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***Via Electronic Filing***

Mr. Steven V. King  
Executive Director  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Pk. Dr. S.W.  
P. O. Box 47250  
Olympia, WA 98504-7250

Re: In the Matter of WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION  
Rulemaking for Integrated Resource Planning  
**Docket No. U-161024**

Dear Mr. King:

Enclosed please find the Comments of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch  
Jesse O. Gorsuch

Enclosure

**BEFORE THE**  
**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of	)	DOCKET NO. U-161024
Amending and Adopting Rules in	)	
WAC 480-107 Rulemaking to consider	)	COMMENTS OF THE INDUSTRIAL
Whether revisions are necessary to better	)	CUSTOMERS OF NORTHWEST
outline a utility’s obligation to a PURPA	)	UTILITIES REGARDING
qualifying facility.	)	OBLIGATIONS OF THE UTILITY TO
	)	QUALIFYING FACILITIES, WAC 480-
	)	107-105
	)	
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**I. INTRODUCTION**

1                   On March 16, 2017, the Washington Utilities and Transportation Commission (“WUTC” or the “Commission”) issued notice that it would receive comments regarding revisions of WAC 480-107 that outline a utility’s obligation to a Public Utility Regulatory Policies Act (“PURPA”) qualifying facility (“QF”). The Industrial Customers of Northwest Utilities (“ICNU”) welcomes the invitation to participate in this rulemaking docket and submits these comments regarding PURPA rates and practices, especially issues relating to avoided cost methodology and standard practices.

**II. COMMENTS**

2                   ICNU appreciates the Commission’s decision to allow for stakeholder participation in its consideration of whether to revise WAC 480-107. The Commission’s questions regarding revisions to WAC 480-107 address many significant concerns associated

with QFs and utilities.<sup>1/</sup> The following comments address certain topics which ICNU hopes the Commission will consider in determining how best to revise WAC 480-107.

**A. Avoided Cost Methodology**

**1. What is the appropriate avoided cost methodology for calculating QF energy and capacity rates?**

3 For standard rates, ICNU generally supports calculating energy and capacity rates for QFs based on a combination of a proxy method for avoided capacity costs and the Partial Displacement Differential Revenue Requirement (“PDDRR”) methodology. For non-standard rates, ICNU supports the existing Washington methodologies based on competitive bidding, although it would be reasonable for the PDDRR pricing to serve as a cap for proposals in a competitive bidding process.

4 When considering the reasonableness of any methodology, a key consideration is whether ratepayers will be held harmless based on pricing the methodology produces. ICNU believes that a proxy method for capacity costs and the PDDRR method for energy costs is consistent with a held-harmless standard, both in terms of avoided energy and capacity costs. The Utah Public Service Commission uses this methodology to establish PacifiCorp’s standard avoided cost rates.<sup>2/</sup> At a high level, for determining the avoided capacity cost, the methodology identifies a proxy resource based on the next deferrable generating unit in the utility’s most recent integrated resource plan (“IRP”) and converts the capital and non-fuel variable O&M costs into a cost per kW. The PDDRR method calculates the avoided energy cost by simulating

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<sup>1/</sup> Notice of Opportunity to File Written Comments (Mar. 16, 2017).

<sup>2/</sup> Re Application of PacifiCorp for Approval of an IRP-Based Avoided Cost Methodology for QF Projects Larger than One Megawatt, U.P.S.C. Docket No. 03-035-14, Report and Order at 7-9 (Oct. 31, 2005).

the utility's power costs over a certain period (i.e., 20 years) including the next planned resource in the IRP, then simulating the utility's power cost over the same period by including a QF resource dispatched at zero energy cost and reducing the capacity of the IRP resource to equal the capacity value of the QF resource. The difference between the two simulations provides the avoided energy cost.

5                   When dealing with large commercial energy developments, competitive bidding is appropriate. Large developments impose unique costs and risk on ratepayers. Therefore, ICNU believes such developments are better considered within the context of a utility's overall resource needs.

