Attachment C

WAC 480-107 Revision – IRP Rulemaking U-161024

CR-102 Notice of Opportunity to File Written Comments on the Public Utility Regulatory Policies Act – Obligations of the Utilities to Qualifying Facilities

Comments Received April 1, 2019

Summary of Comments

1. Avista

Rule or Topic	Summary of Comment	Staff Response
480-106-050(4)(a)(i)	The proposed rules triple Avista's current terms from five (5) to fifteen (15) years. The commission should balance the risk and burden of longer-term contracts to utility customers[1] against qualifying facilities (QF) developers' desire for longer-term contracts. If a utility does not have a resource need, tripling the required terms makes utility customers bear the burden of any delta between the utility's actual avoided cost and rates that are locked in. There has been no showing in this proceeding that shorter contract terms prevent qualifying facility developers from being able to obtain financing for their projects.	For new QFs, fifteen (15) years of fixed rates from date of contract strikes an appropriate balance between ensuring that the QF has the ability to obtain financing, and ratepayers' interest that the contracted rates do not significantly diverge from a utility's avoided cost. We also look to Federal Energy Regulatory Commission (FERC) Order 69, which addressed this concern. In that Order, FERC stated that "The Commission does not believe that the reference in the statute to the incremental cost of alternative energy was intended to require minute-by-minute evaluation of costs which would be checked against rates established in long term [sic] contracts between qualifying facilities and electric utilities…and believes that, in the long run, 'overestimations' and 'underestimations' of avoided costs will balance out."[2]

[1] WAC 480-100-001.
[2] FERC Order 69 ¶ 12224, 18 CFR Part 292 Federal Register Vol. 45, No. 38

480-106-050(4)(a)(i)	The term option for twelve (12) years after commercial operation is problematic, allowing developers to obtain a fixed avoided cost rate as early as three years prior to commercial operation. These rates may not reflect a utility's avoided cost rate three years later and shift risk to utility customers. If avoided cost rates decrease over the three-year period prior to commercial operation, the QF developer obtains a fixed rate that exceeds the utility's actual avoided cost. If the avoided cost rate increases significantly, the QF could dissolve a special purpose LLC and reappear as a new LLC. A utility will then be required to enter into a new contract with that QF at a higher avoided cost rate. This could allow developers a free put option, shifting all of the risk to utility customers.	If a utility's avoided cost rates increase and a QF dissolves a special purpose LLC and reforms, that QF would further delay its operation and its ability to earn any revenue from the project. Furthermore, any affected party may ask the commission to review the interpretation or application of these rules under WAC 480-07-910 or WAC 480-07-370.

2. DGEP Holdings, LLC.

Rule or Topic	Summary of Comment	Staff Response
480-106-050(4)	The fifteen (15) years of fixed rates should begin at the date of commercial operation, not contract execution. The financial viability of a project depends on long-term operating cash flows. The QF is at risk to any unforeseen delays between contract date and the date of commercial operation.	The commission's proposed rules significantly increase the required term of fixed rates for QF projects, from five (5) years to fifteen (15), for two of the three regulated utilities. Staff believes that the proposed rules strike a reasonable balance of the interests of the QF and the ratepayers.

480-106-030(2)	The commission should follow FERC precedent and provide language that established a legally enforceable obligation (LEO) upon a QF's commitment to sell its output to a utility.	Staff recognizes the FERC's precedent that a LEO hinges on a QF's commitment to sell all or part of its output to a utility. To further clarify the commission's intent, see Staff's proposed changes to 480-106-030(2).
480-106-040	The commission should direct utilities to employ the Effective Load Carrying Capability (ELCC) methodology when calculating the value of capacity.	Staff is supportive of the use of ELCC in integrated resource plans (IRP), which would flow into the avoided cost filings. However, there may be more than one reasonable and effective methodology for determining the value of capacity of a resource. If a party does not believe that the utility is appropriately valuing a resource in its IRP, any party may ask the commission to review the interpretation or application of these rules under WAC 480-07-910 or WAC 480-07-370, or file a complaint before the commission.

