

Docket UE-030423 – 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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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 utilities must use to acquire new resources. 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 rules in this chapter do not apply to utilities whose integrated resource plan, prepared pursuant to WAC 480-100-238, demonstrates that the utility does not need additional capacity within three years.

(3) The commission will consider the information obtained through these bidding procedures when it evaluates the performance of the utility in rate and other proceedings.

(4) 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 a utility's obligation to purchase power from qualifying facilities under section 210 of PURPA.

WAC 480-107-002 Application of rules. (1) The rules in this chapter apply to any 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 or application of these rules by a 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.

(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.

WAC 480-107-004 Additional requirements. (1) These rules do not relieve any 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 utility in appropriate circumstances, consistent with the requirements of law.

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.

WAC 480-107-007 Definitions. "**Affiliated interest**" means a person or corporation as defined in RCW 80.16.010.

"**Avoided costs**" means the incremental costs to a 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. A utility's avoided costs are the prices, terms and conditions of the least cost final contract entered into as a result of the competitive bidding process described in this rules. In the event no final contract is entered into as a result of an RFP issue by a utility under these rules, the utility's avoided costs are the lesser of: (1) the price, terms and conditions set forth in the least cost project proposal that meets the criteria specified in the request for proposal, or (2)

current projected market prices for power for the time period that is consistent with the resource acquisition proposed in the RFP.

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

"Commission" means the Washington utilities and transportation commission.

"Conservation" means any reduction in electric power consumption that results from increases in the efficiency of energy use, production, or distribution or from demand response or load management measures that reduce peak capacity demand.

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

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

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

"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 this section.

"Integrated resource plan" or **"IRP"** means the filing made every two years by a utility in accordance with WAC 480-100-238, Integrated resource planning.

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

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

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

"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, also known as a bid.

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

"Request for proposals" or **"RFPs"** means the documents describing a utility's solicitation of bids for delivering electric capacity, energy, or capacity and energy, or conservation.

"Resource block" means the deficit of capacity and associated energy that the IRP shows for the near term.

"Subsidiary" means any company in which the utility owns directly or indirectly five percent or more of the voting securities, and that may enter a power or conservation contract with that electric utility. A company is not a subsidiary if the

utility can demonstrate that it does not control that company.

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

"Utility" means an electric utility as defined by RCW 80.04.010. Any public service company engaged in the generation, distribution, sale, or furnishing of electricity, and that is subject to the jurisdiction of the commission.

WAC 480-107-015 The solicitation process. (1) Any owner of a generating facility, developer of a potential generating facility, marketing entity, or provider of energy savings may participate in the RFP process. Bidders may propose a variety of energy resources including: Electrical savings associated with conservation; 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 megawatt or less may choose to participate in the utilities' standard tariffs without filing a bid.

(2) A 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 affiliated interest. Such a decision must be explained in the utility's RFP submittal.

(3) Timing of the solicitation process.

(a) A 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) A 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.

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

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

WAC 480-107-025 Contents of the solicitation. (1) The RFP must specify the resource block, the initial estimate of 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 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.

(3) The RFP must explain general evaluation and ranking procedures the 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) Utilities are encouraged to consult with commission staff during the development of the RFP. Utilities may, at their own discretion, submit draft RFPs for staff review prior to formally submitting an RFP to the commission.

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

(2) At a minimum, the ranking criteria must recognize resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, credit and financial risks to the utility, the risks imposed on ratepayers, public policies regarding resource preference adopted by Washington state or the federal government and environmental effects including those associated with resources that emit carbon dioxide. The ranking criteria must recognize differences in relative amounts of risk inherent among different technologies, fuel sources, financing arrangements, and contract provisions. The ranking process must complement power acquisition goals identified in the utility's integrated resource plan.

(3) After the project proposals have been opened for ranking, the 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 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) The utility may reject all project proposals if it finds that no proposal adequately serves ratepayers' interests. The commission will review, as appropriate, such a finding together with evidence filed in support of any acquisition in the utility's

next general rate case or other cost recovery proceeding.

