

**Small Business Economic Impact Analysis
Purchases of Electricity Rulemaking
Dockets UE-190837
November 3, 2020**

I. Introduction

The Washington Utilities and Transportation Commission (Commission) initiated a rulemaking in February, 2020, in Docket UE-190837, to consider amendments to Chapter 480-107, Washington Administration Code (WAC), in part, to implement certain sections of the Clean Energy Transformation Act (CETA).

The Commission requested and received two sets of comments from stakeholders on draft rules and conducted two workshops. The Commission is preparing to publish proposed rules. When issuing a notice of proposed rules, agencies must provide a copy of the small business economic impact statement (SBEIS) prepared in accordance with Chapter 19.85 RCW, or explain why an SBEIS was not prepared. The Commission has prepared this small business economic impact analysis in compliance with these requirements.

II. SBEIS Requirements

The Regulatory Fairness Act (RFA), codified in Chapter 19.85 RCW, provides that an agency must conduct an SBEIS “if the proposed rule will impose more than minor costs on businesses in an industry.” RCW 19.85.030. An SBEIS is intended to assist agencies in evaluating any disproportionate impacts of the rulemaking on small businesses. A business is categorized as “small” under the RFA if the business employs 50 or fewer employees. Under RCW 19.85.040(1), agencies must determine whether there is a disproportionate impact on small businesses in the industry, and under RCW 19.85.030(2), consider means to minimize the costs imposed on small businesses.

III. SBEIS Evaluation Procedure

On August 31, 2020, The Commission issued a notice to all stakeholders interested in the Commission’s rulemaking, providing a link to the draft rules posted on the Commission’s website, and providing an opportunity to respond to an SBEIS Questionnaire. The notice requested that both large and small businesses provide information about possible cost impacts of the draft rules with specific information for each rule that the business identified as causing an impact. Only Puget Sound Energy (PSE) responded to the questionnaire.

To conduct an SBEIS pursuant to the RFA, the Commission must determine whether the proposed rules will have a disproportionate impact on small businesses based on a comparison of small and large business cost per employee, cost per hour of labor, or cost per \$100 of sales revenue. RCW 19.85.040(1). PSE is not classified as a small business but provided an estimate of the costs it will likely incur to comply with one section of the rules.

IV. Results of the Analysis

PSE expressed general concerns with the administrative burden on utilities of bringing Washington's rules in line with those of other states, as well as the cost of complying with draft WAC 480-107-010 (Required all-source RFPs and conditions for targeted RFPs) and draft WAC 480-107-023 (Independent evaluator for repowering and bids from a utility or its subsidiary or affiliate).¹ This analysis will discuss the issues raised by the company in the pertinent section analysis.

Draft WAC 480-107-010 (now Proposed WAC 480-107-009) Required all-source RFPs and conditions for targeted RFPs

PSE states that the draft rule creates new administrative burdens and costs by requiring a utility to conduct more frequent all-source RFPs and to compare all-resource options from concurrent all-source RFPs and single-source RFPs in a combined analysis. PSE observes that the rule could potentially require this combined analysis to be conducted twice in a four-year period. PSE estimates the cost of the newly combined analysis is in the range of hundreds of thousands of dollars. PSE does not contend, nor is the Commission otherwise aware, that small businesses will incur any of these costs.

In response to stakeholder comments on the draft rules, the Commission has removed in the proposed rules the requirement for an all-source RFP triggered by the IRP progress report. This modification relieves the utility of the need to issue a second RFP in a four-year period and incur the attendant costs.

In addition to modifying the initial draft rules in response to PSE's March 13, 2020 comments to allow a utility the choice of whether to issue a single-source RFP in conjunction with an all-source RFP, in the proposed rules, the Commission has also changed the reference to a single-source RFP to a targeted RFP in response to PSE's September 14, 2020 comments. The targeted RFP allows the utility to issue an RFP limited to several types of resources.

¹ Section WAC 480-107-010 has been renumbered in the CR-102 rule filing to WAC 480-107-009.

While the proposed rules retain the requirement for a utility to conduct a combined analysis of an all-source and targeted RFP, the rules requires a utility to “fairly compare all resource options in its combined analysis” (WAC 480-107-009(4)). The Commission observes that the statutory requirement in RCW 19.280.030(1)(j) to acquire the lowest reasonable cost resources already obligates the utility to synthesize its analysis of all concurrently available resources that it is considering as resource additions to fulfill its resource need. The Commission’s draft rule incorporates that requirement. Further, the modeling analysis need not be done jointly. Rather, at a minimum, the utility must be able to compare the modeling outcomes in the two RFPs in a combined analysis as it determines the lowest reasonable cost resources.

Proposed WAC 480-107-023 Independent evaluator for repowering and bids from a utility or its subsidiary or affiliate

PSE states that the draft rule’s requirement to use an independent evaluator (IE) is one of the largest additional costs imposed by the draft rule but states that it cannot provide an estimate of the costs based on historic costs because it has not used an IE in the context of an all-source RFP. In the absence of its own data, PSE estimates the cost to be substantial. As a tool for recovering the cost of an IE, PSE discusses the possibility of it applying a bid fee and notes the bench market in the industry for such a fee is \$10,000 per bid. PSE also states that it is contemplating a fee on successful bids (bids awarded a contract) of around \$350,000. These fees would be designed to recover the incremental cost of the IE and other external subject matter experts PSE uses in bid evaluations or contract development. PSE does not contend, nor does the Commission conclude that the draft or proposed rules require small businesses to incur any of these costs.

