

**WAC 480-100-107 POE Rulemaking UE-190837**  
**Written Comments on CR-102 Draft Rules**  
**Filed by December 3, 2020**  
*Summary of Comments*

<b>Party</b>	<b>Summary of Comment</b>	<b>Staff Response</b>
Pacific Power	<p>Pacific Power expresses continuing concern with the practicality of the rules and potential harm the rules may do to customers. Pacific Power asks for clarification or modification of the rules to ensure a fair and efficient acquisition process.</p> <p>Generally, Pacific Power is concerned that the acquisition process in the rules is overly burdensome and complicated, and likely to result in regulatory fatigue for all involved. The rules will likely hamper the rapid acquisition that is inherently needed under the CETA, resulting in additional costs increases to customers.</p> <p>Pacific Power views its proposed changes as limited and feasible to make in the CR-102 phase of this rulemaking. The areas of suggested modifications in the draft rules are areas that Pacific Power believes it is likely to seek exemptions in the future if not modified.</p>	Staff disagrees that the changes proposed are feasible in this phase of the rulemaking.
	<p><i>Require RFP filing 120 days after IRP acknowledgement rather than the date of the IRP filing (WAC 480-107-017).</i> In its practice of filing RFPs 120 days after the IRP is acknowledged, Pacific Power has not found that the IRP data is too stale. a concern Staff raises. Without changes to the draft CR-102 rules, Pacific Power expects waivers will be necessary.</p>	Staff disagrees with the conclusion that requiring an RFP filing 120 days after the filing of the IRP will create significant inefficiencies or lead to requests for exemptions. With the adoption of the CEIP/IRP rules, Staff intends to expedite its review of the IRP and the Commission intends to speed the issuance of its acknowledgment letter.

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	<p><i>Qualifying Facilities (QF) with existing contracts should not be allowed to bid into an RFP (WAC 480-107-009).</i> Pacific Power states that it does not enter contracts voluntarily with QFs but under terms that are Commission approved and that it must use. Using as an example its Oregon standard QF contract terms, Pacific Power states that compensation for a QF breaking its contract is limited and that a QF under Washington’s Schedule QF could bid into an RFP to get a higher price and then breach its existing contract. Pacific Power recognizes that this type of event is unlikely, but recommends the Commission change the rules rather than rely on assumptions of future events.</p>	<p>Staff disagrees with the need and the propriety of changing the rules to limit QFs with contracts from bidding into RFPs. There are also questions as to whether the Commission has the authority to make this change. However, Staff is willing to work with the company to examine the tariffs and contracts the company has filed in Washington to prevent such possible gaming by QFs.</p>
	<p><i>Do not require utilities to issue an RFP for purchases with terms of five years or less (WAC 480-107-009(2)).</i> Pacific Power reiterates its previous request to exempt all purchases with terms less than five years from RFPs. Pacific Power expands its description of its previously provided example of purchasing 5-year hydro slices that are commonly available in the NW bi-lateral market, asserting that the present rule would “prevent utilities from easily contracting for these carbon-free, low-cost resources.” Pacific Power states that applying for waivers to participate in the bidding process for 5-year hydro contracts could put it and its customers at a competitive disadvantage by signaling its participation in the bidding process. Pacific Power recognizes Staff’s intent to exempt hedging practices that contract three years in advance of need but notes that such an exemption is not in rule.</p>	<p>Staff continues to support issuing an all-source RFP for needs that are within four years. WAC 480-107-001 provides flexibility, i.e., providing that a utility may pursue resources in a manner necessary to serve its load. The RFP requirements do not change the responsibility or limit utility actions under section -001 to pursue resource acquisitions from providers who do not have a practice of bidding into utility RFPs.</p> <p>Staff reiterates its conclusion that a utility’s decision between resources with long durations such as 20-year durations and resources with 5-year durations to manage its long-term needs is a long-term resource choice- either to have long-term resources or to take a short position in the market. Staff believes that such decisions must</p>

