BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

UE-030423 and UE-030311

Resource Acquisition, Chapter 480-107 Least Cost Planning Rulemaking, WAC 480-100-238	)	SUPPLEMENTAL COMMENTS OF THE INDUSTRIAL CUSTOMERS OF NORTHWEST UTILITIES

The Industrial Customers of Northwest Utilities ("ICNU") submits the following Supplemental Comments to the Washington Utilities and Transportation Commission ("WUTC" or "Commission") in the above-referenced Dockets. ICNU believes that it is appropriate to review and revise the Commission's rules relating to least cost plans ("LCPs"), resource acquisition, and competitive bidding. While significant changes regarding the least cost planning rule do not appear to be warranted at this time, the current rules regarding the determination of avoided costs for qualifying facilities ("QF") should be changed because they appear to have contributed to the lack of meaningful QF development in Washington. ICNU respectfully requests that the Commission open an investigation into the reasons for the lack of QF development in Washington, and revise its rules regarding competitive bidding to allow: 1) all QFs to

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enter into longer-term contracts; and 2) all QFs up to 40 megawatts ("MW") to obtain published avoided cost pricing.

I. BACKGROUND

In May 1987, the Commission adopted its original LCP rule that required utilities to file a plan every two years with the purpose of ensuring that each electric utility met its load with the appropriate mix of the least cost resources. The Commission subsequently acknowledged utility specific LCPs, and used the information and analysis in the LCPs in rate proceedings, but did not prospectively approve decisions included in a LCP.

In 1989, the Commission adopted competitive bidding rules to implement the provisions of the Public Utility Regulatory Policies Act ("PURPA"), which requires electric utilities to purchase electricity from qualifying small power producers and cogenerators. The competitive bidding process sought to determine the utility's avoided cost through a market, rather than an administrative, process. The Commission's competitive bidding rules have the objectives of "ensuring that regulated companies do not pay too much for purchased power resources, and ensuring that utilities compare opportunities in competitive wholesale markets with the cost of utility owned projects." [1/]

The development of QFs in Washington has not been successful, due in part to the Commission's competitive bidding rules. Washington's rules are well known throughout the region for discouraging the development of QFs and cogeneration

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1/ Re Notice of Inquiry: Examining Regulation of Electric Utilities in the Face of Changes in the Electric Industry, WUTC Docket No. UE-940932, Notice of Termination of Notice of Inquiry (Apr. 22, 1998).

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facilities. Currently, QFs represent only 1.7% of Washington nameplate capacity, substantially below the national average of 5.1%.[2/] Cogeneration resources have also failed to develop in Washington, with 3.3% of Washington's resources classified as cogeneration as opposed to the national average of 7.2%.[3/] This lack of development has occurred despite utility load growth. For example, PacifiCorp's Washington load has increased approximately 100 aMW, or by approximately 28% since 1988; however, PacifiCorp does not appear to have entered into any new QF contracts in Washington during that same period of time.

Other Northwest states have recently recognized that their avoided cost rules have contributed to a lack of QF development in the region. For example, the Idaho Public Utility Commission ("IPUC") recently amended its restrictive QF rules that had caused a dearth of QF development in Idaho.[4/] The new Idaho rules have directly contributed to a rebirth of QF development in Idaho. The Oregon Public Utility Commission ("OPUC") is also conducting an investigation regarding its avoided cost rules.[5/] Despite load growth, high power prices and utility resource acquisitions, the existing Oregon rules have allowed utilities to refuse to enter into contracts with cost-effective QF resources. Although a final order has not been issued in Oregon, no party

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[2/] Attachment 1 to ICNU's Supplemental Comments.

[3/] Id.

[4/] Re the Investigation of the Continued Reasonableness of Current Size Limitations for PURPA QF Published Rate Eligibility and Restrictions on Contract Length, IPUC Docket No. GNR-E-02-1, Order No. 29029 at 8 (May 21, 2002).

[5/] Re Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities, OPUC Docket No. UM 1129, Staff Report (Jan. 20, 2004).

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has supported the existing rules, and all parties have supported at least some changes designed to reduce the barriers to cost-effective QF development.

In March 2003, the Commission opened two new dockets regarding its least cost planning rules and its competitive bidding requirements. The new rules proposed by the Commission Staff did not significantly modify the requirements to the rules regarding LCPs and competitive bidding. Interested parties, including ICNU, submitted initial comments on May 16, 2003. ICNU's initial comments addressed the need for and purpose of LCPs, the consideration of alternatives, and generic issues regarding competitive bidding. In June and December 2003, the Commission Staff published summaries of the comments and responses to the comments of interested parties. In a notice of opportunity to submit written comments, the Commission has requested additional comments on its LCP and competitive bidding rules by May 13, 2005.

II. COMMENTS

1. Commission Acknowledgement of a Utility's LCP Should Not Constitute "Pre-Approval"

ICNU's initial comments pointed out that issues regarding prudence, and used and usefulness should be considered in a rate case setting, not the LCP process.[6/] Some parties have suggested that the Commission formally approve LCPs that would create a rebuttal presumption of prudence in rate proceedings.[7/] The Commission Staff's response concluded that the Commission should continue to "acknowledge" utility LCPs,

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6/ ICNU Comments at 2.

