

**IRP Rule Making – Proposed(Redlined) New Chapter**  
**Relating to the Public Utility Regulatory Policies Act**  
**WAC 480-106 – CR 102 Draft Rule**

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**480-106-001****Purpose.**

The purpose of this chapter is to implement the Public Utility Regulatory Policies Act of 1978 (PURPA), Title II, sections 201 and 210, and related regulations promulgated by the Federal Energy Regulatory Commission (FERC) in 18 C.F.R. Part 292 Subparts A and C. If there is any conflict between these rules and PURPA, or the related rules promulgated by FERC in 18 C.F.R. Part 292, PURPA and those related FERC rules control. Purchase of electric power under these rules satisfies a utility's obligation to purchase power from qualifying facilities under section 210 of PURPA.

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**480-106-002****Application of rules.**

(1) Except as otherwise provided in this chapter, the rules in this chapter apply to any utility that is subject to the eCommission's jurisdiction under RCW 80.01.040, 80.04.010, and chapter 80.28 RCW, and qualifying facilities as defined herein. The rules in this chapter do not supersede contracts existing before the effective date of this rule. At the expiration of such an existing contract between a utility and a qualifying facility, the provisions of this chapter shall apply to rates and terms offered under any contract extension or new contract.

(2) Nothing in this chapter prohibits a utility or a qualifying facility from agreeing to voluntary contracts with rates, terms, or conditions that differ from the provisions in this chapter.

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**480-106-003****Exemptions from rules in chapter 480-106 WAC**

The eCommission, in response to a request or on its own initiative, may grant an exemption from, or modify the application of, any rule in this chapter consistent with the standards and according to the procedures set forth in WAC 480-07-110 ~~Exemptions from and modifications to commission rules~~; conflicts with other rules.

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**480-106-007****Definitions.**

“**Avoided costs**” means the incremental costs to a utility of electric energy, capacity, or both that, but for the purchase from the qualifying facility or qualifying facilities, the utility would generate itself or purchase from another source.

“**Back-up power**” means electric energy or capacity supplied by a utility to replace energy ordinarily generated by a qualifying facility’s own generation equipment during an unscheduled outage of the facility.

“**Capacity**” means the capability to produce or avoid the need to produce electric energy and ancillary electrical services, measured in kilowatts (kW), including but not limited to the services described in WAC 480-106-050(5)(b).

“**Commission**” means the Washington ~~u~~Utilities and ~~transportation commission~~Transportation Commission.

“**Energy**” means electric energy, measured in kilowatt-hours (kWh) or megawatt-hours (MWh).

“**Integrated resource plan**” or “**IRP**” means the filing made every two years by a utility in accordance with WAC 480-100-238 ~~Integrated resource planning~~.

“**Interconnection costs**” means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, and administration incurred by the utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility that are in excess of the corresponding costs the utility would have incurred if it had not engaged in interconnected operations. Interconnection costs do not include any costs included in the calculation of avoided costs.

“**Interruptible power**” means electric energy or capacity supplied by a utility subject to interruption by the utility under specified conditions.

“**Legally enforceable obligation**” means the binding commitment of a qualifying facility to sell, and of a utility to purchase, the energy, capacity, or both provided by the qualifying facility over a specified term in accordance with these rules.

“**Maintenance power**” means electric energy or capacity supplied by a utility during scheduled outages of a qualifying facility.

“**Qualifying facility**” means a cogeneration facility or a small power production facility that is a qualifying facility under 18 C.F.R. Part 292 Subpart B.

“**Request for proposals**” or “**RFPs**” means the documents describing a utility’s solicitation of bids for delivering electric capacity, energy, or both, or conservation that was issued consistent with chapter 480-107 WAC.

**“Supplementary power”** means electric energy or capacity supplied by a utility that a qualifying facility regularly uses in addition to the energy or capacity that the qualifying facility generates itself.

**“System Emergency”** means a condition on a utility’s system that is likely to result in an imminent, significant disruption of service to customers or is imminently likely to endanger life or property.

**“Utility”** means an electrical company as defined in RCW 80.04.010 that is subject to the commission’s jurisdiction under RCW 80.01.040, RCW 80.04.010, and chapter 80.28 RCW.

#### **480-106-010**

##### **Obligations of qualifying facilities to the utility.**

- (1) The owner or operator of a qualifying facility purchasing or selling electricity under this chapter must execute a written agreement with the utility stating at a minimum that:
  - (a) The owner or operator of the qualifying facility will construct and operate all interconnected qualifying facilities within its control in accordance with all applicable federal, state, and local laws and regulations to ensure system safety and reliability of interconnected operations;
  - (b) The qualifying facility will furnish, install, operate, and maintain in good order and repair, and without cost to the utility, such switching equipment, relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus determined by the utility to be reasonably necessary for the safe and reliable operation of the qualifying facility in parallel with the utility’s system, or the qualifying facility may contract for the utility to do so at the qualifying facility’s expense; the qualifying facility’s delivery of electricity to the utility must be at a voltage, phase, power factor, and frequency as reasonably specified by the utility; and
  - (c) The utility at all times must have access to all switching equipment capable of isolating the qualifying facility from the utility’s system.
- (2) To the extent that the qualifying facility will assume responsibility for the safe operation of the interconnection facilities, the qualifying facility is not required to assume responsibility for negligent acts of the utility.
- (3) The utility may ~~choose to~~ operate the switching equipment described in subsection (1)(c) of this section if, in the sole opinion of the utility, continued operation of the qualifying facility in connection with the utility’s system may create or contribute to a system emergency. Such a decision by the utility is subject to ~~e~~Commission verification in accordance with WAC 480-106-070 ~~System emergencies~~. The utility must endeavor to minimize any adverse effects of such operation on the owner or operator of a qualifying facility.

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**480-106-020****Obligations of the utility to qualifying facilities.**

(1) **Obligation to purchase from qualifying facilities:** A utility must purchase, in accordance with WAC 480-106-050 ~~Rates for purchases from qualifying facilities~~, any energy and capacity that is made available from a qualifying facility:

(a) Directly to the utility; or

(b) Indirectly to the utility in accordance with subsection (4) of this section.

