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May 13, 2005

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

RE: Chapter 480-107 WAC Rulemaking--Docket No. UE-030423

Dear Ms. Washburn,

This filing sets forth the response of Puget Sound Energy, Inc. ("PSE") to the Notice of Opportunity to File Written Comments dated April 22, 2005 in the above-noted docket.

PSE appreciates the work undertaken by Commission Staff in moving this docket forward through circulating the discussion draft provided with the Notice, particularly since it involved a complete redrafting of existing Chapter 480-107 WAC, the Commission's competitive bidding rule ("RFP Rule").

PSE believes that the discussion draft improves the current version of the RFP Rule. However, PSE suggests that additional revisions be made to the RFP Rule, as shown in legislative format in Attachment A to this letter. Explanatory comments are provided in footnotes.

PSE believes that its proposed revisions are consistent with the intent of the various sections of the proposed new RFP Rule. PSE's goals in proposing these revisions are to:

- Improve the clarity and efficiency of the RFP Rule consistent with Executive Order No. 97-02;
- Ensure that the RFP Rule is consistent with the Public Utilities Regulatory Policy Act of 1978, 16 U.S.C. § 824a-3 et seq. ("PURPA") and associated FERC regulations; and
- Ensure that utilities have sufficient flexibility to procure resources at the lowest reasonable cost in future resource acquisitions under the RFP Rule, thereby protecting their customers from paying costs higher than would otherwise be necessary.

PSE looks forward to discussing at the June 9, 2005, workshop the comments and suggestions set forth in this filing, as well as the comments submitted by other stakeholders. If you have any questions regarding these comments or if we can be of any other assistance, please contact me at 425-462-3897. Questions regarding PURPA issues should be addressed to PSE's counsel for this docket, Kirstin Dodge at 425-635-1407.

Sincerely,

Karl Karzmar
Director, Regulatory Relations

DRAFT

ELECTRIC COMPANIES--PURCHASES OF ELECTRICITY FROM QUALIFYING FACILITIES AND INDEPENDENT POWER PRODUCERS, AND PURCHASES OF ELECTRICAL SAVINGS FROM CONSERVATION SUPPLIERS

WAC

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AMENDATORY SECTION

WAC 480-107-001 Purpose and scope. (1) The rules in this chapter require utilities to solicit bids, rank project proposals, and identify any bidders that meet the minimum selection criteria. The rules in this chapter do not establish the sole procedures electric utilities must use to acquire new resources. Electric utilities may

construct electric resources, operate conservation programs, purchase power through negotiated contracts, or take other action to satisfy their public service obligations.

(2) The commission may use information about the price and availability of electric power obtained through the bidding procedures described in these rules, in conjunction with other evidence, in general rate cases and other cost recovery proceedings pertaining to resources not acquired through these bidding procedures.

(3) The rules in this chapter are consistent with the provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA), Title II, sections 201 and 210, and related regulations promulgated by the Federal Energy Regulatory Commission (FERC) in 18 C.F.R. Part 292. To the extent of any conflict between these rules and PURPA, or the related rules promulgated by FERC in 18 C.F.R. Part 292, PURPA and those related rules control. Purchase of electric power under these rules satisfies an electric utility's obligation to purchase power from qualifying facilities under section 210 of PURPA.

NEW SECTION

WAC 480-107-002 Application of rules. (1) The rules in this chapter apply to any electric utility that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

~~—(2) Any affected person may ask the commission to review the interpretation of these rules by an electric utility or customer by making an informal complaint under WAC 480-07-910, Informal complaints, or by filing a formal complaint under WAC 480-07-370, Pleading—General.¹~~

~~(3)~~ No exception from the provisions of any rule in this chapter is permitted without prior written authorization by the commission. Such exceptions may be granted only if consistent with the public interest, the purposes underlying regulation, and applicable statutes. Any deviation from the provisions of any rule in this chapter without prior commission authorization will be subject to penalties as provided by law.

NEW SECTION

¹ This section is unnecessary, since affected parties have access to informal and formal complaint proceedings in any event through Chapter 480-07 WAC. It is also unnecessarily restrictive in that parties may wish to seek a declaratory order or interpretive or policy statement rather than pursue a complaint. See WAC 480-07-920, -930. Parties may also wish to pursue any of these proceedings over more than just "interpretation of these rules." Finally, the reference to "customer" does not seem to make sense in the context of this chapter, where it is likely to be a utility and potential supplier that have the dispute. Deletion of this subsection still leaves guidance in the chapter to parties that they may seek Commission review of utility actions. See WAC 480-107-075(1); WAC 480-107-095(1).

