January 31, 2019

Mark Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
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RE: Comments of Renewable Northwest, Docket U-161024
Utilities and Transportation Commission's February 22, 2019, Notice of Opportunity to File Written Comments on Proposed Rules regarding Public Utilities Regulatory Policies Act, Obligations of the Utility to Qualifying Facilities, WAC 480-107, Docket U-161024

I. INTRODUCTION

Renewable Northwest thanks the Washington Utilities and Transportation Commission ("the UTC" or "the Commission") for this opportunity to comment in response to the Commission's February 22, 2019, Notice of Opportunity to File Written Comments ("the Notice"). We commend the Commission and Commission Staff for running a process that allowed for significant stakeholder feedback as they have worked to draft rules that implement the Public Utility Regulatory Policies Act of 1978 ("PURPA") fairly and consistent with Federal Energy Regulatory Commission ("FERC") precedent.

Renewable Northwest is largely supportive of the Commission's Proposed Rules. For example, we applaud the Commission for language that would set a 5 MW eligibility threshold for rates and that would recognize that consideration should be provided for renewable energy certificates ("RECs"). In these comments, we suggest some modifications to help ensure that the

final rules adopted by the Commission lay a framework that allows customers to benefit from the increased competition associated with a healthy PURPA regime.

II. COMMENTS

In these comments, we first encourage the Commission to adopt final rules that allow new QFs to obtain 15 years of fixed prices. We then suggest edits for greater clarity on language in the Proposed Rules on the legally enforceable obligation ("LEO"), and encourage the Commission to adopt a standard to determine whether a LEO has been formed. Next, we offer feedback on the Proposed Rules language on estimating avoided energy and capacity costs. Finally, we encourage the Commission to adopt a timeline for implementation of its Final Rules.

A. Start of the 15-year Fixed Price Term

Renewable Northwest encourages the Commission to adopt Final Rules that allow for 15 years of fixed prices for Qualifying Facilities ("QFs"). Under draft WAC 480-106-050(4)(a)(i), the fixed-price period for new QFs would begin on the date of contract execution and last no less than 12 years. A new QF would only obtain 15 years of fixed prices in the unlikely scenario that the QF could become commercially operational on the date of contract execution. Hence, draft WAC 480-106-050(4)(a)(i) would effectively result in a fixed-price period shorter than 15 years. Fixed-price periods of 15 years or longer are common in PURPA implementation in the region and seem in line with power purchase agreements ("PPAs") outside of the PURPA framework. As a result, we encourage the Commission to modify its draft WAC 480-106-050(4)(a)(i) so that the fixed-price period begins at a QF's commercial operation date ("COD").

B. Providing Additional Clarity on LEO Sections

Renewable Northwest encourages the Commission to amend the Proposed Rules for clarity. We appreciate the Commission's recognition in draft WAC 480-106-0030(2)(b) that a LEO "may exist prior to an executed written contract"; however, we are concerned about language in draft WAC 480-106-0030(2)(a) that a LEO "must be memorialized in an executed written contract between the utility and the qualifying facility prior to commercial operation." Specifically, our concern is that, as written, draft WAC 480-106-0030(2)(a) could be interpreted to require an executed written contract for LEO formation, something that would be inconsistent with FERC precedent.[1] We encourage the Commission to clarify its intent in the final version of 480-106-0030(2)(a).

We also encourage the Commission to modify its current definition of a LEO. Draft WAC 480-106-007 defines the LEO as "the binding commitment of a qualifying facility to sell, and of a utility to purchase, the energy, capacity, or both…" We are concerned that this definition could be interpreted to require an active commitment by the utility before a LEO can be formed. This requirement would be inconsistent with FERC precedent. As a result, we suggest that the definition of a LEO in the final version of WAC 480-106-007 refers to the "obligation" of the utility as opposed to the "commitment" of the utility.

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[1] Under FERC regulations, a signed contract is not necessarily a precondition to a LEO. *See* Order No. 69, 45 Fed. Reg. at 12,224; *see also Grouse Creek Wind Park, LLC*, 142 FERC ¶ 61,187, at ¶ 40. In fact, a LEO exists whenever a QF "has agreed to obligate itself to deliver at a future date energy and capacity to the electric utility." Order No. 69, 45 Fed. Reg. at 12,224; *see also*18 C.F.R. § 292.304(b)(5). FERC's LEO standard is consistent with the purpose of the LEO: to prevent utilities from ignoring their must-purchase obligation by refusing to enter into PPAs with QFs. Order No. 69, FERC Stats. & Regs. ¶ 30,128, at 30,880; *Cedar Creek Wind, LLC*, 137 FERC ¶ 61,006 (2011) (explaining that Section 292.304(d) and the LEO were adopted to prevent utilities from ignoring their must purchase obligation under PURPA). Consequently, the requirement of a signed contract as a precondition to formation of a LEO would be inconsistent with PURPA and FERC regulations.

C. Standard for LEO Formation

Renewable Northwest encourages the Commission to state its LEO standard in the Final Rules or in the order adopting them. Under draft WAC 480-106-0030(2)(b), a QF would be able to petition the Commission to resolve irreconcilable disagreements that arise during the contracting process, "including making a determination about whether the qualifying facility owner is entitled to a legally enforceable obligation and the date that such obligation occurred based on the specific facts and circumstances of each case." However, the rules do not clarify the Commission's standard for determining whether a LEO is formed. We encourage the Commission to specify what steps a QF would have to follow to form a LEO.

D. Identification of Avoided Energy

Under draft WAC 480-106-040(a), schedules of estimated avoided costs would include 15 years of avoided costs of energy. Consistent with our recommendation that the fixed-price period of QF PPAs begins at the commercial operation date of a QF, we encourage the Commission to require utilities to instead include at least 18 years of estimated avoided energy costs.

E. Identification of Avoided Capacity

Under draft WAC 480-106-040(b), schedules of estimated avoided costs would include "[a]n estimated avoided cost of capacity expressed in dollars per megawatt *based on the projected fixed costs of the next planned capacity addition identified in the succeeding ten years*" in the latest acknowledged Integrated Resource Plan ("IRP"). Renewable Northwest encourages

the Commission to adopt Final Rules that require that the avoided costs of capacity are estimated based on the same period used to estimate avoided energy costs.

Under draft WAC 480-106-040(b)(i), utilities could identify the projected fixed cost of the next planned capacity addition using "the most recent project proposals received pursuant to an RFP." Renewable Northwest is generally concerned that using request for proposal ("RFP") data for setting avoided cost rates limits the ability of PURPA stakeholders to vet utility avoided cost rate filings because project proposals in RFPs are usually highly confidential. As a result, we encourage the Commission to adopt Final Rules that require utilities to use acknowledged IRP cost estimates.

F. Implementation Timeline

Renewable Northwest encourages the Commission to specify in its order a timeline for the various filings and approval processes that may be required as part of the implementation of the Final Rules.

III. CONCLUSION

Renewable Northwest again thanks the Commission and Staff for this opportunity to comment and for a process that has allowed for significant stakeholder engagement. We look forward to offering additional feedback at the April 30, 2019 hearing.

Respectfully submitted this 1st day of April, 2019.

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