**Docket UE-030423 - Attachment A**

**Docket UE-030423 – ELECTRIC COMPANIES--PURCHASES OF ELECTRICITY FROM QUALIFYING FACILITIES AND INDEPENDENT POWER PRODUCERS, AND PURCHASES OF ELECTRICAL SAVINGS FROM CONSERVATION SUPPLIERS**

**Stakeholders' comments to CR-102 proposed language**

| | **GENERAL COMMENTS** |
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| **Stakeholder** | **Comment** |
| NRDC/NIPPC/ NWEC/RNP/ PacifiCorp/PSE | Stakeholders request an additional round of informal comments and possibly another workshop because the proposed rules do not produce a long-overdue overhaul of Chapter 480-107 WA. |
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| | **RFPs for specific resource types** |
| **Stakeholder** | **Comment** |
| NWEC | Current language at 480-107-015 (3) seems to require the utility to issue an all source RFP before being able to issue a resource specific RFP. This is emphasized in 480-107-025 (2) that states that "… the RFP must identify a resource block consisting of the overall amount and duration of power the utility is soliciting through the bidding process. With the Commission's decision on 2003 PSE's RFP for wind power resources, requiring the Company to also issue an all source RFP, stakeholders received a clear message that focused RFPs were not encouraged. Suggested language is in Attachment B, 480-107-015 (3) and 480-107-025 (2). |
| PacifiCorp | It is unclear whether all RFPs must be all-source bids. Proposed WAC 480-107-065 states that "any conservation supplier may participate in the bidding process," and proposed WAC 480-107-015(2)(b) requires a utility to solicit bids for "electric power *and* electric savings within thirty days of a commission order approving the RFP." On the other hand, the definition of RFP in proposed WAC 480-107-007 refers to a solicitation of bids for "delivering electric capacity, energy, or capacity and energy, *or* conservation." |

| Stakeholder | Comment |
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| | **Ranking criteria** |
| **Stakeholder** | **Comment** |
| NWEC | The current landscape shifts a utility in favor of owning rather than "renting." Ownership of a resource carries many risks and benefits for ratepayers different from those involved with renting a resource. They include potentially lower cost but higher construction and operations risk. A resource solicitation should recognize these differences. |
| CCW | Proposed WAC 480-107-035 can be interpreted as implicitly accepting the inclusion of debt equivalence in the criteria to be used in reviewing proposals: *"evaluate and rank project proposals [based on], among other items, the credit and financial risks to the utility."* While this is a generic reference to any financial risk, it can easily include imputing additional costs to long-term purchase power agreements on the basis of debt equivalence. This would allow a utility to include in the criteria by which proposals are ranked a factor for imputed debt. While draft RFPs and their proposed ranking criteria are filed for Commission review, that Commission review may simply determine that some "consideration" of imputed debt is permissible. There would be no direct and final determination of how imputed debt should be applied or quantified, or that it is justified in any particular circumstance. The utility's evaluation of the RFP responses may never be filed at the Commission, and there may be no opportunity for Commission review of how the utility applied the criteria of financial risk. And if the evaluations are filed with the Commission, it would likely be under seal so that none of the suppliers could review and question the treatment of imputed debt.<br>CCW recommends that the consideration of imputed debt be judiciously regulated and restricted until the Commission can conduct further inquiry into how this factor should be applied. |
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| | **Utility publication of RFPs** |
| **Stakeholder** | **Comment** |
| NWEC | The proposed rules place the burden of discovery on the public 480-107-015 (4). NWEC suggests including a provision that utilities should distribute their RFP far and wide, including publication of the final RFP. |

| | **Qualifying Facilities (QFs)** |
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| **Stakeholder** | **Comment** |
| ICNU | 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 enter into longer-term contracts; and 2) all QFs up to 40 megawatts ("MW") to obtain published avoided cost pricing.<br><br>Currently, QFs represent only 1.7% of Washington nameplate capacity, substantially below the national average of 5.1%. 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%.<br><br>The Commission's final rules should include a specific contract length requirement that mandates utilities to enter into contracts with QFs for the lesser of twenty years or the economic life of the QF facility. 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.<br><br>The Commission should allow all QFs below 40 MWs to enter into standard contracts at published avoided cost rates. ICNU also refers to the investigation being conducted in Oregon and Idaho. |
| CCW | FERC regulations impose on utilities an absolute obligation to sell to QFs, while the proposed rule may qualify that absolute requirement. In WAC 408-107-095, the current proposed rule provides:<br>(2) A utility must sell to any 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.<br><br>It is arguable whether there are any customers in a class equivalent to QFs. This proposed wording qualifies the absolute obligation. It is unclear whether the phrase "on the same basis" refers to the availability of the service or its pricing terms and conditions. CCW recommends revising this paragraph to mirror the FERC regulation, at 18 CFR §292.303 and 292.305, to clearly make it an absolute service obligation. The appropriate pricing would be determined pursuant to WAC 480-107-105, which can consider service to comparable customers. See suggested language in Attachment B, 480-107-095 (2). |

