BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Least Cost Planning Rulemaking, WAC 480-90-238, 480-100-238 and Chapter 480-107 WAC Rulemaking Preproposal Inquiry (CR 101).	Docket Nos. UE-030311; UG-030312; UE-030423 SECOND COMMENTS OF PUBLIC COUNSEL

SECOND COMMENTS OF PUBLIC COUNSEL

May 12, 2005

Public Counsel files these comments in response to the Commission's Preproposal Statement of Inquiry (CR 101) and the Notice of April 22, 2005.

We appreciate the opportunity to offer these comments. Our comments relate to draft rules "WAC 480-90-238 draft 050422.doc," "WAC 480-100-238 draft 050422.doc" and "WAC 480-107 draft 050422.doc" as released in April 2005 and filed under dockets UG-030312, UE-030311 and UE-030423, respectively. The first two draft rules relate to the development of integrated resource plans (IRPs), and the third relates to utilities' purchases of energy and conservation via Requests for Proposal (RFPs).

Our comments include abbreviated citations of the draft rules, as follows:

"90-238..." is a citation to "WAC 480-90-238 draft 050422.doc"
"100-238..." is a citation to "WAC 480-100-238 draft 050422.doc"
"107..." is a citation to "WAC 480-107 draft 050422.doc"

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

Citations to all other laws or rules are given in full.

GENERAL COMMENT REGARDING THIS RULEMAKING PROCESS

Public Counsel and most other parties that participated in the June, 2003 workshop were clearly eager to consider deep and incisive changes to the rules. Utilities and public interest parties were both present at the table in numbers, with widely varying opening positions that anticipated a broad and exciting dialogue about those changes.

Rather than encouraging and engaging in that broad dialogue, the commission has chosen to propose only minor, administrative changes that do little to improve regulatory policy in Washington State. Commission staff explained their light approach in a December 16, 2003 memo to the Commissioners:

> ...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. (p. 18)

Public Counsel believes that the concern about substantive dialogue creating a longer process is unwarranted. Now is as good a time as any to engage in this difficult process. Energy generation and delivery in Washington State is a relatively stable industry at the moment, with the 2001 price crisis receding in the distance and the background fervor of electric market deregulation greatly slowed. The duration of a deeply-reaching process can be kept to a minimum by keeping the process active. The

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

WUTC can and should organize consecutive workshops to be spaced no more than six months apart, rather than the two years that separated this workshop and the prior one.

Public Counsel strongly encourages the WUTC to delay the planned CR-102 release, and instead facilitate a serious and well-paced dialogue on all of the substantive topics brought up by us and the other parties at the table.

COMMENTS AFFECTING WAC 480-90-238 AND WAC 480-100-238

Risk and uncertainty

In 2003 Public Counsel, the Washington Department of Community, Trade and Economic Development (CTED), PacifiCorp and Puget Sound Energy (PSE) were all at least lightly in favor of more fully specifying the treatment of risk. Public Counsel and CTED went the additional distance of specifically requesting that relative risks to ratepayers vs. shareholders be addressed.

New language has been added (90-238(2)(b) and 100-238(2)(b)) that includes the word "risk," but without specifying how it relates to the concept of lowest reasonable cost that is defined in those paragraphs. In fact, the language implies that risk is a component of "lowest reasonable cost." This is not really possible, since cost is a scalar describing economic, social or environmental price; while risk is a probability distribution describing chances of multiple, future scenarios.

We recommend instead that the concept of risk be taken up in the definitions of

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

integrated resource plan proposed in 90-238(2)(a) and 100-238(2)(a), for example:

> (a) "Integrated resource plan" or "plan" means a plan describing the mix of generating resources and improvements in the efficient use of electricity that will meet current and future needs at the lowest reasonable cost, and at the most appropriate levels of risk, to the utility and its ratepayers.

Correspondingly, the mention of risk in 90-238(2)(b) and 100-238(2)(b) would be removed and new definitions added as 90-238(2)(c) and 100-238(2)(c), for instance:

> (c) "risk" means estimated probabilities of price escalation or service interruption, based on considerations of wholesale energy market volatility, system reliability, and severe weather events.

