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Re: Docket U-161024—Pacific Power & Light Company's Comments

On May 21, 2018, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Opportunity to File Written Comments, requesting (1) recommended rule language regarding when a legally enforceable obligation (LEO) occurs, and (2) recommended redlined edits to the informal draft rules issued on March 14, 2018. In response to this notice, Pacific Power & Light Company (Pacific Power), a division of PacifiCorp, submits these written comments. The following discussion sets forth Pacific Power's proposed revisions to the informal draft rules, and explains those proposed changes where further discussion is appropriate.

Pacific Power believes the guiding principle of any state implementation of the Public Utility Regulatory Policies Act of 1978 (PURPA) is to protect customers. Pacific Power emphasized this point in comments that were filed on April 13, 2018. Past Commission precedent has also explicitly recognized the importance of protecting ratepayers.[1] The Commission has also explicitly recognized avoided-cost pricing as a cornerstone of maintaining customer indifference. "Consistent with the goals of PURPA, ratepayers and utilities should remain indifferent to whether power is purchased from qualifying facilities or from other sources. In achieving this objective, the Commission will use the best forecasts and best assumptions possible to arrive at accurate estimates of avoided costs."[2] Pacific Power emphasizes that any revisions to Washington's implementation of PURPA should continue to incorporate these concepts.

I. LEGALLY ENFORCEABLE OBLIGATION

Pacific Power has collaborated with Avista Corporation (Avista) to address the questions raised in the Notice of Opportunity to File Written Comments and develop a straw proposal for contracting procedures for purchasing output from Qualifying Facilities. The discussion and joint proposed language is provided in the comments filed by Avista in this docket.

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[1] *See Spokane Energy, Inc. v. Wash. Water Power Co.,* Cause No. U-86-114, Commission Order Granting Exceptions; Reversing Proposed order; and Dismissing Complaint at 2 (April 22, 1987).
[2] *Washington Utilities and Transportation Commission v. Washington Water Power Company*, 83 P.U.R.4th 364 at 375 (1987).

II. REDLINED EDITS TO RULES

Below are Pacific Power's comments and specific redline edits to the draft rules in response to the Notice. The company is also providing a full version of the redlined draft rules as an attachment to these comments. The attachment contains a few non-substantive edits and corrections in addition to the proposed changes discussed below. If a section is not included below, Pacific Power has no suggested changes.

480-106-DDD—Definitions

Pacific Power supports and incorporates the revised definition of "back-up power" proposed by Avista in its comments filed on April 13, 2018. The revised definition is consistent with that used by the Federal Energy Regulatory Commission (FERC), and more precisely describes the period during which utility power would be supplied.

480-106-FFF—Obligations of the utility to qualifying facilities

Pacific Power supports and incorporates the proposed change to subsection (1) offered by the Alliance of Western Energy Consumers (AWEC) in their April 13, 2018 comments. AWEC's proposed change makes clear that a utility is not obligated to purchase the power from a qualifying facility (QF) that is necessary to power the facility itself (*i.e.*, more than net power).[3]

In subsection (2), Pacific Power proposes revising the draft rule language to maintain the Commission's existing megawatt (MW) threshold for receiving standard contracts as follows:

> (2) A utility must file a tariff schedule with standard rates for purchases from qualifying facilities with a design capacity of ~~seven~~one megawatt~~s~~ or less that is consistent with WAC 480-106-~~GGG~~HHH(4) Rates for purchases from qualifying facilities. Qualifying facility developers proposing projects with a design capacity of ~~seven~~one megawatt~~s~~ or less may choose to receive a purchase price for power that is set forth in the standard tariff schedule filed under the provisions of this chapter.

Changing the state-wide rule is unnecessary because the Commission's rule serves as a floor, not a ceiling, for utility-specific standard contracting thresholds. It is appropriate to apply discrete thresholds for each utility according to the likely impact on customers and the complexity of each utility's contract negotiation process.