**2. Are there multiple methodologies that may be appropriate for calculating the energy and capacity payments, depending on its circumstances? If so, what criteria should the Commission use to identify the most appropriate methodology for a specific utility, at a specific point in time?**

6                   ICNU does not support using multiple methodologies for calculating the energy and capacity payments. In ICNU's experience, the use of multiple methodologies results in multiple options, unnecessary complexity, and may lead to unintended consequences. There was a time when Oregon used many different avoided cost pricing streams, indexed to the cost of gas.<sup>3/</sup> These schedules were rarely used in standard avoided cost contracts, and ultimately became obsolete. Oregon does have separate renewable and non-renewable avoided cost pricing streams in order to recognize the value of environmental attributes produced by resources eligible for the state's renewable portfolio standard. ICNU does not necessarily oppose this

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<sup>3/</sup> Investigation Into Qualifying Facility Contracting and Pricing, O.P.U.C. Docket No. UM 1610, Order 14-058 at 2 (Feb. 24, 2014).

concept, but notes that the method for establishing a price adder for renewable attributes will require careful consideration.

**3. Is it appropriate for a utility to calculate separate avoided capacity rates based on short-run and long-run resource requirements?**

7 Yes. ICNU supports the Commission’s use of both short-run and long-run capacity rates for calculating avoiding costs. As ICNU understands the question, under such a structure, different capacity rates are provided during forecast periods of resource sufficiency and resource deficiency. When the utility is resource sufficient—i.e., the period prior to when a utility expects it must build a utility-scale capacity resource—capacity rates should be based on the potential capacity cost associated with forward market purchases. When a utility is resource deficient—i.e., the period after the Company expects to build a new capacity resource—capacity rates should be based on the cost of a similar, proxy capacity resource, such as a combined cycle combustion turbine or a simple cycle combustion turbine.

8 A capacity resource, such as a combined cycle combustion turbine, is dispatchable, can carry reserves, and provides other benefits that a typical QF does not provide. Accordingly, the long-run pricing in the PDDRR method includes a partial displacement calculation, which compares the dispatchable energy value of the thermal capacity resource to the energy value of the expected QF contract energy profile. This final step of the calculation is important to ensure that the capacity value of the QF and that of the proxy resource are compared on an “apples-to-apples” basis.

**4. Should avoided costs be separated to reflect each type of resource’s capacity value through a peak credit, Effective Load Carrying Capability (“ELCC”), or some other calculation?**

9 ICNU supports using differing capacity contribution values for different resource types. The Commission, however, should not require all utilities to use the same methodology to determine these capacity contribution values. The calculations underlying these methodologies are highly complex, and different utility-specific models are not necessarily suited to performing one specific type of capacity calculation. In Docket UM 1719 before the Oregon Public Utility Commission, for example, ICNU supported the use of the ELCC method, but did not oppose using the Capacity Factor approximation method as an alternative, so long as it was performed in a manner that achieved results similar to the ELCC method.

10 In this rulemaking, it is neither necessary, nor practical, for the Commission to consider all the diverse ways in which capacity contribution calculations can be performed under these various methodologies. Accordingly, the methodology used in the utility’s IRP is adequate for determining capacity contributions for the various types of QF resources.

**B. Standard Practices**

**1. What should be the maximum design capacity of a facility to qualify for the standard offer? Should the Commission differentiate between types of resources for determining the maximum design capacity of a facility to qualify for a standard contract?**

11 ICNU believes that the threshold for a standard offer, which is referred to as the “Eligibility Cap,” should remain at 1 megawatt (“MW”) or less.<sup>4/</sup> This threshold serves two

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<sup>4/</sup> WAC 480-107-095(2).

purposes. First, the standard offer ensures that small generators such as those associated with dairy or landfill methane digesters have a buyer for their output at a predictable price. The investor in such standard offer-sized generators can then forecast potential revenues based on the published terms, and make investment decisions accordingly. The uncertainties associated with negotiating with the utility over terms, conditions, and price are minimized or eliminated.

12 In contrast, large commercial generators have more significant impacts on costs, and therefore, need to be subject to greater scrutiny than that provided in the standard offer. Unlike the typical small generator located in Washington, big project owners are predictably sophisticated and financially secure investors that can negotiate with utilities on an equal footing.

13 Finally, and consistent with the above point, Washington's standard offer ensures that large discrepancies between average MW and nameplate MW are avoided. The small generator size subject to the standard offer helps bring relative harmony to the relationship between the MW's delivered to the system and the price paid by the utility and its ratepayers.

14 The Commission also asks whether the resource type should affect the eligibility cap. ICNU sees no benefit to differentiating between resource types when establishing the eligibility cap. PURPA seeks to make ratepayers indifferent to the generator used to provide electricity.<sup>5/</sup> The same should hold true for the Commission.

