BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Amending and Adopting Rules in WAC 480-107-105 Regarding Obligations of the Utility to Qualifying Facilities Pursuant to the Public Utilities Regulatory Policies Act ("PURPA")	))))))))	DOCKET NO. U-161024 COMMENTS OF THE ALLIANCE OF WESTERN ENERGY CONSUMERS

I. INTRODUCTION

1 Pursuant to the Washington Utilities and Transportation Commission's ("Commission") March 14, 2018 Notice of Opportunity to File Written Comments ("Notice") in the above-referenced docket, the Alliance of Western Energy Consumers ("AWEC") (formerly the Industrial Customers of Northwest Utilities) files these comments regarding the proposed changes to WAC 480-107, outlining a utility's obligation to a Public Utility Regulatory Policies Act ("PURPA") qualifying facility ("QF") ("Comments"). AWEC's Comments below address the Questions for Consideration presented in the Commission's Notice.[1/] In addition, AWEC's proposed edits to the draft rules are included herein as Attachment A.

2 As background, AWEC's responses are shaped and informed by the following observations: First, the Commission should strive to develop regulatory policies that promote competition in energy supply. QFs represent one sector of the region's alternative energy

[1/] AWEC limits its response to those issues on which it has a position at this time. Its positions on these and other issues within the scope of this proceeding may develop further while this docket remains open.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Ste. 450
Portland, OR 97201
Telephone: (503) 241-7242

providers. By fostering competition in the energy supply chain, the Commission can advance innovation and technological progress across the energy provider spectrum. Next, the Commission can promote efficiency by advancing regulatory policies that encourage and support a low-cost supply of electricity for ratepayers, thus protecting them from undue risk. These observations need not conflict. That said, regulatory policies that promote competition for competition's sake, without concern for cost, may indeed conflict with providing electrical service efficiently. It is therefore a delicate balance, as evidenced by the establishment of PURPA back in 1978 that required utilities to purchase QF power, but at rates no higher than avoided cost.

II. COMMENTS ON THE COMMISSION'S QUESTIONS

1. Is the proposed definition of capacity, as described in WAC 480-106-DDD, an appropriate definition for the purpose of this rule?

3 The proposed rule defines the term "**Capacity**" as:

"the capability to produce or avoid the need to produce electric energy measured in kilowatts (kW)."

AWEC believes the proposed definition lacks both specificity and breadth. To avoid any unintended interpretations of the proposed definition that could require Commission intervention to resolve, AWEC recommends that the definition of "capacity" in WAC 480-106-DDD be amended to read as follows:

"Capacity" means the qualifying facility's average capability to produce electric energy measured in kilowatts (kW) for a specific period.

.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Ste. 450
Portland, OR 97201
Telephone: (503) 241-7242

To take advantage of a QF's kW output, a utility must be relatively certain in a statistical sense of the output's availability for a specified period of time. Importantly, AWEC's proposed definition would measure a QF's capacity by its average kW output for a specified period where the output would be made available to the utility. By using AWEC's definition, the Commission would ensure that the agreement with the QF is fair to the utility, its ratepayers, and the QF.

4 The term "Capacity" should also be viewed to include the ancillary services required to meet reliability operating standards. In this context, each of the related ancillary services should be separately identified along with an associated avoided cost estimate. To the extent a QF is capable of providing such ancillary services, the corresponding QF rate should reflect the value being provided to the utility. This also means that the "Capacity" per kW avoided cost is solely the cost of providing kW for a specified time period. Any ancillary services provided would be compensated by respective and separate payment rates. The proposed rule creates uncertainty relative to the status of QFs as providers of ancillary services. AWEC's proposed definition of capacity would remedy this uncertainty and allow the development of products that comply with a utility's regulatory requirements.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Ste. 450
Portland, OR 97201
Telephone: (503) 241-7242

2. WAC 480-106-GGG strengthens the relationship between a utility's integrated resource plan and the avoided cost rates available to qualifying facilities. Consequently, avoided cost rates calculated at the time a legally enforceable obligation is incurred will reflect the utility's own forecasts and plans for meeting anticipated demand through a combination of supply-side and demand-side resources over a specified future period. Please comment on the merits of strengthening the relationship between a utility's integrated resource plan and its avoided cost.

