



Puget Sound Energy
P.O. Box 97034
Bellevue, WA 98009-9734
PSE.com

September 14, 2020

Filed Via Web Portal

Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98503

Re: **Docket UE-190837: Third Set of Comments of Puget Sound Energy in Relation to Purchases of Electricity Rulemaking.**

Dear Mr. Johnson:

Puget Sound Energy (“PSE” or the “Company”) appreciates the opportunity to respond to the questions posed in this docket and submits the following comments in response to the request in the Washington Utilities and Transportation Commission’s (“Commission”) Notice of Opportunity to File Written Comments issued in Docket UE-190837 (“Notice”) on August 14, 2020.

Overall, PSE believes that this iteration of the rules is a step in the right direction. PSE appreciates staff’s work to address the concerns that were raised about the last iteration of the draft - specifically, removal of the megawatt threshold as a trigger for an independent evaluator (“IE”), clarification that utilities may file targeted requests for proposals (“RFP”) in conjunction with an all-source RFP, and providing utilities with 120 days to develop an all-source RFP are improvements. PSE is concerned, however, about the requirement to conduct an all-source RFP if a utility’s integrated resource plan (“IRP”) update shows need in excess of 80 MW, the definition of “repowering,” and the timing and independent scoring aspects of the IE requirement. These concerns, in addition to recommended refinements to the draft rules, are explained in further detail in responses to the Commission’s questions and the comments set forth below.

Responses to Commission 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?**

Received
Records Management
09/14/20 16:04
State Of WASH.
UTIL. AND TRANSP.
COMMISSION

PSE Response

PSE understands that the intent of this provision is to require utilities to bid a “repowering” project into an RFP only if the purpose of the project is to meet a resource need specified in an RFP. Repower projects undertaken for reasons unrelated to an RFP, however, would not be subject to this requirement. Examples of these types of projects could include monetization of available tax incentives, improvements to plant operation flexibility, emission reductions, safety enhancements, maintenance and other plant cost reductions, correction of an identified failure mode, and efficiency improvement programs. Such projects would be subject to typical competitive bid procedures and evaluation prior to execution, and to Commission prudency review following completion.

Although the proposed definition of “repowering” is a good start, PSE is concerned that it leaves too much room for stakeholders to argue against a utility’s stated purpose for a project in a Commission prudency review proceeding. Very few of a utility’s decisions to prudently pursue repowering are solely (or even substantially) based on future resource needs. Consequently, the proposed rule may have the unintended consequence of creating more controversy and litigation when compared to leaving these decisions, and the attendant prudence risk, to the utilities.

To address this concern, PSE proposes adding a materiality threshold to the definition of “repowering” in Comment 2 in the section below. This approach appropriately balances the interests of stakeholders and utilities by giving stakeholders a measure of assurance that a utility’s project is not attempting to address a need identified in an RFP without bidding into that RFP, and giving utilities a measure of assurance that they can proceed with a range of projects unrelated to an RFP without the risk that their intent for the project will be questioned. The certainty provided by this approach should also reduce the potential for controversy and litigation around these decisions.

- 2. Draft rule 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?**

PSE Response

PSE does not support the proposal 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.” While PSE understands staff’s belief that utilities should issue at least one all-source RFP in response to an IRP,¹ PSE believes that the value of the information provided by such an expansive exercise should be weighed against the significant resources that will be required to conduct an all-source RFP as envisioned in the proposed rule.

The proposed all-source RFP imposes a significant burden on utilities and bidders, without adding value for utility bidders or customers.² This lack of value is due to the analytical

¹ See Summary of Comments, Comment on 1st Draft Rules, June 29, p.6, Docket UE-190837.

² See Comments of Puget Sound Energy on 1st Draft Rules, June 29, pp. 2-3, Docket UE-190837.

challenge of comparing projects with widely varying attributes that do not lend themselves to reasonable comparisons. The draft provision referenced in this question could require utilities to conduct this type of solicitation twice in a four-year period, rather than just once after an IRP is filed as required under WAC 480-107-010(1)(a). For the reasons set forth above, the costs of conducting such a solicitation twice in a four-year period would significantly outweigh the value of the information that they would produce. This provision of the draft rule should be struck accordingly.

Specific Comments, Suggested Revisions or Clarifications to the August 14 Draft Rules

1. In pertinent part, WAC 480-107-001 provides the following:

“The rules in this chapter do not establish the sole procedures utilities may use to acquire new resources. Utilities may construct new resources, operate conservation and efficiency programs, purchase power through negotiated contracts, or take other action to satisfy their public service obligations.”

