

**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

INITIAL COMMENTS OF PUBLIC COUNSEL

MARCH 12, 2020

I. INTRODUCTION

1. Pursuant to the Washington Utilities and Transportation Commission's ("Commission") February 6, 2020, Notice of Opportunity to File Written Comments ("Notice"), Public Counsel submits the following comments in response to the questions posed in the Commission's Notice.

II. COMMENTS AND ANSWERS

A. Previous Comments in Rule making U-161024

2. Public Counsel most recently filed comments in Docket U-161024 on January 30, 2019, regarding changes to the rules governing the request for proposal (RFP) process. Docket U-161024 was closed on August 27, 2019, after adopting a number of changes to the integrated resource planning (IRP) process, to initiate several rulemakings to implement the Clean Energy Transformation Act (CETA). As a result, this docket was opened to address several issues previously included in Docket U-161024 and yet to be resolved. To the extent that RFP-related issues remain unresolved and are addressed in this call for comments, Public Counsel refers to the attached comments from Docket U-161024 related to the RFP process.¹
3. Docket U-161024 included discussion and comments related to distribution system planning and distribution system-related RFPs. Public Counsel's attached comments respond to questions regarding distribution system issues, but it is unclear whether this docket is intended to address those issues. Public Counsel notes that the current draft rule WAC 480-107-015(4)(d) includes an RFP exemption for distribution system projects estimated to cost less than \$10 million. Because the issue of RFPs for distribution system-level resources was not conclusively addressed in the previous rulemaking, Public Counsel recommends removing this exemption

¹ Public Counsel includes Comments dated Sept. 21, 2018; Oct. 26, 2018; and Jan. 30, 2019.

unless the issue is explicitly raised in this rulemaking.

B. Procedural Questions

1. **RCW 19.405.040(8) states: In complying with this section, an electric utility must, consistent with the requirements of RCW 19.280.030 and 19.405.140, ensure that all customers are benefiting from the transition to clean energy: Through the equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health and environmental benefits and reduction of costs and risks; and energy security and resiliency. Do the requirements of RCW 19.405.040(8) affect how utilities acquire resources?**

4. Yes, the extent to which the equitable distribution of benefits influences resource acquisition decisions should be explored through continued discussion among stakeholders. As Public Counsel indicated in our comments filed on February 28, 2020, in Docket UE-191023, it is critical to establish a clear definition of "equity."² Without a definition reached through stakeholder engagement, there is likely to be confusion and disagreement among varying interests as to what the law intends and how best to achieve those goals. This will also help provide direction in ongoing rulemakings and the utilities' subsequent compliance efforts.

- a. **Will utilities ever need to solicit requests for proposals (RFPs) solely to comply with RCW 19.405.040(8) (e.g., acquire equity-specific resources)? Or should compliance with RCW 19.405.040(8) be evaluated only with respect to generation, conservation, and other resources acquired by utilities as a result of other regulatory and system needs.**

5. In short, the answer is perhaps. Equity can be a component of proposals submitted to meet resource or conservation needs; however, lowest reasonable cost and factors currently considered in RFPs are critical to ensuring safe, reliable, and affordable electric service in compliance with the greenhouse gas emission requirements in CETA. That said, it may be

appropriate for utilities to solicit equity-specific proposals as the proposals received may be projects outside the realm of traditional conservation or generation resource acquisitions. With this possibility in mind, Public Counsel looks forward to continued discussions with stakeholders regarding criteria for equity-specific RFPs and imagine the types of projects that could be proposed.

b. What, if any, revisions should be made to the solicitation content requirements in WAC 480-107-025(1) to incorporate the provisions of RCW 19.405.040(8)?

6. Public Counsel recommends adding the following to WAC 480-107-025(1), as proposed in the draft rules:

The RFP must identify the resource need, including any specific attributes or characteristics the utility is soliciting, such as the amount and duration of power, the avoided cost identified in the integrated resource plan, the type of technology necessary to meet a compliance requirement, and any additional information necessary for potential bidders to make a complete bid. The RFP should also include any equity impacts resulting from the bid.

To provide clarity in the rule, Public Counsel reiterates the recommendation to define equity and the equitable distribution of benefits in rule. These definitions will provide guidance to bidders and utilities as they engage in the RFP process.

c. What, if any, revisions should be made to the project ranking procedures in WAC 480-107-035 to incorporate the provisions of RCW 19.405.040(8)?

