WAC 480-107 Revision – IRP Rulemaking U-161024

Notice of Opportunity to File Written Comments on PURPA – Obligations of the Utilities to Qualifying Facilities, Small Business Economic Impact Statement Questionanaire

Summary of Comments

1. Solar Horizon LLC

Rule	Summary of Comment	UTC Response
480-106-040	The avoided cost should include the value of distributed energy resources at the distribution circuit level (e.g. avoided transmission and distribution).	Ideally, a utility's avoided cost would contain avoided transmission and distribution (T&D) costs. However, mandating the use of a generic estimate of avoided T&D costs for the standard offer is notwithin the minimum requirements of PURPA. Consideration of avoided T&D costs is appropriate for larger Qualifying Facilities (QFs) who will negotiate a contract and can include the value with the utility.

480-106-040	The value of renewable energy credits should be specified in the appropriate tariff.	For the standard rate as described in 480-106-050(4)(c), during periods in which the standard rates 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. Thus, the value of the renewable energy certificate can be captured in avoided cost of capacity.

2. Sheep Creek Hydro Inc.

Rule	Summary of Comment	UTC Response
480-106-040(2)	A utility's avoided cost of capacity should distinguish between QFs whose generation was used to calculate projected load and resource need. Sheep Creek Hydro argues that its existing QF helps the company meet its resource need but would not receive a capacity payment under the new rules.	If the utility relies on the QF to meet its capacity need then it should provide a capacity payment upon renewal. If the utility does not need the QF's capacity to meet its need at the time of renewal then the QF should not receive the capacity payment.

3. NextEra Energy Resources

Rule	Summary of Comment	UTC Response

480-106-030(2)(a)(vii)	QFs should be required to provide a specific operation commencement date rather than a proposed commencement date. Further, if the QF fails to meet the operation commencement date there should penalties (financial or otherwise) determined by the commission.	QFs only earn revenue when they produce energy and thus have financial incentives to produce as soon as possible. Furthermore, as actual commencement of operations depends on action by the utility and other parties, the requested addition would not be appropriate.
480-106-030(2)(a)(ix)	QFs should be self-certified as a QF with the Federl Energy Regulatory Commission (FERC) instead of obtaining qualifying facility status.	The proposed change is not necessary. The commission proposes new legally enforceable obligation language that may address this concern.
480-106-030(2)(a)(xiv)	QFs should have to submit a completed, executed interconnection agreement to the utility that demonstrates compliance with system reliability standards and a commitment to pay the cost of interconnection, including any necessary system upgrades.	This step implies that the rules indicate when a legally enforceable obligation (LEO) has occurred. However, such action only indicates a starting point for the minimum standard a QF must meet. The commission proposes new LEO language that may address this concern.

480-106-030(2)(a)(xv)	QFs should be required to have received Commission approval of its contract for it to be considered a LEO. Alternatively, the QF should have at least provided an executable agreement to the utility. Additionally, the following factors—common to other jurisdictions—should be added to the draft rule for determining whether an LEO has been established: (1) demonstrated site control; (2) site plan and design details; (3) certificate of public convenience and necessity or comparable construction permits; (4) timely access and manufacturer commitment to necessary generation equipment; (5) access to necessary financing; (6) performance guarantees that include, at a minimum, a scheduled commercial on-line date, minimum and maximum annual delivery obligations, and adequate security for non-performance.	The commission declines to accept the proposed change because it is contrary to FERC precedent.

4. Avista

Rule	Summary of Comment	UTC Response
480-106-030	The draft rules include part of Avista and Pacific Power's comments out of context and thereby creates an inadequate basis for claiming and LEO. Instead, a LEO should be established in the executed contract. If the utility does not follow the tariff, the QF can request the Commission establish a LEO in the absence of an executed contract.	The commission agrees that a LEO is usually established at time of the executed contract, but it may also be established prior to an executed contract.
480-106-020(4)	QF power transmission has not been fully discussed and vetted in this procedure. The rule should be clear that QFs are required to obtain long-term firm transmission and provide the purchasing utility a firm schedule. Alternatively, at a minimum, the QF should receive the as-available rate and not the rate at the time of the LEO. The rule should further clarify that the utility is not responsible for any third-party transmission costs, including ancillary service costs.	Proposed language in 480-106-020(4) address each of these concerns.