Revision of the state-wide 1 MW threshold is also unnecessary because the Commission can adjust—and has adjusted—this threshold on a utility-specific basis. These adjustments have resulted in 2 MW and 5 MW thresholds for each of Washington's regulated electric utilities—thresholds substantially higher than the 100 kilowatt floor established by FERC. Revisions to

[3] *Connecticut Valley Elec. Co., Inc. v. Wheelabrator Claremont Co., L.P.*, 82 FERC P61,116, at P61,412 (Feb. 11, 1998) ("[A] QF may not sell in excess of its *net* output.") (emphasis added).

the state-wide rules are therefore unnecessary to achieve utility-specific revisions of the standard contracting threshold.

The Commission's existing approach of establishing utility-specific thresholds appropriately allows the Commission to flexibly regulate the amount of PURPA development according to both the size of that utility's retail customer pool as well as the relative complexity of each utility's contract negotiation process. Pacific Power has both a relatively small pool of Washington retail customers as well as a streamlined and clearly defined contracting process for negotiated contracts—one that can be understood and readily navigated by projects above the 1 MW range.

To the extent that the Commission finds it necessary to raise the standard contract threshold for QFs, Pacific Power urges the Commission to take a gradual approach that would avoid sudden floods of development—and concomitant cost spikes for customers.

In subsection (4), Pacific Power proposes to delete the references to the "interconnection service tariffs filed under WAC-480-108-080," as shown below:

> (4) A 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 480-106-KKK Interconnection costs~~ and the interconnection service tariffs filed under WAC 480-108-080~~.

As discussed in detail in Pacific Power's April 13, 2018 comments (pages 20-22), Pacific Power proposes to maintain the Commission's long-standing and deliberate distinction between its distribution-interconnection rules and its QF-interconnection rules.

480-106-GGG—Schedules of estimated avoided cost

Pacific Power proposes to revise subsection (1) to clarify the means of calculating a utility's avoided cost as shown below.

> (b) an avoided capacity cost expressed in cents per kilowatt-hour based on the ~~projected fixed cost of the next planned least-cost~~incremental cost of the capacity resource addition identified in the succeeding 10 years in the utility's most recently ~~acknowledged~~filed integrated resource plan or IRP update filed pursuant to WAC 480-100-238.
>
> > (i) A utility must identify the projected ~~fixed~~incremental costs of its next planned generating unit on either the estimates included in its most recently-~~acknowledged~~filed integrated resource plan or IRP update, or the most recent project proposals received pursuant to an ~~all-source~~ RFP issued consistent with chapter 480-107 WAC, whichever is most current.

> (ii) If the utility's most recently ~~acknowledged~~filed integrated resource plan identifies the need for capacity in the form of market purchases not yet executed, but does not identify a need for new generating units, then the utility shall use the cost of ~~a peaker unit~~such purchases as identified in the integrated resource plan as the avoided capacity cost of the market purchases.
>
> ~~(iii) An avoided capacity cost must account for any differences between the in-service date of the qualifying facility and the date of the next planned generating unit by levelizing the lump sum present value of the capacity cost at the utility's authorized rate of return.~~

> (c) The utility's standard rate may differentiate among qualifying facilities based on the supply characteristics of different technologies for purposes of calculating the avoided capacity and energy cost.

Rather than identifying the "fixed cost" of a capacity addition identified in the next 10 years, the revised language clarifies that the *incremental* costs of the *least-cost* capacity resource to be added within the same period is the appropriate measure of a utility's avoided cost. The net cost of a utility resource accounts for both the costs and benefits associated with that resource—examples of benefits include the provision of zero or low cost energy, the ability to be dispatched, and the value of operating reserves or other ancillary services. Thus, using fixed costs alone could overstate the costs to customers of a utility resource. This Commission has previously stated that "avoided costs should be established to be no greater than that which the ratepayers would be expected to pay without PURPA."[4] As revised, the avoided cost is calculated according to the anticipated *net* impact on customer bills, thereby ensuring that customers remain indifferent to purchases of QF power.

Pacific Power also continues to support using a utility's most recently *filed* IRP or IRP Update as the basis for identifying possible deferrable resource additions. A filed IRP or IRP Update is more likely to represent that utility's least-cost, least-risk plan at any given time, and more accurately represent a utility's long-term plan during an IRP review process than an acknowledged IRP that is out of date.