3. Northwest and Intermountain Power Producers Coalition and Renewable Energy Coalition

Rule or Topic	Summary of Comment	Staff Response
Joint Recommendations	The commission should adopt all of the Joint Recommendations (filed February 26, 2018) as a package and not reshuffle the deck to create new 'winners' and 'losers' from the group that was able to forge common ground.	The commission's proposed rules adopt many of the recommendations set forth by the parties that submitted the Joint Recommendations. [3] However, the commission's obligation is to promote the public interest while complying with all state and federal laws. Staff finds that the commission's rules strike the appropriate balance of meeting the intent of PURPA and providing adequate protection for ratepayers.

[3] U-161024 *Joint Recommendations*, on behalf of Puget Sound Energy, Northwest and Intermountain Power Producers Coalition, Renewable Energy Coalition, Renewable Northwest, Northwest Energy Coalition and Climate Solutions (February 26, 2018).

WAC 480-106-050(4)	A qualifying facility (QF) should be provided with standard rates for purchases for a term of fifteen (15) years beginning on the date of commercial operation. The proposed rule makes it almost entirely infeasible for a project to get up to fifteen (15) years of certainty for pricing. Oregon, California, and Utah all provided a full fifteen (15) years of price certainty from the date of commercial operation. Wyoming requires twenty (20) year from commercial operation, and Idaho requires twenty (20) years for biomass, cogeneration, and hydro-electric QFs.	For new QFs, fifteen (15) years of fixed rates from date of contract strikes a reasonable balance between ensuring that the QF has the ability to obtain financing and ratepayers' interest that the contracted rates do not significantly diverge from the actual avoided costs.
WAC 480-106-050(4)	If the commission maintains a fifteen- (15) year contract from date of contract execution, it should recognize that the utility has an incentive to delay commercial operation in its interconnection process. The commission should require the QF to receive an extension of the total length of its contract if there is a utility-caused delay equal to the length of delay.	The rule states that a utility must make all the necessary interconnections with any QF to accomplish purchases or sales under this rule. In the event of a utility-caused delay, the QF developer can file a complaint against the utility at the commission. The commission would consider the circumstances of the case and make a determination.

WAC 480-106-050(4)	Existing QFs should also have the option of receiving fifteen- (15) year contracts. No other state in the Pacific Northwest or Rocky Mountain West discriminate in contract length between new and existing QFs. If the commission does not modify the rules to allow 15-year contract lengths, then the final rule should provide that: 1. Existing QFs are paid a full capacity payment in all years; 2. The ten-year period for an existing QF starts at the time of power delivery and not contract execution, because the vast majority of existing QFs cannot wait to enter into a new purchase power agreement (PPA) until the day before their current contract expires; and 3. The definition of existing QF should mean a QF that seeks to enter into a new purchase power agreement with the same utility to which the QF is already selling power. If the commission 'elects to discriminate' contract length for existing QFs, then it should require utilities to pay these QFs full capacity payment based on the next deferrable capacity resource in all contract years. Many existing QFs require upgrading equipment and facilities, including interconnections, at the time of their new agreements and need financing for these long-term investments.	The commission should balance between ensuring that a new QF has the ability to obtain financing and minimizing the risk of the contracted avoided cost significantly diverging from a utility's actual avoided cost. For existing QFs where capital financing is not as significant of a limiting factor as it is for new QFs, shorter contract terms, such as 10 years, can help ensure the avoided cost rate is adjusted more frequently to reflect the utility's actual avoided cost. Further, other contract term lengths in this rule also differ. QFs that do not meet the greenhouse gas emissions performance standard established under RCW 80.80.040 are appropriately limited to contract terms of less than five years. Regarding capacity payments valuation, there may be more than one reasonable and effective methodology for determining the value of capacity of a resource. If a party does not believe that the utility is appropriately valuing a resource in its IRP, any party may ask the commission to review the interpretation or application of these rules. We do not believe existing QFs needs to be further defined in rule. Existing QFs are generating, commercially operational facilities under the federal definition of a qualifying facility, as defined in WAC 480-106-007.

	Existing QFs must first enter into a new purchase power agreement to obtain financing for both the interconnection and facility construction, and thus they too can experience a delay between when they sign an agreement and when they become ‘operational’ under that contract. The rule should say that existing projects are able to enter into a fixed-rate contract ‘for a term of ten years after operation under the contract commences.’	

