

April 17, 2017

**Mr. Steven V. King,
Executive Director and Secretary
Washington Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504-7250**

**RE: Comments of Renewable Northwest, the NW Energy Coalition, and Climate Solutions on Public Utility Regulatory Policies Act, Obligations of the Utility to Qualifying Facilities, WAC 480-107-105.
Docket U-161024**

I. Introduction

Renewable Northwest, the NW Energy Coalition, and Climate Solutions thank the Washington Utilities and Transportation Commission (“Commission”) for this opportunity to comment on potential revisions to the rules in WAC 480-107 that outline the obligations of an investor-owned utility (“IOU”) to a Qualifying Facility (“QF”) under the Public Utility Regulatory Policies Act (“PURPA”). We welcome the Commission’s attention to the issues highlighted in recent avoided cost rate filings. We respectfully encourage the Commission to take a holistic approach to PURPA implementation that recognizes PURPA as one of the few opportunities to promote competition in electricity generation in Washington.

Renewable Northwest is a nonprofit advocacy organization that brings together its business and nonprofit members to promote the expansion of environmentally responsible renewable energy resources in the Northwest. Renewable Northwest’s membership includes organizations ranging from consumer and environmental advocates to renewable developers, including QF developers. The NW Energy Coalition is a non-profit organization whose primary purpose is to promote an energy future that is clean, reliable, affordable, and equitable. The NW Energy Coalition provides technical and policy leadership on energy issues in this region, and seeks to promote the development of renewable energy, energy conservation, and affordable energy services, working with utilities and others to achieve these goals. Climate Solutions is a non-profit organization whose mission is to accelerate practical and profitable solutions to global warming. By cultivating political leadership under the proposition that clean energy and broadly-shared economic prosperity go hand-in-hand, Climate Solutions has built a powerful constituency for local, regional, and national action on climate and clean energy.

Our three organizations have years of experience working on PURPA implementation in various states, and support reasonable and balanced approaches to PURPA implementation. Our suggestions in these comments are informed by this collective experience participating in discussions and proceedings related to PURPA and to utility resource planning and procurement. Of particular importance to this proceeding, we have participated in, or monitored, several integrated resource planning cycles for Washington IOUs, as well as in discussions and proceedings related to PURPA avoided cost rate schedules and tariffs. We also have extensive experience with these types of proceedings in various states.

These comments explore how further guidance from the Commission on the terms, conditions, and practices for QF contracts could benefit consumers and improve the efficiency of the market in Washington. In Section II, we encourage the Commission to continue its policy of recognizing the important role of QFs in helping IOUs avoid capacity costs, and to adopt a policy to reasonably account for the costs that an IOU avoids when taking ownership of QF renewable energy credits (“RECs”) and complying with other state energy policies. In Section III, we recommend that the Commission adopt policies regarding standard rates, terms, and conditions, with an eye to addressing the disparate bargaining power between QFs and IOUs. We also encourage the Commission to adopt a minimum QF contract length of 15-20 years as a way to further Washington energy policies, benefit customers, and not unfairly discriminate against QFs. In Section IV, we encourage the Commission to provide guidance regarding the obligations of IOUs towards large QFs. Finally, in Sections V and VI, we encourage the Commission to provide additional predictability for QF developers by adopting policies that address the frequency of avoided cost rate updates and the process for vetting an IOU’s proposed departures from current practice.

II. Avoided Cost Rate Methodology (Questions A1-A4)

Renewable Northwest, the NW Energy Coalition, and Climate Solutions encourage the Commission to provide guidance to Washington IOUs to ensure that avoided cost rates in Washington reasonably account for the IOUs’ avoided costs. While avoided cost rates that are higher than an IOU’s avoided costs do not meet PURPA’s customer indifference standard, avoided cost rates that are artificially low also fail to advance the interests of IOU customers.

By inhibiting QF development, artificially low avoided cost rates deprive customers of the multiple benefits associated with having QFs as part of an IOU’s generation portfolio. Those benefits include price stability and the reduced risks that result from an entity other than the IOU assuming the risks of construction overruns, etc. Artificially low avoided cost rates also fail to advance Washington’s energy policies, including those requiring IOUs to diversify and

decarbonize the state's energy resource mix by minimizing the use of fossil-fueled generation resources and expanding the use of renewable generation resources.¹

We recommend that the Commission continue its policy of recognizing that IOUs avoid capacity costs whenever they avoid any capacity acquisitions, and that the Commission require all Washington IOU avoided cost rates to reflect such avoided capacity costs. Additionally, we encourage the Commission to adopt a policy whereby a QF can choose to either retain its RECs or be fairly compensated for them RECs if the QF decides to transfer them to an IOU.