PSE strongly supports this provision because it explicitly acknowledges that RFPs are not the only avenue for utilities to meet resource needs. Indeed, PSE has prudently acquired resources, including Mint Farm and Goldendale, in this fashion. PSE appreciates that the draft rules recognize that prudent decisions to acquire resources can be made outside of the RFP process.

2. WAC 480-107-007 defines “repowering.” As stated in the response to Question 1 above, PSE proposes the following revisions to include a materiality threshold in the definition:

“‘Repowering’ means a rebuild or refurbishment...The rebuild or refurbishment does not constitute repowering if it is part of (a) planned or forced major maintenance, (b) federal or state regulatory requirements, or (c) replacement of equipment that does not materially affect the physical or economical longevity of the generator or generator facility (i) increase the nameplate capacity of the facility by more than 20 percent, or (ii) extend the estimated useful service life of the facility by more than seven years.”

3. PSE appreciates the revision to WAC 480-107-010(2)(a) that clarifies that utilities may issue a “single-source” RFP in conjunction with an all-source RFP. While this revision is a step in the right direction, utilities may have a need to solicit resources from more than a single source, particularly to fill categorical needs such as the ones that may be created by the specific targets for energy efficiency, demand response, and renewable resources that utilities must include in their Clean Energy Implementation Plans. PSE suggests revising this portion of the proposed rule as follows to clarify that utilities are permitted to categorically target specific types of resources in addition to a single resource:

“(2)(a) *The utility may issue ~~a single source~~ **targeted RFPs** in conjunction with...*”

WAC 480-107-010(2)(a) also permits utilities to issue a single-source RFP in conjunction with an all-source RFP so long as the utility conducts a combined analysis that fairly compares all resources. As mentioned in the response to Question 2 above, PSE is concerned about the requirement to conduct an assessment that compares projects with widely varying attributes that do not lend themselves to reasonable comparisons. PSE requests that staff further elaborate on the type of evaluation that would be expected in order to comply with this provision.

4. WAC 480-107-010(3) clarifies that utilities may solicit resources outside of the required all-source RFPs and appears to include a condition on this type of solicitation. The condition, however, is unknown due to an apparent typographical error. PSE requests that this provision be deleted or clarified.
5. WAC 480-107-017(1) requires utilities to submit an all-source RFP to the Commission within 120 days after the utility files an IRP if the IRP shows a resource need within four years. While this extended period is an improvement compared to the prior version of the rules, it may still be an insufficient time period in which to timely submit the RFP due to the proposed requirement for an IE to participate in the RFP development process. In recent solicitations for an IE, for example, PG&E projected that it would take five to six months to solicit and obtain regulatory approval for an IE.³ PSE expects that this timing issue will be particularly problematic for the first RFP conducted under the current proposed rules because an IE solicitation process cannot begin in earnest until the rules are finalized.

To address this concern, PSE recommends adding the following:

“(1)(a) For the initial RFP submitted pursuant to WAC 480-107-010(1)(a), a utility must submit to the Commission a proposed RFP and accompanying documentation not later than ninety days after the Commission approves an independent evaluator if one is required pursuant to WAC 480-107-023(1).

(b) For all subsequent RFPs submitted pursuant to WAC 480-107-010(1)(a), or if an independent evaluator is not required by WAC 480-107-023(1) for the initial RFP submitted pursuant to WAC 480-107-010(1)(a), a utility must submit to the Commission a proposed RFP and accompanying documentation no later than one hundred twenty days after the utility’s IRP is due to be filed with the Commission.

³ See PG&E “Independent Evaluator Request For Proposal June 2013” (projecting over six months to obtain an IE), available at https://www.pge.com/en/b2b/energysupply/wholesaleelectricssuppliersolicitation/IE_RFP2013/index.page; PG&E “Independent Evaluator (IE) Request for Proposals (RFP)” (projecting over five months to obtain an IE), available at https://www.pge.com/en_US/for-our-business-partners/energy-supply/wholesale-electric-power-procurement/2016-independent-evaluator-request-for-proposal.page.

6. WAC 480-107-024(4) requires the IE and utility to reconcile project rankings that are required pursuant to WAC 480-107-035(4), and further requires the IE to explain any differences in those rankings, among other requirements, in a written report to the Commission.

Requiring the IE to Independently Score and Rank Bids

PSE remains unconvinced that an IE could provide a meaningful parallel evaluation without duplicating PSE's work, and the significant resources required to perform it. PSE reiterates that professional judgement is involved in resource selection, which means that there could be more than one reasonable result based on quantitative modeling results and commercial qualitative evaluations. As a result, it is highly likely that the IE and the utility could each select reasonable yet different resource selections.