Lastly, 90-238(3) and 100-238(3) would each include an additional (lowercase letter) paragraph describing the minimum analysis of ratepayer and investor risk, for instance:

> (x) Evaluations of acceptable levels of price escalation and service interruption risk to ratepayers, and of sensitivity of the integrated resource plan to variations in the levels of risk.

Monetize externalities and possible regulatory penalties

In 2003 we were joined by CTED, the Energy Project, Northwest Energy Coalition (NWEC) and the Natural Resources Defense Council (NRDC) in requesting inclusion of externalities and/or potential, future regulatory penalties in the definition of "least cost" ("lowest reasonable cost" in the proposed rules). Despite the large number of parties requesting such changes, none are included in this first new draft of the rules.

We suggest paragraphs 90-238(2)(b) and 100-238(2)(b) be modified to make the understanding of "cost" as broad as possible, and therefore most consistent with the interests of Washington ratepayers. For instance:

> (b) "Lowest reasonable cost" means the lowest cost resulting from an exhaustive and detailed analysis of all alternative sources and mixes of supply~~, considerations of market volatility risks of generating~~ and demand-side resources, ~~and of system reliability and operational risks~~ where the cost of each resource includes;
> (i) the direct monetary cost;
> (ii) any new regulatory costs reasonably likely to occur within the time horizon of the long-range plan; and
> (iii) if possible, the values of natural or cultural resources lost or damaged.

Note the treatment of risk has been removed from this definition per the discussion in our previous comment.

Enforce timely IRP submission

The draft rules eliminate the need for an initiating letter and clearly state a deadline for each plan two years after the prior one. These changes are an improvement and we endorse them.

In 2003 we recommended that the rules provide an incentive to each utility to adhere to its assigned schedule, and the WUTC staff agreed in its December 16, 2003 memo (p. 6). Now such incentives are even more important because the language in the draft rules causes the entire two year schedule to slide when a plan is late. Yet, no such incentives have been included in the draft rule. We herewith repeat our request to include such incentives in the IRP rules.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

In 2003 we provided the following list of concepts as a starting point for discussion:

- $1,000 fine per day late, in accordance with RCW 80.04.380,
- Petitions for power cost adjustments will not be considered until LCP plan is filed,
- No company petition considered until LCP plan filed, and
- Any resource acquisition which occurs when a utility does not have an approved plan in effect would carry a rebuttable presumption of imprudency.

Planning horizons

In our 2003 comments we stated that the short-term and long-term components of the plan should be defined as having two- and 20-year horizons, respectively, with exceptions made only on a case-by-case basis. The use of specific, uniform planning horizons (1) commits each utility to a significant and clearly stated plan objective, (2) allows consistent comparison of plans between companies, and (3) allows consistent comparison of company plans over time, one to another.

The proposed new rule, rather than strengthening the statement of time horizons, leaves the two-year, short-term horizon as a parenthetical suggestion. The 20-year, long-term horizon has been replaced by an even weaker suggestion of "...a duration appropriate to the life of the resources considered for acquisition." Besides being weaker, the new language does not describe a real parameter governing appropriate, long-term plan horizons. The appropriate principal parameter is the load-resource balance, which is the anticipated load growth coupled with the discontinuance of existing resources (including long-term power purchase agreements). The lives of resources

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

acquired during the long-term planning period will often, in fact, extend far beyond any reasonable planning horizon, more than half a century in the cases of some major capital projects.

All in all, the judgment as to the most appropriate horizon for long-range planning is complex and subjective. That is yet more cause to set it by regulation, and avoid needless and obfuscating discussion of this in the future. We respectfully repeat our request that both the two- and 20-year horizons for the short- and long-term plans be strengthened rather than weakened. Suggested changes to the draft rules might be (affecting 90-238(3)(e), 90-238(3)(f), 100-238(3)(e), and 100-238(3)(f)):

> (e) The integration of the demand forecasts and resource evaluations into a long-range ~~(e.g., of a duration appropriate to the life of the resources considered for acquisition)~~ integrated resource plan describing the strategies designed to meet ~~current and future~~ needs <u>during the twenty years following submission of the plan (or a different period justified by the utility)</u> at the lowest reasonable cost to the utility and its ratepayers.
>
> (f) A short-term ~~(e.g., two-year)~~ plan outlining the specific actions to be taken by the utility in implementing the long-range <u>integrated resource plan during the two years following submission</u>.