7/ *E.g.* PacifiCorp Comments at 5.

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but that acknowledgement should not be considered pre-approval. ICNU agrees with the Commission Staff that utility LCPs are useful information that should be utilized in prudency reviews, but should not constitute formal approval or otherwise change the utility's burden of demonstrating prudence.

A LCP should not substitute for actual management of the utility, and a utility should retain the discretion to prudently depart from a LCP's recommended course of action. For example, circumstances between the time of the LCP and the utility resource decision can change, and the utility should not be precluded from taking actions that deviate from the LCP if they benefit ratepayers. In addition, the least cost planning process should not replace a through prudency review. Although the least cost planning process is long, it is primarily an information gathering process with the utility controlling the information that is provided. In addition, the least cost planning process is less rigorous and adversarial than a prudency review. Staff and intervenors should not be required to raise their prudency concerns in a LCP, especially when the rate impacts of a utility's resource acquisition decisions may not be known for years. ICNU and the Commission Staff's position is consistent with the Commission's existing policy that the review of a LCP should not "constitute any form of preapproval of utility expenditures."[8/]

8/ Re Notice of Inquiry: Examining Regulation of Electric Utilities in the Face of Changes in the Electric Industry, WUTC Docket No. UE-940932, Notice of Termination of Notice of Inquiry (Apr. 22, 1998).

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2. The Least Cost Planning Process Should Be Focused on the Utility Obtaining the Lowest Cost Resources to Meet Its Customers' Needs

In its initial comments, ICNU stated that least cost planning is a useful tool for comparing and judging utility decisions that should be focused on ensuring that the utility provides reliable, low cost power to customers.[9/] ICNU urged the Commission to reject efforts for the Commission to "use this process to: 1) require utilities to consider environmental 'externalities' in resource decision-making; 2) establish portfolio management benchmarks and incentives; 3) establish how non-mandated commitments to mitigate carbon dioxide emissions fit into least cost planning; and 4) implement performance-based ratemaking and decoupling."[10/] Numerous parties requested that the least cost planning process be used to increase electricity rates to further other social goals, including reducing certain emissions or combating global warming. For example, the Washington Department of Trade and Economic Development ("DTED"), an agency ostensibly dedicated to the development of Washington's struggling economy, proposed that the "lowest total cost" include a broad array of undefinable social and environmental costs, including the costs of complying with environmental laws that have not been passed.[11/]

The Commission Staff response on these issues was contradictory. The Staff asserted that externalities should be included in LCPs, but that the rules should not be revised to include "other more controversial issues, which have yet to be generally

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9/ ICNU Comments at 2-3.
10/ Id.
11/ DTED Comments at 2.

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accepted . . . ."[12/] Staff's standard for determining which externalities to include in LCPs is nebulous as it is unclear what issues will be considered "generally accepted."

ICNU agrees that the least cost planning process should include the actual economic costs of resources, including the costs of complying with existing federal and state environmental laws. However, it is inappropriate to require customers to pay higher electric rates by including the costs of complying with environmental laws that have not been passed. Instead of attempting to determine how ratepayers should pay for the costs of mitigating alleged social and environmental ills, the least cost planning process should be focused on ensuring that utilities only develop the lowest cost electric resources. Likewise, the least cost planning process should not be used as a forum to require utility ratepayers to pay for alleged social and environmental "costs" that the state and federal legislatures have chosen not to address.

The least cost planning process should also incorporate the recognition of the near-term impacts of a utility's proposed resource acquisition plans. Near-term rate impacts should receive a higher priority than long-term cost projections. First, long-term projections are invariably inaccurate. In addition, the value of a long-term least cost resource is much lower than the value of a near-term least cost resource because current ratepayers are struggling to compete. At a minimum, if resources have similar long-term cost impacts, the LCP should favor the resource with the lowest near-term costs.

Staff agreed with ICNU that decoupling should not be considered in the least cost planning process because it "is a ratemaking issue, and an evaluation of any

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[12/] Staff Response at 4.

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such proposal belongs within a rate case where company specific issues can be considered . . . ."[13/] ICNU supports Staff's conclusion regarding decoupling.

3. The Competitive Bidding Rules Should Be Changed So that They No Longer Unnecessarily Limit the Development of Cost-Effective QFs in Washington

The proposed Commission rules appear to continue to provide electric utilities with the discretion to refuse to enter into contracts with cost-effective QFs. Under the rules, the avoided costs for all QFs larger than 1 MW will be the lowest bid among the acceptable project proposals in the last competitive bidding process.[14/] A QF that participates in the competitive bidding process may be rejected, even if it is the lowest bid.[15/] QFs smaller than 1 MW may elect a utility's standard tariffs without participating in the bidding process.[16/] However, the utility remains free to negotiate contract terms for QFs, including the QF contract length.[17/] The existing rules contain similar language. These rules may violate PURPA if they do not provide all cost-effective QFs with an opportunity to sell electricity to the utilities at their actual avoided costs.

