

December 3, 2019

Via Electronic Filing

Chair David Danner
Commissioner Ann Rendahl
Commissioner Jay Balasbas
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

Re: Utility PURPA Compliance Filings –
Comments on Utility PURPA Contracting Procedures for Consideration in Advance of
the December 5, 2019 Open Meeting

Docket Nos. UE-190663 – Avista
UE-190665 – Puget Sound Energy
UE-190666 – PacifiCorp

Dear Commissioners:

The Northwest and Intermountain Power Producers Coalition (“NIPPC”) and the Renewable Energy Coalition (“REC”) submit these Comments on the PURPA contracting procedures proposed by Puget Sound Energy’s (“PSE”) Public Utility Regulatory Policies Act (“PURPA”) Compliance Filing submitted in Docket No. UE-190665. NIPPC and REC have also filed separate comments exclusively on the Avista and PSE’s avoided cost prices on November 14, 2019, and submitted separate comments on Avista’s contracting procedures on November 15, 2019.

Please refer to NIPPC and REC’s comments submitted on November 15, 2019 for a detailed explanation of the contracting process generally. PSE worked with NIPPC and REC informally to resolve many of NIPPC and REC’s concerns with its tariff and contracting procedures. In this process PSE made significant and substantial changes, and NIPPC and REC appreciate PSE’s collaborative and reasonable approach to adopting a contracting process that work for both PSE and qualifying facility (“QF”) projects. These comments pertain to any remaining issues and clarifications.

I. PSE’s Schedule 91

PSE’s Schedule 91, regarding purchases from QFs of five megawatts or less, is generally acceptable to NIPPC and REC, but with the clarifications below.

A. QFs Are Entitled to Pick the Contract Term of Their Choice

First, the tariff should clearly state that shorter contract terms are available. Section 6.A-B details that “[t]he minimum term of the Power Purchase Agreement shall be five (5) years,” and that a new RCW 80.80.040-Compliant facility “will” execute a PPA for a term of 15 years, an existing RCW 80.80.040-Compliant facility “will” execute a PPA for a term of 10 years, and an RCW 80.80.040-Non-Compliant facility “will” execute a PPA for a term of 5 years. The Commission’s rules require that a utility “offer” fixed rates for terms of those lengths, but does not limit the QF’s contracting options to only terms of those lengths and the QF should be able to enter into contracts of shorter lengths. All QFs should be entitled to payment of a fixed price for energy and capacity payments for whatever term they desire (up to the maximum permitted by the Commission).¹

NIPPC and REC discussed this issue with PSE and understand that due to the nature of the way that PSE calculates its rates, there are some complications that will need to be worked out. Specifically, NIPPC and REC understand that PSE’s annual year by year energy and capacity payments need to be revised depending on the specific contract years. Thus, PSE need to either: 1) provide specific annual prices for each contract term length; or 2) revise its avoided cost calculation so that only one set of prices is available for QFs of any contract length. PSE’s approach of calculating different annual prices depending on the length of the QF’s selected contract term is unique among the utilities NIPPC’s and REC’s members sell their net output to.

NIPPC and REC agree to work with PSE over the next few months on this issue and are willing to agree that the current schedule without published rates for shorter contract terms go into effect now. This means that QFs seeking contract terms different from what is listed in Schedule 91 will have to ask for the prices applicable to their contract length until a solution is reached with PSE.

NIPPC and REC are concerned, however, that the above language makes it sounds like a QF cannot enter into a shorter contract term, as such PSE should add language to the tariff indicating that shorter contract terms are available, but that they pricing would need to be revised slightly and a QF interested in such an arrangement should contact PSE to obtain appropriate pricing.

¹ Most QFs pick the maximum contract term permitted by the state regulatory agency. However, some QFs have other business reasons to pick a shorter contract term. For example, a cogeneration project may want the flexibility to use their electricity to serve its industrial process rather than sell its net output over the next 10 to 15 years, and may decide to enter into a shorter term contract.

B. References to RCW 80.80.040 Should be Clear That it is Referring to a Greenhouse Gas Emissions Performance Standard

Second, the meaning of “RCW 80.80.040 Compliant” and “RCW 80.80.040 Non-Compliant” as used throughout the tariff should be made clearer in the tariff through the use of a defined term or more descriptive wording. For example, in the rules the Commission, when referring to RCW 80.80.040 Non-Compliant facilities, says “[q]ualifying facilities that do not meet the greenhouse gas emissions performance standard established under RCW 80.80.040.” NIPPC and REC recommend that PSE and all utilities use more descriptive wording like this to indicate that these RCW’s refer to a greenhouse gas emission performance standard.

C. Initial Information Requirements are Flexible Depending on the QF

Third, after discussion with PSE, NIPPC and REC understand that the information requirements in Section 8.A., are not rigid requirements that will be required by each and every QF, but are meant to be flexible enough to accommodate QFs that cannot provide all of that information due to their unique characteristics. PSE has chosen to indicate this flexibility through the use of the words “including, but not limited to” when referring to the information requirements.

