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VIA FACSIMILE

Graciela Etchart
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

Re: **Docket UE 990473, Electric Companies Rulemaking**

Dear Ms. Etchart:

I am writing on behalf of the Renewable Northwest Project and the Washington Solar Energy Industries Association to provide the Commission with additional information regarding the insurance-related requirements associated with the Commission's implementation of the Washington net metering law, as part of its rulemaking docket for Washington's regulated electric companies (WAC 480-100-XX7).

Specifically, we continue to be troubled by the inclusion in Puget Sound Energy's interconnection agreement of a requirement that net metering customers either (a) list the utility as an "additional insured" on their insurance policies; or (b) include in the insurance policy a waiver of the insurer's rights of subrogation against PSE. This language is contained in Section 13.5 of the interconnection agreement.

It is our view that Section 13.5 creates a substantial barrier to potential net metering customers, and will severely limit eligibility for net metering, particularly among residential customers. **Accordingly, we respectfully request that the Commission delete Section 13.5 from PSE's interconnection agreement, and prevent other electric companies from including similar language in their tariffs implementing the net metering law.**

The principal problem associated with Section 13.5 is that most homeowner's insurers will neither add a utility (or any other party) as an additional insured on a homeowner's policy, nor waive the insurer's rights of subrogation against the utility. For example, I have personally contacted two insurance companies that have provided homeowner's insurance for me in the past, USAA and Safeco. Both companies indicated they would not agree to list another entity as an additional insured, nor would they agree to waive subrogation rights against another entity. USAA allowed that it would be willing to refer the matter of the

additional insured listing to their underwriter, but only if the utility wrote a letter to USAA explaining the reasons for seeking to be listed as an additional insured, the circumstances under which the utility would expect to be covered, and an explanation of what the additional insured listing would achieve that the existing homeowner's policy does not provide. Moreover, USAA made it clear that it was doing this as a matter of courtesy to me as a long-standing customer, and that the likely answer from the underwriter would be "no."

In a recent letter from Karl Karmzar to Tom Starrs, October 6 , 1999 (copied to Graciela Etchart and Doug Kilpatrick), PSE stated: "We have learned of one local surplus lines broker that can place this coverage, and have been advised by insurance agents of a couple of insurers that will cover this exposure under their homeowners policies." Although I have little independent expertise in these matters, my insurance broker informs me that a "surplus lines broker" provides coverage for higher-risk, less-preferred customers and that larger, well-established insurance companies will not provide coverage for such customers. With respect to PSE's allegation that "a couple of insurers" will meet the additional insured and/or subrogation requirements, I suggest that the Commission ask PSE to identify those companies by name, since my own research here in Washington and in other states suggests that such companies are rare indeed.

Eight other states have addressed insurance requirements for net metering facilities. Four of these states – including California and Oregon – have flatly prohibited utilities from imposing additional insurance requirements on net metering customers. Four other states, including Idaho and Washington, have allowed utilities to require net metering customers to carry insurance, but in amounts lower than originally proposed by the utilities. (PSE had proposed $2,000,000 in coverage, which was reduced in negotiations with the Commission and other stakeholders to the $200,000 requirement approved by the Commission). **More importantly, none of these eight states has required net metering customers to list the utility as an additional insured or to waive rights of subrogation.** Therefore, Washington appears to be unique in imposing this requirement on net metering customers.

Electric utilities have a legitimate interest in ensuring that generating facilities interconnected to the utility network address legitimate safety and power quality concerns. However, such concerns are adequately addressed in the net metering law, which requires all net metering facilities to be installed in accordance with technical standards developed by the Institute of Electrical and Electronics Engineers; to be type-tested to Underwriters Laboratories standards for safety; and to be installed in accordance with the National Electrical Code. Because facilities are required to meet these rigorous standards, the probability of any property damage or personal injury attributable to the operation of one of these facilities is practically nonexistent. Literally thousands of small solar, wind and micro-hydroelectric systems are operating throughout the Unites States, and to our knowledge there has never been any liability claim made – much less an actual finding of liability established – against a utility, where such claim was associated with the operation of a micro-generating facility of the type eligible under the net metering law.

Moreover, omission of the additional insured and subrogation requirements would not in any way shift liability from the customer to the utility, as PSE has suggested. In a recent letter from Karl Karmzar to Tom Starrs, October 6 , 1999 (copied to Graciela Etchart and Doug Kilpatrick), PSE asked:

> . . . why it is inappropriate for PSE to seek protection from damages and possibly liability exposures that would result from a customer's generating facility and its interconnection with PSE's electrical system. PSE does not believe it is bad public policy to have the risk associated with a customer's generating facility remain with that customer. PSE, and its other ratepayers, should not be responsible to any extent for damages which arise in connection with a generating facility over which PSE has no control.

These statements are terribly disingenuous and a complete distortion of the issues in dispute. We absolutely agree with PSE that net metering customers should be liable for any property damage or personal injury attributable to the operation of their generating facilities. But the allocation of liability is already addressed by the indemnity provisions in Section 13.1, which state that the "Customer-generator hereby releases and shall defend, indemnify and hold harmless [the utility] from and against any . . . liabilities directly or indirectly arising from or in connection with . . . the construction, installation, or operation of the facility." The additional insured and subrogation provisions add nothing with respect to the allocation of liability, and eliminating these provisions will in no way prevent PSE from seeking reimbursement from its net metering customers for any liabilities attributable to the operation of their generating facilities. PSE should be condemned for confusing and distorting the issue in this way.

In short, the language in Section 13.5 of PSE's interconnection agreement adds nothing of substance to the agreement except an onerous requirement that will prevent most residential customers from exercising their rights under the net metering law. The intent of the net metering law was to facilitate the development of small-scale renewable facilities and streamline the process by which these facilities are interconnected, but Section 13.5 flies in the face of the goals. Accordingly, we urge the Commission to delete Section 13.5 from PSE's interconnection agreement, and to eliminate any similar requirement from the tariffs and/or interconnection agreements of the other utilities subject to its jurisdiction in this matter.

Thank you for your consideration of our comments. We appreciate the opportunity to present this issue to the Commission and its staff.

Sincerely yours,

Thomas J. Starrs

cc: J. Rachel Shimshak, Renewable Northwest Project
Sam Vanderhoof, Washington Solar Energy Industries Association