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VIA ELECTRONIC FILING

Mark L. Johnson
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Washington Utilities & Transportation Commission
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Re: Docket U-161024—Pacific Power & Light Company's Comments

On November 14, 2018, the Washington Utilities and Transportation Commission (Commission) issued a Notice of Opportunity to File Written Comments (Notice), requesting comments on draft rules related to avoided cost pricing and qualifying facility contracts under the Public Utility Regulatory Policies Act (PURPA). The draft rules propose revisions to WAC 480-107 and new rules identified as WAC 480-106.

The Notice was issued following the Commission workshop held on September 6, 2018; at this workshop stakeholders discussed when a legally enforceable obligation (LEO) occurs during the contract negotiation process between a utility and a qualifying facility under PURPA. The September 6, 2018 workshop was the most recent stakeholder discussion regarding utility obligations under PURPA. This engagement process began in March 2017 with the Commission's issuance of a notice of workshop and opportunity to file comments. The Commission also held workshops in May 2017 and September 2017, and provided an opportunity for comments on informal draft rules in March 2018 and June 2018. Pacific Power & Light Company (Pacific Power), a division of PacifiCorp, has participated in this process and appreciates the opportunity to offer these additional comments in response to the Notice together with proposed redlines to the draft rules.

Pacific Power looks forward to continuing to engage with staff and other stakeholders to finalize draft rules that ensure a clear and consistent process for execution of contracts between utilities and qualifying facilities under PURPA.

EXPLANATION OF PROPOSED REDLINES

1. WAC 480-106-007, DEFINITIONS

In its comments filed on June 8, 2018, regarding the Commission's informal draft PURPA rules, Pacific Power recommended several revisions to the definitions section. Pacific Power appreciates that many of its proposed revisions have been incorporated into the current version of the draft rules and offers only the following additional revision for consideration (proposed new language is underlined for ease for review).

> **"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 qualifying facility.

The company proposes adding the word "qualifying" before facility in the definition of back-up power for consistency throughout the draft rules.

2. WAC 480-106-030, TARIFF FOR PURCHASES FROM QUALIFYING FACILITIES

Pacific Power reiterates the recommendations from the October 3, 2018 joint comments with Avista Utilities on draft contracting procedures. Simply providing preliminary information to the utility is not a sufficient basis for establishing a non-contractual LEO and could create additional risk for ratepayers. In addition, Pacific Power proposes some limited edits to section 480-106-030 of the draft rules to ensure customer indifference and consistency with current practices across jurisdictions.

> (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 an executed written contract.
>
> (a) A legally enforceable obligation may exist prior to an executed written contract, but not before a qualifying facility owner 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;
> (iii) Design capacity, station service requirements, and the net amount of power, all in kilowatts, the qualifying facility will deliver to the utility's electric system;
> (iv) 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;
> (v) Ability, if any, of qualifying facility to respond to dispatch orders from the utility;
> (vi) Map of qualifying facility location, electrical interconnection point, and point of delivery;
> (vii) Proposed commencement date for the qualifying facility's delivery of electric output to the utility;
> (viii) List of acquired and outstanding qualifying facility permits, including a description of the status and timeline for the acquisition of any outstanding permits;
> (ix) Demonstration of the qualifying facility's ability to obtain qualifying facility status;
> (x) Fuel type(s) and source(s);
> (xi) Plans to obtain, or actual, fuel and transportation agreements, if applicable;

(xii) 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;

(xiii) Interconnection agreement status, including interconnection queue number, and at least one interconnection study that reasonably supports the proposed commencement date identified by the qualifying facility owner in (vii) of this subsection (2); and

(xiv) 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.

(b) In the event of a disagreement between the qualifying facility owner and the purchasing utility, the commission will determine whether the qualifying facility owner is entitled to a legally enforceable obligation prior to execution of a definitive agreement and, if so, the date that a legally enforceable obligation occurred based on the specific facts and circumstances of each case.

The company's proposed edits to section 480-106-030(2) are intended to provide clarifying language. The most substantial proposed edit to this section, the additional language proposed for section 480-106-030(2)(a)(xiii) conforms with Pacific Power's practice across all states in its service territory.[1] But more importantly, this requirement that the commencement date identified by the qualifying facility be supported by at least one interconnection study ensures that the avoided cost provided to such qualifying facility is accurate and thereby protects customer indifference. Without confirmation of the commencement date for the qualifying facility, customers are at risk for subsidizing a qualifying facility that may be delayed and that would otherwise be subject to a different avoided cost.