~~WAC 480-107-004 Additional requirements. (1) These rules do not relieve any electric utility from any of its duties and obligations under the laws of the state of Washington.~~

~~(2) The commission retains its authority to impose additional or different requirements on any electric utility in appropriate circumstances, consistent with the requirements of law.²~~

NEW SECTION

WAC 480-107-006 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

NEW SECTION

WAC 480-107-007 Definitions. (1) " Affiliate" means a person or corporation as defined in RCW 80.16.010.

(2) " Avoided costs" means the incremental costs to an electric utility of electric energy, electric capacity, or both, that the utility would generate itself or purchase from another source, but for purchases to be made under these rules. ~~Avoided costs as of the time a utility enters into a final contract under the competitive bidding process set forth in these rules are identified as the prices, terms and conditions for purchases of electric energy, electric capacity, or both under such final contract. Avoided costs with respect to any other point in time or potential resource are to be determined through issuance of an RFP by the utility and finalization of a new contract pursuant to these rules or through negotiation between a potential supplier and a utility that is informed by:~~

~~(a) the prices, terms and conditions for purchases of electric energy, electric capacity, or both under the most recent final contract a utility entered into under the competitive bidding process set forth in these rules; and~~

~~(b) the most recent estimated avoided cost schedules that the utility has filed pursuant to WAC 480-107-055.~~

~~the minimum bid that meets the criteria specified in the Request for Proposal, or is estimated from data in the utility's most recent Integrated Resource Plan.³~~

² This new section is unnecessary and should be deleted, per Executive Order 97-02.

³ The first sentence of this subsection is consistent with FERC's avoided cost definition as implemented through a competitive bidding process. See 18 C.F.R. § 292.101(b)(6). The first phrase of the second sentence has been revised to more accurately reflect that actual avoided costs determined through these rules are the final contract resulting from the process. Describing a top-ranked bid as determining "avoided costs" could require ratepayers to pay more than is required by a final contract after

(3) "Back-up power" means electric energy or capacity supplied by an electric utility to replace energy ordinarily supplied by utility-owned generation or purchased through contracts that is unavailable due to an unscheduled outage.

(4) "Commission" means the Washington utilities and transportation commission.

(5) "Conservation contract" means a contract in which a conservation supplier provides equipment or services to reduce the use of electricity by a specified amount for a given price or for a price determined by a clear mechanism.

(6) "Conservation measures" means electric energy efficiency improvements to buildings or energy-using equipment and processes, and demand response or load management measures⁴.

(7) "Conservation supplier" means a third party supplier or utility affiliate that provides equipment or services that save capacity or energy.

~~——(8) "Demand Side Management" (DSM) means the same as "conservation measure."~~⁵

(9) "Economic dispatch" means, within contractually specified limits, modifying the scheduling of power purchases from a generating facility to minimize the costs of delivering electricity.

(10) "Electrical savings contract" means the same as "conservation contract."

(11) "Electric utility" means any public service company, as defined by RCW 80.04.010, engaged in the generation, distribution, sale, or furnishing of electricity, and that is subject to the jurisdiction of the commission.

(12) "Generating facilities" means plant and other equipment used to generate electricity purchased through contracts entered into under these rules.

(13) "Independent power producers" means generating facilities or portions thereof that are not recognized in the retail rates of any electric utility and that are not qualifying facilities as defined in subsection (~~4819~~) of this section.

negotiations. New sentences have been added to reflect that avoided costs are constantly changing as market and industry conditions and utilities' needs change. The option of determining avoided costs through negotiation could avoid the need to issue an all-source RFP where a qualifying facility is seeking to require a utility to purchase a small amount of energy or capacity such that a full RFP process does not make sense due to transaction costs and potential delay. Guidance regarding the data points for such negotiations could help avoid future disputes. Recourse to the Commission if negotiations reach impasse is provided for in WAC 480-107-095(1). Deletion of the final phrase is appropriate given this Commission's determination of avoided costs through competitive bidding rather than administrative hearings, as well as the fact that data in the most recent IRP may not reflect current incremental cost options available to a utility.

⁴ Conservation includes demand management as well as energy efficiency.

⁵ The term "Demand Side Management" is not used in this chapter.

(14) "Interruptible power" means electric energy or capacity supplied to an electric utility by a generating facility, the availability of which may be interrupted under certain conditions.

(15) "Integrated resource plan" or "IRP" means the filing made every two years by an electric utility in accordance with WAC 480-100-238, Integrated Resource Planning.

(16) "Maintenance power" means electric energy or capacity supplied by an electric utility during scheduled outages of a generating facility.