(2) **Obligation to sell to qualifying facilities:** A utility must sell to any qualifying facility, in accordance with WAC 480-106-060 ~~Rates for sales to qualifying facilities~~, any energy and capacity requested by the qualifying facility at the same rates, terms, and conditions that are available to other customers of the utility in the same customer class who do not generate electricity.

(3) **Obligation to interconnect:** A utility must make all the necessary interconnections with any qualifying facility to accomplish purchases or sales under this section. The qualifying facility must pay for interconnection costs to the extent required under WAC 480-106-080-~~Interconnection costs~~.

(4) **Transmission to other electrical companies:** At the request of a qualifying facility, a utility that would otherwise be obligated to purchase energy, capacity, or both, from such qualifying facility must transmit energy, capacity, or both, to any other electric service provider at the expense of the qualifying facility. The qualifying facility's use of a utility's transmission facilities shall be pursuant to the utility's open access transmission tariff. Any utility to which energy or capacity generated by a qualifying facility and transmitted to such utility over the facilities of another utility shall purchase the energy or capacity under this subpart as if the qualifying facility were supplying energy or capacity directly to the purchasing utility. The rate the purchasing utility pays the qualifying facility shall be adjusted to reflect line losses and shall not include any charges for transmission.

(5) **Parallel operation:** Each utility must offer to operate in parallel with a qualifying facility if the qualifying facility complies with all applicable standards established in this section.

**Avista Comments:** *As noted in footnote 11 of Avista's Comments, the language in Draft Rule 480-106-020(4) is inconsistent with the language in FERC's regulations. Compare with 18 C.F.R. § 292.303(d). To avoid potential questions regarding whether this requirement is or is not consistent with FERC's regulations, this section should be revised to conform to the language of FERC's regulation.*

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**480-106-030****Tariff for purchases from qualifying facilities**

(1) **Tariff for purchases from qualifying facilities required:** Each utility must file a tariff consistent with this chapter and with WAC 480-80-102 ~~Tariff content.~~

(2) **Contracting procedures:** In the tariff required in subsection (1) of this section, each utility must file ~~procedures for memorializing a legally enforceable obligation in contracting~~ procedures that sets forth the obligations of the utility and the qualifying facility entering into contracts for the purchase and sale of qualifying facility output. Such contracting procedures shall provide that a legally enforceable obligation will be established at such time as the utility and the qualifying facility execute a written contract; provided, however, that a qualifying facility may request that the Commission establish a legally enforceable obligation in the absence of an executed written contract.

~~(a) In the event that a qualifying facility requests that the Commission establish a legally enforceable obligation may exist prior to in the absence of an executed written contract, but not before a qualifying facility provides, at a minimum, the following information to the utility:~~

~~(i) Qualifying facility owner name, organizational structure and chart, and contact information;~~

~~(ii) Generation and other related technology applicable to the qualifying facility;~~

~~(a) Design capacity, station service requirements, and the net amount of power, all in kilowatts, the qualifying facility Commission will deliver to the utility's electric system;:~~

~~(iii) Schedule of estimated qualifying facility electric output, in an 8,760-hour electronic-spreadsheet format, including (to the extent applicable) any expected generation degradation per year;~~

~~(iv) Ability, if any, of qualifying facility to respond to dispatch orders from the utility;~~

~~(v) Map of qualifying facility location, electrical interconnection point, and point of delivery;~~

~~(vi) Proposed commencement date for the qualifying facility's delivery of electric output to the utility;~~

~~(vii) List of acquired and outstanding qualifying facility permits, including a description of the status and timeline for the acquisition of any outstanding permits;~~

~~(viii) Demonstration of the qualifying facility's ability to obtain qualifying facility status;~~

~~(ix) Fuel type(s) and source(s);~~

~~(x) Plans to obtain, or actual, fuel and transportation agreements, if applicable;~~

~~(xiii) Electricity transmission agreements with the interconnected system, or detailed plans to obtain such agreements, in those cases where the qualifying facility is or will be interconnected to an electrical system other than the purchasing utility's system;~~

~~(xiv) Interconnection agreement status, including interconnection queue number; and~~

~~(xv) Proposed contracting terms and pricing provisions for the sale of electric output to the utility, including but not limited to term in years, fixed price and market indexed price.~~

- ~~(i) In the event of a disagreement between the qualifying facility and the purchasing utility, the commission will determine whether the purchasing utility failed to comply with a material obligation of the contracting procedure set forth in such utility's tariff, and;~~

- (ii) if the Commission determines that the purchasing utility failed to comply with a material obligation of the contracting procedure set forth in such utility's tariff, determine the date that a legally enforceable obligation occurred based on the specific facts and circumstances of each case.

**(3) Schedule of estimated avoided costs offering standard rates for purchases from qualifying facilities of five megawatts or less:** In the tariff required in subsection (1) of this section, all utilities must file a schedule of estimated avoided costs offering standard rates for purchases from qualifying facilities with capacities of five megawatts or less, as described in WAC 480-106-040 ~~Schedules of estimated avoided costs.~~ Qualifying facility developers proposing projects with a design capacity of five megawatts or less may choose to receive a purchase price for power that is set forth in such standard tariff.

