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Carole J. Washburn
Executive Secretary
Washington Utilities & Transportation Commission
1300 South Evergreen Park Dr. S.W.
Olympia, Washington 98504-7250

DELIVERED BY ELECTRONIC MAIL to: records@wutc.wa.gov

Re: Puget Sound Energy WAC 480-107 Compliance Filings; Docket UE-031353

Dear Ms. Washburn:

Sempra Energy Resources ("Sempra Resources") files these comments regarding the draft Request for Proposals ("RFP") submitted by Puget Sound Energy ("PSE") in the above-captioned and -docketed matter. Sempra Resources is a developer, owner and operator of generating facilities throughout the United States and holds a license to participate as an exempt wholesale generator in domestic wholesale electricity markets from the Federal Energy Regulatory Commission. Sempra Resources presently plans to participate in the PSE RFP pending resolution of the issues raised in these comments. Representatives of Sempra Resources participated in the public meeting conducted by PSE on December 8, 2003, related to the RFP and raised the issues noted below but did not receive a clear indication from PSE as to how they would be resolved. Sempra Resources raises these matters to the attention of the Commission so as to assure that these issues will be addressed prior to the issuance of the final RFP, which in turn will assure that the PSE RFP will result in the broadest participation and the fairest result possible.

Sempra Resources would ask that the WUTC instruct PSE to amend its draft RFP in two respects:

1. The information requested of bidders should be different for power purchase agreement proposals than for proposed asset sales, and the scope of information required should be limited during the initial evaluation phase of the RFP. Detailed "due diligence" information should be required only for short-listed proposals selected by PSE for binding contract negotiations, and should be subject to strict protection of the bidders' commercially-sensitive information. Respondent bidders offering a power purchase agreement, as opposed to the conveyance of an ownership interest in a facility, whether in whole or in part, should not be required to submit detailed cost or operating information, including that specified in Exhibit VIII to the sample Power Purchase Agreement; and,

Sempra Energy Resources is not the same company as SDG&E/SoCalGas, the utilities. Sempra Energy Resources is not regulated by the California Public Utilities Commission, and you do not have to buy Sempra Energy Resources' products or services to continue to receive quality regulated service from the utilities.

2. PSE should be instructed to not impute the costs of a debt equivalent to the costs associated with any proposed power purchase agreement because the WUTC intends to afford timely and complete rate recognition and cost recovery of the prudent costs resulting from any approved power purchase agreement so as to assure that PSE's credit would not be impaired by the execution of any such agreement.

With respect to the first matter, the appropriate level of information required for the initial proposal evaluation should generally be of the type specified in the RFP Summary Data Form (Exhibit X), and might include (as applicable):

- bidder contact information & qualifications;
- summary description of any project associated with the proposal, including name, location, technology type and commercial operation date;
- location of transmission (and, if applicable) fuel interconnection(s);
- proposed contract term;
- details of the proposed *pricing* (as opposed to *costs and/or financing*) structure, including (for power purchases) any charges for capacity, fixed operation & maintenance (O&M), variable O&M, energy/fuel, startups, etc. or, for asset sales, proposed purchase price;
- any operating limits or flexibility (e.g., number of starts allowed, ramp rates, minimum & maximum loads by season, etc);
- expected heat rate, capacity and degradation curves; and
- expected or guaranteed availability, emissions and other any other relevant performance characteristics.

Sempra Resources agrees that, in the event that PSE elects to short-list and negotiate contracts based on any bids where the bidder offers to convey to PSE, in whole or in part, an ownership interest in the generating facility underlying the offer, that PSE should evaluate the detailed costs and other relevant characteristics of ownership, operation and maintenance of that facility. This would permit PSE, as well as the Commission, to determine the full extent of the potential costs to the company and its ratepayers associated with the offer, as well as the magnitude of potential financial risks represented within the various elements of the offer and by the underlying facility. Power purchases do not, however, pose comparable risks and, consequently, a lesser degree of disclosure is more appropriate. While an owner-utility has few degrees of freedom within which to make decisions related to capital additions, operations and maintenance associated with its own fleet of assets, a utility holding a purchase power agreement can limit the nature and extent of its risks under the contract by explicitly allocating risks to the seller under the terms of the agreement. Sellers such as Sempra Resources are familiar with the assumption of such risks, representing those risks in the capacity and/or energy prices taken under contract, and/or mitigating those risks through secondary instruments and markets. Thus, Sempra Resources submits that purchase power agreements offered to PSE through the RFP process should be evaluated not on the basis of the explicit cost components identified in the schedule shown in Exhibit VIII of the draft RFP, but by the prices submitted in the more general Summary Data sheet attached as Exhibit X to the draft RFP. To the extent either PSE or the Commission would be better informed as to the legitimacy of bids where bidders seek a power purchase agreement, PSE's requirements related to the filing of a due diligence report, to be submitted by a successful offeror ninety (90) days following the execution of any contract, and monthly