A likely scenario to arise is that the utility and IE rankings do not perfectly align. For example, a project appears second in a utility's rank order of projects, and fourth in the IE's rank order of projects. This situation negatively impacts the regulatory system both substantively and practically. Substantively, the IE's individual ranking erodes the utility's appropriate role as the expert on its system and serving its customers because it unnecessarily casts a pall on a reasonable resource decision made by the utility. Practically, this situation could result in delays to the RFP process if stakeholders dispute whether the project should be rank ordered second or fourth. The delay would be unnecessary because whether the project is ranked second or fourth is a distinction without a difference – both are reasonable rankings.

A compromise to address the concerns set forth above and staff's desire for an upfront assessment of the reasonableness of a utility's bid scoring is for the utility and IE to compare their respective shortlists, but not require the IE to independently score and rank these resources. This approach addresses Staff's interest in having the IE evaluate the utility's scoring process while protecting the utility's discretion to select resources - without pitting the utility's professional judgement against that of the IE. Although PSE interprets the language of the rule to be sufficiently broad to accommodate the shortlist approach described above, it would be helpful for the language to be more explicit in this regard. To this end, PSE suggests clarifying language in the next section below, and in Comment 7.

Opportunity for a Utility to Review the IE Report

It would be beneficial for the utility to have the opportunity to review the IE's report to ensure that there are not clear and obvious errors prior to it being finalized. The complex nature of the rankings process increases the risk of inadvertent errors. For example, the IE and the utility may not be utilizing the same assumptions or quantitative modeling in the same fashion. To mitigate the risk that these types of errors result in material differences in the IE's and utility's rankings, PSE believes that the utility should have an opportunity to review the report before the IE submits it to the Commission. The purpose of the review would not be to influence the report, but merely to ensure that it did not

contain any clear and obvious errors. To ensure transparency, the IE could then report any changes that it may have made as a result of the utility's review in its final report.

The following language could be used to implement the framework described above:

“(5)(h) Prepare a final report to the commission ~~after reconciling rankings with the utility in accordance with WAC 480-107-035(4)~~ that must:

- (i) Include an evaluation of the competitive bidding process in selecting the lowest reasonable cost acquisition or action to satisfy the identified resource need, including the adequacy of communication with interested persons and bidders; ~~and~~*
- (ii) ~~Explain ranking differences and why the independent evaluator and the utility were, or were not, able to reconcile the differences.~~ **Include an assessment of whether the RFP process was conducted fairly and reasonably; and***
- (iii) **Include a shortlist or resources that might reasonably meet the needs specified in the RFP, and an explanation of any material discrepancies between this list and the ranking of qualifying bids developed by the utility pursuant to WAC 480-107-035(4).***

(6) The independent evaluator shall provide the utility with an opportunity to review the report for errors before it is submitted to the Commission. The independent evaluator's report shall specify any errors that were identified as a result of the utility's review, and what actions the independent evaluator took, if any, to address those errors.

7. WAC 480-107-035(4) requires utilities, and the IE if applicable, to score and rank bids following the RFP ranking criteria. For the reasons set forth in Comment 6 above, PSE does not believe that the IE should independently rank and score bids, but rather develop a shortlist of resources that might reasonably meet the needs specified in the RFP. The following revisions address this concern:

*“(4) The utility and, as applicable, the independent evaluator will each score and produce a ~~ranking~~ **shortlist** of the qualifying bids following the RFP ranking criteria and methodology.”*

8. WAC 480-107-065(3)(a) permits a utility to file the first competitive procurement framework for conservation and efficiency resources beginning with the 2022-2024 biennial conservation plan. PSE notes that the time period that will be covered in that plan is 2022-2023, and suggests the following revision:

*“(3)(a)...may be filed with the 2022-~~2023~~**2024** biennial conservation plan.”*

PSE appreciates the opportunity to provide responses to the questions identified in the Commission's Notice of Opportunity to File Written Comments. Please contact Nate Moore

at 425-456-2622 or Kara Durbin at 425-456-2377 for additional information about these comments. If you have any other questions please contact me at (425) 456-2142.

Sincerely,

/s/ Jon Piliaris

Jon Piliaris
Director, Regulatory Affairs
Puget Sound Energy
PO Box 97034, EST07W
Bellevue, WA 98009-9734
425-456-2142
Jon.Piliaris@pse.com

cc: Lisa Gafken, Public Counsel
Sheree Strom Carson, Perkins Coie