5 AWEC supports the Commission's use of a utility's most recent integrated resource plan ("IRP") to determine the utility's need for capacity. However, the IRP's use as a measure to determine the avoided costs available to QFs should be discouraged, as the IRP is not fully intended to emulate the future market costs of available capacity. This is but one reason why the Commission does not use an IRP's conclusions to determine future costs or resources for ratemaking purposes.[2/] Further, the Commission does not approve a utility's IRP, but instead acknowledges its compliance with the applicable rules. Here again, the Commission reinforces the IRP's singular use as a planning tool, without giving it overriding weight in determining costs or need.[3/] Because of the IRP's limitations as to forecasting future power market conditions and prices, it should not be used to set capacity costs paid to QFs. It may be possible to address the IRP's inherent forecasting limitations by requiring a utility to update the IRP's conclusions regarding future capacity costs when it files its annual estimated avoided cost tariff.

2/ Re: Puget Sound Energy's 2013 Electric and Natural Gas Integrated Resource Plan, Dockets UE-120767 & UG-120768, Acknowledgment Letter at 1 (Feb. 6, 2014). ("Please be advised that this finding [acknowledging compliance] does not signal pre-approval for ratemaking for any course of action identified in the IRP.")

3/ Id. ("Because an IRP cannot pinpoint precisely the future actions that will minimize a utility's cost and risks, we expect that the company will update regularly the assumptions that underlie the IRP, pursue additional information, and adjust its operational strategies accordingly.")

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Ste. 450
Portland, OR 97201
Telephone: (503) 241-7242

Such an update should, at a minimum, reflect any market and load conditions not addressed in the utility's most recent IRP.

6 Finally, the Commission's IRP rules define "lowest reasonable cost" to include cost estimates associated with a generator's carbon emissions.[4/] Until such carbon costs are fully realized by way of state or federal law, the inclusion of carbon costs in the annual estimated avoided cost tariff would skew QF capacity costs away from relevant market prices, leading to higher costs for ratepayers and harming potential market sellers owning thermal generators. This result should be avoided in order to protect a utility and its ratepayers from QF costs exceeding actual avoided costs. The Commission should make clear that there should be price alignment between QF capacity costs and the contemporary cost of capacity in the regional market.

3. WAC 480-106-GGG(1)(a) requires a utility to file an avoided energy cost based on the utility's forecast of market prices. WAC 480-106-GGG(1)(b) requires the utility to determine the avoided capacity cost using the Proxy Unit method. When using the Proxy Unit method, one option is to set the avoided energy price based on the energy price of the proxy resource. Should the avoided energy price be based on the market forecast or the price of the energy used for the proxy resource?

7 AWEC recommends that a utility's avoided energy cost be based upon the market forecast. By using market forecasts as the relevant surrogate, the Commission would set rates using a comparator that is inherently more flexible and reflective of the utility's cost of energy. A proxy resource-based tool would not provide the same flexibility. Nor would it consistently reflect the utility's cost of energy. A proxy resource-based tool creates inherent trade-offs between a resource's capital costs and energy costs. For example, consider the instance where the proxy unit for avoided capacity cost is a simple-cycle combustion turbine. A simple-cycle

---

[4/] WAC 480-100-238(2)(b).

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Ste. 450
Portland, OR 97201
Telephone: (503) 241-7242

combustion turbine is one of the lowest cost generation plants to supply capacity (kW). It is also one of the highest cost generating plants to supply energy. As a result, a utility would not operate the combustion turbine during periods other than the highest peak periods of demand, unless required by some extraordinary circumstance. To use the operating cost of the simple-cycle combustion turbine as the proxy price of energy would vastly overstate the utility's cost of energy and not reflect the utility's cost of energy avoided during periods of demand other than the highest peak demands. The Commission can avoid this result by adopting a market-based method to determine avoided energy costs.

4. WAC 480-106-GGG(1)(a) requires utilities to file an avoided energy cost on a cents per kilowatt-hour basis, during daily and seasonal peak and off-peak periods, by year. Should the Commission also require the avoided energy cost to include hourly or blocks of hourly periods?

8 AWEC supports having energy costs differentiated by season and time of day. The time-of-day differentiation could be marked by blocks of hourly periods such as peak and off-peak periods. Avoided costs are defined as the costs the utility would incur but for the production of QF power. The utility's cost of energy (kWh) could differ by season and time of day. Therefore, avoided energy costs should allow for differentiation by season and time of day. While it could be true that some kWh cost differentiation may not be present for certain seasons or time of day at this time, allowing for such differentiation in the rule would create flexibility to allow for such differentiation in the future. Further, time-of-day use information should be communicated to QFs, allowing them to identify resources that can provide energy at those times. In such a circumstance, additional value would be provided to both the utility and the QF.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Ste. 450
Portland, OR 97201
Telephone: (503) 241-7242

5. WAC 480-106-GGG(2)(iii) discusses schedules of estimated avoided cost. Is discounting the capacity payment from the utility's year of need to the present day an appropriate way to represent the avoided costs of a resource the utility has identified a need for in the future? In balance, does it provide the required price signal for capacity? Does this subsection require additional rule language and specificity?