project progress reports should act to serve that purpose. (See sample Power Purchase Agreement at Article 1, page 5; Article 2, Part 2.6, page 16; Article 4, Part 4.1, pages 20 to 21.)

Apart from the lack of a compelling need, bidders offering power purchase agreements and any bidder not selected for contract negotiations should not be required to submit extensive cost and operating data for reasons of confidentiality and competitiveness. Many merchant developers such as Sempra Resources have developed proprietary construction, operating or financial systems that constitute their competitive advantage as against others in the market with whom they compete. Divulging detailed cost and operating information under the PSE draft RFP would require the disclosure of, and ultimately undermine, any such advantages. Such a requirement will lead to the withdrawal of some potential bidders from the competition to the detriment of both the RFP process and PSE's ratepayers. As an example, Sempra Resources believes it holds, among others, a competitive advantage due to its relatively strong credit rating and ready access to capital markets. (See disclosure requirements at Draft RFP, Section 5.4, item 10, page 8 of 19.) PSE would require Sempra Resources to disclose its means of capital formation, its financing costs, its required return on equity and the consortium of lenders and investors that would be the source of capital for any Sempra Resources project that would be bid into the RFP. Such disclosures diminish the financial advantages held by Sempra Resources by disclosing to others the company's financial attributes and partners, which could then be duplicated. PSE has no need to have such detailed knowledge in its evaluation of any bid submitted by Sempra Resources – with over 2500 megawatts of new generating capacity having been brought into service by Sempra Resources in the last two years, a review of Sempra Resources' financial information and any map of currently operating facilities should suffice to prove Sempra Resources' ability to source capital for its projects. (Sempra Resources concedes, however, that greater requirements might be placed on an unknown start-up or financially insubstantial bidder whose bona fides are in doubt.) In addition to the interests of Sempra Resources in protecting its competitive advantages, Sempra Resources submits that in many instances the terms of project subcontracts may preclude Sempra Resources from divulging the information PSE proposes to require of bidders. (See Draft RFP, Section 5.8.6, pages 13 to 14 of 19.) The sellers of turbine units or the providers of labor have their own competitive interests in protecting the terms and conditions under which they provide materials and labor to developers and, as a matter of course, frequently preclude their customers from disclosing those terms and conditions without prior consent. While Sempra Resources agrees that the disclosure of proprietary information of a bidder or associated third-party would be essential during the due-diligence evaluation of a bid offering to sell an interest in a project to PSE (and it is inconceivable that such disclosures would not occur in any event), such disclosures would cause competitive harm to the bidder and its subcontractors in the case of power purchase agreements and should not be required. In the view of Sempra Resources, PSE's legitimate interests are most related to the costs of capacity and energy and, therefore, price should suffice.

Sempra Resources also notes the draft RFP calls for bidders to identify primary fuel supplies and sources, including associated pricing details. (See Draft RFP, Section 5.2, item 16, page 6 of 19; also, Section 5.3, page 7 of 19.) This could be read to preclude offers representing tolling agreements, where the bidder offers firm availability to plant capacity and permits the utility to provide its own fuel. So as to assure that valuable offers with these characteristics are not inadvertently deemed nonconforming, Sempra Resources suggests that either the item be deleted or clarified so as to permit tolling arrangements. Even if PSE intends to preclude tolling arrangements, Sempra Resources submits that fuel sourcing and pricing

are among those matters that should be protected from disclosure to PSE since they could constitute the competitive advantage vital to any specific bidder and/or bid.

