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News Alert

Washington UTC Finalizes New PURPA Rules Creating New Opportunities for Renewable Energy Developers

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After a lengthy administrative process, the Washington Utilities & Transportation Commission (UTC) on June 12, 2019, issued an order adopting final rules that implement the must-purchase requirements of the Public Utilities Regulatory Policy Act (PURPA) in Washington. The new rules will go into effect in July. Together with the recently-passed Washington Clean Energy Transformation Act, substantial new opportunities for renewable energy development in Washington are likely to be created.

The new rules substantially revise Washington's implementation of PURPA Section 210, which requires regulated utilities to purchase the output of "qualifying facilities" (QFs) – renewable generators with 80 megawatts (MW) of capacity or less and cogeneration facilities – at "avoided cost" rates. Until now, Washington's PURPA rules were skeletal, and PURPA projects were nearly non-existent in the state, despite vigorous QF activity in neighboring states.

The new rules improve the existing rules in several key areas, including contract length, legally enforceable obligation (LEO), standard contracts for small QFs, defined avoided costs, and negotiation framework. The new rules create a major opportunity for renewable energy developers in Washington and a means for the state's utilities to meet the aggressive mandates for a carbon-free generation that have now been established by the Washington legislature.

Contract Length

Previously, UTC rules required five-year PURPA contracts, undercutting QF development because of the difficulty of financing generation projects over such a short term. The new rules are a major improvement, requiring contracts with a minimum term of 15 years from the date a new QF enters into a "Legally Enforceable Obligation" and a minimum of 12 years from the QF's commercial operation date. For existing QFs, new PURPA contracts must be for a minimum of ten years.

Legally Enforceable Obligation (LEO)

The new rules provide detailed guidelines defining when a LEO has been formed. The LEO concept is important for QF development because it allows QFs to commit to delivering their power output to a utility without having a signed contract in place, which limits the utility's ability to delay contract formation. LEO formation has been a major point of contention in other states. By setting guidelines for LEO formation in Washington, QFs in Washington may be able to avoid such controversies, or at least narrow the scope of the controversy if litigation arises.

Standard Contracts for Small QFs

The new rules require UTC-regulated utilities to provide standard contracts for small QFs, those with a capacity of 5 MW or less. This aspect of the new rules, combined with the requirement for utilities to provide specified avoided cost rates for these QFs, will eliminate the need to negotiate contracts, a major hurdle for these small projects. Hence, the new rules are likely to stimulate significant new development of small projects in the state.

Defined Avoided Costs

Consistent with federal PURPA requirements, the new rules permit a QF to choose an avoided cost rate defined at the time it enters a LEO with the utility or at the time it delivers power to the utility. For small QFs (five MW of capacity or less), the utility must annually file with the UTC its specific avoided costs, which will then become the avoided cost payment term for the QF's contract with the utility. For larger QFs, the rules require utilities to file a schedule of estimated avoided costs annually, including avoided costs for both capacity and energy. These estimated avoided costs provide the basis around which the rates in power purchase agreements for larger QFs can be negotiated.

Negotiation Framework

Although larger QFs are required to negotiate the specifics of their utility contracts, the rules provide a framework for the UTC to resolve disagreements and to determine when a LEO has been formed.

Beveridge & Diamond's Renewable Energy industry group supports and enables successful and sustainable renewable energy projects, helping clients overcome a number of environmental regulatory and transactional hurdles. We help developers, energy companies, manufacturers, and other participants with issues such as construction and land use impacts, endangered species, stormwater management, hazardous materials, and waste. For more information, please contact the author.