A. Capacity Payments

Renewable Northwest, the NW Energy Coalition, and Climate Solutions commend the Commission and Commission Staff ("Staff") for recognizing the importance of reasonably accounting for the capacity costs that an IOU avoids by purchasing QF power. For example, in Order 04, Docket UE-144160, the Commission recognized that IOUs can avoid capacity costs in years prior to the planned procurement of a capacity resource.² As a result, IOUs must compensate QFs for capacity in those years.³ We encourage the Commission to continue its policy of recognizing that IOUs avoid capacity costs whenever they have any avoidable capacity acquisition. Avoided cost rates that reasonably account for an IOU's avoided costs must compensate QFs for those avoided capacity costs.

B. Compensation for Renewable Energy Credits

We encourage the Commission to adopt a policy regarding the treatment of RECs in QF power purchase agreements ("PPAs") and avoided cost rates that, at a minimum, requires fair compensation for the REC. RECs are a mechanism for compliance with Washington's renewable portfolio standard ("RPS") and its Clean Air Rule ("CAR"). Therefore, RECs from a renewable QF may help an IOU avoid costs like that of procuring bundled renewable resources or unbundled RECs from a different source in order to comply with Washington's RPS. Our understanding is that IOU avoided cost rates are currently designed to compensate QFs for energy and capacity, but not for the environmental attributes embodied in a REC. Hence, Washington IOUs should not be allowed to require, as a condition of entering into a PPA with a

¹ Re WUTC's Investigation into Energy Storage Technologies, Docket Nos. UE- 151069 and U-161024, Draft Report and Policy Statement on Treatment of Energy Storage Technologies in Integrated Resource Planning and Resource Acquisition at PP. 21, 41 (March 6, 2017).

² WUTC v. Pacific Power & Light Co., Docket No. UE-144160, Order 04 at PP 22-23 (Nov. 12, 2015).

³ *Id.*

renewable QF, that the QF transfer its RECs to the utility unless the avoided cost rate methodology includes the costs that the IOU may avoid as a result of gaining ownership of the REC.

QFs selling energy and capacity to Washington IOUs should have the option of committing to transfer their RECs to a Washington IOU, and should be fairly compensated for those RECs. We encourage the Commission to consider various policy options to properly compensate renewable QFs that choose to transfer their RECs to an IOU. One such policy option is to establish a separate renewable avoided cost stream designed to fairly compensate QFs for the RECs they generate when IOU acquisition of the QF's RECs helps the IOU avoid the cost of complying with programs like the RPS or the CAR. The Oregon Public Utility Commission ("OPUC") has adopted such a policy. As implemented by the OPUC, QFs can choose between a renewable avoided cost stream and a non-renewable avoided cost stream. The OPUC's renewable avoided cost stream is designed to compensate QFs for RECs in years when the REC helps the IOU avoid costs associated with complying with Oregon's RPS.⁴ Alternatively, the OPUC allows QFs to choose to be compensated under a non-renewable stream that does not require the QF to transfer its RECs to the purchasing IOU.⁵

Given the current structure of the CAR, regardless of whether the IOU or the QF maintains ownership of any RECs associated with a renewable QF, there is an avoided cost or an opportunity cost associated with each MWh of generation from a regulated facility. Consequently, the avoided cost methodology of any Washington IOU should account for any avoided compliance costs that would otherwise be imposed by Washington's CAR. Washington's CAR requires regulated entities, including electric generating stations, to reduce emissions by 1.7% each year through 2035.⁶ To the extent that a non-emitting QF displaces generation from a regulated generating station, there is an avoided compliance cost associated with displacing carbon emissions that should be reflected in the avoided cost methodology.

III. Standard Practices

Renewable Northwest, the NW Energy Coalition, and Climate Solutions encourage the Commission to adopt policies on standard rates, terms, and conditions with an eye toward addressing the imbalance between QFs and IOUs with regards to information, bargaining power, and control over the timeline and process. For that reason, we recommend that the Commission

⁴ Re Investigation Into Resource Sufficiency Pursuant to Order No. 06-538, OPUC Docket No. UM 1396, Order No. 11-505 at 8 (Dec. 13, 2011).

⁵ *Id.*

⁶ WAC ch. 173-442.

adopt a 5-10 MW eligibility threshold for standard QF rates, as well as an eligibility threshold for standard terms and conditions that is at least 10 MW. We also encourage the Commission to adopt a policy of requiring a minimum QF contract length ranging from 15 to 20 years. Finally, we encourage the Commission to explore updating its current standard for the formation of a legally enforceable obligation (“LEO”) to bring it more in line with federal regulations.