480-106-030(2)	Regarding LEO, the phrase 'must be memorialized' implies that a default assumption that no LEO exists without being embodied in writing, contrary to FERC precedent. The rules should explicitly provide that the formation of a LEO is based on when the QF makes it commitment to sell power, and that the policies, rules, and tariffs related to processing and negotiating the PPA do not impede the format of a LEO. The rules should give minimum criteria that must be met by a QF in order to establish that a LEO was formed. If the commission does not modify its rules, the commission should clarify in its adoption that: 1. A LEO results from the QFs commitment to sell power to the utility, upon meeting those minimum criteria; 2. Neither a utility nor a state commission can impose restrictions on processes that have the practical effect of delaying the contract negotiation process; 3. Identify specific actions that have the presumption of creating a LEO; and 4. Specifically explain that prior orders in Washington on this topic are superseded by more recent precedent.	Staff recognizes the FERC's precedent that a legally enforceable obligation hinges on a QF's commitment to sell all or part of its output to a utility. To further clarify the commission's intent, see Staff's proposed changes to 480-106-030(2).

480-106-030(5)	Clarify subsection so that the rule is explicit that QFs larger than five megawatts are eligible for the 15-year price certainty that is afforded to QFs with standard contracts. Recommend adding, "…including the provision of fixed rates for the terms provided for in the case of standard contracts."	As stated in the rules, nonbinding term sheets for QFs with capacities greater than five megawatts should be consistent with commission rules. Contracting parties should begin negotiations using the terms and conditions of the standard offer as a starting point, but the outcome of the final contract may deviate based on the specific characteristics of the QF and the utility, and the circumstances at that time.
480-106-030(2)	Clarify that contracting procedures set out in utilities' tariffs for obtaining a LEO can be completed, assuming appropriate due diligence by QFs, within 60 days.	The commission adopted the 60 days' notice provision as recommended in the Joint Recommendations (filed February 26, 2018). Staff does not foresee anything in the rules that would prohibit a QF from establishing a LEO within the specified timeframe.
480-106-040(1)(b)(ii)	Clarify that the capacity of market purchases is valued at a simple-cycle combustion turbine for both small and large qualifying facilities.	For QFs larger than five megawatts, the contracting parties should begin negotiations using the terms and conditions of the standard offer as a starting point, but the outcome of the final contract may deviate based on the specific characteristics of the QF and the utility, and the circumstances at that time.
480-106-040(1)(b)	Change the length of estimated avoided cost of capacity from ten (10) years to twenty (20) years, as the ten (10) year limit may unintentionally limit capacity payments to the first ten years of a contract, rather than the fifteen (15) identified in the rule.	Staff agrees and recommends making the change in the final rules.

480-106-050(4)(c)	QFs should have the option to choose between a renewable rate and a non-renewable rate. The rules state that during any period in which the QF receives standard rates based on the avoided capacity cost of an eligible renewable resource, the utility shall receive the renewable energy certificates produced by the QF at no additional cost to the utility.	PURPA includes non-renewable and renewable energy qualifying facilities. The utility's avoided rate filed with the commission should be representative of the cost a utility would incur if it chose to either provide the energy itself by building new capacity or the cost incurred by purchasing electricity from non-qualifying facilities. If the utility's avoided cost is based on the avoided capacity costs of an eligible renewable resource as defined in RCW 19.285.030, the utility's total avoided cost should include the cost of compliance with the Energy Independence Act, RCW 19.285. Therefore, the price reflected in the avoided cost includes the renewable energy certificate.
Avoided cost filings	The Order adopting the new rules should clarify that any inputs and assumptions regarding avoided cost changes can be challenged when filed by the utilities.	The rules will continue to allow all interested parties to intervene each time a utility files its avoided cost and contest the utility's results.
Interconnection rulemaking	The commission should commence an interconnection rulemaking either as an additional phase of the instant rulemaking process or as a separate investigation. The current interconnection rules are not sufficiently detailed and are unclear on key aspects.	The commission should consider this request amongst all the other rulemakings and proceedings it has before it.

