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Filed Via Web Portal

Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Drive S.W.
Olympia, Washington 98504-7250

Re: Docket UE-161024: Comments of Puget Sound Energy in Response to Notice of Opportunity to Submit Written Comments on Public Utility Regulatory Policies Act, Obligations of the Utility to Qualifying Facilities

Dear Mr. Johnson:

Puget Sound Energy (“PSE”) appreciates the opportunity to respond to draft rules related to implementation of the Public Utility Regulatory Policies Act (“PURPA”), and the obligations of utilities and qualifying facilities. From PSE’s perspective, the purpose of the various rules and processes being discussed here is to find an appropriate balance to ensure a transparent and efficient market so that customers do not overpay for resources and utilities can act in the best interest of protecting customers from decisions that lead to unjust, unreasonable or insufficient rates. In reviewing these draft rules, PSE encourages the Commission to ensure that any revisions do not deviate from the fundamental objective of protecting customers under the existing regulatory rules and principles in Washington. PSE’s customers must be the ultimate beneficiaries of these processes and their benefits must be known and measurable as defined by existing statute.

On March 20, 2017, the Commission issued a Notice of Workshop and Opportunity to File Written Comments to consider whether additional revisions are necessary to rules in WAC 480-107 that outline a utility’s obligations under PURPA. In addition, workshops were set for May 17, 2017, and September 5, 2017.

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On February 26, 2018, PSE filed a Joint Recommendation with other stakeholders in this docket¹ (the “Joint Recommendation”) that strikes an appropriate balance of customer protection and PURPA development.

On March 14, 2018, the Commission issued a Notice of Opportunity to File Comments on informal draft PURPA rules (the “March 14 Informal Draft Rules”). On April 13, 2018, PSE filed comments in response to such Notice (the “PSE April 13 Comments”). In the PSE April 13 Comments, PSE provided comments to informal rules that adhered to the principles outlined in the Joint Recommendation.

On May 14, 2018, the Commission held an additional workshop to discuss comments on the informal draft PURPA rules. In that workshop, the Commission requested that the participants provide comments on the Commission’s informal draft PURPA rules and provide a recommendation on the legally enforceable obligation (“LEO”) under PURPA. On May 21, 2018, the Commission issued a Notice of Opportunity to Submit Written Comments. On June 8, 2018, PSE filed comments in response to such Notice (the “PSE June 8 Comments”). In the PSE June 8 Comments, PSE provided comments on the Commission’s informal PURPA rules.

On September 6, 2018, members of the Commission’s rulemaking team facilitated a meeting with stakeholders to discuss how to identify in rule when a LEO occurs, including the minimum information that a qualifying facility should provide prior to a utility committing to sell power, and the conditions that would presumptively trigger a LEO.

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

PSE has participated in each step of this process and appreciates the opportunity to offer these additional comments in response to the Notice together with proposed redlines to the draft rules. PSE 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.

¹ Joint Recommendation Regarding Implementation of Public Utility Regulator Policy Act for Utilities and Qualifying Facilities, on behalf of Puget Sound Energy, Northwest and Intermountain Power Producers Coalition, Renewable Energy Coalition, Renewable Northwest, Northwest Energy Coalition, and Climate Solutions, Docket UE-161024 (Feb. 26, 2018).

A. PSE's Suggested Revisions or Clarification to the November 14 Draft Rules**1. Proposed WAC 480-106-040(1)(b) Proxy for planned market purchases.**

The primary change PSE proposes is to WAC 480-106-040 of the November 14 Draft Rules because such section, if adopted, would likely result in PSE customers overpaying for resources based on a faux capacity need. PSE proposes a technology-neutral approach for calculating avoided costs based on agreed upon planning standard in the utility's most-recent Integrated Resource Plan. This approach better reflects an existing market that is long both energy and capacity and protects customers from overpaying for resources.