~~(2) Standard contract provisions for purchases from qualifying facilities of five megawatts or less: In the tariff required in subsection (1) of this section, each utility shall specify the information required for qualifying facilities with capacities of five megawatts or less to obtain draft executable contracts. All utilities shall file standard contract provisions for purchases from a qualifying facility with a capacity of five megawatts or less. Standard contracts may include commercially reasonable milestone events and cure periods, including but not limited to the qualifying utilities:~~

~~(i) provision of any necessary credit support, necessary governmental permits and authorizations, evidence of construction financing, and as-built supplements;~~

~~(ii) completion of interconnection facilities;~~

~~(iii) completion of start-up testing; and~~

~~(iv) achievement of mechanical availability of operation.~~

~~(3) Information and term sheets for qualifying facilities with capacities of greater than five megawatts: In the tariff required in subsection (1) of this section, each utility shall specify the information required for qualifying facilities of greater than five megawatts to obtain draft and executable contracts. All utilities shall post upon the utility's website non-binding term sheets with limited contract provisions for qualifying facilities with capacities greater than five megawatts. Such contract provisions need not be the same as the standard contract provisions required pursuant to subsection (3) of this section, but shall be consistent with the commission's rules.~~

**Avista Comments:** *Avista agrees that each utility should establish, in its tariff, clear contracting procedures that establish the obligations of both utilities and qualifying facilities in reaching an executed contract for the purchase and sale of qualifying facility output. As discussed in Avista's Comments, the rules should clearly state that a legally enforceable obligation is established by executing a contract, unless the utility fails to comply with its contracting procedure. If a utility fails to comply with its contracting procedure, the qualifying facility can request that the Commission establish a legally enforceable obligation in the absence of an executed contract.*

*Avista also recommends deleting the specific list of information to be provided by the qualifying facility that was set forth in Draft Rule 480-106-030(2)(a). While that list of information is generally the information that utilities need to start the contracting process, each utility should be*

*afforded the opportunity to develop the list of information that it requires from qualifying facilities in its tariff. In approving each utility's tariff, the Commission can assure that the list of information the utility requires from a qualifying facility is reasonable.*

*In earlier comments, Avista encouraged the Commission to set 100 kW as the eligibility threshold for published rates. The Company appreciates the Commission's movement from a 7 MW threshold to 5 MW. Also as noted in Avista's prior comments, in setting the published rate cap, the Commission must balance the risk and burden to utility customers of an eligibility cap that is larger than 100 kW, against the burden placed on qualified facility developers who are not eligible for standard offer rates. See Avista's Comments dated June 18, 2018 at p. 3.*

*There has been no demonstration in this proceeding that the burden on qualifying facilities of setting the standard offer cap at 100 kW outweighs the risk to utility ratepayers. Accordingly, the Commission should set the standard offer cap at 100 kW.*

*Finally, as noted in Avista's comments, standard contracts are unnecessary and inappropriate. Similarly, non-binding term sheets are also unnecessary and inappropriate. Accordingly, Avista recommends deleting Draft Rule 480-106-030(4) and (5) in their entirety.*

#### **480-106-040**

##### **Schedules of estimated avoided costs.**

(1) **Filing requirement.** A utility must file by November 1 of each year, as a revision to its tariff described in WAC 480-106-030 ~~Tariff for purchases from qualifying facilities~~, a schedule of estimated avoided costs that identifies, ~~both separately and combined,~~ its avoided costs of energy and its avoided cost of capacity. All schedules of estimated avoided costs must include:

(a) *Identification of avoided energy:* An estimated avoided cost of energy based on the utility's current forecast of market prices for power stated on a cents per kilowatt-hour or dollars per megawatt-hour basis, differentiated by daily and seasonal peak and off-peak periods, by year, for the current calendar year and each of the next ~~18~~six years; and

(b) *Identification of avoided capacity:* An estimated avoided cost of capacity expressed in dollars per megawatt based on the projected fixed cost of the next planned capacity addition identified in the succeeding ~~10~~six years in the utility's most recently acknowledged integrated resource plan filed pursuant to WAC 480-100-238 ~~Integrated resource planning~~, and such identification must include the following:

(i) *Identification of capacity cost:* A utility must identify the projected fixed costs of its next planned capacity addition based on either the estimates included in its most recently filed integrated resource plan or the most recent project proposals received pursuant to an RFP issued consistent with chapter 480-107 WAC, whichever is most current; ~~and~~

(ii) *Proxy for planned market purchases:* If the utility's most recently acknowledged integrated resource plan identifies the need for capacity in the form of market purchases not yet executed, then the utility shall use the projected fixed costs of a simple-cycle combustion turbine unit as identified in the integrated resource plan as the avoided capacity cost of the market purchases; ~~and~~  
~~and.~~

~~(iii) Discounted future capacity: 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;~~

(2) **Differentiating among qualifying facilities.** A utility's estimated avoided cost of capacity ~~may~~shall differentiate among qualifying facilities based on the supply characteristics of different technologies of qualifying facilities for purposes of calculating the estimated avoided cost of capacity.

(3) **Schedule revisions.** A utility may file to revise its schedule of estimated avoided costs prior to its next annual filing; provided that the ~~e~~Commission may not allow such tariff revision to become effective until at least sixty (60) days after such filing. Filing a revised schedule of estimated avoided costs in this subsection does not relieve the utility of its annual obligation to file a schedule in subsection (1) if such filing occurs more than thirty (30) days prior to such annual tariff filings.

**Avista Comments:** *Certain aspects in this section are unclear. For example, the utility is asked to provide a "schedule of estimated avoided costs that identifies, both separately and combined, its avoided cost of energy and its avoided cost of capacity." Providing these schedules separately is intuitive; but, combining them is not possible absent guidance by the Commission on the assumed on-peak capacity contribution, and capacity factor of the resource. Because of this difficulty, Avista has struck this language in the Draft.*

*Avista also encourages the Commission to keep the tariff focused on high-level information. Where the Commission wants more detailed pricing information, such information can easily be provided to the qualified facility developer on request via spreadsheet. Additionally, contracts should be limited to five years in maximum length, which is in line with the Company's previous comments in keeping with the Company's current tariff. Avista requests the Commission strike (1)(iii). Capacity payments made prior to need reduce the value of resources already in the marketplace by magnifying market surplus. Customers are likely to be harmed by over-paying in the early years when the plant is not needed, and by the reduction in value of the existing portfolio created by the further over-supply created by a qualified facility resource brought online prior to a resource need.*

*Avista also proposes changing "may" to "shall" in subsection 2 to recognize that properly pricing qualified facilities at avoided cost requires differentiating between supply characteristics, especially for the timing and capacity contributions of the resource.*

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**480-106-050**

### **Rates for purchases from qualifying facilities**

#### **(1) Rates for purchases by a utility:**

(a) Rates must be just and reasonable to the utility's customers and in the public interest;



(b) Rates must not discriminate against qualifying facilities; and

(2) ~~Rates must not exceed~~ Nothing in this section requires any utility to pay more than the avoided cost to the utility of alternative energy, capacity, or both. Establishing rates:

(a) A rate for purchase from qualifying facilities satisfies the requirements of subsection (1) of this section if the rate equals the utility's avoided costs after consideration, to the extent practicable, of the factors set forth in WAC 480-106-040 ~~Schedules of estimated avoided costs,~~ and in subsection (5) of this section.

