

WAC 480-100-107 POE Rulemaking UE-190837
Notice of Opportunity to File Written Comments on the Questions and First Draft
by June 29, 2020

Summary of Comments

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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.

Party	Summary of Comment	Staff Response
PSE	No. PSE needs 90 days after its IRP filing to prepare an RFP. 90 days allows the Commission to review and acknowledge the IRP and PSE to prepare an RFP. To issue the RFP in 90 days the independent evaluator (IE) must be in place at the development process of the RFP begins.	Staff supports 120 days for the RFP development.

Party	Summary of Comment	Staff Response
	Yes. Supports other elements of RFP review and approval timeline.	No Staff response needed.
Pacific Power	No. Pacific Power needs 120 days between the IRP filing and when the RFP process is initiated. Prefers RFP be issued after IRP is acknowledged. Pacific Power provides a detailed timeline for the 120 day process. Once the RFP is approved, Pacific Power will need to incorporate other states’ conditions and adjust its schedule to the interconnection cluster study in its OATT. In the alternative, the rule could have more general flexibility. Pacific Power strongly encourages adoption of rules that allow coordination with other states’ RFP process.	Staff disagrees with a rule that does not have specific requirements for the timing of the RFP filing and supports 120 days for the RFP development. Staff does not believe it is possible to craft rules to accommodate the rules of multiple other states or that such rules should be applied to other IOUs in the state of Washington. Even if such rules could be constructed, any modification or exemptions of other states’ rules by those states’ commissions would require the Washington Commission to make exemptions to its rules also. Staff supports examining exemptions from Washington rule on a case-by-case basis.
Avista	No. Supports 90 days between IRP and RFP filing. Yes. Supports 30 days for public involvement and 30 days for a Commission decision.	Staff supports 120 days for the RFP development.

Party	Summary of Comment	Staff Response
Public Counsel	No. Opposes shortening the 60-day period for public comments. A shorter comment period contradicts the stated policy goals of CETA to ensure the equitable distribution energy and non-energy benefits and burdens.	Staff is unclear how the timeframe for public comments contradicts the requirements for utilities to ensure equitable distribution. The Commission will review equitable distribution in Company CEIPs and four-year compliance filings, not the RFP processes.
	No. Prefers to retain 135-day timeline between the submission of the IRP and the issuance of an RFP. This will allow for the retention of an independent evaluator and provide enough time for the independent evaluator to assist with the formulation of the RFP.	Staff supports 120 days for the RFP development. It will be the responsibility of the utility to engage the IE early enough to fulfill the minimum requirements of the IE set in rule.
Front and Centered	Maybe. Adopt more rigorous outreach for publicizing their resource planning strategy and in soliciting comments. A comment period under 45 days may be adequate provided the process for engaging the public is, from the very onset, active, open, accessible, and inclusive.	Staff supports a 45-day comment period. The draft rules have requirements for outreach and communications in the RFP process.
NIPPC	No. 30-day comment period is insufficient. Oregon has 80-day review period with option to extend by 30-days and an RFP review that starts in the IRP process.	Staff supports a 45-day comment period and a 120-days for the RFP development.

Party	Summary of Comment	Staff Response
NWEC	<p>No. Supports 60-90 days between IRP and filing of RFP.</p> <p>Maybe. If the utility is “required” rather than just “encouraged” to consult with Commission Staff on the RFP then the 30-day comment period on the RFP may be manageable. If the Commission does not agree that a requirement for consultation with Staff prior to filing the RFP is necessary, we do not believe the 30-day comment period is sufficient and would request the Commission restore the earlier 60-day comment period.</p>	Staff supports a 45-day comment period and a 120-days for the RFP development. Though the rule “encourages” consultation, Staff expects and anticipates utilities utilizing this benefit.
Climate Solutions	No. Need 45-day comment period between filing of draft RFP and Commission decision or a strengthening of the consultation process with Staff and stakeholders during the development of an RFP.	Staff supports a 45-day comment period. Though the rule “encourages” consultation, Staff expects and anticipates utilities utilizing this benefit.
RNW	No. Supports a 45-day comment period on the RFP. Requiring an RFP filing within 45 days after the IRP is filed may need more consideration.	Staff supports a 45-day comment period and a 120-days for the RFP development.
Sierra Club	No. At a minimum, a 45-day comment period on the RFP. This comment period is the last public comment period on the RFP process.	Staff supports a 45-day comment.

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”?

Party	Summary of Comment	Staff Response
PSE	Accepting all bids is burdensome due to widely varying attributes of projects that make comparing projects difficult and impede quick procurement of targeted resources. PSE proposes language to allow resource-specific RFPs.	Staff believes the utility should issue at least one all-source RFP in response to needs it identifies in its IRP and IRP updates and allowing the utility to issue companion a single source RFP as necessary.
	PSE thinks the rule may envision using the price information from the RFP to inform the target in the Clean Energy implementation Plan (CEIP). PSE does not support this use because it would require the RFP to create stringent requirements on bids and a hastily conducted RFP may result in poor information. In addition, maintaining confidentiality of bids would be difficult. If the RFP is used to inform the CEIP then do so in second cycle.	Staff agrees.