**2. For the purpose of setting the maximum design capacity of a facility to qualify for a standard contract, is it necessary for the Commission to set a minimum distance between QFs belonging to the same owner? If so, what is the appropriate distance or test for determining a minimum distance?**

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<sup>5/</sup> Re Investigation Relating to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129 Order No. 05-584 at 45 (May 13, 2005) (“[W]e recognize that the primary aim is to ensure that ratepayers remain indifferent to the source of power that serves them.”).

**Should the Commission set different minimum distance requirements based on the type of QF resource?**

15 ICNU sees no need for the Commission to set a minimum distance between QF's belonging to the same owner. Rather, the Commission can rely on the common standard established by the Federal Energy Regulatory Commission ("FERC").<sup>6/</sup> If it chooses to adopt a minimum distance standard, then it should follow the guidelines established by the FERC.

16 The FERC has set the minimum distance required between QFs qualifying for the standard contract at one mile.<sup>7/</sup> The one mile distance is standard industry practice nationwide, and is thus easier to implement in terms of both financing and permitting QF projects.

17 While there may be a circumstance where an increased or decreased minimum distance would be advantageous for a certain resource type at a specific location, facts such as these are not apparent in this record. In the end, the Commission's regulations are not required to squarely address every conceivable fact situation.

- 3. If the Commission were to specify the term length of a standard offer power purchase agreement, how should it best balance the preference of project developers for longer term agreements to mitigate their risks against the uncertainty that the avoided cost rates in effect at the time will accurately reflect the true avoided cost to the utility in the future? Should the Commission differentiate standard contract lengths based on the type of resource?**

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<sup>6/</sup> See In Re Idaho Power Co., Case No. IPC-E-07-04 Order No. 30415 at 11 (Sept. 7, 2007) (applying the FERC one-mile distance requirement to determine QF status).

<sup>7/</sup> 18 C.F.R. §292.204(2)(i) (2015) ("For purposes of this paragraph, facilities are considered to be located at the same site as the facility for which qualification is sought if they are located within one mile of the facility for which qualification is sought and, for hydroelectric facilities, if they use water from the same impoundment for power generation.").



18                   When contemplating the issues presented in this question, ICNU urges the Commission to consider its foremost duty – to set rates that are “just, fair, reasonable and sufficient.”<sup>8/</sup> In the execution of this duty, the question of whether a rate is “just, fair, reasonable and sufficient” rests upon a balancing of ratepayer and utility interests.<sup>9/</sup> In contrast, the interests of independent generators seeking PURPA-based contracts fall outside of and are ancillary to the Commission’s specific ratemaking framework.

19                   PURPA also protects ratepayers by requiring that rates paid to a QF “may not exceed[] the [avoided cost] to the electric utility.”<sup>10/</sup> FERC’s regulations thus require that QF rates set by the Commission be capped at the purchasing utility’s avoided costs.<sup>11/</sup> The Commission’s role is to determine the methodology used to determine a utility’s avoided costs and to implement its application.<sup>12/</sup>

20                   In the end, the Commission must ensure that the interests of ratepayers are protected and supported by the application of its authorities. It has no similar obligation to protect the interests of independent generators.

21                   ICNU understands the financing benefits afforded a PURPA generator by executing a long-term (e.g., 10-year) agreement with the utility. However, the utility’s obligation to pay the generator a price certain over a multi-year period is almost certain to shift

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<sup>8/</sup> RCW 80.28.010(1).

<sup>9/</sup> See People's Org. for Wash. Energy Res. v. Wash. Utils & Transp. Comm'n, 711 P.2d 319, 326 (Wash. 1985) (“[T]he WUTC must in each rate case endeavor to not only assure fair prices and service to customers, but also to assure that regulated utilities earn enough to remain in business.”).

<sup>10/</sup> 16 U.S.C. § 824a-3(b).

<sup>11/</sup> See 18 C.F.R. § 292.101(b)(6) and 18 C.F.R. § 292.304(d) (2011).

<sup>12/</sup> 16 U.S.C. § 824a-3(f); 18 C.F.R. § 292.304(e).

price risk to ratepayers over the agreement's term. This risk shift may be particularly acute in the Pacific Northwest, where surplus hydropower and wind generation can reduce electricity market prices to near zero at certain times of the year. Risks to ratepayers increase relative to the length of the power contract, and accordingly, the shorter the term of the agreement, the lower the risk to ratepayers.