Also, we recommend removing the explicit definition of the term "plan" as an abbreviation of "integrated resource plan" in 90-238(2)(a) and 100-238(2)(a), because the first use of the word "plan" in 90-238(3)(f) and 100-238(3)(f) does not mean integrated resource plan. Alternatively, the definitions could be left intact and the phrase "short-term plan" replaced with a term not using the word "plan," such as "short-term strategy" or similar.

COMMENTS AFFECTING WAC 480-107

Consider removing the biennial RFP requirement

In 2003 the utilities expressed various frustrations with the biannual requirement to file RFPs 90 days after the IRP is completed. Virtually all these comments were answered in the December 2003 memo with allusions to WUTC's obligation to satisfy the requirements of the Public Utility Regulatory Policies Act of 1978 (PURPA). The memo used this obligation to justify no change in the policy.

We believe the utilities' concerns have merit and deserve further attention. Encouraging RFPs to be more synchronous with need and opportunity is likely to have benefit not just to the utilities but also to their ratepayers; streamlined resource acquisition seems very much in the spirit of least-cost resource acquisition encouraged by the IRP process.

Though PURPA does require the submission of avoided cost schedules on a biennial basis (18 CFR 292.302(b)), it is entirely a decision of the WUTC that these be determined by a bidding process. In fact PURPA specifically and clearly gives state regulators broad authority to specify the most appropriate method for determining avoided costs (18 CFR 292.303(d)). We encourage the WUTC to use this rulemaking process as an opportunity to fully consider the wide array of solutions possible. An important place to begin, would be to conduct a survey of other states' approaches to the avoided costs schedules, and borrow from the more successful and appropriate ones.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

One approach to solving the timing problem would be to remove the tie between IRP filing date and RFP release entirely, while tightening the requirements that RFPs conform to WUTC requirements and invite all types of resources. This provides the maximum number of data points with which to determine avoided cost, while simultaneously freeing the utilities to issue RFPs at the most convenient times. This could be done by breaking the tie made in 107-015(2)(a),

> (a) An electric utility must submit to the commission any proposed request for proposals and accompanying documentation ~~no later than ninety days after the utility's integrated resource plan is due to be filed with the commission~~. Interested persons will have sixty days from the RFP's filing date with the commission to submit written comments to the commission on the RFP. The commission will approve or suspend the RFP within thirty days after the close of the comment period.

and then limiting the freedom to issue nonconforming RFPs by deleting 107-015(3). It may also be important to stringently qualify or delete the last sentence in 107-001(1), which lists three excepted methods for meeting load ("...construct electric resources, operate conservation programs, purchase power through negotiated contracts,...") all of which can, technically speaking, be included among the bids received in response to an RFP.

This approach requires the rule to set an administrative procedure for calculating avoided cost schedules in periods experiencing no RFP for more than two years, or to assign utilities the task of creating such a procedure. In fact, the current draft already does this for any avoided cost schedule submitted more than 12 months after the most recent RFP (107-007(2), 107-055(3)).

As we said previously, the approach described above is only one of many that could be gleaned from an investigation of other states' methods.

Clarify avoided costs applicable to qualifying facilities

The treatment of avoided cost schedules is confusing, mixing PURPA-required uses with non-PURPA, secondary uses; and incompletely specifying either.

The paragraph headings under 107-095 describe the utility's obligations to qualifying facilities (QFs), neatly paralleling paragraph headings under PURPA (18 CFR 292.303). But the expected, similarly parallel prescription for assigning avoided costs to QF energy prices (18 CFR 292.304 in PURPA) is absent, except for being vaguely described, out of sequence, in 107-055(6) and 107-055(7).