Party	Summary of Comment	Staff Response
	<p>The rule section requiring the issuing of an all-source RFP (WAC 480-107-015(7)) contradicts the section on allowing specific attributes or characteristics, WAC 480-107-025(1). PSE asks for clarity on the interaction of these two sections.</p>	<p>The purpose of an RFP is to consider adding a resource to the existing utility portfolio to fill the gaps in the portfolio, “including specific attributes or characteristics” the utility needs. Those attributes are not types of resources but the performance that a resource may be able to contribute. Staff supports the definition and use of all-source RFP in that its use only requires the utility to not dismiss, in advance of receiving and initiating its evaluation of potential bids, the ability of a resource to meet at least some of those characteristics at a lowest reasonable cost.</p>
<p>Pacific Power</p>	<p>The rule should allow a utility to choose an all source or resource specific RFP. Does not agree that it must accept, in every solicitation, bids from “electrical savings associated with conservation and efficiency resources; demand response; energy storage; electricity from qualifying facilities; electricity from independent power producers; and, at the utility’s election, electricity from utility subsidiaries, and other electric utilities.”</p>	<p>Staff disagrees. An integrated resource plan is a collection of models intended to fairly compare a variety of generic and often dis-similar resources. The</p>

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	Rule should exclude conservation programs from those the utility must accept. By way of example, evaluating a 100 MW wind resource is different than evaluating an industrial load shedding or grocery refrigeration upgrade program or a residential window upgrade or duct sealing incentive program.	analysis performed in reviewing responses to requests for proposals runs the models from the integrated resource plan
	Supports transparent rule language for minimum bid eligibility requirements.	

	<p>Proposes language to require bidders to have interconnection request consistent with Oregon rule.</p>	<p>using the specific resource bids from the RFP. The rules as drafted allow the utility to file more than one RFP to solicit a variety of bids. In ensuring the utility has chosen the resources with the lowest reasonable cost, it is necessary for the utility to compare the various types of bids against all of the other bids received.</p> <p>The rules require an all-source RFP in two situations. In both of those situations the utility is allowed to issue single source RFPs.</p> <p>Developing and putting minimum bid requirements in rule for the varied potential resources and complex resource needs is likely to lead to excluding potentially lower costs resources. A utility should have the ability in its evaluation process to quickly determine which</p>
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Party	Summary of Comment	Staff Response
		bids to focus further analysis on. While a bidder having an interconnection request could be preferred, excluding a bid by rule due to a single factor without consideration of the timing of the resource need would be far to blunt an instrument.
Avista	Allow utility to accept bids as it chooses and specify which types of resources it needs when issuing an RFP.	The rules require an all-source RFP in two situations. In both of those situations the utility is allowed to issue single source RFPs.
Public Counsel	Supports the draft rule requirement to accept all bids.	Staff agrees.
Front and Centered	Supports the draft rule requirement to accept all bids.	Staff agrees.
NIPPC	Supports the draft rule requirement to accept all bids. Retain “must.”	Staff agrees.
NVEC	Strongly supports the draft rule requirement to accept all bids. If the utility clearly establishes resource needs and criteria in the RFP, this allowance should not place any additional burden on the utility or other parties.	Staff agrees with the recommendation and the reasoning.
Climate Solutions	Supports the draft rule requirement to accept all bids and recommends expanding the requirement to include distributed energy resources.	Staff agrees and the definition of all-source RFP includes distributed generation.
RNW	Supports the draft rule requirement to accept all bids.	Staff agrees.

Party	Summary of Comment	Staff Response
Sierra Club	<p>Supports the draft rule requirement to accept all bids. Does not see why additional bids would add a significant burden to the utility’s filtering process.</p> <p>Utilities must state which type of bids in WAC 480-107-135 the RFP will accept, including criteria for all greenhouse gas emissions (esp. carbon dioxide and methane). This should include any upstream and downstream GHG emissions associated with fossil fuel resources.</p>	Staff agrees with the requirement to accept all bids for all-source bids.

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.

Party	Summary of Comment	Staff Response
PSE	Yes, supports the proposed language as it includes an alternative to the evaluation rubric.	Staff is considering additional changes. Other

Party	Summary of Comment	Staff Response
Pacific Power	<p>Unclear, specifically on scoring of the non-price criteria.</p> <p>Suggests:</p> <ul style="list-style-type: none"> - Non-price criteria be converted into a bid characteristic that can be objectively scored, or make the attribute a minimum threshold. Recommends using PAC’s rubric of non-price scoring criteria (U-161024). (Refer to the redline edits in 107-025(5)) - To create transparency in measurement of non-price scoring matrices in RFP documents, refer to OAR division 860-89 under which, an electric company must, prior to preparing a draft RFP, develop and file for approval a proposal for scoring and any associated modeling. - Though the company supports requirement to provide a narrative of price scoring but will not share its proprietary price scoring excel files (with bidders) and IRP portfolio optimization models (bidders and independent evaluators). - Specific to price, the evaluation should consider the delivered revenue requirement costs netted against tax incentives (e.g., PTCs) and other possible customer benefits, such as terminal value (if applicable) and location-specific energy and operating reserve benefits calculated via Pacific Power’s modeling tools. - The company has shared list of non-price items in Utah and Oregon such as project development and construction experience; demonstration of site control; demonstration of interconnection status, among others. - Modify the draft rule to specify that a resource need is identified in a utility’s IRP, not its RFP. 	stakeholders suggest requiring both rubric and explanation, and Staff agrees.
Avista	<p>Yes, improves transparency but possibly too much.</p> <p>To ensure competitive bids are received and to maintain some elements of confidentiality on evaluating bids, the company supports providing the summary categories and ranges to weighting of each category; rather than specific criteria of each ranking category (under alternative to the evaluation rubric).</p>	

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Public Counsel	Agree but suggests their earlier comment – remove the phrase “specifically identified”. The phrase limits the utilities to only the criteria identified in the rubric, however, there might be instances where it is appropriate to consider non-listed criteria (with accurate documentation).	Staff disagrees. The point is that bidders need to know the criteria.
NIPPC	No comments	No Staff response needed.
NWECC	Agree but recommends requiring both a rubric and explanation of the evaluation criterion. Adding both will provide increased clarity in the initial RFP, which will lead to higher quality and better matching bids	Staff agrees.
Climate Solutions	Agree but recommends requiring both a rubric and explanation.	
RNW	Agree, followed by an earlier recommendation on October 2018 in UE-161024. To minimize the ambiguity in the utility’s standard for bid evaluation, create a robust evaluation rubric by changing the ‘either ... or’ construction to a ‘ [both] ... and ’ construction under which utilities are required to quantify all criteria”	
Sierra Club	Recommends that utilities provide a sample rubric of their evaluation and provide example scenarios of how this rubric would be employed and evaluated. In addition, utilities need to identify if they use different rubrics.	