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| NWEC | Clean distributed generation can and should play a key role in the region in reducing stress on the transmission and distribution system, enhancing our energy security and providing local economic benefits. Ensuring that the rules related to qualifying facilities are clear and updated is critical to this effort. The Oregon Public Utility Commission and the Idaho Public Utilities Commission currently have open dockets regarding PURPA. An additional round of informal comments would provide an opportunity to learn from the processes taking place in Oregon and Idaho. |
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| | **Environmental externalities** |
| **Stakeholder** | **Comment** |
| NWEC | See suggested language in Attachment B, WAC 480-107-035(2). |
| ICNU | Urges the Commission not to use this process to: (1) require utilities to consider environmental 'externalities' in resource decision-making or (2) to establish how non-mandated commitments to mitigate carbon dioxide emissions fit into this process. |
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| | **Pre-approval/Post RFP approval** |
| **Stakeholder** | **Comment** |
| NWEC | The regulatory tool available to the Commission – future disallowance of costs – is blunt and impractical for the task of making sure that a utility's decisions are the right combination of least cost and least risk. Years after a decision has been made, it is difficult to second guess a utility's choices and to determine the effect of any particular resource decision compared to a result if a different choice had been made. |
| ICNU | Utility's LCPs are useful information that should be utilized in prudence reviews, but should not constitute formal approval or otherwise change the utility's burden of demonstrating prudence. |
| PacifiCorp | Recommends a process whereby a utility could obtain regulatory approval before committing significant expenditures to develop or acquire new resources. This process could be optional and not part of the RFP, but it would be identified in advance. It would be available to utilities seeking greater certainty of cost recovery and it would provide stakeholders and regulators an opportunity to submit their views at a timely stage.. This process is in place in Utah. |

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| PSE | PSE proposes a process through which a utility could obtain a determination from the Commission that it is prudent to move forward with acquisition or development of a resource prior to finally committing the utility to that course of action. The utility's implementation of any such acquisition or development would continue to be subject to a prudence review in an appropriate future proceeding but the prudence of the initial decision to proceed would not be revisited in such future proceedings. For a multi-year or multi-phase project, a utility might return to the Commission at subsequent stages of project development to obtain a determination that moving forward with the next phase of the project is prudent.<br>These ex ante prudence determinations would not include incorporating into rates the funds that are anticipated to be invested in the new resource. However, utilities would still have the ability to request – as part of a ratemaking proceeding -- inclusion in rates of funds that have already been invested in a project (Construction Work In Progress) prior to final project completion. *See* RCW 80.04.250.<br><br>The proper timing for the initial prudence determination would be after a utility conducts a WAC Chapter 480-107 RFP process or similar resource alternative analysis.<br><br>See suggested language in Attachment B. |
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| | **Avoided Costs** |
| **Stakeholder** | **Comment** |
| PSE | It would be a mistake to determine that a utility's "avoided costs" are represented by the least cost project proposal that is submitted to a utility in response to a request for proposals. The contract negotiation and finalization process may result in an outcome of the competitive bidding process that is less costly than the most attractive proposal as submitted. Alternatively, none of the proposals may be least costly than other alternatives available to a utility, including wholesale market purchases. This latter option was not generally available at the time PURPA was enacted, but it seems wise to take such current industry information into account in updating Chapter 480-107 WAC. |

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| CCW | The proposed regulations in WAC 480-107-055(2) require the utility's avoided cost schedule filed within 12 months of an RFP to be based on the results of that RFP. CCW suggests:<br>• The regulations should be clear that the utility cannot manipulate the RFP prices with adjustments for extraneous costs not reflected in RFP responses.<br>• CCW remains concerned about the application of the avoided cost schedules to resources of varying characteristics. This is particularly a problem for the small projects for which the avoided cost schedule is "the basis for prices offered." WAC 480-107-055(6). The RFP may have sought bids for wind resources while the new resource to which the avoided cost would apply is a baseload gas-fired facility providing valuable capacity. The avoided cost rule should be amended to allow projects less than 1 MW to either accept pricing under the avoided cost schedule or opt to negotiate.<br>• It is implied in Paragraph (1) of 480-107-055 that the avoided cost schedule will include prices for both energy and capacity. CCW supports separate pricing for the two components. If the language was not intended to require both prices, it should be clarified to do so.<br><br>See suggested language in Attachment B, WAC 480-107-055(2) and (6). |
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| | **Flexibility** |
| **Stakeholder** | **Comment** |
| PacifiCorp | Proposed language removes flexibility for utilities working in several jurisdictions by making it clear that a utility must submit an RFP within 90 days of an IRP (proposed WAC 480-107-015(2 )) and allowing an exception from this requirement only if such IRP demonstrates that the utility does not need additional capacity within three years (proposed WAC 480-107-001 (2)). This is reinforced by the requirement that "prior written authorization" is necessary before exceptions are granted and deviations from the rule "will be subject to penalties as provided by law." (proposed WAC-107-002(3)).<br>PacifiCorp will not be able to simultaneously comply with these rules and with similar requirements in other jurisdictions. |
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| | **Independent Evaluator** |
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| **Stakeholder** | **Comment** |
| PacifiCorp | Proposed WAC 480-107-035(6) requires that a competing bidder bear the cost of an independent evaluator when a utility subsidiary of affiliate participates in an RFP. It seems odd that the bidder that is potentially disadvantaged by the utility's decision be forced to bear such costs. The provision could create a barrier to market participation. At the same time, proposed WAC 480-107-135 contains an extensive discussion of the procedure to be followed by utilities before their subsidiaries or affiliates may participate in an RFP for conservation resources. The two provisions are inconsistent with one another, since the former provision requires a competing bidder to bear the cost of he utility's ability to comply with the latter provision. |
| | **Remedy for rejection of all bids** |
| **Stakeholder** | **Comment** |
| PacifiCorp | Proposed WAC 480-107-035 permits the utility to reject all project proposal and the remedy is to review the appropriateness of that action in the utility's next general rate case. Proposed WAC 480-107-075 allows a rejected bidder to "petition the commission for reviewing the utility's decision not to enter into a final contract. These remedies seem to be inconsistent and create an ambiguity that does not exist under the current rules. |