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		<p>be made in light of the best available resource options that come with the issuance of an RFP.</p> <p>Staff also clarifies that hedging practices are not so much exempt from the PoE rules as they are part of the underlying practices of the utility that are considered in the long-term planning in its IRP as the utility examines its portfolio performance and determines its long-term resource needs.</p>
	<p><i>Adopt a MW threshold for when an RFP is required (WAC 480-107-009(2)). It is inefficient to require an RFP to be issued for a small resource need. Pacific Power recommends an 80 MW threshold.</i></p>	<p>Staff disagrees that a minimum threshold should be set for the need in an IRP that triggers the requirement for an all-source RFP. With the proposed change to a four-year IRP cycle, Staff considers it very unlikely that some type of resource need under CETA, whether conservation, demand response, or renewable energy, will not be found in the next three IRPs due between now and 2029.</p>
	<p><i>Utilities should not be required to accept identical bids in parallel RFPs (WAC 480-107-009). The rules require an all-source RFP when any need is shown in the IRP but also provides for a parallel targeted RFP, which, to a very limited degree mitigates Pacific Power’s concern with the rules’ requirement to issue an all-source RFP regardless of the size of the need found in the IRP. Pacific Power seeks clarification on whether the rules require Pacific Power to accept identical bids in both the all-source and the targeted RFPs as they run in parallel. Pacific Power asserts that evaluating the same bid in</i></p>	<p>Staff disagrees that the rule should limit a qualified bidder’s participation in the RFP. Staff encourages the company to communicate with potential bidders and direct them to the most appropriate RFP. Staff believes that the occasional bidder that bids into both RFPs will not unduly burden the utility, especially considering that the two parallel RFPs must pick the lowest reasonable cost resources from either</p>

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	<p>both RFPs undermines the efficiency of having two RFP processes and requests clarification that it is not required to accept identical bids in parallel RFPs.</p>	<p>RFP.</p>
<p>PSE</p>	<p>PSE supports the elimination of the requirement to pursue an all-source RFP in response to a two-year IRP update, as well as the clarifications made around the use of a targeted RFP.</p> <p><i>PSE remains concerned with the scope of the term “major maintenance” used in the draft rule, WAC 480-107-007. The breadth and application of repowering and major maintenance should be narrowed in rule or, in the alternative, clarification of the reach of their application is needed in the adoption order. Specifically, the Commission should allow the utility to perform certain types of predictive and corrective maintenance of power generation equipment without such action constituting a “repowering” under the rules.</i></p> <p>PSE strongly recommends that major maintenance activities within the term of a federal hydropower license be specifically exempted from the definition of repowering, even if the activity materially affects the physical and economic longevity of the facility within the license period.</p> <p>PSE observes that long-lived hydroelectric projects do not have a defined routine maintenance manual which may lead to future misinterpretation of the rule. PSE states that in its November 3, 2020, comment matrix Staff states that repairs necessary for reliability that are discovered during routine major maintenance are not part of routine major maintenance. PSE also asks that Staff clarify that work to correct problems</p>	<p>No response needed.</p> <p>Staff’s general use of the term “routine major maintenance” in the rule was intended to include predictive and corrective maintenance. Staff will recommend clarifying in the adoption order that the term major routine maintenance includes predictive and corrective maintenance.</p> <p>Staff views the expected life of a generation facility at the time of its in-service date to include predictive and corrective maintenance, both those known at the time of the generator in-service date and those developed as best practices after the in-service date. Though those types of maintenance activities may increase the life of the generation facility compared to what was known to be possible at the time of its in-service date, Staff views a generation facility’s life as a combination of the physical plant at the time of in-service and good utility practice during the life of the plant.</p>

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	<p>detected during routine major maintenance be included in the definition of routine major maintenance.</p> <p><i>WAC 480-107-007 proposed amendments to definition of repowering:</i></p> <p>PSE recommends two ways to modify the definition.</p> <ol style="list-style-type: none"> <li>1) Limit the definition of repower to the first sentence and eliminate the second sentence.</li> <li>2) Expand the definition of major maintenance to include activities within the terms of the hydroelectric facilities license.</li> </ol> <p><b>“Repowering”</b> means a rebuild or refurbishment, including fuel source changes, of a utility owned generator or generation facility that is required due to the generator or facility reaching the end of its useful life or useful reasonable economic life. The rebuild or refurbishment does not constitute repowering if it is part of <del>routing</del> routine major maintenance, <u>major maintenance within the terms of an existing federal hydropower license, existing hydroelectric licensing obligations, or the maintenance of or replacement of equipment that does not materially affect increase the expected physical or economical longevity of the generator or generation facility.</u>”</p>	<p>Staff recognizes that the expected end of life and actual failure date of the components of a generation facility will not all be the same.</p> <p>Staff agrees in part with the suggested changes.</p> <p>In the final sentence, Staff will change “routing” to “routine”, add “the maintenance of or” before “replacement”, and add “expected” before “physical”.</p> <p>Staff disagrees with changing “affect” to “increase” and to changing “existing hydroelectric licensing obligations”. Staff recognizes, as does the rule, that if repair or replacement of the plant is required by “terms of an existing federal hydropower license” or “existing hydroelectric licensing obligations” or other equivalent phrase, the work is considered part of the expected good utility practice of maintaining a plant for its licensed life or is a pre-existing requirement that must be met to operate the plant for its licensed life.</p>
Public Counsel	Public Counsel supports restoring the requirement for an independent evaluator when an IRP shows a need above an 80	Staff disagrees that an IE is necessary in the case of every all-source RFP. However, Staff will