In addition, Pacific Power does not believe that the rule should restrict relevant least-cost resource procurement to "all source" RFPs. While the current procurement rules require an "all source" RFP, Pacific Power recommends eliminating that requirement from the procurement rules.[5] Pacific Power has often sought waivers of that requirement because Pacific Power's existing procurement policies are tailored to efficiently and effectively acquire the best resource in concert with the IRP process.[6] In fact, one of the primary drivers of this docket was the

[4] *Spokane Energy, Inc. v. Wash. Water Power Co.,* Cause No. U-86-114, *Commission Order Granting Exceptions; Reversing Proposed order; and Dismissing Complaint* (April 22, 1987).
[5] Wash. Admin. Code §480-107-015.
[6] *See In the Matter of Pac. Power & Light Co. Petition for Waiver from Certain Request for Proposal Requirements* , Docket No. UE-111418, Order 01 (October 14, 2011); *In the Matter of Pac. Power & Light Co. Petition for Waiver from Certain Request for Proposal Requirements*, Docket No. UE-131670, Order 01 (October 10, 2013); *In the Matter of Pac. Power & Light Co. Petition for Waiver from Certain Request for Proposal Requirements*, Docket No.

frequent requests for waiver of these RFP rules. Therefore, Pacific Power recommends the elimination of the "all-source" requirement from this rule. Additionally, an RFP that effectively procures the least-cost resource for customers, consistent with that utility's resource planning, should constitute the least-cost resource used for calculating a utility's avoided cost.

Pacific Power's revisions adjust the means of calculating a utility's avoided cost when the utility's most recently filed IRP or IRP Update identifies the need for market purchases, but not for new generating units. Rather than using an arbitrary peaker resource that will likely overstate avoided cost prices, Pacific Power recommends using the actual cost of such market purchases as a principled and accurate measure of the costs avoided by a QF resource. In the circumstance described by the rule, this measure is the only reliable option to preserve customer indifference.

Pacific Power supports Avista's proposal to remove subsection (1)(iii), which would levelize the present value of an avoided capacity cost, thereby paying a QF for capacity before such additional capacity is required. As Pacific Power explained in its April 13, 2018 comments, front-end-loaded payments both disincentivizes long-term performance and operate as a loan from customers to QFs.[7] If the Commission does allow such levelized payments, the Commission should treat such levelization as a loan—to be repaid to customers with interest by means of purchases at *less* than avoided cost in the later years of a contract, as well as additional performance assurances and a levelization security. The Commission's previous precedent has acknowledged that protections for ratepayers are necessary in this issue.[8]

In subsection (2), Pacific Power proposes the following edits:

> (a) The utility executes agreements ~~with qualifying facilities~~ for a combined capacity of ~~50~~<u>25</u> megawatts <u>or one percent of Washington retail load, whichever is lower,</u> or more since it filed the tariff schedule of estimated avoided cost in effect; or if
>
> (b) The utility's current forecast of market prices for power changes by ~~25~~<u>10</u> percent or more from the forecast used to support the tariff schedule of estimated avoided cost in effect~~.~~<u>; or if</u>
>
> <u>(c) The utility executes a quantity of agreements that results in a change in the utility's sufficiency/deficiency date.</u>

UE-151694, Order 01 (October 29, 2015); *In the Matter of Pac. Power & Light Co. Petition for Waiver from Certain Request for Proposal Requirements and Approval of its Draft Request for Proposals*, Docket No. UE-170885, Order 01 (October 12, 2017).

[7] *See* Pacific Power's April 13 Comments at 7-8.

[8] By its own terms, PURPA was meant to protect the ratepayers. Avoided costs should be established to be no greater than that which the ratepayers would be expected to pay without PURPA. Minimizing the cost to the ratepayer involves more than setting a reasonable purchase price. The purchase agreement must be carefully drafted, with minimal ambiguity, and maximum security in the event of a default, or other inability to perform. Such security is of critical importance where a "levelized" contract of long term and high volume is involved. *Spokane Energy, Inc. v. Wash. Water Power Co.,* Cause No. U-86-114, Commission Order Granting Exceptions; Reversing Proposed order; and Dismissing Complaint at 2 (April 22, 1987).