Rule	Summary of Comment	UTC Response
480-106-030	Energy provided from other sources to satisfy the schedule should be discounted at 50 percent of the wholesale market price at the time of delivery. In the case of oversupply where wholesale prices are negative and deliveries are not curtailed, the QF should be charged 150 percent of the price.	There is no indication that the proposal reflects the company's avoided cost, nor is the proposal necessary to be included in the standard offer. A utility may seek to negotiate this issue with QFs larger than five megawatts.
480-106-030(4)	The commission should clarify that QF eligibility for standard rates is based on nameplate capacity.	The commission agrees and has included the suggestion in the draft rules.
480-106-050(4)	The standard contract provision restricts the parties' ability to negotiate and prevents the opportunity for agreements to evolve over time. Also, given differences in QFs, such as on- or off-system power or variable and non-variable resources, the utility would likely need to file multiple standard contracts. The draft rule settles the most contentious issues (duration of term and eligibility for standards rates), thus removing the need for standard contracts. The rule should require clear contracting procedures instead of pre-filed contracts.	A utility can refile its standard contract each year. As outlined in 480-106-002(2), nothing prohibits parties from agreeing to voluntary contracts that differ from the standard contract required under the proposed rules.

5. Pacific Power

Rule	Summary of Comment	UTC Response
480-106-007	Pacific Power recommends adding the word "qualifying" before "facility" in the definition of back-up power for consistency throughout the draft rule.	The commission agrees and has included the suggestion in the draft rules.
480-106-030	Pacific Power reiterates their recommendations filed on October 3, 2018, noting that preliminary information is not a sufficient basis for establishing a non-contractual LEO.	The commission agrees and has included the suggestion in the draft rules.

Rule	Summary of Comment	UTC Response
480-106-030(2)(a)	Pacific Power recommends adding "owner" to this subsection: "A legally enforceable obligation may exist prior to an executed written contract, but not before a qualifying facility owner provides..."	The commission agrees and has included the suggestion in the draft rules.
480-106-030(2)(a)(xiii)	QFs should be required to submit an interconnection study that supports the proposed commencement date to ensure that the QF receives the appropriate avoided cost payment.	The commission may determine that an interconnection study is necessary in a specific case. Given the revised LEO language, it is not necessary to include this proposal in the rule.
480-106-030(2)(b)	Add language to clarify that, in the case of a dispute, the commission will determine *whether* a LEO exists prior to executing the contract. This change expands options beyond just determining when an LEO started.	The commission agrees and has included the suggestion in the draft rules.
480-106-030(3)	Eliminate the opportunity for qualifying facilities to choose nonstandard avoided cost prices if they are otherwise subject to standard rates. The draft rules currently allow utilities and QFs to negotiate exceptions to these rules during the contract process under section 480-106-002(2).	The commission declines to include this change as FERC requires allowing the QF to choose between the two options.
480-106-030(5)	Require utilities to provide a generic draft non-binding contract within 10 days of request by a QF (that qualifies for non-standard rates). Pacific Power notes that this is consistent with other jurisdictions.	For transparency purposes, the commission prefers that utilities post non-binding term sheets with limited contract provisions for QF's on their website, as required by the draft rules.
480-106-040(1)	Eliminate the need to provide avoided costs of capacity and energy separately and together. Pacific Power notes that QFs cannot sell capacity without selling energy and QFs selling energy without capacity are not subject to standard rates.	The commission disagrees. It is important for utilities to separate energy from capacity as capacity payments may not be necessary in all circumstances.

Rule	Summary of Comment	UTC Response
480-106-040(1)(a)	Identify avoided costs using the utility's current production cost model instead of the forecast of market prices for power. Pacific Power's current production cost model balances the utility's dispatch and need for reserves. Pacific Power also recommends having separate avoided costs by QF type.	Proposed 480-106-040(2) allows utilities to differentiate among qualifying facilities based on the supply characteristics of different technologies of QFs for the purposes of calculating the estimated avoided cost of capacity.
480-106-040(1)(b)	Pacific Power recommends changing "most recently acknowledged IRP" to "most recent filed or updated IRP" as this ensures the use of the most current utility data.	The commission disagrees. Acknowledgement is the only oversight the commission has over a utility's IRP.
480-106-040(1)(b)(i)	Change avoided cost calculations from fixed cost to incremental cost, which Pacific Power says aligns with expected customer bill impacts.	The proxy unit's estimated fixed cost is more appropriate for valuing avoided capacity.
480-106-040(1)(b)(ii)	Change the benchmark from the projected fixed cost of simple cycle turbine to the avoided cost in the current IRP.	A simple cycle combustion turbine is a transparent and simple proxy for the value of avoided cost of capacity of market purchases.
480-106-040(1)(b)(iii)	Add a provision that levelized pricing is subject to appropriate credit and security provisions to protect customers from risks associated with the utility providing financing services. Pacific Power also notes the levelized capacity payments can serve as a disincentive to the qualifying facility for long-term performance.	The commission disagrees. The avoided cost rate provides sufficient incentives for long-term performance.
480-106-040(3)	Restate this section to allow tariff revisions to become effective sixty days after filing to allow for the most-up-to-date information to be used. The revisions also maintain the Commission's ability to modify the effective date.	The commission prefers its proposed language as providing better clarity of the intent of the rule.