4. OneEnergy

Rule	Summary of Comment	Staff Response
Compliance filings after Order	Requests that the commission order utilities to file estimated avoided cost pricing within thirty (30) days after the rules are final. There is no basis to wait until November 1, 2019 for the initial avoided cost filing.	Staff agrees that the utilities should expeditiously meet the new requirements of the rule prior to November 1, 2019. Staff encourages the commission to explore with parties a reasonable timeline for meeting the new requirements. Staff's initial recommendation is for the utilities to file within 60 days of the Order.
Compliance filings	The commission should set prompt deadlines for the utilities to file tariffs and make available standard power purchases agreements for review and execution by QFs.	See staff's recommendation, above.
Interconnection issues	Pacific Power is significantly delayed in its processing of interconnection agreements. The company is not providing the developer with a feasibility study agreement within 30 businesses days.	Parties can file complaints against a regulated utility under WAC 480-07-910 or WAC 480-07-370.

5. Pacific Power

Rule	Summary of Comment	Staff Response

General comments	The commission's PURPA rules do not go far enough to ensure that the 'principle of customer indifference,'[4] which requires that ratepayers and utilities should remain indifferent to whether the power is purchased from qualifying facilities or from other sources, is upheld.	Staff finds the commission's rules strike the appropriate balance of meeting the intent of PURPA while maintaining adequate protection for ratepayers. Fairness is paramount in power purchase agreements and the principle of customer indifference is key. To this end, the utility's timely filing of accurate estimates of avoided costs is of the utmost importance.
480-106-040(1)	Filing avoided capacity costs separately from energy costs seems simple but is problematic. Must-take obligation means QFs will provide both energy and capacity, so separating these values will not provide meaningful information. Separating the values may also make tariff filings overly complex. Rules should prioritize commission flexibility. Pacific Power recommends removing the requirement that avoided costs for capacity and energy must be identified separately and combined. [language revisions provided]	Staff does not support this particular recommendation or position. Separating the avoided cost by capacity, energy, and other costs is best practice for transparency to ensure that the public interest is fulfilled.

[4] Washington Utilities and Transportation Commission v. Washington Water Power Company, 83 P.U.R. 4th 364 at 375 (1987), is upheld.

480-106-040(1)(b)	Draft rules require use of most recently ‘acknowledged’ IRP in 480-106-040(1)(b), then requires use of the most recently ‘filed’ IRP in 480-106-040(1)(b)(i), then reverts back to most recently ‘acknowledged’ IRP in subsection (ii). Pacific Power recommends basing avoided costs on estimates from the most recently ‘filed’ IRP. It is critical to use the most up-to-date information available in setting avoided costs. Requiring use of old information is inconsistent with 480-106-050(1). Rate cases allow new information and updated data to ensure the most accurate possible rates.	Staff thanks the parties for identifying this error. Staff recommends correcting 480-106-040(1)(b)(i) to state the most recently ‘acknowledged’ IRP. While more recent data is generally preferable to older data, an acknowledgement is the only oversight the commission has over a utility’s IRP. If resource cost estimates change dramatically between IRP cycles, a utility has the option of requesting an exception to this rule under WAC 480-07-110.
480-106-040(1)(b) and (1)(b)(ii)	Using fixed costs of the next incremental capacity resource overstates the value of that capacity because it fails to account for the lost benefits of a deferred capacity resource. Net capacity costs are a better proxy of a QF’s actual value of capacity. Non-QF utility resources are usually dispatched based on economic value; the must purchase obligation means utilities must buy QF’s output even in hours where cheaper options would have been available. “[U]nless the full benefits of the ability to economically dispatch a deferred capacity resource are accounted for in the cost of capacity, customers are not indifferent when QF capacity displaces it.” Pacific Power proposes replacing “fixed” with “net” in these sections.	PURPA requires that the utilities purchase a QFs output at its ‘avoided cost.’ The actual avoided cost to the utility continuously changes and can only be captured in a snapshot timeframe. FERC recognized this issue in Order 69, as previously referenced in this document. When setting its rules, the commission must balance the public interest and goals of PURPA. An important component of that is to create rules that are relatively simple to interpret and implement. We believe Pacific Power’s proposal unnecessarily complicates the issue, while not demonstrating that its outcome would produce a more accurate avoided cost.