(17) "Project developer" means an individual, association, corporation, or other legal entity that potentially can enter into a power or conservation contract with the utility.

(18) "Project proposal" means a project developer's document containing a description of a project and other information responsive to the requirements set forth in a Request for Proposal.

(19) "Qualifying facilities" means generating facilities that meet the criteria specified by the FERC in 18 C.F.R. Part 292 Subpart B.

(20) "Request for proposals" or "RFPs" means the documents describing an electric utility's solicitation of bids for delivering electric capacity, energy, or capacity and energy, or conservation

(21) "Resource Block" means the deficit of capacity and associated energy that the IRP shows for the near term.

(22) "Subsidiary" means any company in which the ~~gas~~-utility owns directly or indirectly five percent or more of the voting securities, unless the utility demonstrates it does not have control.

(23) "Supplementary power" means electric energy or capacity supplied by an electric utility that is regularly used by a generating facility in addition to that which the facility generates itself.

(24) "Utility" means an electric utility.

(25) "Utility subsidiary" means a legal entity, other than a qualifying facility, that is owned, in whole or in part, by an electric utility, and that may enter a power or conservation contract with that electric utility.

NEW SECTION

WAC 480-107-015 The solicitation process. (1) Participants in the solicitation process may include:

(a) Any owner of a generating facility, developer of a potential generating facility, [marketing entity](#),⁶ or provider of energy savings may participate in the RFP process. Bidders may propose a variety of energy resources: eligible electrical savings associated with conservation measures; electricity from qualifying facilities; electricity from independent power producers; and, at the utility's election, electricity from utility subsidiaries, and other electric utilities, whether or not such electricity includes ownership of property. Qualifying Facility producers with a generation capacity of one MW or less may choose to participate in the utilities standard tariffs without filing a bid, [pursuant to WAC 480-107-095\(1\)](#).⁷

(b) An electric utility may allow an affiliated generating subsidiary to participate in the bidding process as a power supplier, on conditions described in WAC 480-107-135, Conditions for purchase of electrical power or savings from a utility's subsidiary or affiliate. Such a decision must be explained in the utility's RFP submittal.

(2) Timing of the solicitation process.

(a) An electric utility must submit to the commission a 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.

(b) An electric utility must solicit bids for electric power and electrical savings within thirty days of a commission order approving the RFP.

(c) All bids will remain sealed until expiration of the solicitation period specified in the RFP.

(3) In addition to the solicitation process required by these rules, an electric utility may, at its own discretion, issue a RFP that limits project proposals to resources with specific characteristics. In addition, an electric utility, at its own discretion, may issue RFP's more frequently than required by this rule.

(4) Persons interested in receiving commission notice of a specific electric utility's RFP filings can request the commission to place their name on a mailing list for notification of future RFP filings by that utility.

(5) The information that a bidder files in response to an electric utility's RFP is referred to as the "project proposal."

NEW SECTION

⁶ [Added to reflect current industry structure.](#)

⁷ [See proposed revisions to 480-107-095.](#)

WAC 480-107-025 Contents of the solicitation. (1) The RFP must specify the resource block, the initial estimate of long-term avoided cost schedule as calculated in WAC 480-107-055, Avoided cost schedule, and any additional information necessary for potential bidders to make a complete bid.

(2) The RFP must identify a resource block consisting of the overall amount and duration of power the electric utility is soliciting through the bidding process. The RFP must document that the size of the resource block is consistent with the range of estimated new resource needs identified in the utility's integrated resource plan. ~~The An electric utility is exempted from issuing an RFP⁸ may specify a zero-megawatt resource block only~~ if the integrated resource plan demonstrates that the utility does not need additional capacity within three years.

(3) The RFP must explain general evaluation and ranking procedures the electric utility will use in accordance with WAC 480-107-035, Project ranking procedure. The RFP must also specify any minimum criteria that bidders must satisfy to be eligible for consideration in the ranking procedure.

(4) The RFP must specify the timing of process including the solicitation period, the ranking period, and the expected selection period.

(5) The RFP must identify all security requirements and the rationale for them.

(6) Electric utilities are encouraged to consult with commission staff during the development of the RFP. Electric utilities may, at their own discretion, submit draft RFPs for staff review prior to formally submitting a RFP to the commission.

NEW SECTION

WAC 480-107-035 Project ranking procedure. (1) The procedures and criteria the electric utility will use in its RFP to evaluate and rank project proposals are subject to commission approval.