Finally, Sempra Resources submits that its concern with respect to proprietary information, both its own and as to third parties, is heightened by the terms of the Mutual Confidentiality Agreement under which bids are to be submitted. PSE offers bidders protections for any confidential materials for a period of two years, but then reserves the right to retain certain information, including all bids, for a period equal to the longer of seven (7) years or until such time as PSE concludes its next general rate case. (Compare Mutual Confidentiality Agreement, Paragraphs 6 and 10, page 3 of 4.) It is unclear to Sempra Resources what protections any bid materials might enjoy during the period between the lapse of two years and the potentially indeterminate period when PSE's next general rate case might conclude. While Sempra Resources believes PSE or this Commission should address this ambiguity in any event, the level of disclosures related to its costs and potential sources of competitive advantage heightens the Sempra Resources' concerns. For this and all of the foregoing reasons, Sempra Resources respectfully submits that the Commission, if PSE does not, should relieve potential bidders from any obligation to submit data specified by Exhibit VIII of the draft RFP from their offers for power purchase agreements.

Turning to the issue of debt equivalents, PSE indicates in its draft RFP that it intends to evaluate the risks, if any, posed by any offer to its creditworthiness and financial strength in evaluating bids. (See Draft RFP, Section 1.2.2, at page 2 of 19, describing impacts on financial and operating leverage, etc.; also, Exhibit 1, Stage 1 Evaluation Criteria, Item 1, page 7 of 17.) Sempra Resources acknowledges that the financial community, in evaluating the creditworthiness and financial stability of an electric utility, takes into account the financial exposure the utility faces due to its power purchase agreements. In some instances, credit rating agencies will impute a debt equivalent to the balance sheet of the purchasing utility to represent financial risks associated with the agreement. Typically, the revenue stream from the agreement is treated as the functional equivalent of debt service, and some capitalized value representing the capitalized value of an imputed debt equivalent is added to the utility's balance sheet so that investors and lenders can properly assess the utility's ability to satisfy its long-term obligations, including the power purchase agreement. The level of any imputed debt equivalent, however, is a matter of judgment based on many factors, including the regulatory treatment of power purchase costs, the overall financial strength of the purchasing utility, and the terms of the contract itself, e.g., the relative weighting of fixed capacity costs to variable (or avoidable) energy costs. Thus, whether a specific utility will carry any burdens of imputed debt related to power purchases will vary from zero to one hundred percent of the capitalized value of a power contract. In the case of PSE, Sempra Resources submits that the utility proposes to issue its RFP under the aegis of a long-term resource plan previously approved by the Commission, that the Commission will sanction the issuance and terms of the RFP, that the Commission will monitor and evaluate the conduct of the RFP process, and that the Commission will approve any obligations resulting from contracts executed at the end of the RFP process. Under similar circumstances, other state commissions have provided for the timely and complete recovery of costs incurred under power purchase agreements and the financial community, satisfied that these agreements would not impair the ability of the utility to meet its other obligations to lenders and investors, have not reflected imputed debt equivalents related to the agreements in their evaluation of the utility. In its preliminary research of this issue, Sempra Resources could not find mention of debt imputations related to power purchase agreements for any regulated utility operating in the State of Washington, indicating that the financial community in fact has yet to find concern with respect to the State's regulatory treatment of

power purchase agreements. Therefore, Sempra Resources requests that the Commission, in any order approving the issuance of the RFP or in any order approving the execution of power purchase agreements resulting from the RFP, should express its intent, backed by its historical record and practice, to afford timely and complete recovery of the prudent costs associated with any such agreements. In this manner, the Commission will minimize the costs of the resources procured under the RFP and concomitantly protect the credit of PSE. This will avoid any additional, extra-contractual costs, real or imputed, related to power purchase agreements and permit PSE and the Commission to evaluate the financial, operating and market risks of power purchase on a comparable basis to any competing offers involving the conveyance of an ownership interest in a project.

Sempra Resources appreciates the opportunity to submit these comments. Because of the short amount of time allowed over the holidays for comments, we request the Commission's indulgence if, during our continuing review of the draft documents, we come across additional items upon which we would like to submit comments after the official due date. If the Commission or its staff have any questions with respect to the matters raised, please contact Leesa Nayudu, Origination Regional Director – West, at 619.696.4442 or Alvin S. Pak, Director of Regulatory Policy, at 619.696.4022.

Respectfully submitted,



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Sempra Energy Resources

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