Rule	Summary of Comment	UTC Response
480-106-050(3)	Rewrite this section so that rates for purchases apply to both standard and non-standard QFs.	The commission prefers its proposed language as providing better clarity of the different requirements for standard offer rates.
480-106-050(3)(b)	Remove the option to calculate avoided costs at the time of delivery, leaving the option to calculate avoided costs at the time the obligation is created.	The commission declines to accept the proposed change because it is contrary to a FERC requirement.
480-106-050(4)	Shorten the pricing term to ten years from date of contract execution but no less than seven years from commercial operation. Pacific Power notes that the reductions in term length reduces the uncertainty of avoided costs without inhibiting renewable energy growth based on recent trends in financing.	The commission disagrees. We believe that new qualifying facilities should have up to fifteen years as a balance between utility and qualify facility needs and interests.
480-106-050(4)(b) through (b)(ii)(B)	Delete all language in these sections as duplicative with 480-106-050(3).	The commission prefers to keep the language in 480-106-050 because it applies to qualifying facilities greater than five megawatts.
480-106-080(2)	Change interconnection payment election from the QF to the utility. If the commission chooses to keep the language as is, Pacific Power includes 8 questions they feel would need to be answered regarding implementation.	The commission agrees and has included the suggestion in the draft rules. This aligns with the current rules, which states that it is at the utility's election.

6. Puget Sound Energy

Rule	Summary of Comment	UTC Response
480-106-040(1)(b)	PSE proposes a "technology-neutral approach for calculating avoided costs based on an agreed upon planning standard in the utility's most-recent Integrated Resource Plan" instead of the projected costs of a simple cycle turbine unit in the IRP. PSE argues that this approach better reflects the existing market and protects customers from overpaying for resources. PSE also argues that this approach is more flexible, allowing the avoided capacity costs to change with market conditions, including new technologies to meet capacity needs.	A simple cycle combustion turbine is a transparent and simple proxy for the value of avoided cost of capacity of market purchases.
480-106-030(2)	This section establishes a minimum standard for establishing a LEO but does not necessarily determine when an LEO is created, which could lead to uncertainty and disputes.	The commission understands these concerns and has made changes to clarify.
480-106-040(1)	Require utilities to file avoided cost methodologies for energy and capacity—both separately and combined—in lieu of static avoided cost tariffs for QFs (less than 5 MW) that don't qualify for standard rates. This would reduce unnecessary process before the Commission and the risk of slowing negotiations, project development, and contract execution.	The commission prefers static rates for QFs less than 5 MW for greater transparency and efficiency.
480-106-010, -020, -050, -060, and -070	The Commission sufficiently incorporated PSE's suggested changes. PSE has no additional suggested revisions to these sections.	No response.

7. OneEnergy

Rule	Summary of Comment	UTC Response
480-106-050(4)(a)(i)	The contract terms should be changed to 15 years from the project's commercial operation date, which is usually the minimum required for project financing (especially outside of organized energy markets). The Oregon PUC recently clarified that Portland General Electric must include a fixed price term of up to 15 years at a QF's election (Order 17-256). In addition, the scheduled commercial operation date should be no later than three years after PPA execution.	To address this issue, as raised by several stakeholders, the commission set a backstop of not less than twelve years from commercial operation date.
Implementation considerations	The impending step-down in the federal ITC credit makes the timely implementation of these rules—especially regarding approval of utility tariffs, avoided cost pricing, and form of PPAs—important to ensure that the full value tax credit is available, which is a "critical factor" in financing projects.	The commission is working to finalize these rules as soon as possible under the state's rulemaking requirements.

8. Hydro Technology

Rule	Summary of Comment	UTC Response
480-106-030(2)	The new PURPA rules may address benefits of reliable and predictable power generation, but the lack of specificity regarding relative value among QF attributes is concerning. Hydro Technology argues that the local utility has been including their capacity in IRP calculations, but they will lose their capacity payment at the end of 2020 due to the abundance of energy, which will cause financial hardship. Hydro Technology recommends that they be treated as a "Legacy Project."	If the utility relies on the QF to meet its capacity need, it should provide a capacity payment upon renewal. If the utility does not need the QF's capacity to meet its need at the time of renewal, the QF should not receive the capacity payment.