7. Public Counsel proposes the following edit to draft rule WAC 480-107-035(2) (based on the clean version of proposed rules):

At a minimum, the ranking criteria must recognize resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, credit and financial risks to the utility, the risks imposed on ratepayers, public policies regarding resource preference adopted by Washington

² Initial Comments of Public Counsel ¶ 57, *Relating to Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act* (filed Feb. 28, 2020) (Docket UE-191023).

state or the federal government, environmental effects including those associated with resources that emit carbon dioxide, resiliency attributes, equity attributes, and reliability costs and benefits. The ranking criteria must recognize differences in relative amounts of risk inherent among different technologies, fuel sources, financing arrangements, contract provisions, and be consistent with the avoided cost methodology developed in the utility's most recently acknowledged integrated resource plan.

Like the numerous other ranking criteria, equity attributes are one consideration to be made in the RFP selection process for generation and conservation resource acquisitions.

- d. **What, if any, additional summaries of solicitation responses would assist with understanding bid proposals pursuant to the requirements of RCW 19.405.040(8) (e.g., geographic location of proposed projects, bidder information such as women and minority owned business certifications, etc.)?**

8. Geographic siting of proposed projects and bidder information, as indicated in the question, are both valuable pieces of information to consider when weighing the equity impacts of acquisitions. Public Counsel suggests considering the following additional equity characteristics:

- Job creation or impact (net loss/gain of jobs, short- versus long-term jobs, etc.)
- Customer access to projects (i.e. low-income community solar, low-income weatherization, etc.)
- Scale of projects and integration into communities (large versus small scale generation, etc.)

Public Counsel looks forward to continued engagement with other stakeholders on this issue.

2. **Utilities may issue an RFP at any time for a wide variety of purchases. Under existing PoE rules, issuing an RFP is only required if the utility's IRP finds a capacity need within a three year horizon. In the draft rules accompanying this notice, a number of refinements to this requirement have been developed. In light of the resource requirements of CETA, such as those for renewable and non-emitting resources, equity, and resource adequacy, and the creation of clean energy implementation plans (CEIPs), what is the relationship between the trigger for requiring utilities to follow the RFP rules in the PoE, and the rules under consideration in the IRP rulemaking and the CEIP?**

- a. **To what extent should the requirement to issue an RFP under WAC 480-107-015 be tied to the IRP versus the CEIP? Should the PoE rule contain the triggers for invoking sections of the PoE? If so, which rule, CEIP or IRP, should describe the measurement of the metrics on which the threshold trigger is based?**

9. As noted in our previous comments in Dockets UE-190698 and UE-191023, Public Counsel understands that the IRP informs the 10-year clean energy action plan (CEAP),³ which produces the targets and four-year implementation plan proposed in the clean energy implementation plan (CEIP). Given that sequencing and the purposes of the IRP and CEIP, we believe that the RFP process for purchase of electricity should be triggered by the resource needs identified in the IRP. Furthermore, we believe the IRP should describe the measurement of metrics on which the threshold trigger for the RFP is based.

10. In the previous related rulemaking, Docket U-161024, Public Counsel stated our support for timing a conservation specific RFP in conjunction with the biennial conservation plan.⁴ We supported that sequencing because the conservation plan framework was where “the utility must meet its conservation compliance obligation under the Energy Independence Act.”⁵ Similarly, if it is necessary for a utility to issue a separate RFP focused on equity and the equitable distribution of energy and non-energy benefits, it may make sense to issue that RFP in conjunction with the CEIP process. Public Counsel looks forward to continued discussion on this topic.

³ See Initial Comments of Public Counsel, *In the Matter of Amending, Adopting, and Repealing WAC 480-100-238, Relating to Integrated Resource Planning* (filed Dec. 20, 2019) (Docket UE-190698); and Initial Comments of Public Counsel (filed Feb. 28, 2020) (Docket UE-191023).

⁴ See Initial Comments of Public Counsel at 8, *Rulemaking for Integrated Resource Planning, WAC 480-100-238, WAC 480-90-238, and WAC 480-107* (filed Nov. 2, 2016) (Docket U-161024).

⁵ *Id.*

3. **The draft rules rely on the results of the of the Northwest Power and Conservation Council’s (Council) resource adequacy study in determining whether an exemption from issuing an RFP may be granted (WAC 480-107-015(4)(b)). In addition to the work of the Council, members of the Northwest Power Pool are working to develop a resource adequacy program.**
 - a. **Should the rules allow the use of a resource adequacy analysis conducted by other entities in addition to the Council?**

11. Public Counsel believes it is appropriate for the rules to allow for the use of resource adequacy analysis conducted by entities in addition to the Northwest Power and Conservation Council (NWPPCC). As noted in the question, the Northwest Power Pool (NWPP) is currently working with its members to develop a resource adequacy program, with a detailed design planned for release later in 2020 and implementation in 2021.⁶ A recent report from NWPP in support of a regional resource adequacy program noted that “there is no formal approach to regional capacity planning in the Northwest.”⁷ Aside from NWPPCC, the Bonneville Power Administration (BPA) and the Pacific Northwest Utility Conference Committee (PNUCC) also carry out regional reliability assessments periodically.⁸ If a formal regional adequacy program is developed with support from the investor owned utilities and others, WAC 480-107-015(4)(b) should allow for that program’s assessments to be considered in determining when a utility may pursue the RFP requirement exemption. Public Counsel believes that the administrative rules should not necessarily rely on resource adequacy assessments from only one entity when other entities are developing programs that may be more comprehensive or up-to-date.