Subsection (2) is revised to preserve customer indifference by allowing avoided cost price updates in case of material changes in relevant circumstances. For instance, if a utility has executed contracts for a substantial portion of that utility's state retail load, it is likely that the need for capacity—and thus the utility's sufficiency/deficiency date—will have materially changed. Similarly, a substantial increase in market prices for power would shift the avoided cost of market purchases.

As drafted, the rules would allow a utility to update its avoided costs if 50 MW of QF agreements are executed or if forecasted market prices for power have changed by 25 percent or more. However, the 50 MW threshold would have an outsize impact on relatively small service territories. Fifty MW is more than five percent of Pacific Power's peak load in Washington. Pacific Power therefore proposes an alternate cap of one percent of utility retail load or 25 MW, whichever is lower, as the basis for triggering an avoided cost price update. Similarly, a 25-percent-change threshold for updating avoided cost prices is excessive; Pacific Power supports lowering this threshold to a 10 percent change, which is still a significant change that would indicate that avoided cost prices are likely inaccurate and should be updated.

Pacific Power further proposes that utilities be permitted to update avoided cost prices if executed contracts otherwise result in a revised sufficiency/deficiency date to avoid paying multiple QFs to defer the same increment of capacity. For example, if additional committed generation would exceed the size of the deferrable resource, the sufficiency/deficiency date should change and the utility should recalculate avoided cost prices based on the costs associated with a different deferrable resource.

In the alternative, Pacific Power suggests replacing Section GGG(2) in its entirety as follows:

> A utility or any interested party may propose modifications to avoided cost prices at any time, with the moving party bearing the burden to show that the proposed price change is appropriate under the circumstances.

This revised language would allow avoided cost prices to remain up to date, while broadening the sphere of those who may propose such changes.

Pacific Power supports Avista's proposed modification to subsection (3), which would prevent duplicative updates where a revised schedule is filed within thirty days of the annually scheduled tariff filing.

480-106-HHH—Rates for purchases from qualifying facilities

Pacific Power agrees with Avista's proposal to remove subsection (2)(b), which is redundant with the Commission's directive in subsection (1)(c). To preserve customer indifference, Pacific Power agrees that rates "must not exceed the avoided cost to the utility of alternative energy, capacity, or both."

In addition, Pacific Power agrees with Avista's proposal in subsection (4) to retain a five-year term as shown below:

> (4) **Standard rates.** Standard rates for purchases by facilities with a nameplate capacity of ~~seven~~one megawatt~~s~~ or less, shall be implemented as follows:
>
> (a) The commission will consider the annual tariff schedule of estimated avoided costs containing standard rates for purchases filed pursuant to WAC 480-106-GGG through its standard open meeting process, except the tariff will become effective ~~60 days~~ immediately after filing, subject to refund for any corrections or revisions identified during the tariff schedule's approval process. The filing shall contain all the terms and conditions of the purchase. The utility's tariff schedule must offer a minimum term of ~~fifteen~~five years for a new qualifying facility, and ~~ten~~five years for an existing quantifying facility entering into a new agreement with the utility.

The Commission is proposing a comprehensive package of changes in its PURPA implementation, including revisions to how avoided costs are calculated. Even under the most accurate avoided cost methodology, the lengthier the contract, the more likely the actual avoided cost will diverge from the contract price. Shorter contract terms allow for avoided costs to be updated with more accurate inputs when and if a QF elects to renew their contract. Pacific Power has not seen evidence that a shorter term inhibits the ability of developers to gain financing for their projects.

A five-year price term is not only adequate to allow for financing, but may further protect customers by encouraging developers to invest sufficient amounts of their own equity to ensure that they will perform over the PPA period. As AWEC proposed, consecutive five-year terms would allow customers to be assured of paying updated and accurate prices, while allowing for continuity of contracting for QF developers. As an alternative to a set five-year term, Pacific Power would also support AWEC's proposal of a 15-year term with prices updated every five years based on the purchasing utility's most recent avoided cost filing.

Critically, while Pacific Power urges the Commission to consider retaining its existing five-year minimum term for standard contracts, the term is only one piece of the standard contract. Accurately setting avoided costs prices is critical to protecting customers and ensuring customer indifference.