A. Threshold for QFs to Qualify for Standard Rates, Terms, and Conditions (Question B1)

We respectfully recommend that the Commission set the eligibility threshold for standard QF rates at 5-10 MW. We also recommend that the Commission set the eligibility threshold for standard *contract terms and conditions* at a minimum of 10 MW. QFs seeking to sell their output to a Washington IOU are typically negotiating with a monopsony. Regardless of the level of sophistication of a prospective QF developer, the IOU typically has an advantage with regards to information, bargaining power, and control over the length and terms of the negotiation process. Any unduly delays in the negotiation process add unnecessary expense and other barriers to the process of developing a QF.

Standard contracts help address the informational and power imbalance between prospective QF developers and IOUs by, among other things, reducing the QF developers’ need to rely on costly assistance in negotiating with the IOU, and by streamlining the timeline for negotiations. Importantly, standard contracts also address those imbalances without negatively impacting customers or IOUs. Therefore, we recommend that the Commission adopt a policy of facilitating standard rates, terms, and conditions by adopting a 5-10 MW threshold for standard rates and a threshold of at least 10 MW for standard terms and conditions.

B. Length of QF Contracts (Question B3)

Renewable Northwest, the NW Energy Coalition, and Climate Solutions recommend that the Commission sets the minimum length of QF contracts at 15-20 years because such a policy would be in the interest of consumers and would help advance the state’s energy goals. The length of QF contracts is critical to facilitating QF development because it impacts the ability of QFs to obtain financing. In the context of PacifiCorp’s proposal to reduce the length of QF contracts in Oregon from 20 years to three years, John Hobbs from the Oregon Department of Energy⁷ testified that “most lenders would not put capital at risk for the benefit of a QF under the

⁷ Re PacifiCorp, dba Pacific Power, Application to Reduce the QF Contract Term and Lower the QF Standard Contract Eligibility Cap, OPUC Docket No. UM 1734, ODOE’s Testimony of John Hobbs at 1 (Oct. 15, 2015)

proposed standard contract term reduction without having the terms of the subsequent non-standard contract already agreed upon.”⁸ According to Mr. Hobbs, “[f]inanciers prefer a project have a power purchase agreement that spans the life of the loan, [and]... [t]hree year QF standard contracts introduce too much price risk into an essentially closed market for the risk tolerance of most lenders.”⁹ In that proceeding, the Oregon Public Utility Commission rejected the proposed decrease in the contract length on the basis that its policy of requiring IOUs to offer QF PPAs for 20 years, with prices fixed for 15 years, appropriately balances the needs of QFs and customers.¹⁰

By inhibiting the development of QF projects, short-term QF contracts deprive customers of the benefits from QFs. Indeed, long-term QF PPAs can help mitigate the price volatility of an IOU’s generation portfolio and provide stable energy prices over time. Long-term forecasts and assumptions are an essential part of utility planning that have implications for customers. For example, IOUs make procurement decisions based on a number of long-term forecasts, including fuel costs and load curves. Importantly, IOUs are generally able to pass onto their customers the risks inherent in those long-term forecasts as well as any additional risks related to utility ownership of a resource. In contrast, QFs tend to assume all risks associated with their project, and therefore benefit customers by minimizing the risks assumed by the purchasing IOU.

C. Formation of a Legally Enforceable Obligation

We encourage the Commission to consider updating its standard for determining what constitutes a LEO because it appears to go beyond the standard outlined by the Federal Energy Regulatory Commission (“FERC”). State commissions can set the standard for what constitutes a LEO in their state, but that standard must be consistent with PURPA and with FERC regulations.¹¹ Under FERC regulations, a signed contract is not necessarily a pre-condition to a LEO.¹² The LEO standard set by FERC regulations is consistent with the purpose of the LEO: to prevent utilities

(John Hobbs is a project development officer with a background in commercial banking whose responsibilities, as of 2015, included assessing loan applications for proposed renewable energy projects).

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ Re PacifiCorp, dba Pacific Power, Application to Reduce the QF Contract Term and Lower the QF Standard Contract Eligibility Cap, OPUC Docket No. UM 1734, Order 16-130 at 5 (Mar. 29, 2016); Re Idaho Power Company, Application to Lower Standard Contract eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Charge, and for Change in Resource Sufficiency Determination, OPUC Docket No. UM 1725, Order 16-129 at 8 (Mar. 29, 2016).

¹¹ See *Cedar Creek Wind, LLC*, 137 FERC ¶ 61,006, at ¶ 35 (2011) [hereinafter *Cedar Creek*].

¹² See Order No. 69, 45 Fed. Reg. at 12,224; see also *Grouse Creek Wind Park, LLC*, 142 FERC ¶ 61,187, at ¶ 40.

from ignoring their must-purchase obligation by refusing to enter into agreements with QFs.¹³ In fact, a LEO exists whenever a QF “has agreed to obligate itself to deliver at a future date energy and capacity to the electric utility.”¹⁴ Since requiring that a QF be a “mature” project as a prerequisite for LEO formation may go beyond FERC’s standard, we encourage the Commission to explore potential changes to its current policy on LEO formation.