(2) The ranking criteria must address price, dispatchability, risks imposed on ratepayers, financial and credit impacts, ~~and~~ environmental effects including those associated with resources that emit carbon dioxide and other factors the utility deems

⁸ Requiring a utility that does not need additional capacity within three years to issue an RFP – or to issue an RFP for zero megawatts -- is not an efficient use of limited utility, Commission, or stakeholder resources. The Commission has historically granted waivers from the RFP issuance requirement under such circumstances, provided that alternative information is provided to the Commission regarding estimated avoided costs. See In the matter of the Petition of Avista Corporation, d/b/a Avista Utilities for Waiver of WAC 480-107-060, Docket No. UE-021052, 2002 Wash. UTC LEXIS 338 (Sept. 11, 2002); In re Regulation of Electric Utilities, 1998 Wash. UTC Lexis 161, at *23 (stating that when such waivers have been granted, utilities have been required "to file [their] avoided costs for public comment, to preserve compliance with PURPA"). Here, the annual filings under WAC 480-107-055 will serve that purpose.

appropriate.⁹—The ranking criteria must recognize differences in relative amounts of risk inherent among different technologies, fuel sources, financing arrangements, accounting treatment,¹⁰ and contract provisions. The ranking process must complement power acquisition and conservation¹¹ goals identified in the electric utility's integrated resource plan.

(3) After the project proposals have been opened for ranking, the electric utility must make available for public inspection at the utility's designated place of business a summary of each project proposal and a final ranking of all proposed projects.

(4) The electric utility may reject any project proposal that does not specify, as part of the price bid, the costs of complying with environmental laws, rules, and regulations in effect at the time of the bid.

(5) Any project proposal that involves the acquisition of energy from a hydroelectric project located in a protected area, as designated by the Northwest Power and Conservation Council, must show that:

(a) Such project qualifies for exception or exemption under sections 1103 (b)(4)-(5) or section 1303(g) of the Columbia River Basin Fish and Wildlife Program, or corresponding provisions of the Northwest Conservation and Electric Power Plan, in effect at the time of rule adoption; or

(b) The project developer has obtained the necessary approvals from all entities legally responsible for the protection or management of fish or wildlife resources affected by the project, including the Federal Energy Regulatory Commission. The bid shall specify the estimated costs of such compliance.

NEW SECTION

WAC 480-107-045 Pricing and contracting procedures. (1) Once project proposals have been ranked in accordance with WAC 480-107-035, Project ranking procedure, the electric utility must identify the bidders (if any) that best meet the selection criteria and that are expected to produce the energy, capacity, and electrical savings as defined by that portion of the resource block to which the project proposal is directed.

(2) The electric utility may reject all bids if it finds that no bid adequately serves ratepayers' interests. The commission will, as appropriate, review such a finding together with evidence filed in support of any acquisition in the electric utility's next general rate case or other cost recovery proceeding¹².

⁹ Language added to allow utility flexibility to meet dynamic resource market conditions.

¹⁰ Additions to both ranking criteria lists are to further specify the various types of issues that should be considered as part of resource acquisition decisions.

¹¹ There may be separate criteria and ranking for supply resources and conservation.

¹² Revised to be consistent with WAC 480-107-001(2), which recognizes that there may be other appropriate proceedings for such review than a general rate case (such as the power cost only rate case proceeding under PSE's PCA Mechanism).

(3) The bid's price, pricing structure, and terms are subject to negotiation. ~~If a qualifying facility or other generating facility agrees to be operated under economic dispatch, then the electric utility will adjust the price bid by operating performance adjustments, such as the project's equivalent availability factor. The methodology for such performance adjustments must be explained in the electric utility's RFP submittal.~~¹³

NEW SECTION

WAC 480-107-055 Avoided cost schedules. (1) ~~On an annual basis~~No less often than every two years¹⁴, an electric utility must file ~~an a schedule of its estimated~~ avoided costs ~~schedule~~ for the energy and capacity associated with the resource block the electric utility solicited in its most recent RFP filed pursuant to WAC 480-07-025, Contents of the solicitation. Such estimated avoided cost schedules are to be informed by:

(a) the prices, terms and conditions for purchases of electric energy, electric capacity, or both under the most recent final contract a utility entered into under the competitive bidding process set forth in these rules; and

(b) any other data that is indicative of the current incremental costs that would likely be incurred by the utility for that electric energy or electric capacity, including but not limited to current wholesale market prices and other cost discovery information that may be available to the utility.

The electric utility must file documentation supporting its estimated avoided cost schedule.¹⁵

~~——(2) Avoided cost schedules filed within 12 months after an RFP will be based directly on the bids received pursuant to that RFP.~~

~~——(3) Avoided cost schedules filed more than 12 months after an RFP will be based on estimates included in the utility's current integrated resource plan filed pursuant to WAC 480-100-238 and the results of the most recent bidding process. The electric utility must file documentation supporting its estimated avoided cost schedule.~~

(42) Electric utilities may revise an estimated avoided cost schedule at any time. Such ~~revisions~~ revised schedule must be filed with the commission ~~and are subject to commission approval~~¹⁶.