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.

4a. 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?

Party	Summary of Comment	Staff Response
PSE	<p>Requiring an IE could add complexity, uncertainty, and administrative burden that could delay the acquisition process. PSE proposes rule language to streamline and define IE as a facilitator not an evaluator and to have the IE analyze the fairness and reasonableness of the utility’s resource evaluation process (rather than conduct a parallel evaluation).</p> <p>As a part of an alternative, the IE could develop a shortlist of bidders but not score the bids and explain any material discrepancies between the shortlist it developed and the rankings of qualifying bids that the utility produces.</p> <p>The utility should have an opportunity to “review” the IE report before it is submitted.</p>	<p>IEs have been used successfully in many RFPs without the down sides PSE raises.</p> <p>An IE participating in the evaluation will improve decision making and providing a better record for prudence review.</p> <p>The IE is valuable because it is independent so the rule should not require the IE to share its report with anyone prior to filing.</p>
Pacific Power	Supports the use of an IE for all RFP with an 80 MW need threshold and term length of 5 years or greater.	Staff has not concluded that a 5-year minimum should be included in the rule.
Avista	Not aware of any unintended consequences.	No Staff response needed.
Public Counsel	No position. Interested in discussion.	No Staff response needed.
NIPPC	See comments in 4c.	See reply in 4C.

Party	Summary of Comment	Staff Response
NWEC	Supports a 50 MW threshold. The rules should make clear that issuing a series of smaller RFP's to avoid a threshold is expressly prohibited.	80 MW threshold is a reasonable balance between the need to have an IE and the burden of engaging one. Staff intends to watch for gaming of the intent of any Commission rule.
Climate Solutions	Supports a 50 MW threshold.	80 MW threshold is a reasonable balance between the need to have an IE and the burden of engaging one.
Front and Center	Supports IE for any size of resource need to support the Commission in making an equity assessment of the RFP process.	Staff agrees that IEs could provide additional information that may be helpful for the Commission's review of equity requirements in the Company's four-year compliance filing.
RNW	Reinstate the 80-MW threshold. IE brings benefit even if it is only for evaluating 3rd party suppliers.	An 80 MW threshold is a reasonable balance between the need to have an IE and the burden of engaging one.
Sierra Club	No recommendation. Need to guard against gold-plating a self-build and capture new emerging resources like demand response.	Staff believes the IE role in the rule will help prevent negative outcomes and fair evaluation of demand response.

4b. 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?

Party	Summary of Comment	Staff Response
PSE	A capacity trigger would all but assure that an IE would be required in every PSE IRP- Ok if IE is facilitator. IE would unnecessarily duplicate PSE analysis.	Staff does not agree that a second analysis would only duplicate PSE's analysis without adding substantive considerations.
Pacific Power	See answer 4a.	
Avista	Supports a MWh threshold of an expected delivery of 440,000 MWh (50.2 aMW) in a year, if a threshold is used.	Staff is still considered this requirement.
Public Counsel	Possible but no suggestion at this time.	No Staff response needed.
NIPPC	See comments in 4c.	See reply in 4c.
NWEC	Requiring IE on all RFPs might be time consuming or burdensome for small resource acquisitions.	Staff agrees that generally an 80 MW threshold is a reasonable balance between the need to have an IE and the burden of engaging one.
Climate Solutions	No comment.	No Staff response needed.
Front and Center	IE is beneficial for any size of resource need.	Generally an 80 MW threshold is a reasonable balance between the need to have an IE and the burden of engaging one.
RNW	A capacity metric is an objective threshold.	An 80 MW threshold is a reasonable balance between the need to have an IE and the burden of engaging one.
Sierra Club	No recommendation.	No Staff response needed.

4c. 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.

Party	Summary of Comment	Staff Response
Avista	See 4b. IE should only be used with self-bids but if there is a threshold it should be based on an energy threshold.	See reply above.
Pacific Power	Supports IE when self-build or subsidiary or affiliate participates.	Staff agrees.
PSE	PSE also recommends revising the draft rule to clarify that short-term resource acquisitions less than five years are exempt from the IE requirement.	Staff disagrees. First, a resource need that only lasts 5 years is either rare or may be more about market timing than resource need. Considering the risk of market timing, Staff finds it well worth the effort to examine the tradeoff between long-term resources available in the market and short-term resources.
Public Counsel	The metric in the rule should not be modified for different levels of financial interest of the utility in the project.	Staff agrees.

Party	Summary of Comment	Staff Response
Front and Center	The rules should contain a metric for determining whether the utility fails to meet its equity requirements of RCW 19.405.040(8), or 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. If the utility fails, the Commission should require an IE.	Staff is unclear what metric is appropriate within the context of the PoE rules since .040(8) compliance will not be reviewed within the RFP process. The Commission has authority to order compliance with legal requirements within its jurisdiction, as Staff has proposed the Commission recognize in the draft enforcement rules in WAC 480-100-680. The Commission thus may order a utility to take specific actions to comply with RCW 19.405.040(8), including specific procurement actions, and a rule provision to that effect is unnecessary.
Climate Solutions	No comment.	No Staff response needed.
RNW	No, use capacity.	Staff agrees.

