes that the focus of the rule should be on long-term resource

acquisition of standard products. For less-standardized projects, requests for qualifications (RFQs) or other similar means are more useful in obtaining competitive prices.

- The Cogeneration Coalition of Washington (CCW) stated that even if PURPA did not exist, 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, some of which benefits are unique to cogeneration.
- Finally, CCW and BP West Coast LLP (BPWC) stated their belief that no changes are needed in Chapter 480-107. Other stakeholders (PSE, NWECC) stated that Chapter WAC 480-107 WAC must be reexamined and updated in light of significant changes since the rules were adopted.

**Staff's response:**

While it is true the wholesale power markets have changed and the alternatives for supply are now more varied and numerous, the current rule is flexible enough to accommodate these changes. Therefore, we believe the proposed changes are unnecessary.

**Conclusion**

As shown by the comments included above, stakeholders have provided varied and often conflicting suggestions and recommendations, although the common denominator of those comments is that both the least cost planning rules and Chapter 480-107 WAC need revision. Some of the revisions relate to procedural aspects of the LCP and IRP, others refer to the substance of the rules and imply important changes from current policy. A rulemaking process that encompasses both types of revisions at the same time is likely to be long and would deter some changes in process aspects that could improve both the LCP and the RFP procedures in the shorter-term. These latter changes likely would be easily agreed upon with stakeholders.

An option is to divide the Rulemaking Procedures in two steps: a first one would be limited to language clearance and procedural updates but without revisiting major policy issues. In a later step, the Commission would revisit substantive issues.

## **Integrated Resource Planning in neighbor states**

Because all but one of the investor-owned utilities regulated by the Commission are multi-jurisdictional utilities with service territories spreading over neighboring states, Staff has conducted research about integrated resources planning (IRP) or least cost planning (LCP) practices in Idaho, Oregon, and Utah.

### **IDAHO**

Idaho does not have integrated resource planning rules. The Idaho Public Utilities Commission (PUC) Order No. 22299 in Case No. U-1500-165 provides guidance to utilities on this subject.

In that order, the Idaho PUC stated its belief that resource planning is the sole domain of utility executives and that utilities have different management styles and planning techniques. Consequently, the Commission decided to limit its work to prudence reviews of management decisions.

However, and because the Idaho's Administrative Determination of Full Avoided Cost (ADFAC) is subject to public process and an important ADFAC component is utility resource planning, the Commission established public review of each utility's resource plan. In order to assure a reasonable, balanced consideration of all resources, the Commission has ordered each electric utility to submit "Resource Management Reports" (RMRs) to acknowledge the managerial aspects of owning and maintaining existing resources, procuring new resources, and avoiding/reducing load. The term "Report" is intended to emphasize that the desired document is just that, a report of the utility's planning status, and not a requirement to implement new planning efforts. The PUC views integrated resource planning as an ongoing, changing process and the RMRs to be similar to an accounting balance sheet, i.e., a "freeze-frame" look at a utility's fluid process.

The Commission order mandates that each utility's RMR analyze, among other aspects: (1) load forecast uncertainties; (2) effects of known or potential changes to existing resources; (3) demand- and supply-side resource options; and (4) contingencies for upgrading, optioning and acquiring resources at optimum times.

Because the PUC expected the RMRs to be used either as a significant component for determining regional power supply conditions or as the basis for determining utility-specific power supply conditions, the Commission mandated that each report include certain common requirements: (1) existing resource stack; (2) load forecasts; and (3) additional resource menu. For each of these characteristics, the PUC listed detailed instructions of what information to include. The Commission established a planning horizon of 20 years for the load forecasts.

The first RMRs were submitted in March 1989 and the utilities were mandated to submit reports at least biennially afterwards.

The PUC has also made clear that the RMRs do not constitute pre-approval of a utility's proposed resource acquisition and that the reporting process is expected to be ongoing-revisions and adjustments subject to public workshops when needed.

Idaho utilities are allowed to submit RMRs in formats compatible with the Least Cost Plans or Integrated Resource Plans submitted to other jurisdictions, as far as they keep the characteristics of clarity, understandability, resource capabilities, and planning flexibility, required by the Idaho PUC.