9 AWEC does not support using the value of future capacity to calculate the present value of capacity using discount rates. This recommendation appears to be based on the notion that avoided costs should not reflect the actual cost the utility would avoid but for the QF power. For example, assume that capacity is not needed for five years. The costs avoided today to provide additional capacity is limited to reduced market purchases. Therefore, valuing near-term capacity through the use of discounting future capacity leads to current customers overpaying for the cost of energy supply. Should capacity be required, utilities and the Commission can make available through publicly available resources the utilities' load resource balance by year, as identified in each utility's IRP.

10 If the Commission is inclined nevertheless to include payments for capacity through the use of present-valued rates, AWEC recommends this treatment be made available for large QFs only and not for those QFs eligible for the standard rate. Utilities entering into contracts with large QFs could properly develop and consistently apply capacity pricing that uses present-value discounts over the life of the contract. In such an instance, the utility would overpay for capacity if payments today reflect the present value of future capacity needs, while future payments would reflect the full non-discounted value of capacity. One way to observe this is to consider a stream of payments that encompass zero values for five years and then positive values for ten years. From an economic standpoint, those values can be present-valued

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Ste. 450
Portland, OR 97201
Telephone: (503) 241-7242

into today's dollars and then real-levelized over the time periods. The result is a stream of payments that are higher in the initial five years and lower in the final ten years.

11 Another way of demonstrating AWEC's recommendation on this question is to assume that capacity is not needed for five years. And assume that a QF has an economic life of only five years. If the QF were to come online today, under the avoided cost stream that provides payments today for the value of capacity needed five years out, the QF would receive payments for capacity at a time capacity is not needed and provide zero capacity when capacity is needed. It is a far better price signal to provide a price that is limited to avoided market purchases today and a full price in five years. That would inform the QFs that capacity is needed in five years and to time projects to take advantage of those capacity payments when the capacity is needed.

6. WAC 480-106-GGG(c) is intended to permit utilities to offer standard rates that take into account the differing qualities of various generation types, such as variations in capacity factors. Currently, the informal PURPA draft rules do not specify how a utility might identify these qualities and use them to calculate avoided capacity costs. Does this subsection provide enough specificity or is additional rule language needed?

12 AWEC supports offering standard rates specific to the type of generation resource that take into account a generator's diverse qualities. However, the proposed rule offers no guidance to utilities regarding what generator characteristics the Commission considers essential to the determination of avoided costs. In the interest of aiding the regulatory process, the Commission should provide additional rule language or guidance by way of its adoption order identifying the elements it considers essential to determining differentiated avoided costs.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Ste. 450
Portland, OR 97201
Telephone: (503) 241-7242

a. No resource, including thermal generation, has a one hundred percent capacity factor. Should the rules require applying a calculation that compares the qualifying facility to the highest capacity factor resource? For example, if the highest capacity factor plant has a capacity factor of 90 percent, and the qualifying facility has a capacity factor of 30 percent, then the capacity credit to the qualifying facility is 30% ÷ 90% = 33%.

13 AWEC does not support the use of this mathematical formula to derive a capacity credit. The capacity credit is a capacity (kW) consideration, not an energy consideration (kWh). The capacity factor is essentially an energy consideration in describing how much energy over a year on average can be expected from a resource. AWEC does not find merit in mixing capacity considerations and energy considerations for purposes of deriving a capacity credit.

14 For example, assume that a utility has peak requirements in the winter. Also assume that the capacity resource is a simple-cycle combustion turbine that is able to operate during the winter even though on an expected basis (could be environmental constraints or other constraints) it would only be able to operate 30 percent on average over the year. This 30 percent covers the entire winter peak period and hence no discounting is warranted.

15 As a final point, if the Commission nevertheless is inclined to make this adjustment, the capacity factor needs to be clarified. The capacity factor should reflect operating capability and not reflect economic considerations. For an illustrative example, a simple-cycle combustion turbine may be functionally able to operate 90 to 95 percent of all hours in a year, but on average only operates ten percent of the year for economic reasons. The simple-cycle combustion turbine may still be the least-cost manner of providing capacity, and stands ready to

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Ste. 450
Portland, OR 97201
Telephone: (503) 241-7242

meet peak loads when required, but is not operated when lower-cost resources are available to meet energy needs.

7. Joint Recommendations – The discussion draft rules do not include any option or the requirement to transfer any renewable energy credits (RECs) generated by qualifying facilities. The Joint Recommendations propose that RECs should be included in the sale when the avoided costs used to determine a utility's offered standard rate are based on a resource that would also generate RECs. Would this arrangement be satisfactory for all parties? In the instance where standard rates are based on a resource that does not generate RECs, is there reason to permit, or to require, the utility to offer a tariff schedule to qualifying facilities, which include the avoided cost of RECs? This arrangement would enable smaller developers to sell RECs at a set price and avoid the challenge of navigating a complex market, mirroring the rationale that PURPA uses in compelling utilities to purchase of capacity and energy.