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Party	Summary of Comment	Staff Response
NIPPC	The RFP minimum size threshold should be 50 MW and five years in length but only if the utility can own a resource. RFPs should not be required if the utility is only seeking power purchase agreements without ownership options.	An 80 MW threshold is a reasonable balance between the need to have an IE and the burden of engaging one. The IE can contribute value to decision making, and considering size of the financial obligation under a PPA over 80 MW of capacity, the IE is worthwhile.
NWECC	No comment.	No Staff response needed.
Sierra Club	No recommendation.	No Staff response needed.

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?

Party	Summary of Comment	Staff Response
Avista	Rule is too broad. Should include wind repowering but not replacing or upgrading a turbine at a hydroelectric facility.	Staff agrees. The repowering definition is intended not to include replacement of individual wind turbines but is written to include turbine replacement at a hydroelectric facility if doing so extends the physical or economic life of the facility.
Pacific Power	<p>Does not support this requirement. Repowering may be for safety and reliability reasons and rather than meeting a near-term need identified in the IRP. It may be less expensive.</p> <p>Rule should be changed to specify that a resource need is identified in a utility’s IRP, not its RFP.</p>	Staff does not see how comparing resource choices in an RFP prevents decisions regarding safety and reliability. The rule does mean to say RFP, as the need in the RFP should match the need in the IRP, except under unusual circumstances.

Party	Summary of Comment	Staff Response
PSE	The length of an RFP process could preclude utilities from acting quickly to take advantage of time-sensitive opportunities such as tax credits on equipment. The timing of the repowering decision may not align with the RFP. A repowering decision often presents a different risk profile and timeline than proposals for new or existing projects through an RFP.	Staff expects a utility to plan ahead for resource needs. If unusual and unexpected circumstances arise a utility may ask for an exemption. Staff does not see evidence in the record that such circumstances will be common.
	The Commission should allow repowering as an opportunistic option outside of an RFP or due to the need for maintenance or upgrades to allow the utility to act nimbly to take advantage of time-sensitive opportunities.	
Public Counsel	Supports including repowering in RFP.	Staff agrees.
Front and Center	Maximum opportunity should be provided 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. IE will help maximize that opportunity.	The IE is expected to improve the fairness of the RFP process.
Climate Solutions	Supports using an IE for repowering in RFP. “Because a decision to repower could displace the need for a resource build or procurement that would normally go through an RFP process, we strongly recommend that the rules and process outlined here cover these investments as well.”	Staff agrees.
RNW	Need clarification on the meaning of repowering.	Staff has provided a definition in the 2 nd draft.
NIPPC	Sees no reason not to require repowering in the RFP but is open to considering interested parties arguments.	Staff supports included repowering.
NWEC	Strongly support including repower- helps find the optimal combination of resources. Seeks a definition of repowering.	Staff agrees.

Party	Summary of Comment	Staff Response
Sierra Club	<p>Request clarity on the scope of “repowering.” Does it include:</p> <ul style="list-style-type: none"> • From a coal plant to a gas plant • Repurposing land from a coal mine to a solar farm • The purchase of a new turbine or just re-wrapping the coils, whether for a wind, hydro or gas turbine? <p>Small wind turbine or small hydroelectric turbine refurbishment would not need to be included in a RFP. However, a large wind farm costing tens of million might need to be part of an RFP.</p>	<p>It does include changing a coal plant to a gas plant and repurposing land from a coal mine to a solar farm.</p> <p>It does not include replacing a new turbine at a wind facility but yes to a hydro or gas turbine if it extends the life of the plant.</p>

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?

Party	Summary of Comment	Staff Response
Avista	Utilities should not be required to consult with Commission Staff or interested persons regarding the issuance of an RFP for an independent evaluator or obtain approval from the Commission. The burden lies on the utility to select an independent evaluator.	The draft only “encourages” the utility to consult with Staff.
	Avista is not yet certain what qualifications will demonstrate that independent evaluator has the training or experience to appropriately weigh and consider CETA’s equity provisions in their ranking of project bids.	No response required.

Party	Summary of Comment	Staff Response
Pacific Power	<ol style="list-style-type: none"> 1) An understanding of Washington’s specific rules and guidelines regarding CETA’s equity provisions; 2) Prior experience with other national utilities in evaluating similar equity provisions as defined in CETA, 	Staff is not aware of other national utilities that have similar equity provisions as defined in CETA.
	Commission should approve the utility selected IE using the criteria provided in the redline version of the draft rules.	Staff believes it is premature to set in rule a set of criteria for the IE considering the new and unique requirements of CETA.
PSE	The understanding of how to implement the equity provisions of CETA is still developing, making it is difficult to opine on what may qualify an IE to provide advice on equity issues in the ranking of project bids. IE qualifications could be discussed in the equity advisory group.	Staff agrees that input for the equity advisory group will be beneficial.
Public Counsel	At a minimum, an independent evaluator should have experience with evaluating disparate impacts of solicitations on communities, should understand the detrimental impacts on and significant benefits for communities of resources and demonstrate knowledge of vulnerable communities in Washington.	Staff agrees.
	Utilities should be allowed to hire a separate consultant who is more experienced with the equity considerations.	Staff agrees that this should be allowed. Staff is unclear if rule changes are necessary to accommodate this comment.
Front and Center	Standard for IE should include input from customers and public participants.	Consistent with redlines provided by Pacific Power.

