

July 30, 2004

Commissioners Showalter, Hemsted, and Oshie  
c/o Carole J. Washburn , Executive Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

RE: Docket Nos. UE-030311/UE-030423/UG-030312

Dear Commissioners:

Thank you for your letter of July 2, 2004. On behalf of Natural Resources Defense Council, Renewable Northwest Project, NW Energy Coalition, and the Northwest Independent Power Producers Coalition (NIPPC), we are writing in response to your invitation to provide a sense of the developments over the past 12 months that we believe merit full discussion among yourselves and stakeholders. These developments, and perhaps others, provide new information that was not available to the Commission or parties when initial testimony was submitted. Our letter focuses on four areas that are discussed below:

- Responses to Wall Street bias against power purchase agreements
- Protection against unfair and biased solicitation processes as have occurred in other Western states
- Lessons learned from recent targeted RFPs
- Role of transmission constraints in RFP process

We sincerely hope that this letter will lead to a productive discussion among the Commission, Commission staff and stakeholders interested in updating the Commission's integrated resource planning (IRP) and utility procurement rules.

**(1) Examine new responses to correcting utility bias to build and/or acquire rather than contract for power.**

Wall Street's treatment of contracted power as "debt" coupled with views regarding appropriate debt-equity ratios is encouraging utilities to seek rate-based resources. The result is that the value of power purchase opportunities offered through competitive procurement is increasingly obscured.

The position Standard & Poor's (S&P) has taken in emphasizing the risk to shareholders that it perceives in power purchase agreements (PPAs) has cast a

lengthening shadow over utility procurement decisions.<sup>1</sup> For example, S&P now assigns a full 30% risk factor in its evaluation of purchased power obligations for Florida Power & Light Company (FPL), which the Florida Public Service Commission (FPSC) has approved for purposes of “an equity adjustment in the calculation of capacity payments” for FPL’s standard offer contracts.<sup>2</sup> The FPSC’s approval of this equity adjustment in the calculation of capacity payments responds directly to an increase in the S&P Risk Factor from 10% to 30%. With this action, the Commission took an innovative action to preserve PPAs as a viable supply option. It is important for the UTC to examine FPSC’s rationale for this decision, and to discuss various alternatives to deal with Wall Street’s treatment of contracts and their risks.

It should be recognized that S&P represents the interests of investors, not utility customers. The factors S&P has identified to evaluate the risks being taken by its clients encourage utilities to respond with potentially profound impacts on utility customers.

As Northwest utilities increasingly focus on growing rate base rather than treating least cost resources developed by Independent Power Producers (IPPs) on an equal footing, it is important that the Commission endeavor to keep the credit impacts of buying versus building in perspective. In doing so it is also important for the Commission to develop policies that allow for the proper valuing of the different risks of utility ownership vs. purchase or lease (tolling agreements) from market participants.

Recommendation: consider (a) options for ensuring that changes in rating agency practice do not bias resource procurement against power purchase agreements; (b) innovative approaches to correct “apples to oranges” treatment and valuation of resource options; and (c) related revisions to WAC 480-100-238(3)(d) (least cost planning), to prototype contracts approved under WAC 480-107-010, and to WAC 480-107-060 – 080 (procurement process).

**(2) Consider approaches to protect against the unfair and biased competitive solicitations (RFPs) recently experienced in nearby Western states.**

The establishment of clear and fair rules for competitive procurement processes is essential if consumers are to be assured of securing the best possible long-term resource deals. Two recent procurement exercises recently conducted in nearby states point to the importance of seeing to it that procurement rules yield fair results.

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<sup>1</sup> See, e.g., Wolinsky, Jeffrey. “Buy Versus Build: Debt Aspects of Purchased-Power Agreements”. *Standard & Poor’s Utilities & Perspectives*. Vol. 12, No. 19. May 12, 2003.

<sup>2</sup> FPSC Docket No. 031093-EQ, Staff Memorandum dated February 5, 2004, approved by Order PSC-04-0249-TRF-EQ, March 5, 2004, with an effective date of August 5, 2004.

The Oregon Public Utilities Commission authorized Portland General Electric to conduct an RFP within the context of an ongoing IRP.<sup>3</sup> This approach contributed to a process widely perceived as unfair whereby the utility was able to examine bidders' proposals while it simultaneously refined its proposed self-build project, Port Westward. The conflation of the IRP and procurement processes yielded a result that provides no assurance that the utility has in fact secured the least cost resource in meeting approximately half its near-term requirements.<sup>4</sup>

Utah Power (PacifiCorp), working under the oversight of the Utah Public Service Commission, also recently concluded an RFP. In this case, the fairness of the exercise was called into question after the utility selected a Build Own Transfer (BOT) option outside the defined context of the RFP. Several parties have filed compelling complaints to the Commission.<sup>5</sup> Similarly, in the Arizona Public Service rate case that is pending before the Arizona Corporation Commission, Commission Staff, has filed testimony recommending denial of the company's request to move assets from its unregulated subsidiary into its rate base.<sup>6</sup>

The assurance and perception of fairness is central to the success of a utility-sponsored competitive procurement. The willingness of IPPs to participate will be reduced, thereby affecting the range of option available to consumers, if the RFP appears flawed.