(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 facilities~~y developers proposing projects~~ with a design capacity of five megawatts or less that contract for a fixed price shall~~may choose to~~ receive the ~~a~~ purchase price for power that is set forth in such standard tariff.

The company proposes this revision to section 480-106-030(3) to eliminate the opportunity for qualifying facilities that are otherwise subject to standard avoided cost prices to choose non-standard avoided cost prices. Providing standard qualifying facilities with the opportunity to choose their avoided cost price would allow such qualifying facilities to choose whichever price is higher and result in a customer funded subsidy; this will not maintain customer indifference. Should the need arise to deviate from the standard avoided cost pricing, the draft

[1] The draft rules inadvertently fail to include a section 480-106-030(2)(a)(xii); the company's reference to section 480-106-030(2)(a)(xiii) assumes that the numbering of this section is corrected in the final rules and revises language contained in section 480-106-030(2)(a)(xiv) of the draft rules as proposed on November 14, 2018.

rules already allow utilities and qualifying facilities to negotiate exceptions to these rules during the contract process under section 480-106-002(2).

> (5) **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, which shall include all the information requirements set forth in subsection (2)(a) of this section. All utilities shall provide a generic draft non-standard contract within ten days of the request received from a qualifying facility with a capacity of greater than five megawatts. ~~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.

In lieu of posting non-binding term sheets on its website for non-standard qualifying facilities (defined under the draft rules as those qualifying facilities of greater than five megawatts), the company is proposing a timeframe for providing a draft non-standard contract to such qualifying facilities. This requirement is consistent with current practices in other jurisdictions. In any case, it will be more helpful to both parties if a contract specific to the qualifying facility is created and provided in a timely manner, in lieu of reliance on a generic draft or non-binding term sheets that may not be relevant to the circumstances. The timeline and requirements for receiving a draft contract specific to a qualifying facility will be identified in the company's tariff, in accordance with 480-106-030(2).

3. WAC 480-106-040, SCHEDULES OF ESTIMATED AVOIDED COSTS

Pacific Power offers the following proposed substantive changes regarding requirements for schedules of estimated avoided costs. In general, these proposed edits are intended to ensure that avoided cost pricing includes all attributes, including capacity, and that avoided cost pricing is calculated using the most accurate and up-to-date information.

> (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 includes ~~identifies, both separately and combined,~~ its avoided cost 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 production cost model ~~forecast of market prices for power~~ stated on a cents per kilowatt-hour or dollars per megawatt-hour basis by qualifying facility type and~~,~~ differentiated by daily and seasonal peak and off-peak periods, by year, for the current calendar year and each of the next 18 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 years in the utility's most recent~~ly acknowledged~~ integrated resource plan filed pursuant to WAC 480-100-238 Integrated resource planning, or an integrated resource plan update filed with the commission, and such identification must include the following:

(i) Identification of capacity cost: A utility must identify the incremental ~~projected fixed~~ costs of its next planned capacity addition based on either the estimates included in its most recently filed or update to its 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;

(ii) Proxy for planned market purchases: If the utility's most recently filed ~~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

(iii) ~~Discounted future capacity~~Levelized avoided cost pricing: Subject to appropriate credit and security provisions, a qualifying facility may receive an avoided cost price that~~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~~ reflects the lump sum present value over the contract term, levelized ~~of the capacity cost~~ at the weighted average cost of capital in the utility's integrated resource plan~~authorized rate of return~~;

The company's proposed revisions to section 480-106-040(1) are intended to result in the most accurate calculation of avoided costs. In section 480-106-040(1), Pacific Power proposes to delete the requirement to separately identify capacity and energy costs because qualifying facilities cannot sell capacity without also selling energy. A qualifying facility selling only energy that is firm and subject to liquidated damages for non-performance would necessarily result in a utility avoiding capacity costs consistent with that resource type, while a qualifying facility selling only energy that is not firm and not subject to liquidated damages, would not result in avoided capacity costs and would not be eligible for fixed rates. Therefore, estimated avoided costs should reflect both capacity and energy, and should be distinguished by resource type (*e.g.*, solar, wind, etc.).