Party	Summary of Comment	Staff Response
	<p>IE criteria should include:</p> <ul style="list-style-type: none"> • 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. 	<p>Staff mostly agrees but is unclear why an IE would need to be familiar with the cumulative impact analysis as that tool is used to determine highly impacted communities, which will be identified within a Company’s CEIP.</p>
Climate Solutions	<p>Independent evaluators should have a demonstrated,</p> <ul style="list-style-type: none"> • History of evaluating, steering, and participating in similar resource solicitations, • Competence and familiarity with Washington law and regulation, and • Track record of properly evaluating the public interest, including ability to consider public health, environmental impacts, cost and risk considerations and other criteria identified in CETA and past Commission proceedings, orders, and findings. <p>Independent evaluators with explicit experience and competence in equity issues should be preferred, and the rules should identify this preference.</p>	<p>Staff believes it is premature to set in rule a set of criteria for the IE considering the new and unique requirements of CETA. Not doing so will provide flexibility to utilities to respond quickly to the evolving field.</p>
RNW	<p>Add “experience and competence of the IE including with respect to equity considerations” to the rule or adding a standalone equity-oriented prong such as “the ability of the IE to appropriately evaluate equity considerations in the ranking of project bids, as demonstrated by the IE’s experience or training.”</p> <p>Expressly add to rule language the opportunity for interested parties to comment on IE selection before Commission approval of an IE.</p>	<p>Staff believes it is premature to set in rule a set of criteria for the IE considering the new and unique requirements of CETA. Not doing so will provide flexibility to utilities to respond quickly to the evolving field.</p>

Party	Summary of Comment	Staff Response
NIPPC	IE should demonstrate they understand utility bias for ownership and how to design a RFP to address that bias. IE needs to understand the Northwest and the history of utility bias and learn from Commission, UTC Staff and stakeholders. Oregon allows interested parties to submit questions to the independent evaluator.	Staff believes it is premature to set in rule a set of criteria for the IE considering the new and unique requirements of CETA. Not doing so will provide flexibility to utilities to respond quickly to the evolving field.
NVEC	Recommends Commission examine the Oregon competitive bidding rules as a framework for IE selection criteria and qualifications.	Staff believes it is premature to set in rule a set of criteria for the IE considering the new and unique requirements of CETA. Not doing so will provide flexibility to utilities to respond quickly to the evolving field.

Party	Summary of Comment	Staff Response
Sierra Club	No specific recommendations. The qualifications of the IE should be subject to review by stakeholders.	IE selection is subject to Commission approval when the RFP is triggered by the four-year IRP need. Staff believes it is premature to set in rule a set of criteria for the IE considering the new and unique requirements of CETA. Not doing so will provide flexibility to utilities to respond quickly to the evolving field.

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.

Party	Summary of Comment	Staff Response
Avista	Not aware of any applicable requirements.	No Staff response required.

Party	Summary of Comment	Staff Response
Pacific Power	Recommends review of Oregon’s community solar requirements include a low-income requirement.	Oregon’s rules are not jurisdictional to Washington utilities. Staff encourages submission of a redline version of draft rule showing how Oregon rules could be adapted in a manner consistent with CETA requirements.
	Recommends review of California Supplier Diversity Requirements, outlined in General Order 156, that require large utilities to submit annual detailed and verifiable plans for increasing women-owned, minority-owned, and LGBT-owned business enterprises procurement.	California’s rules are not jurisdictional to Washington utilities. Staff encourages submission of a redline version of draft rule showing how California rules could be adapted in a manner consistent with CETA requirements.
PSE	Not aware of any directly applicable requirements.	
	Tax exemptions in CETA for minority-, women-, disabled-, and veteran-owned businesses may signal legislative intent that these bidders or subcontractors should be given some preference in utility RFPs.	The tax law is not directly applicable to requirements for utilities under CETA.

Party	Summary of Comment	Staff Response
	Does not believe draft rule language needs to be modified for utilities to create a preference as part of their RFP evaluation criteria, unless the Commission expects that utilities give such preferences in an RFP.	Staff agrees Commission rules do not need to create explicit preferences. But the rules require the utility to conduct equitable outreach to women-, minority-, disabled-, and veteran-owned businesses and requires reporting on their participation in the RFP.
Public Counsel	Washington state and local laws contemplate contracting with women- and minority-owned businesses generally, but do not explicitly address utility RFPs.	Staff agrees.
	RCW 39.19 directs the Washington State Office of Minority & Women's Business Enterprises to encourage contracting among women- and minority-owned businesses to bid for public works and public education contracts.	Staff agrees. The rules require that a utility seek to place notices in publications aimed at women-, minority-, disabled-, and veteran-owned businesses and requires reporting on their participation in the RFP.

Party	Summary of Comment	Staff Response
	The City of Seattle encourages departments, including Seattle City Light, to contract with women- and minority-owned businesses.	Staff agrees but recognizes that IOUs are not jurisdictional to the City of Seattle rules. The 2 nd draft rules require that a utility seek to place notices in publications aimed at women-, minority-, disabled-, and veteran-owned businesses and requires reporting on their participation in the RFP.
	California places reporting and goal-setting requirements on all utilities, including energy, water, and telecommunications.	California laws and rules are not jurisdictional to IOUs in Washington state. The rules require that a utility seek to place notices in publications aimed at women-, minority-, disabled-, and veteran-owned businesses and requires reporting on their participation in the RFP.

Party	Summary of Comment	Staff Response
	<p>The Commission should consider contracts with minority-, women-, disabled-, and veteran-owned businesses when determining compliance with CETA's equity requirements, including the three requirements specified below.</p>	<p>Staff agrees that the rules should require consideration of contracts. The rules require that a utility seek to place notices in publications aimed at women-, minority-, disabled-, and veteran-owned businesses and requires reporting on their participation in the RFP.</p>
	<p>First, require utilities to set contracting goals based on the percentage of contracts issues (both CETA-specific and in total) and percent of contract spending (both CETA-specific and in total). See redlines.</p>	<p>The Commission does not have enough information to start setting goals. It may be problematic to have utilities set goals before specific data/trends for contracting are known.</p>
	<p>Second, require utilities to report contracting data (by number of contracts and spending) for each group.</p>	<p>Staff agrees. Requiring the reporting and tracking of this data would be useful before any requirements for utilities to set specific goals.</p>
	<p>Third, require utilities to report why minority-, women-, disabled- and veteran-owned contracts were not selected. See redlines.</p>	<p>The utility's evaluation of bids is required to explain why each bid was ranked as it was and why the bid was not chosen.</p>