(b) When a utility bases its purchase rates on estimates of avoided costs over a specific term of the contract or other legally enforceable obligation, the rates do not violate these rules if any payment under the obligation differs from avoided costs at the time of delivery.

(3) **Rates for purchases — time of calculation:** ~~Except for the purchases made under a standard rates tariff pursuant to subsection (4) of this section, each~~ Each qualifying facility shall have the option to:

(a) Provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility's avoided cost of energy at the time of delivery; or

(b) Provide energy, capacity, or both, pursuant to a legally enforceable obligation, in which case the rates for purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on:

(i) The avoided costs of energy and capacity calculated at the time of delivery; or

(ii) The avoided costs of energy and capacity projected over the life of the obligation and calculated at the time the parties incur the obligation.

(4) **Standard rates for purchases from qualifying facilities with capacities five megawatts or less:** A utility shall establish standard rates for its purchases from qualifying facilities with capacities of five megawatts or less as follows:

(a) A utility must file ~~the~~ a schedule of estimated avoided costs containing standard rates for purchases pursuant to WAC 480-106-040 ~~Schedules of estimated avoided costs~~ as a revision to its tariff required in WAC 480-106-030 ~~Tariff for purchases from qualifying facilities.~~

(i) The utility's standard rates for purchases must offer ~~fixed~~ rates to a ~~new~~ qualifying facility for a term of ~~fifteen~~ six years beginning on the date of contract execution, but not ~~less~~ more than ~~twelve~~ five years from the commercial operation date of the qualifying facility.

(ii) The utility's standard rates for purchases must offer fixed rates to an existing qualifying facility entering into a new agreement with the utility for a term of ten years.

(iii) Qualifying facilities that do not meet the greenhouse gas emissions performance standard established under RCW 80.80.040 are limited to contract terms of less than five years.

(b) A utility's standard rates for purchases must provide the qualifying facility the option to either:

(i) Provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility's avoided cost of energy at the time of delivery; or

(ii) Provide energy, capacity, or both, pursuant to a legally enforceable obligation, in which case the rates for purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on:

(A) The avoided energy and capacity calculated at the time of delivery; or

(B) The avoided costs of energy and capacity identified in the utility's schedule of estimated avoided costs in effect when the parties incur the obligation.

(c) Except where expressly conveyed to the utility for additional consideration, the qualifying facility shall own the renewable energy certificates and any other environmental attributes associated with the production from such qualifying facility unless the standard rates are based on the avoided ~~capacity~~ costs of an eligible renewable resource as defined in RCW 19.285.030. During any period in which the qualifying facility receives standard rates that are based on the avoided capacity costs of an eligible renewable resource, the utility shall receive the renewable energy certificates produced by the qualifying facility at no additional cost to the utility.

(d) The standard rate may account for the integration costs associated with variable technologies, as approved by the eCommission.

**(5) Negotiated rates for qualifying facilities with capacities greater than five megawatts:**

Each utility shall file and obtain eCommission approval of its avoided cost rate methodology for qualifying facilities with capacity greater than five megawatts. When negotiating rates for purchases from qualifying facilities with capacities greater than five megawatts, to the extent practicable, the parties should consider the following factors:

(a) The data the utility provided to the eCommission pursuant to WAC 480-106-040 ~~Schedules of estimated avoided costs~~, and the eCommission's evaluation of the data;

(b) The availability of energy, capacity, and ancillary services from a qualifying facility during the system daily and seasonal peak periods, including:

(i) The utility's ability to dispatch the qualifying facility;

(ii) The qualifying facility's expected or demonstrated reliability;

(iii) The terms of any contract or other legally enforceable obligation;

(iv) The extent to which the parties can usefully coordinate their respective scheduled outages;

(v) The usefulness of energy, capacity, or both, supplied from a qualifying facility during system emergencies, including the qualifying utility's ability to separate its load from its generation;

(vi) The individual and aggregate value of energy and capacity from qualifying facilities on the utility's system; and

(vii) The smaller capacity increments and the shorter lead times available, if any, with additions of capacity from qualifying facilities.

(c) The relationship of the availability of energy, capacity, or both, from the qualifying facility as derived in subsection (5)(b) of this section, to the ability of the utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and

(d) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility.

**Avista Comments:** *Consistent with its prior comments, Avista again recommends limiting contract terms to no more than five years after commercial operation, and utilities should not be required to enter such contracts more than one year prior to commercial operation. Further, the term for new contracts and renewal contracts for existing qualifying facilities should be the same. Contract terms longer than five years put utility ratepayers at risk. A five year term provides qualifying facilities the avoided cost rates over a term as required by FERC rules and strikes a more appropriate balance between protecting ratepayers from overpaying for resources and qualifying facility developers' desires for longer term contracts.*

#### **480-106-060**

##### **Rates for sales to qualifying facilities.**

###### **(1) General rules:**

(a) Rates for sales:

(i) Shall be just and reasonable, and in the public interest; and

(ii) Shall not discriminate against any qualifying facility in comparison to rates for sales to other customers served by the utility.

(iii) Utilities may not deny service to a customer for which the customer otherwise qualifies based on the presence of a qualifying facility, including interruptible power service.

(b) Rates for sales that are based on accurate data and consistent system-wide costing principles will not be considered to discriminate against any qualifying facilities if those rates apply to the utility's other customers with similar load or other cost-related characteristics.

###### ~~**(1) Additional services to be provided to qualifying facilities:**~~

~~(a) Upon request by a qualifying facility, each utility will provide:~~

~~(i) supplementary power;~~

~~(ii) back-up power;~~

~~(iii) maintenance power; and~~

~~(iv) interruptible power~~

(c) The eC<sub>Commission</sub> may waive any requirement of (a) of this subsection if, after notice in the area served by the utility and after opportunity for public comment, the utility demonstrates and

the eCommission finds that compliance with such requirement will:

- (i) Impair the utility's ability to render adequate service to its customers; or
- (ii) Place an undue burden on the utility.