⁶ See Northwest PowerPool, Status of Resource Adequacy Program for NWPP Members and Stakeholder Engagement Opportunities at 1, https://www.nwpp.org/private-media/documents/2020.01.03_NWPP_RA_Stakeholder_Engagement_Public_Document.pdf.

⁷ Northwest PowerPool, *Exploring a Resource Adequacy Program for the Pacific Northwest* at 16 (Oct. 2019) https://www.nwpp.org/private-media/documents/2019.11.12_NWPP_RA_Assessment_Review_Final_10-23.2019.pdf.

⁸ *Id.*

b. To what extent should transmission modeling be required in the resource adequacy analysis?

12. Public Counsel supports the inclusion of transmission modeling in resource adequacy analysis. NWPP’s report, “Exploring a Resource Adequacy Program for the Pacific Northwest,” highlights impending transmission constraints. The report cites a recent finding that “over a 5-year planning horizon the available transmission capacity in the region is sufficient to deliver quantities of renewable energy expected over that timeframe.” But, “[o]ver the longer term, NWPP found that transmission system upgrades will be needed to address regional load and resource imbalances.” If utilities plan to rely on more wind resources from Montana, for example, transmission modeling may be important to plan how to move those resources to load centers in Washington. Thus, transmission modeling should be included in the resource adequacy analysis. Public Counsel looks forward to further discussions with other stakeholders on this issue.

4. The draft rule at WAC 480-107-AAA requires the use of an Independent Evaluator under certain circumstances.

a. Should the utility be required to have an independent evaluator examine the utility’s performance as a developer in the case of a utility proposing to self-build or a utility’s subsidiary or affiliate bidding in a build-to-lease or build-to-own project?

13. Yes, a utility should be required to have an independent evaluator examine the utility’s performance as a developer in the case of a utility proposing to self-build or a utility’s subsidiary or affiliate bidding in a build-to-lease or build-to-own project. All entities bidding in an RFP must be subject to the same scrutiny, regardless of whether the bidder is the utility, its affiliate, or a third party developer to ensure fairness and transparency of the resource selection process.

b. Should there be a MW or MWh threshold to determine whether an independent evaluator should be used? Should it be different than the threshold triggering a utility to comply with the requirements regarding an RFP?

14. Aside for a minor discrepancy regarding the wording around the 50 MW threshold itself,⁹ the draft rules appear to align the threshold for an RFP with the threshold for an independent evaluator. Public Counsel believes that all RFPs should be evaluated using an independent evaluator. To the extent the Commission agrees, the draft rules could be simplified to clearly state that an independent evaluator should examine all RFPs, rather than setting a MW threshold.

15. It is unclear at this time if the Commission intends to split the RFP process to account for resource need separate from resources or projects intended to ensure equity. If there are separate RFPs for projects intended to meet resource need and projects primarily intended to maintain equity, it may be necessary to apply the megawatt thresholds – or thresholds based on other criteria – for the different RFPs. Public Counsel believes that further discussions regarding this issue are necessary.

c. The draft rule at WAC 480-107-035 provides a list of items that must be included in the ranking criteria. Those items may expand under CETA, especially for RCW 19.405.040(8). What items should be in the criterion list and included in the independent evaluator’s scope of work?

16. The inclusion of new criteria and the expansion of an independent evaluator’s scope of work depends upon how we define equity. Therefore, before this question can be answered, it is

⁹ Public Counsel notes one minor issue in the wording of the proposed subsection 480-07-AAA(1)(a). The language requires the use of an independent evaluator in instances where the resource need *is greater than 50* megawatts. The proposed language in section 480-107-015(4)(a) exempts utilities from engaging in a solicitation process when the resource need *is less than 50* megawatts. This discrepancy in language makes it unclear what process is required for resource need that is exactly 50 megawatts. In other words, does a 50 megawatt resource need trigger a solicitation process and would that solicitation also require an independent evaluator?


critical to establish a clear definition of equity and determine what goals should be achieved through an RFP. Additionally, the structure of the RFP process will impact the list of new criteria that should be added to the scoring rubric. As noted above, it is unclear whether the Commission intends to require separate RFPs for resource needs as well as for primary equity-driven programs. Public Counsel recommends revisiting this question once these fundamental questions are answered.