WAC 480-106-040(1)(b)(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~~ a planning standard for market purchases developed and agreed to by its stakeholder advisory group and published in the integrated resource plan as the avoided capacity cost of the market purchases; and

The methodology proposed by PSE in this revision is a more flexible standard that will allow for changes in the market over time. Simply stated, use of the cost of a gas turbine peaking plant as a "proxy" for capacity value may have served well in the past when growth in demand was a given and the utility additions to meet such demand grown were generally large utility plants. Today, demand growth is not a given, and changes in the generation market have introduced a wider range of technologies with which a utility may meet its capacity needs. Requiring the use of the cost of a gas turbine peaking plant as a "proxy" for capacity value may or may not reflect the true costs of capacity given current and future conditions, and the Commission's rules should allow flexibility to allow a utility's avoided capacity costs to change with market conditions.

2. Proposed WAC 480-106-030(2) Contracting procedures.

PSE has concerns with the Commission's approach to establishing an LEO via contracting procedure in proposed WAC 480-106-030(2)(a) instead of clearly stating when a LEO is established. PSE acknowledges that the Commission's approach in proposed WAC 480-106-030(2)(a) is an improvement on the current guidance provided utilities with respect to the establishment of an LEO, which is minimal, at best. Nonetheless, PSE has concerns that the approach proposed by the Commission may not achieve the Commission's goals in reducing uncertainty and eliminating disputes regarding the creation of an LEO.

Proposed WAC 480-106-030(2)(a) provides that an LEO "may exist prior to an executed written contract, but not before a qualifying facility provides, at a *minimum*," fifteen types of information to the utility relevant to the degree of the commitment of the qualifying facility to sell electricity to the utility at the avoided cost of the utility. The language in proposed WAC 480-106-030(2) is clear that the types of information required by such subsection are necessary but not sufficient to the establishment of an LEO. In other words, proposed WAC 480-

106-030(2)(a) establishes a *minimum* standard for establishing an LEO but does not necessarily determine when an LEO is created. This lack of clarity could lead to potential disputes between a utility and a qualifying facility regarding whether information beyond that required by proposed WAC 480-106-030(2)(a) is necessary to the establishment of an LEO.

Proposed WAC 480-106-030(2)(b) recognizes the inherent uncertainty with respect to the Commission's approach to establishing an LEO via contracting procedure in proposed WAC 480-106-030(2)(a). Such subsection (2)(b) requires the utility and the qualifying facility to submit any dispute regarding the establishment of an LEO to the Commission for a determination based on the specific facts and circumstances of each case. PSE interprets this subsection as acknowledging that (i) a qualifying facility submitting the minimum information required by proposed WAC 480-106-030(2)(a) is not entitled, as a matter of law, to the creation of an LEO and (ii) the Commission reserves the right to make the final determination of whether an LEO is created in the event that the utility and the qualifying facility are unable to reach agreement as to such issue.

If PSE's interpretation of proposed WAC 480-106-030(2) described above is accurate, then PSE believes that the Commission's approach to establishing an LEO via contracting procedure in proposed WAC 480-106-030(2) is satisfactory. PSE acknowledges that the establishment of an LEO is an amorphous concept. Although not perfect, the Commission's approach could be workable provided that the Commission were to clarify that no qualifying facility should expect to be entitled to the creation of a LEO by submitting the minimum information identified in proposed WAC 480-106-030(2)(a).

3. Proposed WAC 480-106-040(1) Schedules of estimated avoided costs.

PSE proposes changes to proposed WAC 480-106-040(1) in the November 14 Draft Rules that would require utilities to file avoided cost methodologies in lieu of static avoided cost tariffs:

WAC 480-106-040(1) 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 cost methodologies that identifies, both separately and combined, its avoided cost of energy and its avoided cost of capacity. All schedules of estimated avoided costs must include:

PSE's proposed revision would reduce unnecessary process before the Commission and the risk of slowing negotiations, project development, and contract execution. This revision is consistent with the Joint Recommendation submitted earlier in the proceeding, which also noted that a better approach would be for utilities to file avoided cost estimates in November or December of each year and allow utilities to file avoided cost prices at times other than November and December, after providing minimum notice of 60 calendar days to the Commission and qualifying facilities negotiating contracts.

To be clear, PSE's proposed revision in proposed WAC 480-106-040(1) would apply solely to purchases from qualifying facilities that do not meet the requirements for standard rates. PSE acknowledges the need to establish static standard rates for purchases from qualifying facilities with capacities five (5) megawatts or less. For qualifying facilities with capacities greater than five (5) megawatts, however, the avoided costs should not remain static but should vary over time based on changes in market conditions and the location and unique operating characteristics of the qualifying facility in question.