## **OREGON**

Oregon does not have IRP or LCP rules. Instead, the Oregon Public Utility Commission (PUC) adopted least cost planning (LCP) for all energy companies in Order 89-507. In the Order, the Commission stated that it does not intend to take over the role of utility decision-makers.

The Order defines least cost planning as an approach to utility planning that requires consideration of all known resources for meeting the utility's load, including those that focus on the supply side and those that focus on the demand side. The expected result is the selection of the mix of options that assures an adequate and reliable supply of energy, at the least cost to the utility and its customers, and that is consistent with the long-run public interest. The order allows for public and Commission participation from the earliest stages of the process.

The Commission mandated, among other things, that: (1) all resources in the plan be evaluated on a consistent and comparable basis; (2) plans include

consideration of uncertainty; and (3) plans be consistent with the energy policy of the state of Oregon. The order went further to provide a list of elements that could be included in the plans. The Commission established the planning horizon in 20 years with two-year action plans. Utilities need to update the plans at least every two years.

The PUC established that although certain external costs may not be easily quantified, a cost-effectiveness evaluation of resource options should include, to the fullest extent practical and quantifiable, costs and benefits external to any resource transaction.

The PUC acknowledges LCPs, but favorable ratemaking treatment is not guaranteed by this acknowledgment. When the Commission acknowledges a LCP, the plan becomes a working document to use by the utility, the Commission, and all the interested parties in a ratecase or other proceedings before the Commission.

The PUC stated that attainment of the goals of least cost planning would be furthered through cooperation and coordination among the states in the Pacific Northwest.

## UTAH

Utah does not have integrated resource planning rules. In 1988, the Public Service Commission (PSC) issued some recommended guidelines. These guidelines were repeated in Docket No. 90-2035-01, in occasion of PacifiCorp's submission of its IRP.

The Utah PSC has defined integrated resource planning as a utility planning process, open to the public at all stages. The IRP needs to evaluate all known resources on a consistent and comparable basis in order to meet the current and future needs of customers at the lowest total cost to the utility and its customers, and in a manner consistent with the long-run public interest. The process should result in the selection of the optimal set of resources given the expected combination of costs, risk, and uncertainty. Although external costs do not have to be explicitly included in the definition of lowest total costs, the Commission has directed companies that all other things being equal, companies should pursue resource acquisitions that minimize adverse environmental impacts as a

method of reducing risk. Avoided Costs should be determined in a manner consistent with the Company's IRP.

The PSC's guidelines state that IRPs will include, among other things: (1) forecasts of load growth, including both capacity and energy requirements by jurisdiction and by general class; (2) analyses of economic and demographic factors that influence demand; (3) an evaluation of present and future resources, including future market opportunities (both demand-side and supply-side); (4) assessments of technically feasible and cost-effective improvements in the efficient use of electricity; and (5) assessments of all technically feasible generating technologies (i.e. renewable resources, cogeneration). The prescribed planning horizon is 20 years. Companies have to submit IRPs biennially

The Commission considered that flexibility in the planning process is in the public interest because it allows companies to take advantage of opportunities and prevent the premature foreclosure of options. However, acquisitions not contained in the plan will come under the same scrutiny as any other resource acquisition when companies apply for ratemaking treatment.

The Utah PSC acknowledges IRPs. Acknowledgement of an acceptable IRP does not guarantee favorable ratemaking treatment of future resource acquisitions. Prudence reviews of new resource acquisitions will occur during ratemaking proceedings.

The Utah PSC has stated that the planning standards and guidelines need meet the needs of the Utah service area and be directly related to the companies' strategic business plans, but the plans must not ignore the rules governing the planning process in place in other jurisdictions. The purpose of the latter consideration is to facilitate coordination with those other jurisdictions where the utilities serve territories.