480-106-040(1)(b)(ii)	Using a simple-cycle combustion turbine as a proxy for capacity valuation may be inconsistent with potential policies to move away from the use of fossil fuels for electricity production." A utility should value its avoided cost of such capacity based on the prevailing market cost it would otherwise incur to build the same type of resource to supply such capacity.	A simple-cycle combustion turbine is a transparent and simple proxy for the value of avoided cost of capacity of market purchases. Staff recognizes that the emerging state policy may require utilities to move away from fossil-fueled plants in the future. However, it is reasonable to assume that a simple-cycle combustion turbine will remain a marginal capacity plant for the foreseeable future.
480-106-040(1)(c)	Qualifying facilities should be required to post security as a condition to receiving levelized pricing, as is required in Utah and Wyoming – where the requirement seems to not be a prohibitive burden. This protects the utility and ratepayers from the possibility that a QF defaults after having benefited from higher-than-normal payments in the earlier years of the term. Contrary to previous commission responses to Pacific Power comments, levelizing payments greatly diminishes a QF's long-term performance incentive by bringing some of the benefits of higher, late-term pricing forward to the beginning of the term. Without security to ensure the QFs continued performance, there is an increased risk of a QF defaulting toward the end of the term.	Staff disagrees that levelizing payments does not incentivize long-term performance and greatly diminishes a QFs long-term incentive by bringing forward some of the benefits. A QF does not receive financial compensation from a utility unless it is producing and delivering electricity to the utility. Levelized payments place equal value to the payments over the life of the contract resulting in an equal weighting of benefits over time. We are not convinced that the advantages of a security requirement are outweighed by the requirement's potential disadvantages – making tariffs and contracting processes lengthier, more expensive, and less transparent for all participants.

480-106-050(4)(a)(i)	Pacific Power believes that the intent of the Proposed Rules is to provide an overall maximum term of fifteen (15) years, and to limit QFs to executing those contracts to no more than three (3) years before their commercial operation dates. However, as written, the Proposed Rules would require standard rate prices be provided only starting twelve (12) years after the QF reaches commercial operation. Recommends changes to 480-106-050(4)(a)(i).	Staff appreciates Pacific Power's comments and believe that the Order may need to clarify the intent. The fifteen- (15) year term begins at the date of contract execution for new QFs. Payments should begin on the commercial operation date, and should continue for either twelve (12) years or until the end of the fifteen- (15) year term, whichever period is longer.

6. Puget Sound Energy

Rule	Summary of Comment	UTC Response
480-106-040(1)(b)	PSE continues to disagree with the commission's rationale that a simple cycle combustion turbine is the appropriate proxy for calculating the value of avoided cost of capacity of market purchases. PSE urges the commission to adopt a more technology neutral approach. PSE proposes a planning standard developed by a stakeholder advisory group. 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.	A PURPA standard offer contract should be reasonable, simple to understand, and transparent. A simple cycle combustion turbine is a reasonable, simple, and transparent proxy for the value of avoided cost of capacity of market purchases, particularly for QFs with capacities less than five (5) megawatts. PSE does not resolve how a stakeholder advisory committee could come to a conclusion should reasonable parties disagree on an appropriate outcome. This issue is within the purview of the commission and it has proposed a reasonable solution.
480-106-030(2)(b)	Acknowledges that the establishment of an LEO is an amorphous concept. Although not perfect, the commission's approach is workable.	Staff appreciates PSE's acknowledgement of the challenges of crafting LEO language. Please see previous responses for proposed LEO clarifications in this document.

Rule	Summary of Comment	UTC Response
480-106-040(1)	For QFs with capacities greater than five (5) megawatts, publishing an avoided cost methodology 'would provide better cost signals' than static avoided costs in tariff.	The schedule of estimated avoided costs required in WAC 480-106-040(1) is the same schedule that offers rates to qualifying facilities less than five (5) megawatts. PSE's proposed replacement of this tariff schedule with a methodology is not acceptable. Staff agrees that there may be merit to the utility publishing methodologies as well. The rules do not prevent the Company from also filing, on an informational basis, an avoided cost methodology to assist prospective QFs greater than five (5) megawatts.
480-106-040(1)(b)	There is an inconsistency within draft rules, using the most recently acknowledged IRP in some instances but the most recently filed IRP in others. PSE recommends using 'the most recently filed IRP throughout.'	Staff appreciates PSE identification of an inconsistency. While more recent data is generally preferable to older data, an acknowledgement is the only oversight the commission has over a utility's IRP. See Staff's proposed edits to the rules.