~~(2) The rate for sale of back-up power or maintenance power:~~

~~(a) Shall not be based on an assumption, unless supported by factual data, that forced outages or other reductions in electric output by all qualifying facilities on a utility's system will occur simultaneously, or during the system peak, or both; and~~

~~(b) Must take into account the extent to which scheduled outages of the qualifying facilities can be usefully coordinated with scheduled outages of the utility's facilities.~~

***Avista Comments:** FERC regulations require utilities to sell qualifying facilities energy and capacity. 18 C.F.R. § 292.303(b). Like other customers, qualified facilities are eligible to procure these services through existing utility tariffs. Accordingly, subsection (3) is unnecessary and should be deleted.*

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#### **480-106-070**

##### **System emergencies.**

(1) **Qualifying facility obligation to provide power during system emergencies:** A qualifying facility may be required to provide energy or capacity to a utility during a system emergency only to the extent:

- (a) Provided by agreement between the qualifying facility and utility; or
- (b) Ordered under section 202(c) of the Federal Power Act.

(2) **Discontinuance of purchases and sales during system emergencies:** During any system emergency, a utility may, in a non-discriminatory fashion, discontinue:

- (a) Purchases from a qualifying facility if such purchases would contribute to such emergency; and
- (b) Sales to a qualifying facility provided that such discontinuance is on a nondiscriminatory basis.

~~(1) System emergencies resulting in utility action under this chapter are subject to verification by the commission upon request by either party to the power contract.~~

***Avista Comments:** The Commission's rules already provide all customers, including qualifying facilities a process for seeking recourse against a utility. See, e.g., WAC 480-07-305. This provision is therefore unnecessary. Also, because there appears to be no cost associated with requesting this verification, this provision could cause significant waste of Commission time and resources by giving qualifying facilities the ability, as a matter of course, to request that the Commission second guess utilities determinations regarding the existence of system emergencies.*

**480-106-080**

**Interconnection costs.**

(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.

(2) The owner or operator of the qualifying facility must reimburse the utility for any reasonable interconnection costs the utility may incur. Such reimbursement may be made, at the qualifying facility's election:

(a) At the time the utility invoices the owner or operator of the qualifying facility for interconnection costs incurred by the utility; or

(b) Over an agreed period not greater than the length of any contract between the utility and the qualifying facility.

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**480-106-001**

**Purpose.**

The purpose of this chapter is to implement the Public Utility Regulatory Policies Act of 1978 (PURPA), Title II, sections 201 and 210, and related regulations promulgated by the Federal Energy Regulatory Commission (FERC) in 18 C.F.R. Part 292 Subparts A and C. If there is any conflict between these rules and PURPA, or the related rules promulgated by FERC in 18 C.F.R. Part 292, PURPA and those related FERC rules control. Purchase of electric power under these rules satisfies a utility's obligation to purchase power from qualifying facilities under section 210 of PURPA.

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**480-106-002**

**Application of rules.**

(1) Except as otherwise provided in this chapter, the rules in this chapter apply to any utility that is subject to the Commission's jurisdiction under [RCW 80.01.040](#), [80.04.010](#), and chapter [80.28](#) RCW, and qualifying facilities as defined herein. The rules in this chapter do not supersede contracts existing before the effective date of this rule. At the expiration of such an existing contract between a utility and a qualifying facility, the provisions of this chapter shall apply to rates and terms offered under any contract extension or new contract.

(2) Nothing in this chapter prohibits a utility or a qualifying facility from agreeing to voluntary contracts with rates, terms, or conditions that differ from the provisions in this chapter.

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**480-106-003**

**Exemptions from rules in chapter 480-106 WAC**

The Commission, in response to a request or on its own initiative, may grant an exemption from, or modify the application of, any rule in this chapter consistent with the standards and according to the procedures set forth in WAC 480-07-110 conflicts with other rules.

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**480-106-007****Definitions.**

**“Avoided costs”** means the incremental costs to a utility of electric energy, capacity, or both that, but for the purchase from the qualifying facility or qualifying facilities, the utility would generate itself or purchase from another source.

**“Back-up power”** means electric energy or capacity supplied by a utility to replace energy ordinarily generated by a qualifying facility’s own generation equipment during an unscheduled outage of the facility.

**“Capacity”** means the capability to produce or avoid the need to produce electric energy and ancillary electrical services, measured in kilowatts (kW), including but not limited to the services described in WAC 480-106-050(5)(b).

**“Commission”** means the Washington Utilities and Transportation Commission.

**“Energy”** means electric energy, measured in kilowatt-hours (kWh) or megawatt-hours (MWh).

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**“Interruptible power”** means electric energy or capacity supplied by a utility subject to interruption by the utility under specified conditions.

**“Legally enforceable obligation”** means the binding commitment of a qualifying facility to sell, and of a utility to purchase, the energy, capacity, or both provided by the qualifying facility over a specified term in accordance with these rules.

**“Maintenance power”** means electric energy or capacity supplied by a utility during scheduled outages of a qualifying facility.

**“Qualifying facility”** means a cogeneration facility or a small power production facility that is a qualifying facility under 18 C.F.R. Part 292 Subpart B.

**“Request for proposals”** or **“RFPs”** means the documents describing a utility’s solicitation of bids for delivering electric capacity, energy, or both, or conservation that was issued consistent with chapter 480-107 WAC.

**“Supplementary power”** means electric energy or capacity supplied by a utility that a qualifying facility regularly uses in addition to the energy or capacity that the qualifying facility generates itself.

**“System Emergency”** means a condition on a utility’s system that is likely to result in an imminent, significant disruption of service to customers or is imminently likely to endanger life or property.

**“Utility”** means an electrical company as defined in RCW 80.04.010 that is subject to the commission’s jurisdiction under RCW 80.01.040, RCW 80.04.010, and chapter 80.28 RCW.