**Summary of Key Information on Least Cost Plan and Relevant Legal/Policy Environment  
(updated at 4-7-04)**

States	IRP – State has a rule? (1)	Filing Frequency	Planning Horizon	Commission Decision	Competitive bidding rules? (2)	DSM or Efficiency Plan	Public Hearing	Show Cause	Restructure
Alabama	No				No			Yes	Pending
Alaska	No				No			Yes	
Arizona	No-suspended		10		Yes	No	No	No	In Place
Arkansas	Yes	3	20		Yes	Yes	Yes	No	Progressing
California	No				No			Yes	Pending
Colorado	Electric only	4	10	Accept; Reject	Yes	Yes		Yes	None
Connecticut	No				No			Yes	In Place
Delaware	No				No			No	In Place
District of Columbia	No				No			No	In Place
Florida	In Bidding rules			Approve, Reject	Yes	Yes		Yes	Pending
Georgia	Yes	3	20	Approve, Reject	Yes	Yes	Yes	Yes	Pending
Hawaii	Guidelines	3	5	Approve, Reject	No	Yes	Yes	No	Pending
Idaho	Guidelines	2	20 (5 for gas)	Accept; Reject	Yes	Yes	Yes	No	None
Illinois (1)	No				No			No	In Place
Indiana	Yes	2	20	Review; Consistency	No	Yes	Yes	No	Pending
Iowa	Yes	2	20	Notice	No	Yes	No	No	None
Kansas	No				No			Yes	None
Kentucky	Yes	Action plan every 3 & update every six months	15	Review	Yes	Yes	Yes	Yes	None
Louisiana	No				No			Yes	Pending
Maine	No				No			Yes	In Place
Maryland	No				No			Yes	In Place
Massachusetts	No				No			No	In Place
Michigan	No	Annual	5	Approve; Reject	Yes	No	Yes	Yes	In Place
Minnesota	No				No			Yes	Pending
Mississippi	No				No			No	None
Missouri	Yes	3	20		None	Yes	Yes	Yes	None

States	Has a rule in Place (1)	Filing Frequency	Planning Horizon	Commission Decision	Competitive bidding (2)	DSM or Efficiency Plan	Public Hearing	Show Cause	Restructure
Montana	Yes	2	Up to 20	Comment	Yes	Yes	Yes/No	Yes	In Place
Nebraska	No				No			No	
Nevada	Yes	3	20	Approve; Reject	Yes	Yes	Yes	No	In Place
New Hampshire	No				No			No	In Place
New Jersey	No				No			Yes	In Place
New Mexico	Yes	For Major Investment	10		Yes	No	Yes	Yes	Progressing
New York	No				No			Yes	In Place
North Carolina	Yes	1	10	Review; Comment	Yes	Yes	Yes	Yes	Pending
North Dakota	No				No			Yes	None
Ohio	No				No			No	In Place
Oklahoma	No				No			Yes	Pending
Oregon	No	2	20	Acknowledge	Yes	Yes	Yes	Yes	In Place
Pennsylvania	No				No			Yes	In Place
Rhode Island	No				No			Yes	In Place
South Carolina	No				No			Yes	Pending
South Dakota	No				No			Yes	None
Tennessee	No				No			No	None
Texas	Yes	3	10		Yes	Yes	Yes	No	In Place
Utah	Guidelines	2	20	Acknowledge	Yes	Yes	No	Yes	None
Vermont	No				No			Yes	None
Virginia	No				No			Yes	In Place
Washington	Yes	2	20	Acknowledge; Prudence	Yes	Yes	Yes	No	None
West Virginia	No				No			Yes	None
Wisconsin	No				No			No	Pending
Wyoming	No	Annual	Up to 15	Publicly notice	Yes	No	Yes	No	None

Yes = 14    1 yr = 3    5yrs = 2    Appr = 4    Yes = 17    Yes = 17    Yes=31  
 Guide = 2    2 yrs = 7    10yrs= 5    Acpt= 2                No=20  
 No = 35    3 yrs = 7    15yrs= 2    Notice= 2  
           4 yrs = 1    20yrs=11    Acknd= 3



**Notes:**

(1) Integrated resource planning. In states with restructure already in place, the integrated resource planning rules were either repealed or not enforced. Some other states, although they do not have rules in place they have IRP policies or guidelines. Examples: Oregon does not have a rule in place but there is a Commission order that defines policy; Delaware, Illinois have no rules in place but utilities prepare least cost plans.

(2) Bidding process. A "no" in this column means that a search for competitive bidding did not show any match in the state commission's website or as a result of personal (e-mail) communications with commission staff.

**Sources:** Internet searches of commissions websites, Regulatory Assistance Project website and personal communications with several commissions staff members.