7. Renewable Northwest

Rule	Summary of Comment	Staff Response
480-106-050(4)(a)(i)	Draft language would effectively result in a fixed-price period shorter than fifteen (15) years, which is shorter than other PURPA contracts in the region and shorter than many PPAs. The commission should modify the rule so that the fixed-price period begins at a QF's commercial operation date.	For new QFs, fifteen (15) years of fixed rates from date of contract strikes a reasonable balance between ensuring that the QF has the ability to obtain financing, and ratepayers' interest that the contracted rates are set at the utility's avoided cost.
480-106-030(2)(a)	Current language could be interpreted to require an executed written contract for LEO formation. Encourages the Commission to clarify its intent in the final version of 480-106-030(2)(a).	Staff recognizes the FERC's precedent that a legally enforceable obligation hinges on a QF's commitment to sell all or part of its output to a utility. To further clarify the intent, see the proposed changes made to 480-106-030(2).

480-106-007	The definition of LEO could be interpreted to require an active commitment of the utility before a LEO can be formed. In the definition, recommends replacing 'commitment' with 'obligation' to align with FERC precedent.	With Staff's recommended addition to the rules, Staff is not concerned that the definition of a LEO can be construed as requiring an active commitment of the utility.
480-106-030(2)(b)	Draft rule says that the commission may make a determination about whether and when a LEO has been established, but the rules do not clarify the commission's standard for making such a determination. Encourages the commission to specify what steps a QF would have to follow to form a LEO.	The commission should make a determination, consistent with FERC precedent, on a case-by-case basis. However, the commission should be guided by FERC's determination in JD Wind 1 that, "… a QF, by committing itself to sell to an electric utility, also commits the electric utility to buy from the QF; these commitments result either in contracts or in non-contractual, but binding, legally enforceable obligations [pursuant to the state's implementation of PURPA]."
480-106-040(a)	Consistent with the recommendation that QF purchase power agreements start at operation date, the commission should also require utilities to include at least eighteen (18) years of estimated avoided energy costs.	Staff recommends twenty (20) years. See Staff's comments in response to the Northwest Intermountain Power Producers comments on number of years of estimated avoided costs.
480-106-040(b)	The estimated avoided costs of capacity should be based on the same period used to estimate avoided energy costs.	Staff's understands the rules to require utilities to use the same period for estimating the avoided cost of energy and capacity.
480-106-040(b)(i)	Using request for proposals (RFP) data, which is often highly confidential, to set avoided cost rates limits the ability of other PURPA stakeholders to vet avoided cost filings. Encourages the commission to adopt Final Rules that require utilities to use acknowledged IRP cost estimates.	Should the utility rely on its most recent RFP data, the utility must follow disclosure rules for its most recent project proposals received, pursuant to an RFP issued, and consistent with WAC 480-107. The utility is also subject to the commission's confidentiality rules.

Compliance filings	Recommends that the commission 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.	Staff agrees that the utilities should expeditiously meet the new requirements of the rule prior to November 1, 2019. Staff encourages the commission to explore with parties a reasonable timeline for meeting the new requirements. Staff's initial recommendation is for the utilities to file within sixty (60) days of the Order.

8. Sun2o Partners

Rule	**Summary of Comment**	**Staff Response**
Compliance filings	Following the adoption heating, the commission should expedite the release of the utilities' avoided cost pricing tariffs and a draft power purchase agreement. Further delays to implement the rules could have a detrimental impact on QFs ability to obtain the Federal Investment Tax Credit.	Staff agrees that the utilities should expeditiously meet the new requirements of the rule prior to November 1, 2019. Staff encourages the commission to explore with parties a reasonable timeline for meeting the new requirements. Staff's initial recommendation is for the utilities to file within sixty (60) days of the Order.