¹³ The deleted sentences are too prescriptive and may lead to a less than optimal outcome. The topic is best left to the negotiations described in this subsection, ranking criteria in WAC 480-107-035, description in the RFP in WAC 480-107-025, and contract finalization procedures in WAC 480-107-075.

¹⁴ PURPA regulations require provision of this information not less than every two years. 18 C.F.R. § 292.302(b). Utilities may well update such information more often, but it would make more sense to do so at times aligned with resource acquisitions rather than on a fixed annual schedule.

¹⁵ Subsections (1) through (3) reworked to provide more flexibility while still requiring updating, reference to recent cost data, and documentation by the utility.

~~(53)~~ The estimated 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.

~~(64)~~ For projects rated at one megawatt capacity or less, the The utility must update its standard tariff for purchases from qualifying facilities rated at one megawatt capacity or less from time to time as needed to reflect the incremental costs to the utility for alternative sources of such powermost recently approved long term avoided costs will be the basis for prices offered.¹⁷

~~————(7) For projects in excess of one megawatt, the avoided cost will be the lowest bid among the project proposals with an acceptable evaluation.~~¹⁸

NEW SECTION

WAC 480-107-065 Eligibility for long-run conservation purchase rates. (1) Any conservation supplier may participate in the bidding process. An electric utility may allow a utility subsidiary to participate as a conservation supplier, on conditions described in WAC 480-107-135, Conditions for purchase of electrical power or savings from a utility's subsidiary or affiliate. A decision to allow a utility subsidiary to participate must be explained in the electric utility's RFP submittal.

(2) All conservation measures included in a project proposal must:

(a) Produce electrical savings over a time period greater than five years, or a longer period if specified in the electric utility's RFP. A measure with an expected life that is shorter than the contract term must include replacements through the contract term;

(b) Be consistent with the electric utility's integrated resource plan; and

(c) Produce savings that can be reliably measured or estimated with accepted engineering methods.

¹⁶ It is unclear whether the Commission intends to require an approval process for these estimated avoided cost schedules or not. To avoid problems associated with historic determinations of avoided costs through administrative proceedings rather than competitive bidding, PSE does not believe any formal "approval" should be required unless a QF challenges a utility's alleged failure to comply with an obligation to purchase QF power at the utility's avoided cost (per WAC 480-107-095).

¹⁷ This revision is for consistency with provision of standard tariffs for QF purchases of one megawatt or less. The avoided cost for such purchases may not be the utility's "most recently approved long term avoided costs."

¹⁸ Replaced by proposed revisions to WAC 480-107-007(2).

NEW SECTION

WAC 480-107-075 Contract finalization. (1) Unless otherwise prohibited by law, an electric utility has discretion to decide whether to enter into a final contract with any project bidder that meets the selection criteria of the RFP. Any such bidder may petition the commission to review a utility decision not to enter into a final contract.

(2) Any project bidder and electric utility may negotiate changes to the selected project proposal for the purpose of finalizing a particular contract consistent with the provisions of this chapter.

(3) The electric utility may sign contracts for any appropriate time period specified in a selected project proposal for up to a twenty-year term. The utility may sign longer-term contracts if such provisions are specified in the utility's RFP.

(4) If material changes are made to the project proposal after project ranking, including material price changes, the electric utility must suspend contract finalization with that party and re-rank projects according to the revised project proposal. If the material changes cause the revised project proposal to rank lower than projects not originally selected, the utility must dismiss the project proposal from further consideration and replace it with next ranked project.

(5) A project developer must provide evidence that the developer has obtained or will obtain a generation site (e.g., letter of intent) before signing a contract with the purchasing electric utility.

NEW SECTION

WAC 480-107-085 Obligations of generating facilities to electric utility. (1) The owner or operator of a generating facility purchasing or selling electricity under this chapter must execute with the electric utility a written agreement stating that:

(a) The owner or operator will construct and operate all interconnected generating facilities and interconnection facilities¹⁹ in accordance with all applicable federal, state, and local laws and regulations to ensure system safety and reliability of interconnected operations;

(b) The generating facility will furnish, install, operate, and maintain in good order and repair, and without cost to the electric utility, such relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus as reasonably required~~shown~~ by the utility ~~to be reasonably necessary~~ for the safe and

¹⁹ Interconnection facilities are different from generating facilities, and both should be operated in the stated manner.

reliable²⁰ operation of the generating facility in parallel with the electric utility's system; and

(c) At all times, the electric utility will be able to gain access to all switching equipment capable of isolating the generating facility from the electric utility's system.