An avoided cost methodology would provide better cost signals to qualifying facilities with capacities greater than five (5) megawatts than a static avoided cost that would become quickly outdated or simply inapplicable to a given qualifying facility given its location or operating characteristics. Therefore, PSE respectfully requests that the Commission make the proposed revision to proposed WAC 480-106-040(1).

B. Additional Comments of PSE to the November 14 Draft Rules

1. Proposed WAC 480-106-001 Purpose.

In the PSE June 8 Comments, PSE suggested edits to draft informal WAC 480-106-AAA of the March 14 Informal Draft Rules. The Commission has incorporated PSE's suggested revisions in proposed WAC 480-106-001 of the November 14 Draft Rules. PSE appreciates that its proposed revision has been incorporated in proposed WAC 480-106-001, and PSE has no additional suggested revisions to this section.

2. Proposed WAC 480-106-002 Application of rules.

In the PSE June 8 Comments, PSE suggested edits to draft informal WAC 480-106-BBB of the March 14 Informal Draft Rules. The Commission has incorporated PSE's suggested revisions in proposed WAC 480-106-002 of the November 14 Draft Rules. PSE appreciates that its proposed revision has been incorporated in proposed WAC 480-106-002, and PSE has no additional suggested revisions to this section.

3. Proposed WAC 480-106-010 Obligations of qualifying facilities to the utility.

In the PSE June 8 Comments, PSE suggested edits to draft informal WAC 480-106-EEE of the March 14 Informal Draft Rules. The Commission has incorporated the vast majority of PSE's suggested revisions in proposed WAC 480-106-010 of the November 14 Draft Rules. PSE appreciates that its proposed revisions have been largely incorporated in proposed WAC 480-106-010, and PSE has no additional suggested revisions to this section.

4. Proposed WAC 480-106-020 Obligations of the utility to qualifying facilities.

In the PSE June 8 Comments, PSE suggested edits to draft informal WAC 480-106-FFF of the March 14 Informal Draft Rules. The Commission has incorporated the PSE's suggested revisions

in proposed WAC 480-106-020 of the November 14 Draft Rules. PSE appreciates that its proposed revisions have been incorporated in draft WAC 480-106-020, and PSE has no additional suggested revisions to this section.

5. Proposed WAC 480-106-050 Rates for purchases from qualifying facilities.

In the PSE June 8 Comments, PSE suggested edits to draft informal WAC 480-106-HHH of the March 14 Informal Draft Rules. The Commission has incorporated the vast majority of PSE's suggested revisions in proposed WAC 480-106-050 of the November 14 Draft Rules. PSE appreciates that its proposed revisions have been largely incorporated in proposed WAC 480-106-050, and PSE has no additional suggested revisions to this section.

6. Proposed WAC 480-106-060 Rates for sales to qualifying facilities.

In the PSE June 8 Comments, PSE suggested edits to draft informal WAC 480-106-III of the March 14 Informal Draft Rules. The Commission has incorporated the vast majority of PSE's suggested revisions in proposed WAC 480-106-060 of the November 14 Draft Rules. PSE appreciates that its proposed revisions have been largely incorporated in proposed WAC 480-106-060, and PSE has no additional suggested revisions to this section.

7. Proposed WAC 480-106-070 System emergencies.

In the PSE June 8 Comments, PSE suggested edits to draft informal WAC 480-106-JJJ of the March 14 Informal Draft Rules. The Commission has incorporated the vast majority of PSE's suggested revisions in proposed WAC 480-106-070 of the November 14 Draft Rules. PSE appreciates that its proposed revisions have been largely incorporated in proposed WAC 480-106-070, and PSE has no additional suggested revisions to this section.

8. Proposed WAC 480-106-080 Interconnection costs.

In the PSE June 8 Comments, PSE did not have any proposed edits to draft informal WAC 480-106-KKK of the March 14 Informal Draft Rules, and PSE has no suggested revisions to proposed WAC 480-106-080.

Please contact Nate Hill at (425) 457-5524 or nate.hill@pse.com for additional information or questions regarding this filing. If you have any other questions, please contact me at (425) 456-2142.

Sincerely,

/s/ Jon Piliaris

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