Party	Summary of Comment	Staff Response
Front and Centered	Wash. State has a number of institutions and organizations with goals of achieving diversity in contractors and vendors for public works projects but has limited legal means for requiring a certain amount of business is done with diverse enterprises. Ex AG opinion on I200 finds preference is limited to public employment, education, and contracting.	Staff agrees.
	Women- and minority-owned businesses may seek certification from the Office of Minority and Women’s Business Enterprises for public contracts and as well as private enterprise diversity goals.	Staff agrees but the office does not have direct authority over utility procurement.
	California requires utilities to track and report on public procurement projects for review by regulatory bodies.	California’s rules are not jurisdictional to Washington utilities. Staff encourages submission of a redline version of draft rule showing how California rules could be adapted in a manner consistent with CETA requirements.
	The Emerald Cities Collaborative produced a study on inclusivity in procurement and contracting in environmental policy implementation.	Staff agrees inclusivity is beneficial to procurement and contracting.
	Utilities may further equity compliance by adopting diverse partnerships in their contracting and purchasing, which may be informed by the equity advisory groups, and include diversity program officers, inclusion planning, contracting goals, asset-sharing guarantees, capacity-support grants, and technical assistance arrangements.	Goal setting may be a good conversation in the IRP/CEIP advisory group process but is likely not suited for the RFP process.

Party	Summary of Comment	Staff Response
	<p>In addition to the special consideration that the rules provide for women-, minority- and disabled veteran-owned businesses, recommends the addition of enterprises based in the concerned communities, worker-run and community cooperatively owned enterprises. See redlines.</p>	<p>Staff is not aware of designations for these class of businesses and believes many of them will be included in the categories of women, women-, minority- and disabled veteran-owned businesses.</p> <p>Specific goals for community-based contracting may be better suited for the CIEP, IRP advisory committees.</p>
Climate Solutions	<p>Recommends including labor standards-related tax exemption provisions in CETA, including definitions and thresholds for procurements found in WAC 296-140-002, in the rule because RCW 82.08.962 and RCW 82.12.962 are explicitly targeted to the development of renewable energy resources. See redlines.</p>	<p>Staff believes that the tax provisions are not directly applicable to UTC rule making. The standards are enforced by other agency.</p>

Party	Summary of Comment	Staff Response
	Also recommends including provisions for RPF solicitations from the Alternative Public Works Contracting Procedures in Chapter 39.10 RCW, including sections 330, 440, and elsewhere. See redlines.	The Alternative Public Work rules are for state contracting. A utility contracting through an RFP is a private company conducting private contracting in a private, competitive market. The Alternative Public Work Contracting Procedures are not well adapted to the private utility environment.
RNW	Recommends including labor standards-related tax exemption provisions in CETA in the rule because RCW 82.08.962 and RCW 82.12.962 are explicitly targeted to the development of renewable energy resources.	Staff believes that the tax provisions are not directly applicable to UTC rule making. The standards are enforced by other agency.
NIPPC	No comments provided.	
NWECC	Supports the comments provided by Climate Solutions.	See replies above.

8. Other comments

Party	Summary of Comment	Staff Response
Avista	Requests language in 065(2) be modified to reflect the “intention to produce savings” since actual savings cannot be known prior to implementation.	Staff agrees with the spirit of the recommendation and has added “be expected to” after “must” in 065(2).
	Requests modification of 035(5): to 10 days to accommodate holidays and the time it may take to summarize all projects if there is a high number of bids received.	Staff supports this change and it is reflected in the 2 nd draft.

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Party	Summary of Comment	Staff Response
	Objects to 015(3). Believes it could be discriminatory, burdensome to keep up with changing landscape of bidders; notes Avista conducts outreach. Suggests equal access to information instead of equitable access.	Staff does not believe that conducting outreach to under-represented bidders is burdensome nor is it outside the interests of the company to stay current on the types of potential bidders who could respond to an RFP.
Pacific Power	The IE should “consult” rather than “participate” in the design of the draft RFP.	Staff disagrees though this may be a matter of semantics.
	Include Utah’s definition of solicitation.	Staff believes that the current draft defines the RFP requirements in the rule without a formal definition of solicitation.
	Eliminate sealed bids as it is administratively infeasible to keep identity of bidders unknown. [480-107-015 (6)]	Staff agrees. Rule reflects intent of the term.
	Eliminate reference to avoided cost information and base the RFP on the IRP action plan. [480-107-025(1)]	Staff disagrees. The reference is informational.

Party	Summary of Comment	Staff Response
	<p>480-107-025 (2) – Contents of the solicitation. Recommends replacing the high-level equity language with objective, measurable criteria that can be included as bid requirements, submitted by bidders, and measured and scored objectively. Eliminates: “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.”</p>	<p>Staff disagrees. The terms included in this section are from statute and Staff believes that all relevant characteristics should be included in the solicitation. The specific characteristics will depend on the solicitation and may evolve over time. Staff recommends including the elements provided in subsections (d) and (e) in redlines as examples of relevant characteristics within the adoption order.</p>
	<p>Proposed language for minimum Bid requirements (consistent with Oregon’s OAR Division 860-089).</p>	<p>Including minimum bid requirements may have the unintended consequence of limit bids that have the potential to be least cost.</p>

Party	Summary of Comment	Staff Response
	Propose language that allows for compensation for any utility-owned assets that are provided to third-party bidders (consistent with Oregon’s OAR Division 860-089).	If the assets are in use and providing value to the utility portfolio, then the value lost due to their use by a new resource being added to the portfolio should be included in the evaluation of the resource cost. However, if the asset is not being used to reduce the cost of the utility portfolio then it is of no value and no charge is due.
	Cost recovery for IE costs.	Staff is still considering this option but is concerned with its effect on equity.
	IE tasks should include the upfront evaluation of the utility’s price and non-price evaluation methodologies, a specific list of utility assumptions that should be verified, and a process for independently valuing and comparing utility bid scores. [480-107-AAA (5)]	Staff agrees that these elements are good tasks and are still considering these elements.
	Eliminate reference to shortlist unless guidance on shortlist rules is provided.[480-107-AAA (5)(f)]	Staff agrees. Staff recommends guidance in the adoption order as the winnowing process used by each utility is different.

