



June 29, 2020

Re: Relating to Purchase of Electricity and Compliance with the Clean Energy Transformation Act, Docket UE-190837

Mark Johnson, Executive Director/Secretary
Washington Utilities and Transportation Commission
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Dear Mark L. Johnson,

Thank you for the opportunity to submit comments and answer questions on the direction of the rulemaking for the Purchase of Electricity, Docket UE-190837.

Front and Centered is a statewide coalition of organizations across the state that are rooted in communities of color and with lower incomes. Together we are committed to equity and ensuring climate and environmental justice. Communities of color and people with lower incomes are hit first and worse by extraction, pollution, and climate change, which exacerbates existing health and economic disparities. These frontline communities are often left out of, or are the last to be included in, the transition to a healthy, resilient, and sustainable future.

We appreciate the opportunity to submit comments on this docket and UTC's work to ensure robust and full consideration of the Clean Energy Transformation Act's (CETA) equity mandate in RCW 19.405.040(8). Because communities of color and lower income communities are disproportionately impacted by pollution, CETA would ensure clean, healthy and thriving neighborhoods, as well as broadly shared economic benefits of a clean energy transition.

In further rulemaking in the Purchase of Electricity Docket 190837, Front and Centered recommends that the Commission continue to affirm the importance of the equitable distribution of benefits in the transition to 100% clean energy by directing utilities to acquire resources through a transparent and accessible bidding process that aligns with ensuring everyone benefits and the equitable distribution of benefits. The new rules should reinforce CETA's standards while ensuring that the energy sector adopt more rigorous processes and content for contracting

and purchasing. More opportunities for partnering with utilities to electrify Washington communities will promote innovation, build capacity and support diverse participation in the sector. The Commission's rules on this docket should strengthen the connection between purchasing rules and the equity standard and the opportunities for vendors controlled by and benefiting vulnerable populations and based in highly impacted communities to engage in energy services to ensure resource adequacy, efficiency and resiliency on the supply side.

Front and Centered reiterates the importance of equity in all aspects of energy planning. For purposes of CETA rulemaking the Commission may refer to a broader equity framework centering equity in decisions related to purchase of electricity.

Benefits for All - Equity Framework

- Centering equity values in utility sector in areas of public and environmental health, security, resiliency, economic opportunity, and democracy; and
 - Transforming the energy sector to reduce burdens, mitigate risks and ensure benefits flow to vulnerable populations and highly impacted communities; for a
 - Progressively more equitable RFP and acquisition process and outcomes.
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- Restorative Justice
 - Understanding systemic injustices in electrical industry
 - Accounting for historical patterns, disparate impacts and current advantage deficits in assessing energy needs and opportunities in service area
 - Setting equity targets and adopting a clear standard for progress
 - Prioritizing vulnerable persons and highly impacted communities to achieve equity for everyone
 - Meaningful Participation
 - Extensive outreach about RFPs to potential partners (sub/contractors) based in and serving highly impacted communities and controlled by and benefiting vulnerable populations
 - Clarity in establishing equity goals in solicitation, describing indicators and targets in evaluation criteria, and explaining conceptual framework to bidders
 - Representation of equity advisory groups in RFP planning
 - Accessibility of procurement and capacity-building opportunities to entities from vulnerable populations, especially those in highly impacted communities
 - Reporting Adequacy
 - Transparency of evaluation criteria, selection process and ultimate decision-making
 - Representation of equity advisory groups in RFP planning
 - Statewide committee and IOU equity advisory groups consultation on in RFP drafting, solicitation dissemination, evaluation
 - Consistency between equity targets and selection criteria
 - Independent evaluator body/certification with equity component
 - Accountability Mechanisms

- Clear objectives and targets for equitable procurement practices
- Adequacy/sufficiency standard for quantifying progress
- Oversight to ensure rule compliance

Commission Notice Questions and Front and Centered Responses

1. The draft rule at WAC 480-107-015(4), Solicitation Process, shortens the RFP filing period requirement from 135 days to 45 days after a utility files its IRP, reduces the 60-day comment period to 30 days, and requires a Commission decision 60 days after the RFP is filed. The intended outcome is to reduce the time between identifying the resource need and pursuing resources through an RFP. Does the draft rule contain adequate time for public involvement to assure that, in most circumstances, stakeholder concerns are resolved? If not, please recommend an alternative timeline for these filing requirements.