22 In sum, ratepayers should not have to shoulder additional power cost risks in order to improve a generator's financing opportunities. The shorter the term of the agreement, the less likely that such risks will manifest to the detriment of the ratepayer. Therefore, ICNU urges the Commission to maintain the 5-year term for standard offer purchase agreements.<sup>13/</sup> By doing so, ratepayers are more likely to be afforded "just, fair, reasonable and sufficient" rates over the term of the agreement.<sup>14/</sup> The resource type is not material to ICNU's recommended outcome here.

**4. Should the Commission specify in rule the point in the standard offer contract process where a utility has a legally enforceable obligation to purchase a facility's output?**

23 No. ICNU understands that this question addresses when a utility becomes contractually obligated to a PURPA-based generator. Said another way, can a utility circumvent

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<sup>13/</sup> Pacific Power & Light Co., Schedule 37 (June 13, 2011). See also Wash. Utils & Transp. Comm'n v. PacifiCorp, Docket UE-130043 Order 05 ¶ 106 (Dec. 4, 2013) ("PacifiCorp's standard contract includes an avoided cost price stream over 10 years, but states expressly that the listed avoided costs are fixed for only five years.").

<sup>14/</sup> See In the Matter of Idaho Power Co., Docket No. UM 1725 Order 16-129 at 7–8 (Mar. 29, 2016) (discussing the benefits and harms between longer term and shorter term standard contracts).

an obligation to buy energy from a QF by refusing to sign a contract, after the QF has obligated itself to offer power to the electric utility?<sup>15/</sup> To this question, the FERC has said no.

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In Cedar Creek Wind, the FERC ruled that a Firm Energy Sales Agreement/Power Purchase Agreement executed by both parties is not necessary for a legally enforceable PURPA obligation to arise.<sup>16/</sup> Here, the FERC expressly ruled that a QF can “commit[] itself to sell to an electric utility, [which also] commits the electric utility to buy from the QF.”<sup>17/</sup> In other words, a reciprocal obligation arises out of the QF’s delivery of power to a utility and the utility’s acceptance of the same. If a QF and a utility cannot agree when the PURPA obligations commence, a state commission may “determine the date on which the legally enforceable obligation is incurred,” so long as the commission’s determination is consistent with FERC’s regulations.<sup>18/</sup>

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Applying this rationale to the facts in Cedar Creek Wind, the FERC struck down the Idaho Commission’s attempt to set an arbitrary date for the execution of a power purchase agreement after power had been delivered to the utility. In its order, FERC went on to opine that a state commission’s role is only to “enforce the PURPA-imposed obligation on the electric utility to purchase from the QF.”<sup>19/</sup> Thus, the FERC made clear that a state commission’s

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<sup>15/</sup> Cedar Creek Wind, LLC, 137 FERC ¶ 61,006 at P. 10 (Oct. 4, 2011).

<sup>16/</sup> Id. at P. 32 (“[A] ‘legally enforceable obligation’ is intended to prevent a utility from circumventing the requirement that provides capacity credit for an eligible facility merely by refusing to enter into a contract with a [QF].”).

<sup>17/</sup> Id.

<sup>18/</sup> Id.

<sup>19/</sup> Id. FERC said this role of the state Commission is consistent with the meaning of section 210(a) of PURPA and 18 C.F.R. 292.304(d) (2011).

authority to impose rules upon the relationship between a QF and a utility is limited by and must be reconciled with the FERC's regulations.

26 In sum, ICNU has no issues with the FERC standards governing when a legally enforceable obligation is incurred under PURPA. If the Commission believes the current rules are unclear and need to be changed, it must act consistent with these FERC standards and guard against creating a framework that allows QFs or utilities to manipulate the Commission's PURPA program.

**5. Should the rates and the model standard offer agreements be disaggregated into separate tariffs?**

27 No. ICNU believes there is no reason to put standard offers and QF rates into separate tariffs. While the rates and standard offer agreements should be posted by the Commission, putting such items into the tariffs may cause numerous filings and impede the Commission's regulatory processes. In essence, PURPA-based agreements are simply power purchase agreements with an additional regulatory overlay. To ICNU's knowledge, no power purchase agreements between a utility and independent generator are specifically filed as tariffs. There is no reason to treat PURPA agreements differently.

**III. CONCLUSION**

28 ICNU appreciates the opportunity to submit these comments regarding proposed revisions to WAC 480-107. While the revisions under consideration are still in formative stages, and ICNU's support for any particular approach could change based on further developments, ICNU respectfully requests that the Commission and Staff consider the foregoing views based on the points discussed.

Dated this 17th day of April, 2017.

Respectfully submitted,

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/s/ Patrick J. Oshie

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