Increasing the confusion further, 107-025(1) introduces the secondary use of avoided cost schedules as a nonbinding reference included in RFPs. 107-055(5) then emphasizes the nonbinding use, stating:

> (5) The avoided cost schedule provides only general information to potential bidders about the costs of new power supplies. It does not provide a guaranteed contract price for electricity.

This paragraph appears to be in partial conflict with PURPA, which requires standard rates for purchases to be based on avoided costs, in particular for QFs 100 kW in size or less (18 CFR 292.304(c)).

We recommend the following to clarify the discussion of avoided costs. Discuss only the prescription for calculating the avoided cost schedules in 107-055 by deleting

107-055(5), 107-055(6) and 107-055(7). Then explicitly describe the assignment of purchase price by expanding the language in 107-095(1), perhaps as follows:

> (1) Obligation to purchase from qualifying facilities.
> (a) Qualifying facilities one megawatt or less shall receive a purchase price for power based on avoided costs as identified pursuant to WAC 480-107-055, Avoided cost schedules.
> (b) Any owner of a ~~generating~~ qualifying facility or developer of a potential ~~generating~~ qualifying facility greater than one megawatt ~~may~~ must participate in the bidding process associated with an RFP, and will receive a purchase price for power based on the lowest bid among the project proposals with an acceptable evaluation. ~~Qualifying facility developers proposing projects with a design capacity of one megawatt or less may choose to receive a purchase price for power based on avoided energy and capacity costs as identified pursuant to WAC 480-107-055, Avoided cost schedules.~~

This suggested change also clarifies slightly ambiguous wording in 107-055(7) that makes it unclear whether a QF bidding into an RFP is offered the avoided cost equal to "the lowest bid among the project proposals" from the same RFP, or from the prior RFP used to generate the schedule published per 107-025(1).

In this suggested change, we follow through on two perceived intents in the draft rule: first, that the WUTC is choosing to raise the threshold at which standard rates are no longer required (as allowed by PURPA, 18 USC 292.304(c)(2)) from 100 kW to 1 MW; and second, that avoided costs for QFs above the threshold can only be determined in a bidding process that includes the QF. The second intent is reasonable if RFPs are issued on a regular basis, as the draft rule requires. However, if the WUTC honors our request to decouple RFPs from the biannual IRP schedule, a third provision may need to be added to the language to remain legal under PURPA, which requires utilities to purchase

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

power generated by QFs on demand by the QF. For instance, the following additional paragraph to 107-095(1) would solve the problem:

> (c) Any qualifying facility wishing to sell power prior to the next available bidding process, will receive a purchase price for power based on avoided costs as identified pursuant to WAC 480-107-055 until the next bidding process occurs, in which they will be required to participate per WAC 480-107-095(1)(b).

Favoring renewable or other special resources

While in principle Public Counsel stands behind the sentiment to allow resource-specific bidding processes (107-015(3)), it may be necessary to take a different approach if most RFPs are required to invite all resource types per our suggestion in section "Consider removing the biennial RFP requirement" above. The best way to do this may be to give those resources an advantage in the ranking procedure, 107-035. In theory, a uniform credit against bid price for resources of the favored class would work. In practice, it might be more consistent with the IRP process to assign a penalty to the bid price of conventional resources. This could be allowed with an additional numbered paragraph under 107-035, e.g.

> (0) At the utility's discretion, some ranking criteria may be expressed as penalties or credits to bid price that reflect otherwise externalized costs or values of a particular class of resources. If present, such penalties or credits must apply uniformly to resource classes predefined in the RFP, and should be consistent with any similar penalties or credits used in the utility's most recent integrated resource plan.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

Favoring conservation

In 2003 CTED recommended prioritizing acquisition of cost-effective conservation. In its December 2003 memo, WUTC did not honor the suggestion, stating that "Demand and supply side resources must compete on equal footing...." Public Counsel believes that both CTED's and WUTC's approaches could be answered by assuring that conservation resources are given advantage in the ranking procedure, similarly to renewable resources as described above. For instance,

> (0) Conservation measures shall be assigned a credit to bid price that reflects the average avoided costs of transmission, distribution, and transmission and distribution system expansion that would be associated with an equivalent generating resource.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 98164-1012
(206) 464-7744