(6) When the utility, the utility's subsidiary or an affiliated interest submits a bid in response to an RFP, a competing bidder may request the commission to appoint an independent third party to assist commission staff in its review of the bid. Should the commission grant such a request, the fees charged by the independent third party will be paid by the party requesting the independent review.

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 utility must identify the bidders 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 project proposal'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 utility will adjust the price by operating performance adjustments, such as the project's equivalent availability factor. The methodology for such performance adjustments must be explained in the utility's RFP.

WAC 480-107-055 Avoided cost schedules. (1) On an annual basis, a utility must file an avoided cost schedule for the energy and capacity associated with the resource block the utility solicited in its most recent RFP filed pursuant to WAC 480-07-025, Contents of the solicitation.

(2) Avoided cost schedules are to be based upon: (i) the most recent project proposals received pursuant to an RFP issued under these rules, (ii) estimates included in the utility's current integrated resource plan filed pursuant to WAC 480-100-238, (iii) the results of the utility's most recent bidding process, and (iv) current projected market prices for power. The utility must file documentation supporting its estimated avoided cost schedule.

(3) Utilities may revise an avoided cost schedule at any time. Such revisions must be filed with the commission and are subject to commission approval.

(4) The avoided cost schedule provides only general information to potential bidders about the costs of new power supplies. Except as indicated in subsection (5), it does not provide a guaranteed contract price for electricity.

(5) For projects rated at one megawatt capacity or less, the avoided costs specified in the current approved tariff will be the basis for prices offered.

WAC 480-107-065 Eligibility for long-run conservation purchase rates. (1) Any conservation supplier may participate in the bidding process. A 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 affiliated interest. A decision to allow a utility subsidiary to participate must be explained in the 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 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 utility's integrated resource plan; and

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

WAC 480-107-075 Contract finalization. (1) Unless otherwise prohibited by law, a 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's decision not to enter into a final contract.

(2) Any project bidder and 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 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 utility must suspend contract finalization with that party and rerank 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 instead pursue contract finalization with the 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 utility.

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

(a) The owner or operator will construct and operate all interconnected generating facilities and interconnection facilities 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 utility, such relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus as determined by the utility to be necessary for the safe and reliable operation of the generating facility in parallel with the utility's system; and

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

(2) The 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 a 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.

WAC 480-107-095 Obligations of the utility to qualifying facilities. (1) A utility must purchase electric energy, electric capacity, or both from a qualifying facility on terms that do not exceed the utility's avoided costs for such electric energy, electric capacity, or both. Qualifying facility developers proposing projects with a design capacity of one megawatt or less may choose to receive a purchase price for power that is set forth in the utility's standard tariff for purchases from qualifying facilities rated at one megawatt capacity or less. Such standard tariff may be based upon market prices and include incremental costs associated with purchasing small quantities of power.

(2) A 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) Any 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) At the request of a qualifying facility, a utility that would otherwise be obligated to purchase energy or capacity from such qualifying facility may transmit energy or capacity to any other utility at the option of the utilities involved. Nothing in this section obligates the 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) Each 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.

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 utility.

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

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

(ii) Place an undue burden on the 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 a 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.

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 a utility during a system emergency only to the extent:

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

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

(2) During any system emergency, a 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.

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 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 utility for any reasonable interconnection costs the utility may incur. Such reimbursement 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 not greater than the length of any contract between the utility and the generating facility.

WAC 480-107-135 Conditions for purchase of electrical power or savings from a utility subsidiary or affiliated interest. (1) The utility's subsidiaries and affiliated interests 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 utility's subsidiary or affiliated interest. Commission scrutiny will ensure that ratepayer interests are protected.

(2) As part of its RFP, a utility must include specific notice that the utility intends to allow its subsidiaries and affiliated interests to participate in its bidding process. The utility must indicate in its RFP submittal how it will ensure that its subsidiary or affiliated interests will not gain an unfair advantage through association with the utility over potential nonaffiliated competitors. Specifically, disclosure by a utility to its subsidiary or affiliated interests 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 affiliated interest's project(s), upon a showing that any unfair advantage was given to the subsidiary or any other bidder.

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

(2) The 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.

WAC 480-107-999 Adoption by reference. 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.