The draft rules specify that the utility must pay for the IE. The current Purchases of Electricity rules (PoE) in effect and the proposed rules do not provide that a utility may levy bid fees nor do they prohibit bid fees. The proposed rules makes no changes that direct or grant additional discretion to a utility to assess bid costs on bidders, including potentially small businesses that bid. The Commission’s ratemaking process can provide for recovery of the IE costs. The costs of the IE, if prudently incurred during the utility test year, may be included in determination of a utility’s rates, allowing a utility to recover such costs on an on-going annual basis as part of its rates.

If, on the other hand, a utility proposes bid fees, it must weigh how they adversely affect the ability of small businesses to provide bids that have the potential to fulfill the utility’s need for the lowest reasonable cost resources. The Commission has ongoing authority to review the effect of the utility’s proposed bid fees and modify their application to meet the public interest. For instance, the Commission, in approving an all-source RFP required by the draft rules after an IRP, may condition approval of the RFP on the removal of bidder fees for small businesses. As

an IE is only required in the case of RFP in which the utility plans to enter its own bid, the Commission could condition the utility's participation in the RFP on the bid fees being assigned on a cost causation basis.

As required by the RFA, the Commission has reviewed the draft and proposed rules for potential impacts on small businesses. The analysis revealed a limited impact to small businesses to comply with these draft rules as the rules address the requirements for utility resource procurement to transition to a clean energy portfolio. A utility's cost of complying with these draft rules is de minimus compared to a utility's overall cost of business and the utility may recover those costs from all customers, including small business customers, through a general rate case.

Proposed Rule WAC 480-107-065 Acquisition of conservation and efficiency resources

The Commission proposes to amend WAC 480-107-065 to require competitive procurement of energy efficiency resources, which will create greater opportunities for small businesses to provide those services. The proposed rules expand the detail the utility must provide in an RFP to potential bidders of energy efficiency. This change reduces the upfront fixed costs of small businesses participating in the RFP. The upfront fixed cost incurred to have an opportunity to secure a contract in a bidding process is problematic for small businesses as they do not have the same volume of service over which to spread the fixed costs as large businesses do, even if their per unit costs are lower.

Proposed Rule WAC 480-107-023 Independent evaluator for repowering and bids from a utility or its subsidiary or affiliate

The proposed rules expand the requirement for a utility to retain an IE in those circumstances in which the utility is considering repowering its own generation facilities, and requires that such repowering be bid into any RFP the utility is conducting at the time. The proposed rules provide a public and open opportunity for small businesses to bid on the repowering request, or portions thereof. The use of an IE provides small businesses greater assurance that the evaluation of the utility bid to repower its generation facility and any small business bids are considered fairly and equally.

Proposed Rule WAC 480-107-025 Contents of the RFP solicitations

The proposed rules reduce the burden on small businesses' participation in RFPs by increasing the transparency of the RFP process. For example, it increases the detail provided in the RFP concerning the utility's resource need, evaluation rubric, and the utility's electric operations and

physical system, which will reduce the transaction costs for small businesses to participate. The added requirement that the utility provide information on its operations and physical system is aimed at providing small businesses an opportunity to design unique energy solutions for the utility's electric system.

Proposed Rule WAC 480-107-025 Bid ranking procedure

The proposed rules expand the information on bid ranking that a utility must provide in its RFP and protects against discrimination based on the business structure of the bidder. The latter provision is aimed at preventing a utility from discounting bids based on the size of the bidder alone. Additional detail on ranking procedures assists small businesses, which typically have more focused and targeted bids, to determine if their bids are responsive to the RFP and to design their bids to fulfill the need in the RFP.

V. Summary of Findings and Mitigation

The Commission has modified the draft rules to address utility concerns with the cost and burden of issuing two RFPs within four years and included flexibility in the type of RFPs issued other than the RFP required following an IRP. The Commission's analysis shows that the proposed rules will likely cause a small increase in a utility's costs to conduct RFPs, but have the potential to greatly lower the utility's overall costs of doing business through an RFP process that procures lower cost resources than under the existing rules. Further, the proposed rules do not change the existing opportunity under the current rules for utilities to recover the costs of an RFP in general rates, nor impose a requirement for utilities to impose bidding fees,

The proposed rules reduce the burden on small business participation in RFPs by increasing the transparency of the RFP process. The proposed rules increase the detail provided in the RFP concerning the utility's resource need, evaluation rubric, and ranking procedures, reducing the time and expense to small and large businesses alike that may participate as bidders. The proposed rules require competitive procurement of energy efficiency resources opening greater opportunities for small businesses to provide those services. In doing so, the proposed rules greatly expand the detail the utility must provide in its RFP to potential bidders, which will help small businesses understand how their proposal can be successfully bid.

VI. Conclusion

Chapter 19.85 RCW requires that an agency determine whether proposed rules would impose more than minor costs on businesses in an industry and evaluate any disproportionate impacts of the rulemaking on small businesses.

The Commission has analyzed all available information and concludes the proposed rules will impose de minimus costs on electric utility companies and small business customers directly, through their electric rates. The proposed rules will potentially save utility customers amounts through lower cost resource acquisitions while providing greater access for small businesses to participate successfully in utility RFPs.