(2) The electric utility may choose to operate the switching equipment described in subsection (1)(c) of this section if, in the sole opinion of the utility, continued operation of the customer's generating facility in connection with the utility's system may create or contribute to a system emergency. Such a decision by the utility is subject to commission verification in accordance with WAC 480-107-115, System emergencies. The utility must endeavor to minimize any adverse effects of such operation on the customer.

(3) Any agreement between a generating facility and an electric utility must state the extent to which the generating facility will assume responsibility for the safe operation of the interconnection facilities. The generating facility may not be required to assume responsibility for negligent acts of the utility.

(4) To the extent there is any conflict between these rules and federal rules promulgated by FERC regarding the subject matter of this section, those FERC rules control.²¹

NEW SECTION

WAC 480-107-095 Obligations of electric utility to qualifying facilities. (1)
Obligation to purchase from qualifying facilities.

(a) A utility is obligated to purchase electric energy, electric capacity, or both from a qualifying facility at rates that do not exceed the utility's avoided costs for such electric energy, electric capacity, or both.²² Any owner of a generating facility or developer of a potential generating facility may participate in the bidding process.²³ If an owner or operator of a qualifying facility believes that a utility is refusing to purchase power from the qualifying facility at the utility's avoided costs, it may seek commission review of the matter through an informal

²⁰ It is unclear where such a "showing" would be made or what the standard would be.

²¹ FERC's Order No. 2003 sets forth obligations for utilities regarding the interconnection of generating facilities (other than QFs) with greater than 20 MW of capacity. FERC is also currently undertaking a rulemaking on obligations for utilities regarding the interconnection of generating facilities (other than QFs) with 20 MW or less of capacity. Utilities should not be subject to claims that they are violating state regulations by complying with federal regulations.

²² This directly states the obligation addressed in this section of the rule in a manner consistent with PURPA and related regulations.

²³ The deleted sentence duplicates WAC 480-107-015 and does not seem to fit in this subsection, which concerns obligations to purchase from QFs.

~~or formal complaint.²⁴ 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~~

~~(b) A utility must provide a standard tariff for purchases from qualifying facilities with a design capacity of one megawatt or less that is based on the estimated avoided energy and capacity costs as identified pursuant to WAC 480-107-055, Avoided cost schedules, indexed to market prices, or otherwise related to the incremental costs of purchasing small quantities of power²⁵.~~

(2) Obligation to sell to qualifying facilities. An electric utility must sell to any qualifying facilities, in accordance with WAC 480-107-105, Rates for sales to qualifying facilities, any energy and capacity requested by the qualifying facilities on the same basis as available to other customers of the utility in the same class.

(3) Obligation to interconnect. Any electric utility must make all the necessary interconnections with any qualifying facilities to accomplish purchases or sales under this section. The obligation to pay for any interconnection costs will be determined in accordance with WAC 480-107-125, Interconnection Costs.

(4) Transmission to other electric utilities. At the request of a qualifying facility, an electric utility that would otherwise be obligated to purchase energy or capacity from such qualifying facility may transmit energy or capacity to any other electric utility at the option of the utilities involved. Nothing in this section obligates ~~The the~~ electric utility connected with the qualifying facility to transmit to other utilities. Nothing in this section obligates other utilities to purchase from the qualifying facility.

(5) Parallel operation. Each electric utility may offer to operate in parallel with a qualifying facility if the qualifying facility complies with all applicable standards established in WAC 480-107-095, Obligations of generating facilities to electric utilities.

NEW SECTION

WAC 480-107-105 Rates for sales to qualifying facilities. (1) General rules:

- (a) Rates must be just and reasonable, and in the public interest; and
- (b) Rates must not discriminate between qualifying facilities and other customers served by the electric utility.

²⁴ ~~This sentence provides guidance to QFs in the event a utility refuses to deal with a QF or negotiations reach impasse. An informal or formal complaint make sense as the proper procedures to follow in the event a QF believes that a utility is failing to comply with its PURPA obligations to purchase power at its avoided cost.~~

²⁵ ~~The requirement for providing a standard tariff offering is consistent with references to a QFs ability to participate in the standard tariff in WAC 480-107-015(1)(a). Guidance regarding the content of such offerings would be helpful in order to reduce disputes at the time a utility files or revises such tariff schedules. Small purchases based on a standard tariff offering is appropriate given transactional costs associated with other means of determining avoided costs, as well as costs specific to small purchases such as balancing costs.~~

(2) Rates for sales that are based on accurate data and consistent system-wide costing principles will not be considered to discriminate against any qualifying facilities if those rates apply to the utility's other customers with similar load or other cost-related characteristics.

