

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

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

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DOCKET UE-190837

**FOURTH COMMENTS OF PUBLIC COUNSEL**

**December 3, 2020**

## I. INTRODUCTION

1. Pursuant to the Washington Utilities and Transportation Commission's ("Commission") Notice of Opportunity to File Written Comments ("Notice") of November 3, 2020, Public Counsel submits the following comments. 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. Public Counsel's comments focus on remaining items of concern.

## II. COMMENTS

### A. Requirement for an Independent Evaluator

2. In prior versions of the draft rules, an independent evaluator was required if the RFP was above a certain megawatt (MW) threshold, demonstrated a large resource need, or if the utility was repowering or a subsidiary or affiliate would be bidding. In the current Draft Rules, there is no MW threshold or large resource need requirement for an independent evaluator. The utility need only retain an independent evaluator if there is the possibility of repowering, a subsidiary or affiliate bid, or if the utility intends to retain a purchase option over the useful life of the resource.<sup>1</sup> Public Counsel believes that utilities should engage an independent evaluator under those circumstances, but we also believe that it would be useful to engage an independent evaluator for a large resource need, all-source RFP.
3. Draft WAC 480-107-009(2) provides that a "utility must issue an all-source RFP if the IRP demonstrates that the utility has a resource need within four years." The previous set of draft

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<sup>1</sup> Draft WAC 480-107-023(1).  
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rules required the utility to issue an RFP for a resource need identified in the IRP or the two-year IRP update. Even though the utility is required to issue only one all-source RFP every four years, the rules do not require the use of an independent evaluator in all cases.<sup>2</sup> As we have stated in past comments, we believe that an independent evaluator can “provide oversight and assistance with the design of the solicitation, increase transparency over the bidding and ranking process, and provide greater assurance that the process is competitive and fair.”<sup>3</sup> Though the use of an independent evaluator is particularly important when the utility or a subsidiary is bidding in an RFP, Public Counsel believes that it is also important that utilities engage an independent evaluator for a large resource need, all-source RFP. Past drafts of these rules set the threshold at 80 MW, and Public Counsel still believes that is a fair and reasonable threshold.

4. It is possible that the effect of the draft rules means that a utility will always engage an independent evaluator because there will always be a self-bid or consideration of repowering or option to purchase power over the life of the resource in an all-source RFP. However, these rules should encompass all of the scenarios where it will benefit ratepayers, bidders, and other stakeholders to be assured of the fairness and transparency of the process. One of those scenarios includes when the utility has a large resource need connected to a four-year IRP and does not plan to repower or submit a self-bid or have the option to purchase power over the life of the resource. The implementation of CETA will affect utilities broadly, and it is important to develop the rules to offer as much fairness and transparency as possible, even if some scenarios seem less likely under current circumstances.

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<sup>2</sup> Draft WAC 480-107-009(2).

<sup>3</sup> Second Comments of Public Counsel ¶ 3 (June 29, 2020).

**B. Stakeholder Request for an Independent Evaluator**

5. As we noted above, there are some scenarios under the draft rules where a utility may not engage an independent evaluator for an all-source RFP resulting from a four-year resource need identified in the utility’s IRP. In response to stakeholder recommendations to require independent evaluators for RFPs in addition to those in which the utility was bidding, Staff stated that the Commission has the authority to require an independent evaluator if necessary.<sup>4</sup> Public Counsel recommends making explicit in the rules that interested persons may request that the Commission require an independent evaluator for a required RFP. We believe that the language below is particularly important if the rules requiring an independent evaluator do not require an independent evaluator for large resource need, all-source RFPs. We recommend the following edit to draft WAC 480-107-017(3):

Within forty-five (45) days after the utility files an RFP, interested persons may submit written comments to the commission on the RFP. Interested persons may also request that the commission require the utility to engage an independent evaluator for the RFP in this comment period.

6. For interested stakeholders who are not familiar with the process or the Commission’s role, an explicit statement is necessary to help them participate and express any concerns they may have about a utility’s approach to an RFP. The edit is also not burdensome to the Commission’s process. Since the Commission must approve, approve with conditions, or suspend the filed RFP, the public comment period provides a natural point in the process during which an interested person could file a request that an independent evaluator be used.

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<sup>4</sup> Notice of Opportunity to File Written Comments on the Questions and Second Draft, Summary of Comments, at 18 (Nov. 3, 2020).

### C. Future Workshop on Supplier Diversity

7. In response to Public Counsel<sup>5</sup> and other stakeholders' suggestions about developing contracting goals with a diversity of suppliers for RFPs, Commission Staff noted that there was insufficient time to address the issue in this rulemaking. Public Counsel requests that the Commission consider scheduling workshops outside of this rulemaking to consider the issue, with the goal of issuing a policy statement or other guidance on how best to include bids from minority-, women-, disabled-, and veteran-owned businesses.

### III. CONCLUSION

8. Public Counsel appreciates the opportunity to provide comments on these draft rules. We look forward to reviewing other stakeholders' comments and participating in the rule adoption hearing. 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 3rd day of December, 2020.

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<sup>5</sup> Public Counsel's Third Comments ¶ 7 (Sept. 14, 2020).  
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