16 AWEC supports the Joint Recommendation that RECs be included as a bundled component of the energy purchased from QFs that meet the requirements of the Energy Independence Act when the utility's avoided cost rate is based on a EIA-eligible resource. AWEC does not at this time take a position on the question of whether utilities should develop a separate tariff schedule to value RECs when avoided costs are based on a non-EIA-compliant resource.

8. Joint Recommendations – If the Commission adopts the recommendation to require the inclusion of limited contract provisions to qualifying facilities of all sizes, should the rule specify contract provisions that utilities must offer?

17 AWEC supports the principle that QFs offering comparable energy or capacity should be treated equally by the Commission and the utility. To ensure equal treatment, the Commission should proactively address certain contract terms to ensure that QF contracts do not discriminate between providers or regulated utilities. For example, common terms that would impact contract performance, contract modification, payment terms, force majeure, termination,

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Ste. 450
Portland, OR 97201
Telephone: (503) 241-7242

breach, and remedies in the event of a breach should be determined by the Commission and set forth in this rule. By instituting such key and common terms by rule, the Commission would avoid having to preside over potential disputes between a QF and the purchasing utility.

18 The use of Commission-approved contract terms played a prominent role in the telecommunications industry, ensuring that Competitive Local Exchange Companies ("CLECs") were provided access to Local Exchange Company ("LEC") facilities via interconnection agreements that included common terms and conditions. The Commission also allowed CLECs to adopt the terms of executed interconnection agreements, thus providing a more level playing field for both market entrants and established companies. While AWEC is not advocating for such an "adoption" rule in this instance, it is raised as an example of how the Commission used common contract terms and interconnection agreement adoptions to guard against the discriminatory treatment of market entrants.

19 With regard to specific contract terms, AWEC does not support increasing the QF size cap qualifying for the standard contract and the contract term, as provided for in the proposed rules. Instead, AWEC supports retaining the current 5 mW cap. The point of the cap is to identify the mW size at which the utility and QF negotiate and establish rates, terms and conditions specific to the QF. The standard rate is established for purposes of reducing the administrative cost of entering into a power sales contract for small power producers. The concept is to not create an economic barrier to entry for small developers. For QFs greater than 5 mW, those projects are of sufficient size such that it benefits both the developer and the utility, and thereby its customers, to identify the specifics of the project and respective contract terms so

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Ste. 450
Portland, OR 97201
Telephone: (503) 241-7242

that the QF developer is fully compensated for the services they provide and the associated rates, terms and conditions are just and reasonable.

20 As to contract term, AWEC does not support the proposed contract term of 15 years. Given the fast-changing energy environment, 15 years is too long to contractually commit to a fixed set of prices for power to a QF project. While the current contract length of five years may be viewed as too short by some, increasing the term to 15 years places too much economic risk on customers. Perhaps one way of addressing this issue is for the terms and conditions of the contract, exclusive of price, be of a term greater than 5 years, but still less than 15 years. The price paid for power would have a maximum term of five years.

9. Joint Recommendations – Does the recommendation that each utility file and obtain Commission approval of its avoided cost rate methodology for qualifying facilities above the size threshold for standard rate eligibility impose an unnecessary burden on utilities, stakeholders, and the Commission? Should the avoided cost rate for larger qualifying facilities depend on facts and circumstances that cannot be easily accounted for by rule?

21 AWEC does not at this time have a position on this question. AWEC has some concern that such a methodology, if required, would be of such generality to be of little value. There are many considerations and factors that go into the development of the terms and conditions reached between a utility and a large qualifying facility. However, it is possible that standardizing certain methodologies for establishing avoided costs could reduce conflict and the cost of negotiations between a utility and large QF developers. Thus, AWEC would like to better understand the type of information that would be standardized through this process.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Ste. 450
Portland, OR 97201
Telephone: (503) 241-7242

III. CONCLUSION

22 AWEC appreciates the opportunity to provide its perspective on the Commission's rules and process, and looks forward to continuing its participation in subsequent phases of this docket.

Dated this 13th day of April, 2018.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Patrick J. Oshie
Patrick J. Oshie
Of Counsel
Davison Van Cleve, P.C.
507 Ballard Rd.
Zillah, WA 98953
Phone: (503) 241-7242
Facsimile: (503) 241-8160
pjo@dvclaw.com
Of Attorneys for the Alliance of Western Energy Consumers