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	<p>megawatt (MW) threshold, i.e., when a utility is required to issue an all-source RFP. Though an all-source RFP may contain utility self-bids or considerations of repowering, thus triggering the IE requirement, Public Counsel believes the use of an IE should be required every time an all-source RFP is issued.</p>	<p>consider recommending the use of an IE on a case-by-case basis considering the circumstances at the time of the resource need.</p>
	<p>In the alternative, PC recommends adding language to the rule that explicitly provides that interested persons may ask the Commission to require an IE by order when a utility files its RFP. This is explicit statement is necessary for stakeholders who are not familiar with the Commission’s process.</p>	<p>Staff agrees that interested persons may ask the Commission to require an IE where the rule does not require it due to changed circumstances not considered or accounted for in rule. Staff supports stating in the adoption order that interested parties have the option to request that the Commission require a utility to use an IE.</p>
	<p>PC requests the Commission workshops outside of the rulemaking to consider how to develop contracting goals with a diversity of suppliers with the goal of issuing a policy statement or other guidance on how to best include bids from minority-, women-, disabled-, and veteran-owned businesses.</p>	<p>Staff supports scheduling conversations on supplier diversity via workshop or other forums outside of this rulemaking as CETA is implemented and as utilities and the Commission have collected additional data supporting such conversations, including but not limited to data collected under proposed WAC 480-107-075(3) and WAC 480-107-145(2).</p>
<p>NIPPC</p>	<p>NIPPC recommends that voluntary RFPs undergo the same robust process as required and targeted RFPs. A comment period for voluntary RFPs should be provided similar to the comment period for required and targeted RFPs. For circumstances in which the utility must retain an IE for its voluntary RFP, there is no substantive review by the Commission or stakeholders and no approval process of the</p>	<p>Staff disagrees that the voluntary RFPs must be reviewed in detail. Staff believes that in the review and approval by the Commission of required RFPs, the Commission will set standards for an RFP that a utility should consider in any voluntary RFP.</p>

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	<p>voluntary RFP. In the case of a voluntary RFP that does not trigger the need for an IE, the only requirement in rule is that the voluntary RFP be filed with the Commission. There is no requirement to notify stakeholders. NIPPC believes that the abbreviated process will likely lead to uncompetitive procurements.</p> <p>NIPPC expresses concern that utilities will sidestep using the RFP required after the IRP and instead use the voluntary RFP to acquire a large portion of its resources.</p>	<p>Staff does not believe utilities will or can sidestep acquisitions in the required RFP. The required RFP will provide ample information from bidders to show the cost of resources the utility passed over and is available to use in a prudence review of resources acquired by the utility in its voluntary RFP.</p>
<p>Northwest Energy Coalition (Coalition)</p>	<p>The Coalition supports the rules' requirement to have the IE rank bids and explain in the final report to the Commission, after reconciling rankings with the utility, why the IE and the utility were or were not able to reconcile any differences. As an objective and independent third party, an IE will provide a non-self-interested evaluation on behalf of ratepayers. The use of an IE is a major improvement to the current RFP process.</p> <p>The Coalition supports the expanded application of equity indicators beyond generators and wires to such items as energy efficiency or incentive programs that results from the newly added definition of resource.</p>	<p>No response required.</p>
	<p>The Coalition supports the use of an IE for any RFP resulting from an IRP with a resource need within four years or for any RFP seeking to fill a large resource need. Short of including that requirement in rule, the Coalition seeks guidance in the adoption order on what conditions might warrant, outside of 480-107-023(1), the Commission to require the utility to use</p>	<p>Staff disagrees that an IE is necessary in the case of every all-source RFP. However, Staff will consider recommending the use of an IE on a case-by-case basis considering the circumstances at the time of the resource need.</p>