Recognizing the importance of timely resource planning for the public interest, Front and Centered respectfully recommends that utilities adopt more rigorous outreach in publicizing their resource planning strategy and soliciting comments. A comment period under 45 days may be adequate for allowing meaningful public participation as long as the process for engaging the public is, from the very onset, active, open, accessible, and inclusive. Sufficient time for public involvement in RFPs must include time to comment and receive a response. Utility resources, including equity advisory groups, may be directed to regularly reviewing and strengthening accommodations for public engagement. The Commission must ensure that IOUs account for their responsiveness to concerns raised in public comments when filing RFPs.

2. The draft rule at WAC 480-107-015(4), Solicitation Process, includes the requirement that the utility “must accept bids for a variety of energy resources that may have the potential to fill the identified resource needs including, but not limited to...” What burden does this requirement impose? What are the benefits or drawbacks of the rule providing that the utility “may accept bids”?

Front and Centered supports the rule language as it stands with respect to energy resources, including identified need for efficiency, conservation and demand response. The rule allows for an open bidding process that widens the field of participation in energy sector supply. Open competition for purchasing contracts allows for utilities to provide clarity in how they define resource needs and objectives and supports greater fairness in access to opportunities for diverse generators and increased co-benefits.

3. The “Contents of a solicitation” section of draft rule WAC 480-107-025(5) requires a sample evaluation rubric or, in the alternative, an explanation of the evaluation criterion. This requirement is intended to better enable bidders to design projects and bids that satisfy the resource needs as identified in the RFP. Does the draft language improve the transparency of the evaluation process? If not, please recommend an alternative approach or alternative components of the evaluation criterion that will provide the necessary transparency.

Where RFP bid evaluators are bound to reviewing proposals based on a predetermined set of criteria, it is in the interest of fairness that those criteria are made as clear as possible. The Commission rules sufficiently factor in the requirement for transparency in the sample evaluation rubric that offers a frame of reference for potential bidders to know the areas of importance and their relative weight. A detailed explanation of evaluation criteria with references to CETA and other legal provisions and IOU objectives that are to be met by each would enhance transparency.

The rules should also provide that utility interests in compliance with CETA equity mandates may be furthered when the evaluation rubric offers sufficient weight to equity-specific features in the RFP scope of work and provider characteristics, including, for example, proposed programs that:

- Create benefits located in communities that have higher levels of cumulative health impacts (and harms elsewhere);
- Provide energy security and resilience, prioritizing non-transmission wire alternatives (public health and safety)
- Provide economic benefit and job opportunities for under- and unemployed individuals in highly impacted communities;
- Create more community owned and controlled, equitable, energy sources, ensuring economic benefits are widely available including to renters and rural lower income customers;
- Ensure lower long-term and short-term cost, considering not only the financial cost on consumers but the health and economic costs;

- Couple with energy efficiency efforts.

The sufficiency of the evaluation rubric in detailing the essential and preferential features of a proposal and their relative weight should be assessed by the Commission in the RFP approval process.

4. Comments received from stakeholders in this docket on March 13, 2020, presented a variety of options for determining when a utility should be required to use an independent evaluator. Several commenters recommend including a capacity threshold ranging from 20 MW to 100 MW.

- a. Are there unintended consequences of using a capacity threshold in WAC 480-107-AAA to decide whether an independent evaluator will add value to the Commission's review?

Front and Centered supports the use of a qualified independent evaluator in assessing proposals at any capacity threshold to support the Commission in making an equity assessment of the RFP process.

- b. If a capacity metric (i.e., MW) is used in WAC 480-107-AAA(1)(a), what is the justification for requiring a capacity metric as a threshold for retaining an independent evaluator?