Party	Summary of Comment	Staff Response
	Proposes in draft language project ranking procedures from Oregon. Includes filing an evaluation and scoring for all bids, use a price evaluation criteria based upon the IRP modeling assumptions used to develop the IRP’s action plan, convert non-price factors to price factors where practicable, and Non-price score criteria that seek to identify minimum thresholds for a successful bid and that may readily be converted into minimum bidder requirements must be converted into minimum bidder requirements	Staff supports providing the utility flexibility in determining the ranking. Staff supports the Commission reviewing the ranking the utility proposes to use during the Commission approval of the RFP triggered by the four-year IRP.
	The criteria for ranking bids should not be the same as the avoided cost modeling because Pacific Power uses the IRP modeling for ranking bids which is different. Proposes language to eliminate avoid cost method as criteria.	The rule does not require that the criteria be the same as the AC.
	Pacific Power strongly opposes publishing information publicly on the bids and proposes to eliminate 480-107-035 (5)	The rule does not require the utility to publish confidential information.
	Suggests language for additional RFP process for conditions for purchase of resources. Including restrictions on employees working on both the RFP evaluation and the utility bid.	The rule prohibits RFP information from being shared with employees that develop the utility self-bid.
	When an RFP does not result in an award (480-107-035 (9)), Commission review of the utility findings should include evidence filed by an IE and from any concurrent acquisition.	The rule does not provide for this but the rules of evidence used in prudency reviews does provide for the introduction of reasonably relevant information.
	Add a section at the end of these rules to allow for the utility to request a protective order to protect the confidentiality of the information throughout the RFP process (provides language).	Staff does not support divulging confidential information

Party	Summary of Comment	Staff Response
	Apply the concepts included in WAC 480-107-065 (Acquisition of conservation and efficiency resources) to demand response acquisitions (provides language).	There is already an EE advisory group already in place.
	Request clarification on the term adaptive management.	Refer to 480-109
	Rules should allow utility and affiliates to participate in solicitations for demand response, conservation and energy efficiency.	Staff believes the rules do.
	Allow thirty-year contracts at 480-107-075 (3) instead of just twenty.	The commenter has not provided an example of resources that needs 30-year contracts. However, exemptions from this provision could be provided if unique circumstances arose.
	Delete current WAC section 480-107-125, which requires a utility to prepay the interconnection costs for all resources procured as part of a utility RFP. It attempts to regulate FERC matters.	Staff does not interpret WAC 480-107-125 to require prepayment.
Pacific Power	IE should not “assist” in the evaluation and ranking of bids but rather “monitor, consult, evaluate, verify, and comment upon” the utility’s evaluation and ranking of bids.	Staff supports the role of the IE in rule, though Staff considers the list of actions to be included in the meaning of the term assist.
PSE	Rule language change to add “process” to WAC 480-107-015(5)(b) to clarify interested persons can be involved in the process rather than the in the RFP itself as a bidder.	Staff agrees and the rule reflects this change.

Party	Summary of Comment	Staff Response
	PSE asks for a precise definition of “the value of any additional net benefits” as that term is used in WAC 480-107-035(2).	Staff believes that the additional net benefits will be specific to individual responses and will evolve as technologies changes. Staff will consider illustrative examples that could be included in the adoption order.
	Allow ten days instead of five to post the summary of the RFP bids and strike “complete.”	Staff is supportive of extending to 10 days but has concerns with striking “complete”
	Time period for the conservation and efficiency resources will be 2022-2023 not 2022-2024.	Staff agrees and the 2 nd draft rule reflects this suggestion.
Public Counsel	PSE should include stakeholder review process for the RFP in which interested parties could be included in the ranking process for proposals.	Staff disagrees. The development of the RFP is the responsibility of the utility. While consulting with outside entities would be beneficial, a proscriptive process in rule is not necessary. The RFP required for filling the need from the four-year IRP is filed for approval, allowing opportunity for interested persons to comment.

Party	Summary of Comment	Staff Response
Front and Center	<u>Restorative Justice</u> <ul style="list-style-type: none"> • 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 	RCW 19.405.040(8) will be evaluated based on a portfolio of specific actions (<i>i.e.</i> , resources), rather than during individual RFP processes.