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	<p>an IE.</p>	<p>Staff does not believe, absent a particular circumstance, it is possible or useful for the Commission to speculate on a fact pattern that would result in a future Commission determining the need for an IE.</p>
	<p>The Coalition asks for clarification of when a voluntary RFP could be used, after an IRP progress report? After a utility rejects bids from a required all-source RFP?</p>	<p>Staff believes there could be numerous possible circumstances but cannot speculate on their probability. Changing market conditions either driven by pressures of supply and demand or technology advancements may create opportunities for additional RFPs.</p> <p>Staff does not foresee a condition in which a utility will refuse fulfilling its need in a required all-source RFP for the purpose of using a voluntary RFP to fill the same resource need.</p>
<p>RNW</p>	<p>RNW supports the trigger for requiring an all-source RFP, the timelines for issuing a required RFP, the 45-day comment period on the required RFP.</p> <p>RNW also “appreciates the draft rules’ attention to stakeholder outreach in Draft WAC 480-107-015, the establishment of a 45-day comment period as noted above, the informational filing requirements of Draft WAC 480-107-020, the stakeholder consultation required before independent evaluator (“IE”) selection in Draft WAC 480-107-023(2), and the opportunity for stakeholder comment on the required IE report in Draft WAC 480-107-023(7).”</p>	<p>No response required.</p>



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	<p>While RNW supports the rules’ existing application of an IE and the role of the IE, it recommends applying the IE requirement for any RFP seeking to meet resource needs greater than 50 MW.</p>	<p>Staff disagrees that an IE is necessary in the case of every all-source RFP. However, Staff will consider recommending the use of an IE on a case-by-case basis considering the circumstances at the time of the resource need.</p>
	<p>RNW encourages the Commission to consider requiring rather than only encouraging the utility to consult with Staff and interested stakeholders during the development of an RFP and the associated evaluation rubric [WAC 480-107-015].</p>	<p>Staff believes the rules appropriately encourage utilities to engage stakeholders during the development of an RFP and the associated evaluation rubric.</p>
	<p>The clean version of Draft WAC 480-107-XXX contains a typographical error mistakenly designating it as a section of the rule as WAC 480-107-001. The redline version labels that section WAC 480-107-011. Also, the internal cross-reference to WAC 480-107-035(5) appears to be an error in both the clean and redline version of the draft rules and WAC 480-107-035(6) appears to be the correct internal cross-reference.</p>	<p>Staff agrees and has made these changes.</p>
<p>Sierra Club</p>	<p>Sierra Club strongly requests that the rules require a utility to provide more bidder price information. Understanding the need for confidentiality, Sierra Club suggest that stakeholders could enter into non-disclosure agreements (NDA) to ensure confidentiality and a utility could aggregate data to provide price averages or means.</p>	<p>Staff disagrees with requiring utilities to enter into NDAs. However, Staff believes the rules do not prevent a utility from voluntarily entering into such agreements.</p> <p>Staff does not consider the filing of bidder information necessary until the time at which a bid is awarded a contract (and only the information related to the awarded bid) or at the time the resource costs are requested in rates.</p>

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	<p>An IE should be required when a utility has under-performed in its acquisition of non-generation resources, especially for demand response. Due to chronic under-funding of demand response, Sierra Club proposed six criteria for evaluating demand response.</p> <p>To achieve fair evaluation of non-generation resources, Sierra Club proposes eight criteria setting out roles and responsibilities for the utility, the IE, the Staff, and the Commission in the RFP development, review and bid evaluation process.</p>	<p>Staff supports the rules' requirements for a summary of bid information and the protection of confidential bid information.</p> <p>Staff considers the Sierra Club's suggested criteria for evaluating demand response to be part of the IRP modeling and analysis and, as such, would also be applied in the resource evaluation process of the RFP. With the evaluation criteria included in the IRP methodology, it is not necessary to restate them in the PoE rules.</p> <p>Staff appreciates Sierra Club's suggested list of IE functions and believes these items are either part of the rule or that the rule provides for their enforcement.</p>
<p>Michael Laurie, Sustainability Consultant</p>	<p>Supports the comments of the Sierra Club.</p>	<p>No response required.</p>