The competitive bidding process in the current and proposed Washington rules appears to be a barrier to the development of cost-effective QF resources because it allows utilities to refuse to enter into meaningful contracts with QF developers. PURPA was passed because Congress sought to diversify the supply of electric power by

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[13/] Id. at 9.
[14/] Proposed WAC § 480-107-055.
[15/] Proposed WAC § 480-107-045.
[16/] Proposed WAC §§ 480-107-015, -095.
[17/] Proposed WAC §§ 480-107-045, -075.

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developing cost-effective non-utility resources.[18/] Congress sought to encourage the development of these non-utility resources by removing structural barriers imposed by utilities that prevented independent small power producers and cogeneration resources from selling electricity to utilities at reasonable prices.[19/] PURPA was not intended to require ratepayers to subsidize these non-utility resources, but allow cost-effective QFs to sell to the utilities at the utilities' avoided cost, or the cost that the utility would have to pay for incremental resources.

The current and proposed Washington rules are likely to continue to allow utilities to impose barriers to the development of QFs and harm ratepayers. Successful implementation of PURPA, and the development of cogeneration resources in particular, should benefit Washington ratepayers and the electric power system. Ratepayers can benefit from the development of QFs and cogeneration resources because they increase the sources of electricity to meet the utilities' energy needs, lower the price of electricity by relying upon private investment, and reduce ratepayer risks by requiring the QF to bear the cost of upgrades or plant failures. The failure to properly implement PURPA can also harm ratepayers by requiring them to pay for more expensive, less efficient utility-owned resources. However, ratepayers can also be harmed from overly aggressive PURPA implementation if utilities are required to enter into contracts with QFs at prices above the utilities' actual avoided costs. ICNU recommends that the Commission address these issues by adopting ICNU's proposed interim changes and opening an

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18/ Fed. Energy Regulatory Comm'n v. Mississippi, 456 U.S. 742 (1982).
19/ Id; Swecker v. Midland Power Coop., 105 F.E.R.C. ¶ 61,238 (2003).

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evidentiary investigation to revise Washington's avoided cost rules to allow cost-effective QFs to sell their electricity to utilities.

The Commission's final rules in this proceeding should include a specific contract length requirement that requires utilities to enter into contracts with QFs for the lesser of twenty years or the economic life of the QF facility. The lack of specified contract term for all QF developers may have unnecessarily hindered QF development in Washington. A utility can harm QF development by proposing short contract terms that make it difficult for QF developers to obtain reasonable financing because QF developers typically need financing equal to the economic life of the project. Lenders are reluctant to offer financing for terms longer than either the economic life of the project or the QF contract with the utility. At a minimum, QF purchases should have a contract term that is comparable to the utility's avoided resource.

The limitation of standard avoided cost schedules for all QFs above 1 MW also appears to have hindered QF development in Washington. QF developers over 1 MW must participate in a competitive bidding process, and then enter into bi-lateral negotiations with the electric utilities. This process seems to have provided the utilities, which have superior bargaining positions and well-known incentives to refuse to purchase from QFs, an opportunity to refuse to enter into QF contracts. The Commission should remedy this problem, in part, by allowing all QFs below 40 MWs to enter into standard contracts at published avoided cost rates.

ICNU also believes that the utilities' avoided costs should not become outdated and the utilities should be required to conduct timely competitive bids. This is

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especially true if QFs are expected to participate in the competitive bid, or if avoided costs for QFs will only be set if there have been recent competitive bids. In the past, some utilities have sought waivers of the requirement to conduct competitive bids because they allegedly did not have a need for new resources. For example, PacifiCorp claims that it has not conducted a competitive bid pursuant to the Washington rules since the early 1990s.[20/] Despite not conducting a competitive bid, PacifiCorp has acquired new resources through its service territory, its Washington load has grown, and its subsidiary Pacific Power Marketing has built the largest single wind farm in the United States, which is at least partially located in southeastern Washington. It is inappropriate to use the competitive bidding process to set a QF's avoided cost if the avoided cost information is based on outdated competitive bidding information that does not reflect the utility's actual, current avoided costs.

ICNU's proposals to increase the standard size eligible for standard avoided cost schedules and adopt longer contract terms may not fully remedy the problems facing cost-effective QFs in Washington. For example, ICNU's proposals may not eliminate certain disincentives inherent in the competitive bidding process or significantly aid cost-effective QFs larger than 40 MWs. ICNU also recommends that the Commission open an investigation and take evidence regarding the reasons for the lack of QF development in Washington and the appropriate solutions to remedy this problem. Simply taking comments from interested parties on the Commission's proposed rules

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[20/] PacifiCorp Comments at 3.

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may not provide sufficient information for the Commission to allow cost-effective QF developers to sell electricity to Washington utilities.

III. CONCLUSION

ICNU appreciates the opportunity to comment on the Commission's proposed rule changes. ICNU intends to participate in the upcoming Commission workshop and may have further comments as these rulemakings proceed.

Dated this 13th day of May, 2005.

Respectfully submitted,

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