Regarding subsection v. “Demonstration of ability to obtain QF status,” NIPPC and REC understand that PSE’s intent is for a QF to explain their plan to obtain financing, or how they plan to position the QF in the future to so that it can obtain financing. Some QF developers will take a QF only through the project development stage by acquiring the PPA, interconnection agreement, site control and permits, and repackage it for re-sale to a larger developer that will secure financing. After discussion with PSE, NIPPC and REC’s understanding is that such a developer will not be required to demonstrate how it will secure financing, but its plan to resell the QF to another entity (not necessarily known at the time) that will secure financing. PSE could make this clearer by revising section 8.A.v. to say that a QF will need to provide “a plan for or a reasonable demonstration of ability to secure financing.” However, in the absence of such a revision, NIPPC and REC offer the above clarifications, and would ask that the Commission make this clarification in their order approving Schedule 91.

D. PSE’s Contracting Procedure is Streamlined

Fourth, PSE’s Schedule 91 contracting procedure is the most streamlined of any utility and NIPPC and REC have no concerns with it. NIPPC and REC are not recommending any changes to PSE’s contracting procedure, but are submitting comments for the Commission to understand the development community’s understanding. NIPPC and REC do not believe that there is any disagreement with PSE.

PSE will forward the QF an executable contract within 15 business days after receiving all of the required information. Should there be an error or other issue with that version of the contract, the QF may request revisions, to which PSE will respond with a new executable PPA

within another 15 business days. Once that executable PPA is provided, a 45-business-day clock starts ticking and the QF will be required to execute the PPA within that time frame, or else the PPA will expire and the process will begin anew. Further, NIPPC and REC wish to clarify that if the draft contract is done in less than 15 business days, there is no reason to wait until the 15th day just “to run out the clock” when there is an impending rate decrease as some utilities (not PSE) have done. If there is an impending rate decrease, then the utility should endeavor to provide the draft contracts back as quickly as possible.

II. PSE’s Schedule 92

PSE’s Schedule 92, regarding purchases from QFs of greater than five megawatts, is also generally acceptable to NIPPC and REC, but with the clarifications below.

First, PSE’s Schedule 92 contracting procedure makes sense, and NIPPC and REC have no changes. PSE will provide indicative pricing within 30 business days of receiving the initial information from the QF. If the QF desires to proceed, it will request a draft PPA, which PSE will provide within 25 business days. PSE will provide interim drafts within 15 business days and once the parties are in full agreement PSE will provide the executable PPA within 15 business days. This schedule makes sense along with the clarifications noted above regarding the Schedule 91 process that there is flexibility in the initial information requirements and that PSE will not simply hold the next draft to “run out the clock” if it can be provided sooner.

Second, NIPPC and REC understand that statements giving PSE the authority or permission to request additional, open-ended information are limited to information that is reasonably necessary and that PSE will only request in good faith and not out of any drive to delay the contracting process. For example, PSE “[m]ay request any additional information from the QF necessary to finalize the terms of the PPA [or Negotiated Agreement] and satisfy the Company’s due diligence regarding the QF project.”² This is the type of language that a utility may lean on to delay the negotiation process until a lower avoided cost price becomes effective and for that reason is suspect. NIPPC and REC understand, however, that there may be instances where such information is reasonably necessary. As such, NIPPC and REC have no specific changes, but are merely taking this opportunity to clarify that requests for such information must be made in good faith and must be reasonable.

III. PSE Standard Contract Terms and Conditions

NIPPC and REC recommend that the contract terms and conditions for all utilities be addressed in early 2020. Until then, the contracts for Avista and PacifiCorp should not go into effect. Because PSE has already been using a standard contract in Washington, NIPPC and REC are comfortable with and recommend that PSE’s go into effect immediately but with the merits addressed in early 2020 along with the other utilities.

² PSE draft Schedule 91 at Section 8.B.iv. and Schedule 92 at Section 3.F.iv. (Nov. 22, 2019).

IV. Other Issues

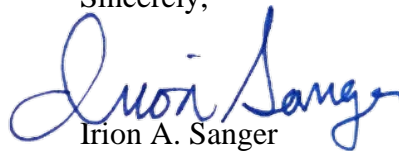
It is NIPPC and REC's understanding that the remaining issues related to PSE's compliance filing will be resolved on the following schedule:

- The contract terms and conditions will be addressed in 2020.
- The methodology for negotiating non-standard prices will be filed by PSE in a separate filing before December 31, 2019.

V. Conclusion

With the above clarifications and the changes detailed in NIPPC and REC's November 14, 2019 comments on PSE's avoided cost prices, NIPPC and REC recommend that the Commission approve PSE's Schedule 91 and Schedule 92 compliance filings filed on November 22, 2019.

Sincerely,



Irion A. Sanger

cc: John Lowe, Executive Director REC
Carol Opatrny, Interim Executive Director NIPPC