	<p><u>Meaningful Participation</u></p> <ul style="list-style-type: none"> • 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 • Expand resources to include capacity-building projects, community-based tools, and workforce development opportunities. 	<p>WAC 480-107-025 requires utilities to solicit information related to indicators and explain selection criteria, including equity-related criteria.</p> <p>These rules are specific to defined resources. Capacity building project, community-based tools and broad workforce development opportunities are outside the scope of this rulemaking.</p> <p>-015 (3) Current scoping of bidder outreach likely captures “extensive outreach” but could be refined. The list of potential under-represented bidders is nonexhaustive and could include these types of businesses if they are a type of under-represented bidder. This language provides language related to equitable access to information for bidders but doesn’t assume what</p>
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Party	Summary of Comment	Staff Response
	<p data-bbox="438 565 709 597"><u>Reporting Adequacy</u></p> <ul data-bbox="438 602 1451 850" style="list-style-type: none"> • 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 <p data-bbox="438 857 802 889"><u>Accountability Mechanisms</u></p> <ul data-bbox="438 894 1276 997" style="list-style-type: none"> • Clear objectives and targets for equitable procurement practices • Adequacy/sufficiency standard for quantifying progress • Oversight to ensure rule compliance 	<p data-bbox="1514 310 1871 558">specific information might be required. This rule does not implicate all procurement, so additional capacity-building work is likely better suited elsewhere.</p> <p data-bbox="1514 565 1881 776">WAC 480-107-025 requires utilities to solicit information related to indicators and explain selection criteria, including equity-related criteria.</p> <p data-bbox="1514 857 1881 1068">WAC 480-107-035 states that the Commission must approve the procedures and criteria the utility will use in its RFP to evaluation and rank project proposals.</p>
Climate Solutions	<p data-bbox="438 1081 1482 1187">Supports the rule’s inclusion of requirements to proactively outreach and advertise to under-represented potential bidders, gather information on equity impacts in all RFP responses, improved inclusion of public health considerations,</p> <p data-bbox="438 1192 1251 1224">Title of chapter should be changed to “Resource Procurement.”</p> <p data-bbox="438 1229 1472 1300">Recommends changing to 060 to refer to all distributed energy resources instead of just demand response.</p>	<p data-bbox="1514 1081 1793 1260">Staff agrees with the suggested title. Rule requires outreach and reporting on under-represented bidders.</p> <p data-bbox="1514 1300 1860 1398">Distributed generation is included in the description of an all-source RFP.</p>

Party	Summary of Comment	Staff Response
NWEC	WAC 480-107-007 Definitions. Include a definition of avoided cost- refer to definition already in statute.	Staff agrees.
	WAC 480-107-015 The solicitation process. Resource need in the RFP should be tied to both the IRP and the CEIP as the CEIP may identify additional resource needs. The additions to the draft rules in this section help clarify the additional equity information the utility must request from bidders.	Staff does not find this necessary. If the CEIP must be approved by the Commission. If the need in CEIP is different than the need in the IRP the utility will need to propose a remedy for the RFP if the RFP has already been issued.
	WAC 480-107-025(1) Contents of the Solicitation. Strike “the type of technology or fuel source necessary to meet a compliance requirement” as it directly contradicts the language in WAC 480-107-015, The solicitation process, subsection (7) that provides opportunity for a variety of resources to bid into an RFP.	Staff does not believe the language is contradictory. Certain fuel sources maybe necessary to specify in order for the resource to qualify under CETA or the EIA. The utility specifying a type of technology that it is looking for does, if it does not rule out other types from bidding. For instance, Solar inverters that can perform frequency control or/and provide imbalance energy would be helpful to indicate in an RFP.

Party	Summary of Comment	Staff Response
	<p>WAC 480-107-AAA. Supports the draft rules’ clarification that the independent evaluator’s work now commences with the start of the RFP process.</p> <p>Supports reinstating the requirement for an initial report to the Commission from the IE.</p>	<p>Staff does not agree an initial report is necessary. The requirement for the initial report does not match a time when the Commission would be taking action. The final report is expected to document each stage of the IE’s work.</p> <p>The IE is to participate in the design of the solicitation. WAC 480-107-023(5)(b)</p>
	<p>WAC 480-107-035 Project ranking procedure. This section strengthens the requirements for rank benefits to vulnerable populations but the requirement to consider “environmental effects including those associated with resources that emit carbon dioxide” was dropped.</p> <p>Previous language included in section (7) should be used as it included more specific language related to UTC filing requirements and the new language is less clear.</p>	<p>The language was dropped because the resource need must account for required environmental compliance.</p> <p>Staff believes the 2nd draft is clear.</p>
	<p>As in our previous comments in this docket, we strongly urge the Commission to allow stakeholder participation in the ranking discussion, as is done in Oregon. This would require, at minimum, that the initial bids received be posted in the open docket for review and comment, and that there be time for stakeholders to comment.</p>	<p>The ranking process is the responsibility of the utility and it bears the burden to demonstrate it acted prudently.</p>

Party	Summary of Comment	Staff Response
	WAC 480-107-060, Acquisition of demand response. Supports addition of inclusion of DR but recommends removing “If demand response may meet some or all of the identified resource need,” because it might allow the utility to predetermine if DR can fill the resource need.	Staff disagrees. The language requires the utility to consider DR of any amount.
	WAC 480-107-065 Acquisition of conservation and efficiency resources. Supports conservation changes in the draft and has some minor edits.	
	WAC 480-107-075 Contract finalization. In negotiating the final terms of a purchase agreement, it is critical that the utility and the bidder be on equal ground in terms of the ability to negotiate changes.	Staff disagrees. The utility should negotiate the lowest price contract to save rate payers money.
	WAC 480-107-115 System emergencies. Unclear what qualifies as a system emergency- needs clarification.	System emergency refers to NERC and WECC requirements.
NVEC	<p>WAC 480-107-125 Interconnection costs. Should include all information on interconnection costs so bidder can include interconnection costs in their bid.</p> <p>WAC 480-107-145 Filings –Investigations. The addition of specific reporting requirements for the summary of responses strongly improves this section of the draft rules. In particular, the Coalition appreciates the addition of subsections (g)-(j), which help to report information that will allow tracking of the equity related elements of resource solicitation.</p> <p>The draft rules has inexplicably changed the amount of time a utility has to file a summary report of any RFP process with the Commission from 30 to 90 days.</p>	Bidders are required to determine interconnection costs.

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Party	Summary of Comment	Staff Response
Sierra Club	<p>Comment on WAC 480-107-135. Utilities must state which type of bids in WAC 480-107-135 the RFP will accept. This needs to include criteria for all greenhouse gas emissions including carbon dioxide and methane, as well as any upstream and downstream GHG emissions associated with fossil fuel resources.</p>	<p>The rule requires utilities to state the type of bids it will accept.</p>