(3) Additional services to be provided to qualifying facilities:

(a) Upon request by a qualifying facility, each electric utility will provide:

- (i) Supplementary power;
- (ii) Back-up power;
- (iii) Maintenance power; and
- (iv) Interruptible power.

(b) The commission may waive any requirement of subsection (a) of this section if the electric utility demonstrates and the commission finds, after notice in the area served by the electric utility and after opportunity for public comment, that compliance with such requirement will:

(i) Impair the electric utility's ability to render adequate service to its customers;

or

(ii) Place an undue burden on the electric utility.

(4) The rate for sale of back-up power or maintenance power:

(a) Unless otherwise supported by factual data, may not be based on an assumption that forced outages or other reductions in electric output by all qualifying facilities on an electric utility's system will occur simultaneously, or during the system peak, or both; and

(b) Must take into account the extent to which scheduled outages of the qualifying facilities can be coordinated with scheduled outages of the utility's facilities.

NEW SECTION

WAC 480-107-115 System emergencies. (1) A generating facility entering into a power contract under these rules is required to provide energy or capacity to an electric utility during a system emergency only to the extent:

(a) Provided by agreement between such generating facility and electric utility;

or

(b) Ordered under section 202(c) of the Federal Power Act.

(2) During any system emergency, an electric utility may discontinue or curtail:

(a) Purchases from a generating facility if such purchases would contribute to such emergency; and

(b) Sales to a generating facility, if such discontinuance or curtailment:

(i) Does not discriminate against a generating facility; and

(ii) Takes into account the degree to which purchases from the generating facility would offset the need to discontinue or curtail sales to the generating facility.

(3) System emergencies resulting in utility action under this chapter are subject to verification by the commission upon request by either party.

NEW SECTION

WAC 480-107-125 Interconnection costs. (1) Obligation to pay. Any costs of interconnection are the responsibility of the owner or operator of the generating facility entering into a power contract under this chapter. The electric utility must assess all reasonable interconnection costs it incurs against a generating facility on a nondiscriminatory basis.

(2) Reimbursement of interconnection costs. The owner or operator of the generating facility must reimburse the electric utility for any reasonable interconnection costs the utility may incur. Such reimbursement ~~may~~ shall be made, at the utility's election: (a) at the time the utility invoices the owner or operator of the generating facility for interconnection costs incurred by the utility, or (b) over an agreed period of time, ~~but~~ not greater than the length of any contract between the utility and the generating facility.²⁶

NEW SECTION

WAC 480-107-135 Conditions for purchase of electrical power or savings from a utility subsidiary or affiliate. (1) The electric utility's subsidiaries and affiliates may participate in the utility's bidding process. In these circumstances, the solicitation and bidding process will be subject to additional scrutiny by the commission to ensure that no unfair advantage is given to the bidding subsidiary. Commission scrutiny will ensure ratepayer interests are protected.

(2) As part of its RFP, an electric utility must include specific notice that the utility intends to allow its subsidiaries and affiliates to participate in its bidding process. The electric utility must indicate in its RFP submittal how it will ensure that its subsidiary or affiliates will not gain an unfair advantage through association with the electric utility over potential nonaffiliated competitors. Specifically, disclosure by an electric utility to its subsidiary and affiliates of the contents of an RFP or competing project proposals prior to any public availability of such information will be construed to constitute an unfair advantage.

(3) The commission may deny in full or in part rate recovery of costs associated with the subsidiary's or affiliate's project(s), upon a showing that any unfair advantage was given to the subsidiary or any other bidder.

²⁶ Addition of option (a) is consistent with the FERC standard for reimbursement of interconnection costs.

NEW SECTION

WAC 480-107-145 Filings--Investigations. (1) The commission retains the right to examine project proposals as originally submitted by potential developers. The electric utility must keep all documents supplied by project bidders or on their behalf, and all documents created by the electric utility relating to each bid, for at least seven years from the close of the bidding process, or the conclusion of the electric utility's next general rate case, whichever is later.

(2) The electric utility must file with the commission and maintain on file for inspection at its place of business the current rates, prices, and charges established in accordance with this chapter.