Puget Sound Energy (PSE) has conducted RFPs in recent months. These efforts, conducted under the current procurement policies, provide an up-to-the-minute opportunity to evaluate areas where the existing procedures may be improved.

**Recommendation:** Consider the design of each of these RFPs, their outcomes and the complaints that have been made about the fairness of the processes to avoid repetition in future WUTC-approved RFPs. Revise WAC 480-107-020(3) and 480-107-160 as appropriate.

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<sup>3</sup> Order No. 03-387, July 3, 2003, Oregon Public Utilities Commission, UM 1080, "Request for Proposals for Power Supply Resources in Compliance with Competitive Bidding Guidelines Established by Order No. 91-1383." *Id.* at page 1.

<sup>4</sup> See Summary of Comments of the Northwest Independent Power Producers Coalition, Order No. 04-375, July 20 2004, Oregon Public Utilities Commission, LC 33, "Integrated Resource Final Action Plan Acknowledged, with Exception and Conditions." *Id.* at page 6.

<sup>5</sup> Testimony of Ted Banasiewicz, Principal, USA Power, LLC "Solicitation Processes for Public Utilities" Before: Federal Energy Regulatory Commission, Office of Market Oversight and Investigations, Technical Conference, June 10, 2004.

<sup>6</sup> Docket No. E-01345A-03-0437, Direct Testimony of Linda Jaress dated February 3, 2004 at, e.g., page 2, lines 18-22. Notably, ACC Staff is also recommending approval of costs related to a certain purchased power contract entered as a result of competitive solicitation, even though utilities do not request, Staff does not recommend, nor does the Commission approve, future purchased power contract costs. *Id.* at page 8, lines 3-6.

### **(3) Review the lessons learned in the conduct of PSE's and PacifiCorp's "wind only" RFPs.**

The Commission, WUTC staff, regulated utilities and stakeholders have worked with wind-only RFPs over the past year. PSE initially proposed the conduct of a "wind only" RFP.<sup>7</sup> The results of rolling this RFP into PSE's subsequent invitation to bidders to bid into its "All Source" RFP should be reviewed, as the consolidation suggests a lack of confidence in the wind only RFP. Any analysis of the relative merits of renewable or wind only RFPs versus all source solicitations need consider the problems with apples-to-oranges comparisons if the risks and benefits of respective resources are not explicitly accounted for in some way.

There is growing national experience in utilities conducting wind or renewable only RFPs. PacifiCorp is currently conducting a 1000 MW "Renewable Resource Request for Proposals," or RFP 2003B, for its Utah Power and Pacific Power services territories. Avista, shortly after completing its recent IRP, sought and acquired output from the Stateline Energy Center. It would be constructive for PSE and PacifiCorp to share their respective experience with conducting wind and renewable only RFPs.

Recommendation: Discuss the advantages/limitations of different approaches to designing RFPs based on recent, real-life experiences. Clarify WAC 480-107-060 as appropriate.

### **(4) Consider impact of transmission and distribution costs and constraints in the preparation of IRPs.**

The BPA Transmission Business Line's recent Available Transmission Capacity (ATC) investigation, the development work on Grid West, and the Power Pool's transmission planning effort have collectively shed considerable light on the impact transmission constraints have on utility procurement. The Oregon PUC in its recent Order on PGE's Action Plan specifically identified transmission access as a limiting factor in the utility's acquisition of cost-effective wind power resources. Moreover, the Commission directed the utility to (among other transmission planning actions) "...demonstrate that it [PGE] has taken reasonable measures to acquire or option, as well as retain, cost effective transmission capacity over the Cascades before issuing its next Request For Proposal (RFP)."<sup>8</sup>

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<sup>7</sup> Docket No. UE-031353, "Request for Proposals: Wind Power Resources", Draft RFP for Public Comment August 25, 2003.

<sup>8</sup> Order No. 04-375, July 20 2004, Oregon Public Utilities Commission, LC 33, "Integrated Resource Final Action Plan Acknowledged, with Exception and Conditions." *Id.* at page 1.

Utility transmission and distribution plans and access to BPA service, among other factors, have not historically been considered in the preparation of IRPs. The region's recent transmission planning efforts (including but not limited to those cited above) should be reviewed and the relevancy of Total Transmission Capacity (TTC) and Available Transmission Capacity (ATC) in IRP and utility procurement considered by stakeholders.

Recommendation: Consider new information generated in regional transmission forums and the relevancy of TTC and ATC in the procurement of cost-effective resources. Amend WAC 480-100-238 (least cost planning) as appropriate.

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These four issues outlined in this letter have come into greater focus over the last 12 months. Other stakeholders may perceive similar trends that warrant a robust discussion prior to staff preparation of draft rules in these proceedings.


We respectfully suggest that time be reserved on the Commission calendar for discussion of recent and relevant developments in planning and acquisition of resources.

Thank you for your consideration.


Sincerely,




Ralph Cavanagh, Co-Director, Energy Program  
Natural Resources Defense Council



J. Rachel Shimshak, Director  
Renewable Northwest Project



Nancy Hirsh, Policy Director  
NW Energy Coalition



Robert D. Kahn, Executive Director  
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