The Commission will benefit from the review of an independent evaluator for large and smaller-scale resource acquisition need and a threshold is not necessary to justify their use.

- c. Should a metric(s) other than capacity be used in WAC 480-107-AAA(1)(a), in addition to financial interest, to decide whether or not the utility must use an independent evaluator? If so, what considerations should be used to determine the value of that metric.

The rules may provide for a metric to determine that an independent proposal evaluator is necessary when a utility is found not to have met its compliance obligations under the equity requirements of RCW 19.405.040(8), when the utility's IRP equity assessment or RFP practices demonstrates a pattern of bias or lack of objectivity that perpetuates inequitable distribution of procurement opportunities as determined by the Commission.

5. The draft rule at WAC 480-107-135(1)(a) provides for the use of an independent evaluator when a utility has a financial interest in the resource choice, including when a utility is considering repowering one of its owned resources at the end of the resource's life to fulfill the resource need identified in the RFP. The draft rule requires that the repowering of the utility-owned resource be evaluated with the other responsive bids to the RFP. What are the benefits and drawbacks of this requirement?

It is in the interest of equity that the Purchase of Electricity rules provide for the maximum opportunity for small business, worker and community-controlled sources including women-, minority- and disabled-owned energy enterprises to be considered to contract with IOUs to meet the resource need of the service area.

6. Under certain circumstances, the draft rules at WAC 480-107-AAA require utilities to use independent evaluators, approved by the Commission, to assist in the evaluation and ranking of bids. What qualifications demonstrate that independent evaluators have the training or experience to appropriately weigh and consider CETA's equity provisions in their ranking of project bids?

The rules should set minimum qualifications of independent evaluators that define independence to and set standards for all evaluators to adhere to, informed by input from customers and a public participation process. Evaluators who are familiar with CETA purpose and objectives, clean energy policy, public sector procurement processes, private sector purchasing practices, developing inclusion opportunity for small and medium enterprises particularly in highly impacted communities, and the Cumulative Impact Analysis and its application are better positioned to provide sufficiently rigorous review of the

proposals and selection of bidders to complete a resource portfolio to meet customer need. Independent evaluators should receive training on the significance of equity and disparities in access to benefits and exposure to risks, among other important topics through a certification process.

7. In previous comments, stakeholders have requested various provisions for the consideration of minority-, women-, disabled- and veteran-owned businesses as bidders or subcontractors in utility RFPs. Please provide citations to existing federal, state, or local laws applicable to the requirements of utility RFPs related to minority-, women-, disabled- or veteran-owned businesses and how these affect the language in the draft rule.

Preferential consideration to enterprises based in highly impacted communities for private utility energy procurement should be encouraged through rulemaking around data tracking and compliance with CETA equity provisions. While there are a number of institutions in Washington state that set goals to achieve greater inclusion of community, worker, women-, minority- and veteran-owned businesses among the contractors and vendors they engage for public works projects, the state overall has a limited legal regime for requiring a minimum amount of business be done with these enterprises. On preferential consideration for these businesses in public contracts on Initiative 200, the Attorney General found that the preference is specifically limited to public employment, public education or public contracting (<https://www.atg.wa.gov/ago-opinions/use-race-or-sex-conscious-measures-or-preferences-remedy-discrimination-state>). Entities seeking to access state and local benefits for women and minority-owned businesses, for public contracts and as well as private enterprise diversity goals, may seek certification from the Office of Minority and Women's Business Enterprises (<https://omwbe.wa.gov/certification>).

The Commission may look to how different jurisdictions oversee and promote access to contracting opportunities for suppliers and contractors from highly impacted communities. Many states require that utilities compile information about their vendors and contractors into supplier diversity reports for review by regulatory bodies. An example is California, which requires tracking and reporting of enterprises contracted for public procurement projects (CA <https://www.cpuc.ca.gov/supplierdiversity/>). The Emerald Cities Collaborative (ECC) produced a study on inclusivity in procurement and contracting in environmental policy implementation (<http://emeraldcities.org/media/news/inclusive-procurement-and-contracting>).