The company's proposed revisions to section 480-106-040(1)(a) would require use of a utility's production cost model because this model balances a utility's dispatch of resources to meet load with its need to maintain operating reserves to reliably serve its customers. Pacific Power uses the Generation and Regulation Initiative Decision Tools (GRID) model to set its retail rates; using this model to identify the avoided cost of energy will therefore result in a more direct calculation of customer indifference. In addition to using the company's production cost model, it is important to provide the estimated avoided costs by resource type because of differences in delivery patterns that result in different energy prices for each resource type.

As set forth in the company's June 8, 2018 comments, the company continues to support the identification of avoided capacity based on a utility's most recently filed integrated resource plan (IRP) or update to such IRP instead of only a company's most recently *acknowledged* IRP. This proposed change to section 480-106-040(1)(b) of the draft rules would result in use of the most current information available to the utility.

Echoing its comments from June, the company continues to propose to revise the language in section 480-106-040(1)(b)(i) to reflect that the appropriate measure of a utility's avoided cost is the incremental costs of the least-cost capacity resource and not the fixed-cost of a capacity addition. This incremental cost accounts for both the costs and benefits associated with the resources. Energy 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. Use of fixed costs alone could overstate the costs to customers for a particular utility resource. For example, a wind resource provides free energy. As a result, paying the capacity cost and the market price for energy from a wind resource would be inappropriate. This approach is consistent with prior Commission precedent; 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."[2] The company's proposed revisions ensure that avoided costs are calculated according to the anticipated net impact to customer bills thereby maintaining customer indifference to purchases of qualifying facility power.

Pacific Power proposes to revise the language in section 480-106-040(1)(b)(ii) to change the market proxy from the projected, fixed costs of a simple cycle combustion turbine unit to the projected costs identified in the company's most recently filed integrated resource plan (or update to the IRP). Where lower cost market options are available and have been identified in a utility's IRP, these options will represent the best proxy to ensure customer indifference. The draft rules could otherwise result in customers paying more than the expected costs of market purchases.

Finally, the company proposes revisions to section 480-106-040(1)(b)(iii) to include a provision that levelized pricing is subject to appropriate credit and security provisions. As discussed in Pacific Power's April 13, 2018 comments, the company does not support application of levelized payments because it effectively requires a utility to provide a financial service to qualified facilities (QFs) and provides a disincentive to long-term performance. However, if the Commission intends to retain a requirement to offer levelized pricing, Pacific Power provides the revisions above to clearly state that credit and security provisions are necessary to prevent additional financial risk to ratepayers.

> (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~~shall become effective ~~until at least~~ sixty (60) days after such filing or as otherwise directed by the Commission. Filing a revised schedule of estimated avoided costs in this subsection does not relieve the utility of its annual obligation to

[2] *Spokane Energy, Inc. v. Wash. Water Power Co.,* Cause No. U-86-114, *anting Exceptions; Reversing Proposed order; and Dismissing Complaint* (April 22, 1987).

file a schedule in subsection (1) if such filing occurs more than thirty (30) days prior to such annual tariff filings.

The company's minor proposed revision to section 480-106-040(3) would allow tariff revisions to become effective sixty days after filing; this automatic effective date would allow for the most up-to-date information to be reflected in a company's tariff and reduce the risk of having outdated rates for an extended time. Pacific Power's proposed revisions also maintain the Commission's ability to modify the effective date, if necessary, to allow for additional Commission review or to ensure customer indifference. This proposed language strikes an appropriate balance between ensuring that avoided costs reflect the most recently available information and Commission oversight.

4. WAC 480-106-050, RATES FOR PURCHASES FROM QUALIFYING FACILITIES

Pacific Power's proposed changes to the draft rules in section 480-106-050 are intended to make clear that these rates will apply to both standard and non-standard qualifying facilities. In addition, the company has attempted to streamline the draft rules where duplicative language and requirements appear.

(3) **Rates for purchases — time of calculation:** ~~Except for the purchases made under a standard rates tariff pursuant to subsection (4) of this section~~, ~~e~~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~~the avoided costs of energy and capacity projected over the life of the obligation and calculated at the time the parties incur the obligation.

The company's revision confirms that standard qualifying facilities are also permitted to provide energy on an as available basis.