~~————(3) If a project developer is damaged by an action of an electric utility acting in accordance with these rules, the developer may petition the commission to investigate such action. The commission, at its discretion, may open an investigation and hold public hearings regarding any such petition.²⁷~~

NEW SECTION

WAC 480-107-999 Adoption by reference (1) In WAC 480-107-001, Purpose and scope, the commission refers to the provisions of the Public Utilities Regulatory Policies Act of 1978 (PURPA), Title II, sections 201 and 210, and related regulations promulgated by the Federal Energy Regulatory Commission (FERC) in 18 C.F.R. Part 292. The versions referenced are those current on the day the commission adopted the rule that includes the reference, consistent with the requirements of WAC 480-07-180.

²⁷ It is unclear why a developer should have recourse to the Commission for "damage" from utility actions that are "in accordance with these rules." Complaints that a utility has failed to comply with the rules are available in any event under Chapter 480-07 WAC.

CURRENT RULES	PROPOSED LANGUAGE
<p><u>001 Purpose and scope</u></p>	<p>001 Purpose and scope Subsection (1) The provision about environmental compliance has been removed from this rule. It was included twice in current chapter, also in 020.</p>
	<p>New rules common to all chapters 002 Application of rules 003 Exemptions from rules in Chapter 480-107 WAC 004 Additional requirements 006 Severability</p>
<p><u>005 Definitions</u> It is now renumbered 007.</p>	<p>007 Definitions It contains more definitions.</p>
<p><u>010 Filing requirements for prototype contracts</u> This rule section was deleted.</p>	
<p><u>020 Eligibility for long-run generating facility purchase rates</u> Subsection (1) is in 095 (1) Subsection (2) deleted Subsection (3) moved to 015 (1)(b) Subsection (4) moved to 075 (5) Subsection (5) deleted as such Subsection (6) moved to 035 (5) but revised to provide utility more flexibility</p>	
<p><u>030 Eligibility for long-run conservation purchase rates</u> Subsection (1) is subsection (1) of 015 Subsection (2) deleted, meaningless Subsection (3) is subsection (2) of 065</p>	<p>065 Eligibility for long-run conservation purchase rates Subsection (1) coming from 030 (1) Subsection (2) coming from 030 (3)</p>
<p><u>040 Size of resource block</u> Moved to 025</p>	<p>025 Contents of the solicitation Subsections (1) and (2) come from 040 (1) and (2) and 060 (2) (c) Subsection (3) comes from 060 (2) (d)</p>
<p><u>050 Avoided cost schedules</u></p>	<p>055 Avoided cost schedules Proposed language eliminates the 20 years as an option for the utility to determine the avoided cost for energy and capacity associated with resource block.</p>

CURRENT RULES	PROPOSED LANGUAGE
<p><u>060 The solicitation process</u> Subsection (1) merged in 015 Subsection (2) (a) goes to 015 (2) (a) and (b) Subsection (2) (b) moved 015 (2) Subsection (2) (c) goes to 025 (1) Subsection (2) (d) moved to 025 (3)</p>	<p><u>015 The solicitation process</u> Subsection (1) comes from 020 (1) and (3). Subsection (2) new organization Subsection (3) from 060 (2) (a)</p>
<p><u>070 Project ranking procedure</u> Subsections (1), (2), and (3) moved to 035 (1) and (2) Subsection (4) went to 145</p>	<p><u>035 Project ranking procedure</u> Subsections (1) and (2) from 070 (1), (2) and (3) Subsection (4) includes environmental law requirement from 001 (1) and 020 (5) but revised to give utility's more flexibility Subsection (5) includes current 020 (6)</p>
<p><u>080 Pricing and contracting procedures</u> Subsection (1) moved to 045 (1) Subsection (2) moved to 045 (3)</p>	<p><u>045 Pricing and contracting procedures</u> Subsection (1) from 080 (1) Subsection (2) is new Subsection (3) from 080 (2)</p>
<p><u>090 Security considerations</u> Deleted for redundancy</p>	
<p><u>100 Contract finalization</u> Subsection (1) rewritten in 075 (1) Subsection (2) moved to 075 (3) Subsection (3) moved to 075 (4)</p>	<p><u>75 Contract finalization</u> Subsection (1) similar to 100 (1) Subsection (3) comes from 100 (2) but revised to give utility's more flexibility Subsection (4) comes from 100 (3) Subsection (5) comes from 020 (4)</p>
<p><u>110, 120, 130 140, 150, 160</u></p>	<p><u>85,95, 105, 115, 125, 135</u> Rewritten for clarity only</p>
<p><u>170 Filings – Investigations – Exceptions</u> Subsection (3) deleted. Same as the new 003.</p>	<p><u>145 Filings – Investigations –</u></p>
	<p><u>099 Adoption by reference</u> New rule: it is equivalent to rules in other chapters</p>