#### **480-106-010**

##### **Obligations of qualifying facilities to the utility.**

- (1) The owner or operator of a qualifying facility purchasing or selling electricity under this chapter must execute a written agreement with the utility stating at a minimum that:
  - (a) The owner or operator of the qualifying facility will construct and operate all interconnected qualifying facilities within its control in accordance with all applicable federal, state, and local laws and regulations to ensure system safety and reliability of interconnected operations;
  - (b) The qualifying facility will furnish, install, operate, and maintain in good order and repair, and without cost to the utility, such switching equipment, relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus determined by the utility to be reasonably necessary for the safe and reliable operation of the qualifying facility in parallel with the utility’s system, or the qualifying facility may contract for the utility to do so at the qualifying facility’s expense; the qualifying facility’s delivery of electricity to the utility must be at a voltage, phase, power factor, and frequency as reasonably specified by the utility; and
  - (c) The utility at all times must have access to all switching equipment capable of isolating the qualifying facility from the utility’s system.
- (2) To the extent that the qualifying facility will assume responsibility for the safe operation of the interconnection facilities, the qualifying facility is not required to assume responsibility for negligent acts of the utility.
- (3) The utility may operate the switching equipment described in subsection (1)(c) of this section if, in the sole opinion of the utility, continued operation of the qualifying facility in connection with the utility’s system may create or contribute to a system emergency. Such a decision by the utility is subject to Commission verification in accordance with WAC 480-106-070. The utility must endeavor to minimize any adverse effects of such operation on the owner or operator of a qualifying facility.

#### **480-106-020**

##### **Obligations of the utility to qualifying facilities.**

- (1) **Obligation to purchase from qualifying facilities:** A utility must purchase, in accordance with WAC 480-106-050, any energy and capacity that is made available from a qualifying facility:



(a) Directly to the utility; or

(b) Indirectly to the utility in accordance with subsection (4) of this section.

(2) **Obligation to sell to qualifying facilities:** A utility must sell to any qualifying facility, in accordance with WAC 480-106-060, any energy and capacity requested by the qualifying facility at the same rates, terms, and conditions that are available to other customers of the utility in the same customer class who do not generate electricity.

(3) **Obligation to interconnect:** A utility must make all the necessary interconnections with any qualifying facility to accomplish purchases or sales under this section. The qualifying facility must pay for interconnection costs to the extent required under WAC 480-106-080.

(4) **Transmission to other electrical companies:** At the request of a qualifying facility, a utility that would otherwise be obligated to purchase energy, capacity, or both, from such qualifying facility must transmit energy, capacity, or both, to any other electric service provider at the expense of the qualifying facility. The qualifying facility's use of a utility's transmission facilities shall be pursuant to the utility's open access transmission tariff. Any utility to which energy or capacity generated by a qualifying facility and transmitted to such utility over the facilities of another utility shall purchase the energy or capacity under this subpart as if the qualifying facility were supplying energy or capacity directly to the purchasing utility. The rate the purchasing utility pays the qualifying facility shall be adjusted to reflect line losses and shall not include any charges for transmission.

(5) **Parallel operation:** Each utility must offer to operate in parallel with a qualifying facility if the qualifying facility complies with all applicable standards established in this section.

**Avista Comments:** *As noted in footnote 11 of Avista's Comments, the language in Draft Rule 480-106-020(4) is inconsistent with the language in FERC's regulations. Compare with 18 C.F.R. § 292.303(d). To avoid potential questions regarding whether this requirement is or is not consistent with FERC's regulations, this section should be revised to conform to the language of FERC's regulation.*

## **480-106-030**

### **Tariff for purchases from qualifying facilities**

(1) **Tariff for purchases from qualifying facilities required:** Each utility must file a tariff consistent with this chapter and with WAC 480-80-102.

(2) **Contracting procedures:** In the tariff required in subsection (1) of this section, each utility must file contracting procedures that sets forth the obligations of the utility and the qualifying facility entering into contracts for the purchase and sale of qualifying facility output. Such contracting procedures shall provide that a legally enforceable obligation will be established at such time as the utility and the qualifying facility execute a written contract; provided, however, that a qualifying facility may request that the Commission establish a legally enforceable obligation in the absence of an executed written contract.

(a) In the event that a qualifying facility requests that the Commission establish a legally enforceable obligation in the absence of an executed written contract, the Commission will:

(i) determine whether the purchasing utility failed to comply with a material obligation of

the contracting procedure set forth in such utility's tariff, and;

- (ii) if the Commission determines that the purchasing utility failed to comply with a material obligation of the contracting procedure set forth in such utility's tariff, determine the date that a legally enforceable obligation occurred based on the specific facts and circumstances of each case.

**(3) Schedule of estimated avoided costs offering standard rates for purchases from qualifying facilities of five megawatts or less:** In the tariff required in subsection (1) of this section, all utilities must file a schedule of estimated avoided costs offering standard rates for purchases from qualifying facilities with capacities of five megawatts or less, as described in WAC 480-106-040. Qualifying facility developers proposing projects with a design capacity of five megawatts or less may choose to receive a purchase price for power that is set forth in such standard tariff.

***Avista Comments:*** *Avista agrees that each utility should establish, in its tariff, clear contracting procedures that establish the obligations of both utilities and qualifying facilities in reaching an executed contract for the purchase and sale of qualifying facility output. As discussed in Avista's Comments, the rules should clearly state that a legally enforceable obligation is established by executing a contract, unless the utility fails to comply with its contracting procedure. If a utility fails to comply with its contracting procedure, the qualifying facility can request that the Commission establish a legally enforceable obligation in the absence of an executed contract.*

*Avista also recommends deleting the specific list of information to be provided by the qualifying facility that was set forth in Draft Rule 480-106-030(2)(a). While that list of information is generally the information that utilities need to start the contracting process, each utility should be afforded the opportunity to develop the list of information that it requires from qualifying facilities in its tariff. In approving each utility's tariff, the Commission can assure that the list of information the utility requires from a qualifying facility is reasonable.*