Pacific Power also revised subsection (4) to incorporate an implementation timeline that better serves customers. The existing 60-day notice is inappropriate because it allows for further contracting at prices that no longer reflect the utility's actual avoided costs. Instead, Pacific

Power suggests making revised prices effective immediately, subject to refund for any corrections or revisions identified during the tariff schedule's approval process.

480-106-KKK—Interconnection costs

Pacific Power proposes the following modifications to this section:

> (1) Any costs of interconnection are the responsibility of the owner or operator of the qualifying facility entering into a power contract under this chapter. The utility must assess all reasonable interconnection and necessary system or network upgrade costs the utility incurs against a qualifying facility on a nondiscriminatory basis~~, as described in a utility's interconnection tariff filed pursuant to WAC 480-108-080~~.
>
> (2) The owner or operator of the qualifying facility must reimburse the utility for any reasonable interconnection costs the utility may incur. Such reimbursement shall be made, at the ~~qualifying facility's~~utility's election:

Pacific Power deleted the references to "a utility's interconnection tariff filed pursuant to WAC-480-108-080" because, as discussed in detail in Pacific Power's April 13, 2018 comments (pages 20–22), Pacific Power believes the Commission should maintain its long-standing and deliberate distinction between its distribution-interconnection rules and its QF-interconnection rules.

Pacific Power also proposed to revert back to the current rule's language with respect to which entity (the utility or the qualifying facility) elects the mechanism used for the qualifying facility' reimbursement to the utility of interconnection costs, including system or network upgrades. As explained in detail in Pacific Power's April 13, 2018 comments (page 22), the Commission should maintain its current rule that states the utility, not the QF, elects the reimbursement mechanism. The existing approach maintains customer indifference because customers are not required to subsidize qualifying facility development and allow the same upfront payment process to be used for all interconnection customers (qualifying facility and non-qualifying facility). If qualifying facilities are given the option to elect the mechanism and choose to pay "over an agreed period of time" instead of paying upfront, the Commission will need to establish the appropriate qualifying facility-specific contractual mechanisms and processes to define exactly how such a mechanism would work, as no other generator receives that option currently, *e.g.*, would the interconnection costs, including what can be extremely significant network upgrades, be identified in the utility transmission function's interconnection process but paid over the term of the power purchase agreement that is negotiated with the utility merchant function and not always at the same time as the interconnection agreement?

Finally, the Commission's existing rules clearly require that a qualifying facility is responsible for interconnection costs, which include any network upgrades that may be required to grant the qualifying facility's interconnection. This aspect of the Commission's rules has become more critical in recent years when an increasing number of qualifying facilities are choosing to site their projects in constrained areas—siting choices that can have real, and sometimes astronomical, costs consequences. Customers must be held indifferent to these qualifying facility interconnection-driven network upgrade costs. As an example, a qualifying facility recently chose to site is project in a constrained area of PacifiCorp's southern Utah transmission system, and the qualifying facility's interconnection study identified that approximately $400 million in facilities and network upgrades would be required to provide interconnection at the requested location. The qualifying facility sought to shift these costs to PacifiCorp's customers—a shift that the Utah state commission rejected in violation of customer indifference in a fully litigated proceeding.[9] Pacific Power raises this issue to simply highlight the importance of and express strong support for the Commission maintaining the existing rules' explicit reference to a qualifying facility's responsibility for interconnection-driven network upgrade costs.

III. CONCLUSION

Pacific Power appreciates the opportunity to provide these further comments after the workshop that was held with the Commissioners on May 14, 2018. The Commission's implementation of PURPA could significantly impact Washington customers, and therefore Pacific Power emphasizes the importance of a deliberative process and dialogue to work through these PURPA concerns. In that spirit, Pacific Power will continue to work collaboratively with all stakeholders to help provide the best outcome for Washington customers.

Please contact Ariel Son at (503) 813-5410 if you have any questions.

Sincerely,

/s/

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[9] *See Application of Rocky Mountain Power for Approval of the Power Purchase Agreement between PacifiCorp and Glen Canyon Solar A, LLC*, Utah Public Service Commission, Docket Nos. 17-035-26, et al., Consolidated Order (Dec. 22, 2017).