IV. Non-Standard QF Contracts

Renewable Northwest, the NW Energy Coalition, and Climate Solutions respectfully encourage the Commission to provide further guidance on the obligations of IOUs to QFs above the threshold for standard rates, terms, and conditions. Standard contracts for small QFs help reduce transaction costs and address the imbalance in bargaining power. However, large QFs often face similar challenges when negotiating PURPA contracts with IOUs. Without clear expectations in place for the negotiation process, these barriers are often difficult to overcome, even for large QFs, due to asymmetric information and bargaining power.

To reduce these market barriers, we recommend that the Commission provide guidelines for the negotiation process between IOUs and QF developers to lay out clear expectations for both parties throughout the process. Those guidelines would ideally address, among other things, the timeline for an IOU to negotiate with large QFs. We also respectfully encourage the Commission to identify a process for large QFs to seek resolution of disputes that arise throughout the negotiation process. Finally, we recommend that the Commission adopt the policy of requiring utilities to file a single avoided cost schedule for the standard contract that serves as the starting point for large QF negotiations.

V. Avoided Cost Rates Update: Frequency

Renewable Northwest, the NW Energy Coalition, and Climate Solutions respectfully encourage the Commission to adopt a policy regarding the timing and frequency of updates to avoided cost rate inputs that increases predictability and decreases the perception of gaming. Under current rules, Washington IOUs are required to update their avoided cost rates annually, but can also update these rates at any time. This framework leads to an uncertain development landscape for QFs. Additionally, we understand that this framework has led some prospective QF developers

¹³ Order No. 69, FERC Stats. & Regs. ¶ 30,128, at 30,880; *Cedar Creek*, 137 FERC at ¶ 32 (explaining that Section 292.304(d) and the LEO were adopted to prevent utilities from ignoring their must purchase obligation under PURPA).

¹⁴ Order No. 69, 45 Fed. Reg. at 12,224; *see also* 18 C.F.R. § 292.304(b)(5).

to distrust the process because IOUs have discretion to file for lower avoided cost rates while in the middle of negotiating a QF PPA, yet they have no incentive or obligation to file new rates if the avoided costs for the IOU have increased. That uncertainty and distrust are magnified by the almost complete control that IOUs have over the timeline and process for getting from a PPA request to an executed PPA.

We encourage the Commission to adopt a policy that requires IOUs to update the inputs in their avoided cost rate calculations annually, as well as after the Commission has had time to review and comment on an integrated resource plan. Such a policy would provide predictability with regard to upcoming rate changes, and would reduce the perception that an IOU would file an updated avoided cost rate when beneficial to the IOU and while in the middle of QF PPA negotiations. We understand that special circumstances may warrant an “out-of-cycle” update, so we suggest that the Commission limit other opportunities for out-of-cycle updates to avoided cost rates to situations when the IOUs can demonstrate that exceptional circumstances require such an update.

Finally, we encourage the Commission to allow QF developers and other stakeholders to vet input updates that affect avoided cost rates. We understand that Staff currently has that opportunity, and commend Staff for conducting a thorough review of the inputs in avoided cost rate updates. However, we encourage the Commission to allow stakeholders and QF developers to have a similar opportunity to vet and comment on changes to avoided cost rates that may affect their interests.

VI. Avoided Cost Rates Update: Policy Changes

Renewable Northwest, the NW Energy Coalition, and Climate Solutions respectfully request that the Commission adopt a policy whereby utilities must clearly spell out any desired policy changes under PURPA and provide stakeholders and QF developers a process to vet such proposed changes. Proposed policy changes affecting avoided cost rate filings should not be buried in an IOU’s avoided cost rate filing because such a practice does not provide proper notice of the change to potentially affected parties. Therefore, we recommend that the Commission require Washington IOUs to clearly spell out any proposed policy changes (i.e. in an avoided cost rate schedule), and that the Commission hold an appropriate process that allows stakeholders and affected parties to contest such changes.

VII. Conclusion

Renewable Northwest, the NW Energy Coalition, and Climate Solutions again thank the Commission for this opportunity to comment on potential revisions to its rules implementing PURPA. Informed by our experience with issues that affect PURPA as well as utility resource planning and procurement, we recommend that the Commission consider a holistic approach to updating its PURPA policies. PURPA is one of few opportunities for competition in electricity generation in Washington. As the Commission seeks to balance the interests of QFs and customers, we wish to underscore the customer benefits of a portfolio that includes independently owned generation. Hence, we also encourage the Commission to maintain and adopt PURPA policies that decrease barriers for QFs to sell their output to Washington IOUs when they can do so at an IOU's avoided cost. We look forward to continue actively engaging in any discussions that can help further inform the Commission throughout this process.

Respectfully submitted this 17th day of April, 2017.

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