Utilities may further their compliance with CETA equity requirements by adopting equity-centered practices to better integrate diverse partnerships in their contracting and purchasing. These may be informed by the design of the equity advisory groups and can

include diversity program officers, inclusion planning, contracting goals, asset-sharing guarantees, capacity-support grants, and technical assistance arrangements.

In addition to the special consideration that the rules provide for women-, minority- and disabled veteran-owned businesses, Front and Centered recommends the addition of enterprises based in the concerned communities, worker-run and community cooperatively-owned enterprises. Regulatory guidance that supports the greater inclusion of these businesses in the energy sector will provide for a diversified market for energy supply which will support greater integration of different vendors and contractors in utility services.

Thank you again for the opportunity for us to submit our recommended changes and to provide you with our answers to your questions for consideration. If you have any further questions, need further clarification or additional information, please do not hesitate to reach out to me at deric@frontandcentered.org and via phone at (206) 422-2597.

Sincerely,

Deric J. Gruen

Co-Executive Director

Programs and Policy

Front and Centered Language Change Recommendations for Draft Rules

<p>WAC 480-107-015</p> <p>The solicitation process.</p>	
<p><i>F&C Recommendation Comments</i></p>	<p><i>UTC Draft Rules with Front and Centered underlined additions.</i></p>
<p>RESTORATIVE JUSTICE</p> <p>Any time that either an IRP process or CEIP process indicates that a utility is making insufficient progress on the equity mandate, this should trigger an RFP process to solicit additional projects that would ensure a discrete path of compliance with the equity mandate.</p>	<p>(1) The utility must solicit bids for its resource needs whenever its most recently filed integrated resource plan demonstrates that the utility has a resource need within four years, as assessed <u>with consideration to the equity requirements of RCW 19.405.040(8).</u></p>

<p>RESTORATIVE JUSTICE and MEANINGFUL PARTICIPATION</p> <p>The Commission and IOUs should do extensive outreach to affirmatively, actively, and specifically seek out a diverse field of applicants. Extensive outreach may take the form of a series of widely promoted workshops.</p> <p>Equitable outreach and information access activities must be targeted to communities historically underrepresented and excluded from opportunities in the energy sector.</p>	<p>(3) A utility must conduct <u>extensive</u> outreach to potential bidders, including nonprofits and under-represented bidders such as minority-, women-, disabled and veteran-owned businesses, <u>and businesses located or with workforce located in highly impacted communities</u>, to encourage equitable participation in the bidding process. Potential bidders must have equitable access to information relevant to responding to a utility’s RFP, including but not limited to <u>data related to how the utility is ensuring the equitable distribution of energy and nonenergy benefits within the scope of the acquisition and accommodation</u> required by the Americans with Disabilities Act communications guidance.</p> <p><u>Prior to publicizing a resource need RFP a utility should launch a series of equity transition project workshops in highly impacted communities designed to build the capacity of relevant community businesses to understand the parameters of the solicitation and engage with the industry on the acquisition of clean, equity-focused resources.</u></p>
<p>RESTORATIVE JUSTICE</p> <p>Recommend the broadening of allowable energy sources to include distributed and customer owned energy as a means to meet equity specific resources.</p>	<p>(7) The utility must accept bids for a variety of energy resources that may have the potential to fill the identified resource needs including, but not limited to: electrical savings associated with conservation and efficiency resources; demand response; energy storage; electricity from qualifying facilities; electricity from independent power producers <u>including distributed and customer-owned energy</u>; and, at the utility's election, electricity from utility subsidiaries,</p>