*In earlier comments, Avista encouraged the Commission to set 100 kW as the eligibility threshold for published rates. The Company appreciates the Commission's movement from a 7 MW threshold to 5 MW. Also as noted in Avista's prior comments, in setting the published rate cap, the Commission must balance the risk and burden to utility customers of an eligibility cap that is larger than 100 kW, against the burden placed on qualified facility developers who are not eligible for standard offer rates. See Avista's Comments dated June 18, 2018 at p. 3. There has been no demonstration in this proceeding that the burden on qualifying facilities of setting the standard offer cap at 100 kW outweighs the risk to utility ratepayers. Accordingly, the Commission should set the standard offer cap at 100 kW.*

*Finally, as noted in Avista's comments, standard contracts are unnecessary and inappropriate. Similarly, non-binding term sheets are also unnecessary and inappropriate. Accordingly, Avista recommends deleting Draft Rule 480-106-030(4) and (5) in their entirety.*

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#### **480-106-040**

##### **Schedules of estimated avoided costs.**

(1) **Filing requirement.** A utility must file by November 1 of each year, as a revision to its tariff described in WAC 480-106-030, a schedule of estimated avoided costs that identifies, its

avoided costs of energy and its avoided cost of capacity. All schedules of estimated avoided costs must include:

(a) *Identification of avoided energy*: An estimated avoided cost of energy based on the utility's current forecast of market prices for power stated on a cents per kilowatt-hour or dollars per megawatt-hour basis, differentiated by daily and seasonal peak and off-peak periods, by year, for the current calendar year and each of the next six years; and

(b) *Identification of avoided capacity*: An estimated avoided cost of capacity expressed in dollars per megawatt based on the projected fixed cost of the next planned capacity addition identified in the succeeding six years in the utility's most recently acknowledged integrated resource plan filed pursuant to WAC 480-100-238 and such identification must include the following:

(i) Identification of capacity cost: A utility must identify the projected fixed costs of its next planned capacity addition based on either the estimates included in its most recently filed integrated resource plan or the most recent project proposals received pursuant to an RFP issued consistent with chapter 480-107 WAC, whichever is most current; and

(ii) Proxy for planned market purchases: If the utility's most recently acknowledged integrated resource plan identifies the need for capacity in the form of market purchases not yet executed, then the utility shall use the projected fixed costs of a simple-cycle combustion turbine unit as identified in the integrated resource plan as the avoided capacity cost of the market purchases.

(2) **Differentiating among qualifying facilities.** A utility's estimated avoided cost of capacity shall differentiate among qualifying facilities based on the supply characteristics of different technologies of qualifying facilities for purposes of calculating the estimated avoided cost of capacity.

(3) **Schedule revisions.** A utility may file to revise its schedule of estimated avoided costs prior to its next annual filing; provided that the Commission may not allow such tariff revision to become effective until at least sixty (60) days after such filing. Filing a revised schedule of estimated avoided costs in this subsection does not relieve the utility of its annual obligation to file a schedule in subsection (1) if such filing occurs more than thirty (30) days prior to such annual tariff filings.

**Avista Comments:** *Certain aspects in this section are unclear. For example, the utility is asked to provide a "schedule of estimated avoided costs that identifies, both separately and combined, its avoided cost of energy and its avoided cost of capacity." Providing these schedules separately is intuitive; but, combining them is not possible absent guidance by the Commission on the assumed on-peak capacity contribution, and capacity factor of the resource. Because of this difficulty, Avista has struck this language in the Draft.*

*Avista also encourages the Commission to keep the tariff focused on high-level information. Where the Commission wants more detailed pricing information, such information can easily be provided to the qualified facility developer on request via spreadsheet. Additionally, contracts should be limited to five years in maximum length, which is in line with the Company's previous comments in keeping with the Company's current tariff. Avista requests the Commission strike (1)(iii). Capacity payments made prior to need reduce the value of resources already in the marketplace by magnifying market surplus. Customers are likely to be harmed by over-paying in the early years when the plant is not needed, and by the reduction in value of the existing portfolio created by the further over-supply created by a qualified facility resource brought online prior to a resource need.*

*Avista also proposes changing “may” to “shall” in subsection 2 to recognize that properly pricing qualified facilities at avoided cost requires differentiating between supply characteristics, especially for the timing and capacity contributions of the resource.*

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## **480-106-050**

### **Rates for purchases from qualifying facilities**

#### **(1) Rates for purchases by a utility:**

- (a) Rates must be just and reasonable to the utility’s customers and in the public interest;
  - (b) Rates must not discriminate against qualifying facilities; and
- (2) Nothing in this section requires any utility to pay more than the avoided cost to the utility of alternative energy, capacity, or both. Establishing rates:

(a) A rate for purchase from qualifying facilities satisfies the requirements of subsection (1) of this section if the rate equals the utility’s avoided costs after consideration, to the extent practicable, of the factors set forth in WAC 480-106-040 and in subsection (5) of this section.

(b) When a utility bases its purchase rates on estimates of avoided costs over a specific term of the contract or other legally enforceable obligation, the rates do not violate these rules if any payment under the obligation differs from avoided costs at the time of delivery.

#### **(3) Rates for purchases — time of calculation:**—Each qualifying facility shall have the option to:

- (a) Provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility’s avoided cost of energy at the time of delivery; or
- (b) Provide energy, capacity, or both, pursuant to a legally enforceable obligation, in which case the rates for purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on:
  - (i) The avoided costs of energy and capacity calculated at the time of delivery; or
  - (ii) The avoided costs of energy and capacity projected over the life of the obligation and calculated at the time the parties incur the obligation.

#### **(4) Standard rates for purchases from qualifying facilities with capacities five megawatts or less:** A utility shall establish standard rates for its purchases from qualifying facilities with capacities of five megawatts or less as follows:

- (a) A utility must file a schedule of estimated avoided costs containing standard rates for purchases pursuant to WAC 480-106-040 as a revision to its tariff required in WAC 480-106-

030.

(i) The utility's standard rates for purchases must offer rates to a qualifying facility for a term of six years beginning on the date of contract execution, but not more than five years from the commercial operation date of the qualifying facility.

(ii) The utility's standard rates for purchases must offer fixed rates to an existing qualifying facility entering into a new agreement with the utility for a term of ten years.

