

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Amending, Adopting, and  
Repealing WAC 480-107, Relating to  
Purchases of Electricity

DOCKET UE-190837

**THIRD COMMENTS OF PUBLIC COUNSEL**

**September 14, 2020**

## **I. INTRODUCTION**

1. Pursuant to the Washington Utilities and Transportation Commission's ("Commission") Notice of Opportunity to File Written Comments ("Notice") of August 13, 2020, Public Counsel submits the following comments in response to the questions posed in the Commission's Notice.

## **II. COMMENTS AND ANSWERS TO NOTICE QUESTIONS**

### **A. General Comments on Draft Rules**

2. Public Counsel appreciates the thoughtfully drafted rules included with the Commission's Notice. Generally, the rules establish a good framework for when utilities must issue a Request for Proposal (RFP) to meet a resource need identified by the utility's integrated resource plan (IRP), in coordination with Clean Energy Transformation Act (CETA) mandates. In addition to responses to questions posed in the Notice, Public Counsel offers the following general comments on the draft rules.
3. Draft WAC 480-107-010 describes the two main scenarios in which a utility must issue an RFP: (1) when the utility's IRP demonstrates a resource need within four years or (2) when the two-year IRP update demonstrates a new or unfilled need greater than 80 MW. Draft WAC 480-107-011 lists the sections of the rules that apply to each scenario, including section -023, which applies to each scenario and addresses when an independent evaluator must be utilized. Draft WAC 480-107-023 is titled "Independent evaluator for large resource need or utility or affiliate bid." This section requires the use of an independent evaluator if the utility itself or its subsidiary or affiliate takes part in the RFP bidding process or if the utility is considering repowering existing facilities. However, the section does not address the requirement for an independent evaluator for a "large resource need" or what constitutes a "large resource need,"

and this phrase is not defined elsewhere in the draft.

4. The previous draft stated that an independent evaluator should be engaged if the resource need was greater than 80 MW, and Public Counsel recommends making this resource threshold explicit in the draft. We recommend including the language below:

**WAC 480-107-023 Independent evaluator for large resource need or utility or affiliate bid.**

(1) A utility must engage the services of an independent evaluator to assess and report on the solicitation process if:

(a) The utility, its subsidiary, or affiliate participates in the utility's RFP bidding process, which may result in the utility owning or having a purchase option in the resource over its expected useful life; or

(b) The utility is considering repowering its existing resources to meet the resource need identified in its RFP.

(c) The resource need is equal to or greater than 80 MW.

Public Counsel believes that the requirements for engaging an independent evaluator should be as clear as possible for all parties. We look forward to the comments from other stakeholders on this matter.

5. Previously, Public Counsel stated our support for a 60-day public comment period. The current draft proposes a 45-day public comment period, along with a 120-day RFP development period, and a 30-day evaluation period for the Commission.<sup>1</sup> We agree that this is an appropriate timeframe for the RFP filing and review period, given the outreach and public participation requirements elsewhere in the rule.

6. Public Counsel also previously supported a requirement for utilities to consult with stakeholders during the development of an RFP.<sup>2</sup> Draft WAC 480-107-015(1) strongly encourages the consultation, though it does not require it. Though there is no requirement in the

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<sup>1</sup> Draft WAC 480-107-017.

<sup>2</sup> Second Comments of Public Counsel, ¶ 2 (June 29, 2020).

rule, Public Counsel hopes that utilities will follow this guidance and take the opportunity to engage with various stakeholders.

7. In our last set of comments, though we did not find any existing laws applicable to utility RFPs, Public Counsel offered some examples of how other entities have approached consideration of bids from minority-, women-, disabled-, and veteran-owned businesses.<sup>3</sup> Though the draft rules do not reflect our earlier suggested language, we continue to believe that the Commission should consider contracts with minority-, women-, disabled-, and veteran-owned businesses when determining a utility's compliance with CETA's equity requirements. We continue to recommend the following:

- Utilities should set a goal for contracts with minority-, women-, disabled-, and veteran-owned businesses.
- Targets for contracts should be based on percentage of total contracts issued, percentage of total contract spending, percentage of contracts issued to comply with CETA, and percentage of contract spending in compliance with CETA.
- Utilities should report granular data, in terms of number of contracts issued and spending on contracts, on the contracts issued to each of the enumerated groups.

Because there is no currently available information about the number of contracts a utility has with a minority-, women-, disabled-, and veteran-owned business, goal setting and targets for contracts can be based on a percent increase over what the utility is currently spending or the number of current contracts with minority-, women-, disabled-, and veteran-owned businesses.

8. Finally, under Draft WAC 480-107-007, the definitions for conservation and efficiency

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<sup>3</sup> *Id.* ¶¶ 17-19.

resources, demand response, equitable distribution, highly impacted communities, and vulnerable communities all cite to definitions in WAC 480-100-600. These definitions should all be updated to cite to WAC 480-100-605 to reflect the current iteration of the draft Clean Energy Implementation Plan and Integrated Resource Plan rules.

**B. Answers to Notice Questions**

- 1. Draft rule WAC 480-107-007 defines repowering. Is the definition clear and do the rules succeed in assuring that a utility’s decision to rebuild generation it owns is evaluated on an equal basis with other alternatives available in the market?**

9. Public Counsel believes that the definition of repowering in draft WAC 480-107-007 is reasonable. The definition will allow utilities the ability to make necessary repairs or updates for safety, regulatory, or other reasons, while requiring them to bid in larger repowering efforts intended to extend the life of the facility overall. Draft WAC 480-107-023 and -024 appear to address how a repowered bid will be considered and under what circumstances. Public Counsel looks forward to stakeholder discussion on this topic.

- 2. Draft rule WAC 480-107-010(1)(b) requires a utility to issue an RFP if “the utility’s two-year IRP update demonstrates a new or unfilled resource need of 80 MW compared to the utility’s most recently filed IRP.” Please provide comments on whether you support or oppose this provision and why?**

10. Public Counsel is fine with setting the threshold for the issuance of an RFP at 80 MW. However, we note that certain concerns raised earlier in the process by Western Grid Group were not addressed in this draft or comment matrix. Western Grid Group highlighted that the threshold of 80 MW does not align with the Federal Energy Regulatory Commission’s (FERC) distinction


between small and large generator interconnection agreements.<sup>4</sup> Public Counsel is not raising this issue independently, but is interested in whether this inconsistency has been resolved. We look forward to the comments of other parties.

### III. CONCLUSION

11. Public Counsel appreciates the opportunity to provide comments on these Notice questions. We look forward to reviewing other parties' comments and participating in further discussions on these topics. If there are any questions regarding these comments, please contact Nina Suetake at [Nina.Suetake@ATG.WA.GOV](mailto:Nina.Suetake@ATG.WA.GOV), Corey Dahl at [Corey.Dahl@ATG.WA.GOV](mailto:Corey.Dahl@ATG.WA.GOV), or Stephanie Chase at [Stephanie.Chase@ATG.WA.GOV](mailto:Stephanie.Chase@ATG.WA.GOV).

Dated this 14th day of September, 2020.

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<sup>4</sup> *Id.*; see also, Western Grid Group Comments Relating to Electricity Purchases and Compliance with the Clean Energy Transformation Act, at 6 (Mar. 13, 2020).