	and other electric utilities, whether or not such electricity includes ownership of property.
<p>WAC 480-107-025</p> <p>Contents of the solicitation.</p>	
<i>F&C Recommendation Comments</i>	<i>UTC Draft Rules with Front and Centered <u>underlined additions.</u></i>
<p>REPORTING ADEQUACY</p> <p>The equity mandate of RCW 19.405.040(8) should not only be written expressly into the solicitation content requirements but the RFP must clearly detail what it means within the scope of the resource acquisition project and how equity ties into the IOU’s overall CETA compliance plan - and subsequently what bidders must be prepared to do to support it. The bidders must be apprised of scope and status of utility’s approach to achieving progress in compliance with equity requirement.</p>	<p>(2) The RFP must <u>list and describe the utility’s CEIP equity indicators and status towards interim targets and must request information identifying energy and nonenergy benefits or burdens to highly impacted communities and vulnerable populations, short-term and long-term public health impacts, environmental impacts, resiliency and energy security impacts, or other information that may be relevant to identifying the costs and benefits of each bid. After the approval of the utility’s first Clean Energy Implementation Plan requested information must include, at a minimum, information related to indicators approved in</u></p> <p>the utility’s most recent Clean Energy Implementation Plan.</p>

<p>MEANINGFUL PARTICIPATION</p> <p>A diverse field of candidates may be more responsive to an RFP with severable resource need elements, and resources contributing to equity factors may include:</p> <ol style="list-style-type: none"> 1. Plan for education, engagement, enrollment, and access for low income customers 2. The specific location in communities with high cumulative health impacts, and the specific environmental benefits both short- and long-term. 3. The specific workforce development plan and past outcomes, and participation by minority, worker/community, and women-owned business, along with additional specific, tangible economic benefits to customers and communities with lower incomes. 4. Specific ways communities will be part of the design, plan, implementation and on-going engagement in the proposed project. 	<p>(4) The RFP must allow bids for any resources that meets a portion of the amount or a subset of the characteristics or attributes of the resource need to bid, including but not limited to unbundled renewable energy credits, conservation and efficiency resources, <u>capacity-building projects, community-based tools, workforce development opportunities</u>, or other resources identified to contribute to an equitable distribution of energy and nonenergy benefits to vulnerable populations and highly impacted communities.</p>
<p>REPORTING ADEQUACY and ACCOUNTABILITY MECHANISM</p> <p>Transparency in evaluation criteria and ranking procedure is essential upfront in the RFP design process and in solicitation outreach as well. The value is high for enterprises that have had limited access to the market for energy sourcing to understand how different considerations are weighted, and it is similarly important to ensure that utilities define the resource need clearly upfront and adhere to equitable standards of evaluation that are made known in advance of applying them.</p>	<p>(5) The RFP must explain general evaluation and the specific ranking procedures and assumptions that the utility will use in accordance with WAC 480-107-035 (Project ranking procedure). The RFP must include a sample evaluation rubric that either quantifies the weight each criterion will be given during the project ranking procedure or <u>and</u> provides a detailed explanation of the aspects of each criterion specifically identified that would result in the bid receiving higher priority. <u>The Commission must approve the scoring rubric or weighted value ranking system adopted by the utility.</u> The RFP must also specify any minimum criteria and qualifications that bidders must satisfy to be eligible for consideration in the</p>

	ranking procedure.
<p>WAC 480-107-AAA</p> <p>Independent Evaluator for Large Resource Need or Utility or Affiliate Bid.</p>	
<i>F&C Recommendation Comments</i>	<i>UTC Draft Rules with Front and Centered <u>underlined additions.</u></i>
<p>ACCOUNTABILITY MECHANISM</p> <p>Yes, the utility should be required to have an independent evaluator (IE) examine these kinds of projects, as this would more likely level the playing field among utility-proposed projects and community proposed or other outside bids.</p> <p>An independent evaluator should be used in all proposals, as a matter of fairness and in recognition that over time CETA may lead to a significant number of proposals from new-entrant, small-scale projects that deserve a third-party neutral evaluation. The IE may work with the utility equity advisory group to determine how well the proposals meet equity-specific evaluation</p>	<p>(1) When required to solicit bids under WAC 480-107-015(1), a utility must engage the services of an independent evaluator to assess and report on the solicitation process if: (a) The resource need <u>will affect vulnerable people and highly-impacted communities negatively unless equitably addressed</u> is greater than 80 megawatts; or (b) [The utility, its subsidiary or affiliate (may) participate in the utility's bidding process]</p>

criteria.	
<p style="text-align: center;">WAC 480-107-035</p> <p style="text-align: center;">Project ranking procedure.</p>	
<i>F&C Recommendation Comments</i>	<i>UTC Draft Rules with Front and Centered <u>underlined additions.</u></i>