(iii) Qualifying facilities that do not meet the greenhouse gas emissions performance standard established under RCW 80.80.040 are limited to contract terms of less than five years.

(b) A utility's standard rates for purchases must provide the qualifying facility the option to either:

(i) Provide energy as the qualifying facility determines such energy to be available for such purchases, in which case the rates for such purchases shall be based on the purchasing utility's avoided cost of energy at the time of delivery; or

(ii) Provide energy, capacity, or both, pursuant to a legally enforceable obligation, in which case the rates for purchases shall, at the option of the qualifying facility exercised prior to the beginning of the specified term, be based on:

(A) The avoided energy and capacity calculated at the time of delivery; or

(B) The avoided costs of energy and capacity identified in the utility's schedule of estimated avoided costs in effect when the parties incur the obligation.

(c) Except where expressly conveyed to the utility for additional consideration, the qualifying facility shall own the renewable energy certificates and any other environmental attributes associated with the production from such qualifying facility unless the standard rates are based on the avoided costs of an eligible renewable resource as defined in RCW 19.285.030. During any period in which the qualifying facility receives standard rates that are based on the avoided capacity costs of an eligible renewable resource, the utility shall receive the renewable energy certificates produced by the qualifying facility at no additional cost to the utility.

(d) The standard rate may account for the integration costs associated with variable technologies, as approved by the Commission.

**(5) Negotiated rates for qualifying facilities with capacities greater than five megawatts:**

Each utility shall file and obtain Commission approval of its avoided cost rate methodology for qualifying facilities with capacity greater than five megawatts. When negotiating rates for purchases from qualifying facilities with capacities greater than five megawatts, to the extent practicable, the parties should consider the following factors:

(a) The data the utility provided to the Commission pursuant to WAC 480-106-040 and the Commission's evaluation of the data;

(b) The availability of energy, capacity, and ancillary services from a qualifying facility during the system daily and seasonal peak periods, including:

(i) The utility's ability to dispatch the qualifying facility;

- (ii) The qualifying facility's expected or demonstrated reliability;
  - (iii) The terms of any contract or other legally enforceable obligation;
  - (iv) The extent to which the parties can usefully coordinate their respective scheduled outages;
  - (v) The usefulness of energy, capacity, or both, supplied from a qualifying facility during system emergencies, including the qualifying utility's ability to separate its load from its generation;
  - (vi) The individual and aggregate value of energy and capacity from qualifying facilities on the utility's system; and
  - (vii) The smaller capacity increments and the shorter lead times available, if any, with additions of capacity from qualifying facilities.
- (c) The relationship of the availability of energy, capacity, or both, from the qualifying facility as derived in subsection (5)(b) of this section, to the ability of the utility to avoid costs, including the deferral of capacity additions and the reduction of fossil fuel use; and
- (d) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from a qualifying facility.

**Avista Comments:** *Consistent with its prior comments, Avista again recommends limiting contract terms to no more than five years after commercial operation, and utilities should not be required to enter such contracts more than one year prior to commercial operation. Further, the term for new contracts and renewal contracts for existing qualifying facilities should be the same. Contract terms longer than five years put utility ratepayers at risk. A five year term provides qualifying facilities the avoided cost rates over a term as required by FERC rules and strikes a more appropriate balance between protecting ratepayers from overpaying for resources and qualifying facility developers' desires for longer term contracts.*

## **480-106-060**

### **Rates for sales to qualifying facilities.**

#### **(1) General rules:**

##### **(a) Rates for sales:**

- (i) Shall be just and reasonable, and in the public interest; and
  - (ii) Shall not discriminate against any qualifying facility in comparison to rates for sales to other customers served by the utility.
  - (iii) Utilities may not deny service to a customer for which the customer otherwise qualifies based on the presence of a qualifying facility, including interruptible power service.
- (b) Rates for sales that are based on accurate data and consistent system-wide costing principles will not be considered to discriminate against any qualifying facilities if those rates apply to the utility's other customers with similar load or other cost-related characteristics.

- (c) The Commission may waive any requirement of (a) of this subsection if, after notice in the

area served by the utility and after opportunity for public comment, the utility demonstrates and the Commission finds that compliance with such requirement will:

- (i) Impair the utility's ability to render adequate service to its customers; or
- (ii) Place an undue burden on the utility.

***Avista Comments:*** *FERC regulations require utilities to sell qualifying facilities energy and capacity. 18 C.F.R. § 292.303(b). Like other customers, qualified facilities are eligible to procure these services through existing utility tariffs. Accordingly, subsection (3) is unnecessary and should be deleted.*

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#### **480-106-070**

##### **System emergencies.**

**(1) Qualifying facility obligation to provide power during system emergencies:** A qualifying facility may be required to provide energy or capacity to a utility during a system emergency only to the extent:

- (a) Provided by agreement between the qualifying facility and utility; or
- (b) Ordered under section 202(c) of the Federal Power Act.

**(2) Discontinuance of purchases and sales during system emergencies:** During any system emergency, a utility may, in a non-discriminatory fashion, discontinue:

- (a) Purchases from a qualifying facility if such purchases would contribute to such emergency; and
- (b) Sales to a qualifying facility provided that such discontinuance is on a nondiscriminatory basis.

***Avista Comments:*** *The Commission's rules already provide all customers, including qualifying facilities a process for seeking recourse against a utility. See, e.g., WAC 480-07-305. This provision is therefore unnecessary. Also, because there appears to be no cost associated with requesting this verification, this provision could cause significant waste of Commission time and resources by giving qualifying facilities the ability, as a matter of course, to request that the Commission second guess utilities determinations regarding the existence of system emergencies.*

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**480-106-080**

**Interconnection costs.**

- (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.
- (2) The owner or operator of the qualifying facility must reimburse the utility for any reasonable interconnection costs the utility may incur. Such reimbursement may be made, at the qualifying facility's election:
  - (a) At the time the utility invoices the owner or operator of the qualifying facility for interconnection costs incurred by the utility; or
  - (b) Over an agreed period not greater than the length of any contract between the utility and the qualifying facility.