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Via Electronic Filing

Mr. Mark L. Johnson
Executive Director and Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
P. O. Box 47250
Olympia, WA 98504-7250

Re: Public Utility Regulatory Policies Act, Obligations of the Utility to Qualifying
Facilities, WAC 480-107-105.
Docket U-161024

Dear Mr. Johnson:

By and through this letter, the Alliance of Western Energy Consumers (“AWEC”), formerly the Industrial Customers of Northwest Utilities, responds to the Notice of Opportunity to File Written Comments (“Notice”) issued by the Commission in the above-referenced docket on May 21, 2018. AWEC appreciates the invitation to participate in this rulemaking docket and submits these comments responding to the question posed by the Commission. In addition, and as requested, AWEC provides its proposed revisions to the draft rules in Attachment A, which were also previously attached to AWEC’s comments on the Commission’s draft PURPA rules on April 13, 2018.

The Commission also requests draft language that expresses clearly when a legally enforceable obligation (“LEO”) emerges between a Qualifying Facility (“QF”) and the purchasing utility. AWEC recommends that the Commission follow established FERC precedent on this issue by making clear that a LEO is created at the time the QF makes a binding commitment to sell its output to the utility.^{1/} Importantly, such a binding commitment may precede an executed contract, as FERC has made clear that the important factor is that the commitment is binding on the QF. Thus, a LEO could be created by a QF returning a signed contract to the utility, even though the utility has not yet countersigned that contract. AWEC proposes the following rule language:

^{1/} See, e.g., Cedar Creek Wind, LLC, 137 FERC ¶ 61,006 (2011); FLS Energy, Inc., 157 FERC ¶ 61,211 (2016).

480-106-XXX

**Creation of a legally enforceable obligation between a
qualifying facility and the utility**

A legally enforceable obligation arises when the qualifying facility makes a binding commitment to sell energy and/or capacity to a utility, regardless of whether a contract to sell such energy and/or capacity has been fully executed.

Although it is outside of the scope of this rulemaking, AWEC wishes to emphasize that the creation of a LEO should not necessarily result in the inclusion of a QF's costs in customer rates. Many QFs never reach commercial operation, so the Commission should closely scrutinize any utility's rate filings that propose to place such costs in rates.

Again, AWEC thanks the Commission for the opportunity to respond and provide these comments.

Sincerely,

/s/ Patrick J. Oshie

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