<p>RESTORATIVE JUSTICE and REPORTING ADEQUACY</p> <p>Equity needs to be a meaningful factor in how proposals are ranked such that it has a discernable, transparent, and definite effect on the selection of projects and moves a utility toward full compliance with 4(8).</p> <p>The ranking system should give <i>more weight</i> to those that are at a minimum:</p> <ul style="list-style-type: none"> - Locate benefits in communities that have higher levels of cumulative health impacts; - Provide energy security and resilience, prioritizing non-transmission wire alternatives; - Provide economic benefit and job opportunities for under- and unemployed vulnerable populations in impacted communities; - Create more community, including worker, owned and controlled, equitable, energy sources, ensuring economic benefits are widely available including to renters and rural lower income customers. 	<p>(2) The ranking criteria must recognize differences in relative amounts of risk and benefit inherent among different technologies, fuel sources, financing arrangements, and contract provisions, including risks and benefits to vulnerable populations and highly impacted communities. The ranking process must complement power acquisition goals identified, and criteria must also be consistent with the avoided cost methodology developed in the utility’s integrated resource plan the utility uses to support its determination of its resource need.</p> <p>The utility must consider the value of any additional net <u>economic, health, environmental, security, resiliency, and democracy</u> benefits to all customers that are not directly related to the specific need requested <u>to be able to assess equitable distribution</u>.</p>
<p>RESTORATIVE JUSTICE</p> <p>Rules should orient utilities to consider long term benefits and cost savings as value built into proposal selection and portfolio design.</p>	<p>(3) The utility must evaluate project bids that meet only a portion of the resource need in conjunction with other proposals in developing the lowest reasonable cost <u>and equitable distribution</u> portfolio. The utility must not discriminate based on ownership structure.</p>
<p>WAC 480-107-065</p>	
<p>Eligibility for long-run Acquisition of conservation purchase rates and efficiency resources.</p>	

<i>F&C Recommendation Comments</i>	<i>UTC Draft Rules with Front and Centered underlined additions.</i>
<p>MEANINGFUL PARTICIPATION and RESTORATIVE JUSTICE</p> <p>Conservation and efficiency resources are best acquired through competitive bidding rather than targeted solicitations that may limit access to opportunities for enterprises in impacted communities.</p>	<p>(3) A utility must acquire conservation and efficiency resources through a competitive procurement process as described in this rule unless implementing a competitive procurement framework for conservation and efficiency resources as approved by the commission...(c) The competitive procurement framework for conservation and efficiency resources must:... (ii) Address appropriate public participation, <u>outreach</u> and communication of evaluation and selection criteria; ...(d) The competitive procurement framework for conservation and efficiency resources may: (i) Exempt particular programs from competitive procurement, such as low-income <u>assistance</u>, market transformation, or self-directed programs.</p>
<p>WAC 480-107-145</p> <p>Filings—Investigations.</p>	
<i>F&C Recommendations Comments</i>	<i>UTC Draft Rules with Front and Centered underlined additions.</i>
<p>REPORTING ADEQUACY and ACCOUNTABILITY MECHANISMS</p> <p>Include in solicitation summaries specific geographic reference to benefits or burdens to highly impacted communities, vulnerable populations, and the detailed results for the project area as indicated by DOH CIA. As much as possible, the metrics required in these</p>	<p>(2) The utility must file with the commission and maintain on file for inspection... within 90 days of the conclusion of any RFP process, a summary report of responses including, at a minimum:... (g) Number of bids received by location, including locations designated as highly impacted communities; (h) Number of bids received by bidder type, including women-, minority-, disabled, or veteran-owned businesses, <u>and</u></p>

summaries should be the same as those used to measure progress toward the equity standard in CEIPs and other compliance reports.	<u>(j) the number of bids from aforementioned that were declined.</u>