Rule	Summary of Comment	Staff Response
480-106-030(2)	Regarding a LEO, the rules should establish a quantifiable test that relies fundamentally on a QF unequivocally committing itself to sell its output to a utility. The LEO criteria cannot depend solely on factors in the control of a utility. The proposed rules do not define the substance of the written contract but its reliance that it be executed by both the utility and the QF is not in line with FERC precedent. LEO precedent in Oregon could be useful to the commission. Oregon determined that "a LEO exists when a QF signs a final draft of an executable standard contract that includes a scheduled commercial on-line date and information regarding the QF's minimum and maximum annual deliveries" while still providing that a QF could establish a LEO prior to its execution of a PPA should there be delays or obstruction in the establishment of the contract.	Staff believes that the commission's draft rules are aligned with FERC and Oregon's rules. However, we propose additional clarifying edits in 480-106-030(2).
480-106-050(4)	QFs should have the option to select up to fifteen-(15) year contracts at the date of commercial operation and the right to select a date of commercial operation three years from contract execution, so long as the QF can complete commercially reasonable milestone events. A period of three years after contract execution is necessary to ensure the completion of the development milestones, including the interconnection study, which is out of the control of the utility. A utility-owned generator typically last for over thirty (30) years regardless of future market pricing.	The commission's proposed rules significantly increase the required term of fixed rates for QF projects, from five (5) years to fifteen (15), for most of the regulated utilities. Staff believes that the proposed rules strike a reasonable balance of the interests of the QF and the ratepayers.

Rule	**Summary of Comment**	**Staff Response**
480-106-040	Utilities should use publicly available and independently published third-party data to drive the avoided cost rate schedules. Recommend using EIA data, which has been adopted in other states.	Staff recommends that the utilities use to best available information to set its avoided cost rate schedules with a preference for publicly available information, as outlined in chapter 480-100-238 (IRP rules) and 480-107 WAC (acquisition rules). If the utility uses third-party data, the utility should make that information available for inspection and review.
Energy storage	QFs should have the right to incorporate energy storage and be compensated accordingly. FERC has ruled that energy storage is eligible to be incorporated into QFs, so long as at least 75 percent of the charging energy is from qualifying renewables.	Staff understands that the legal precedent on pairing QFs with energy storage is limited. Staff is also aware that FERC is considering the status of QFs sited with generation and batteries; however, the outcomes of the status of those projects remain unresolved. It may be premature for the commission to make a determination on QFs sited with storage before FERC has issued guidance. Staff recommends that the commission remain open to the concept of QFs sited with storage and consider applications on a case-by-case basis, should a petition arrive before the commission, rather than make a determination before an application and before FERC has issued any guidance.
480-106-040(1)(c)	The commission should provide clarity of the levelized avoided cost pricing. A QF delays, reduces, or eliminates the utility's future capacity need and should be compensated accordingly.	Levelized avoided cost pricing means that the costs are converted to a level stream of payments over the contract period.

Rule	Summary of Comment	Staff Response
480-106-040	The commission should require the utilities to use a robust method for calculating the capacity value of each resources, and recommends using the Effective Load Carrying Capability (ELCC) method. The commission should set clear ELCC guidelines that allow for the contribution of energy storage when paired with a QF. ELCC method should be fixed upon contract execution or LEO formation, as it is essential to a QF's ability to secure financing.	Staff supports the ELCC method and its use in IRPs. However, there may be more than one reasonable and effective methodologies for determining the value of capacity of a resource. If a party does not believe that the utility is appropriately valuing a resource in its IRP, it may intervene when the utility files avoided cost rates. Any party may also ask the commission to review the interpretation or application of these rules under WAC 480-07-910 or WAC 480-07-370.
480-106-040	The commission should set standard ELCC percentage by technology by month for all standard offer QFs.	Staff urges the commission not to set standard ELCC percentages by technology and month for all standard offers. The ELCC of a resource will change based on its location and the utility with which it is interconnecting. This determination is best made in a utility's IRP.
480-106-030(5)	The commission should confirm that the proposed rules established for standard offer QFs provide the starting point for large QFs contract negotiations. Large QFs should still be entitled to contract provisions for qualifying facilities with capacities greater than five megawatts.	As stated in the rules, nonbinding term sheets for QFs with capacities greater than five megawatts should be consistent with the commission's rules. Contracting parties should begin negotiations using the terms and conditions of the standard offer as a starting point, but the outcome of the final contract may deviate based on the specific characteristics of the QF and the utility, and the circumstances at that time.