(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 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 ten ~~fifteen~~ years beginning on the date of contract execution, but not less than seven ~~twelve~~ 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 seven ~~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.

The company proposes revising section 480-106-050(4) to shorten the pricing term to seven years. As drafted, the rules would allow qualifying facilities to receive fixed pricing for a term indefinitely far in the future. For instance the qualifying facility could select a commercial operation date five years in the future and combine this five-year period with the not-less-than 12 year fixed rate period. This would be a time period that is far too long to ensure customer indifference and accuracy of avoided cost pricing. Furthermore the company does not expect that, based on recent financing trends, a shorter contract term would in any way limit the ability of qualifying facility developers to obtain capital. There have been large amounts of capital available for renewable energy projects in recent years and this capital is unlikely to dry up even with shorter contract terms. In addition to the recent trend towards shorter contract terms, utility scale renewable projects have been secured using bank hedges instead of power purchase agreements (PPAs). These bank hedges are fixed for float financial swaps that developers enter into with banks or insurance companies to hedge the prices developers receive for some or all of their renewable energy generation. While these bank hedges can introduce risks not present when a PPA is used, projects using this funding mechanism are still being built and renewable capacity continues to grow.

~~(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.~~

The company proposes to delete the language above as duplicative of section 480-106-050(3).

In addition, the company proposes adding language from sections 480-106-050(4)(c) and (d) to section 480-106-050(5) as well because these sections are applicable to both standard and non-standard qualifying facilities. These additions are included in the attached redline rules.

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

Finally, the company proposes one minor edit to section 480-106-050(5)(b)(iii) to include the word "proposed" before "contract or other legally enforceable obligation;". This edit recognizes that this section refers to obligations during the time period prior to execution of a non-standard contract.

5. WAC 480-106-080, INTERCONNECTION COSTS

Pacific Power reiterates its April 13, 2018 comments recommending that the Commission retain the current language, which allows the utility to decide on the mechanism for the QF's payment of interconnection costs. The utility's customers should not be forced to finance the cost of QF interconnections, and the utility, not the QF, is the appropriate party to elect the method of payment that best protects customer indifference. The current rule should not be modified in a way that unduly increases risk to customers. Pacific Power proposes making the following edits to retain the current rule language:

> (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~~may~~ be made, at the ~~qualifying facility's~~utility'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.

If the Commission would nevertheless prefer to shift the choice of payment mechanism to QFs, PacifiCorp will need clarity on how to implement the second option—i.e., payment of interconnection costs over an agreed period of time—should QFs choose it because it will be an implementation issue of first impression. PacifiCorp's initial questions include, for example:

(1) Would utilities need to set forth the specifics of the longer-term payment mechanisms in a QF-specific policy?
(2) Would a brand new contract be needed to govern the QF's payment of interconnection costs over the agreed-upon term or would it be governed by, for example, a new addendum to the QF's interconnection agreement? A new addendum to the PPA?

(3) Would utilities initially roll the cost of any system upgrades necessary to accommodate the Washington QF's interconnection into transmission rate base to be paid for by all system users or would the Commission prefer some other special ratemaking treatment?
(4) If utilities initially roll the cost of any system upgrades into transmission rate base, would the transmission rate base somehow receive "credits" later when the QF reimburses the utility for those interconnection costs?
(5) Would utilities accumulate interest on any unpaid balances or implement other measures to hold retail customers financially indifferent if a QF elects the longer-term payment mechanism?
(6) What is envisioned by not greater than the length of "any contract" between the utility and the QF? Is this meant to potentially tie the interconnection cost payments that the QF owes to the transmission function of the utility to the length of the QF's separate PPA with the merchant function of the utility?
(7) Would consequences, if any, occur as a result of non-payment by the QF? Interconnection disconnection, termination of the interconnection agreement or the PPA, etc.?
(8) How can utility customers be protected in scenarios where the utility puts all necessary system upgrades in place and the QF has to walk away from the project, e.g., due to default?

CONCLUSION

The draft rules provide an important opportunity to provide consistency and clarity to the contracting process for qualifying facilities, including avoided cost prices. The comments provided above together with the company's proposed redline edits are intended to further these goals and reduce confusion between contracting parties. Pacific Power appreciates the opportunity to provide these comments in response to the proposed rules and looks forward to further discussions with the Commission and stakeholders.

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

Sincerely,

/s/

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Enclosures

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