III. CONCLUSION

17. 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, Corey Dahl at corey.dahl@atg.wa.gov, or Stephanie Chase at stephanie.chase@atg.wa.gov.

Dated this 12th day of March, 2020.

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Docket U-161024

Request for Proposal Comments
of Public Counsel
dated September 21, 2018

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

Rulemaking for Integrated Resource Planning,
WAC 480-100-238, WAC 480-90-238, and
WAC 480-017.

DOCKET U-161024

REQUEST FOR PROPOSAL (RFP) COMMENTS OF PUBLIC COUNSEL

September 21, 2018

I. INTRODUCTION

1. Pursuant to the Commission's Notice of Opportunity to File Written Comments filed on August 24, 2018 (Notice), Public Counsel respectfully submits these comments on the Draft Rules for Request for Proposals (RFPs). Public Counsel supports the Commission's decision to update the RFP rules and provides feedback on the proposed changes below. We look forward to discussions with stakeholders at the workshop on October 2, 2018.

II. GENERAL COMMENTS ON DRAFT RULES

2. Public Counsel largely agrees with the Draft Rules. However, Public Counsel proposes several edits to the draft language and offers additional comments in subsequent sections in response to the questions presented in the Notice.

WAC 480-107-015(1)

3. The Draft Rules state the following:

(1) The utility must solicit bids for its resource needs identified during the IRP process. It must accept bids for a variety of energy resources which may have the potential to fill the identified needs including: electrical saving associated with conservation and efficiency resources; demand response; energy storage; electricity from qualifying facilities; electricity from independent power

producers; and, at the utilities election, electricity from utility subsidiaries, and other electric utilities, whether or not such electricity includes ownership of property.

4. Public Counsel agrees with the energy resources identified in the draft rule. However, the draft language limits the types of bids that a utility may accept to only those specifically listed. Public Counsel recommends the rule be broadened to accommodate new types of technology or applicable energy resources that may fulfill a utility's need in an RFP. Thus, we recommend the following language:

(1) The utility must solicit bids for its resource needs identified during the IRP process. It must accept bids for a variety of energy resources which may have the potential to fill the identified needs including, but not limited to: electrical saving associated with conservation and efficiency resources; demand response; energy storage; electricity from qualifying facilities; electricity from independent power producers; and, at the utilities election, electricity from utility subsidiaries, and other electric utilities, whether or not such electricity includes ownership of property.

WAC 480-107-015(4)(d)

5. The Draft Rules provide an exemption in the following circumstance: "The utility's identified resource need is for a distribution system or local transmission resources project estimated to cost less than \$10 million".
6. Public Counsel recommends the following two changes to this exemption. First, we believe that major distribution capital investments may be used for meeting capacity and system needs and should be included in the RFP process. As stated in our May 17, 2018 comments, Public Counsel believes that further discussion and parameters should be established for both traditional distribution investments and those that are considered major distribution capital

investments, which may be utilized as a non-wires alternative in distribution system planning.¹

While our distribution planning comments focused on a larger framework for all distribution system investments, we believe that distribution non-wires alternatives (i.e. major distribution capital investments) and distributed energy resources (DERs) should not be exempt from the RFPs rules, if they are proposed to meet a resource need identified in an IRP (regardless of cost).

7. Second, Public Counsel is open to including local transmission resources to the definition of resource need. Without additional discussion, however, it is too early to include an exemption for local transmission resources, regardless of the magnitude of the cost threshold included in the draft language. Public Counsel looks forward to further discussion about this issue at the October 2 workshop.

8. Finally, once further clarifications are made to the definitions of traditional distribution investment and major distribution capital investment, we consider the estimated investment cost threshold as unnecessary. The appropriateness of an exemption for local transmission resources below a set cost threshold should be discussed further at the upcoming workshops.

9. Public Counsel recommends the following modifications to this section:

The utility's identified resources need is for a traditional distribution system ~~or local transmission resources investment project estimated to cost less than \$10 million.~~

¹ Public Counsel Comments on Distribution Planning at 6-7, 13, *Rulemaking for Integrated Resource Planning*, WAC 480-100-238, WAC 480-90-238, and WAC 480-017, Docket U-161024.

WAC 480-107-015(6)

10. WAC 480-107-015(6) states that, “Utilities are encouraged to consult with commission staff during the development of the RFP. Utilities may submit draft RFPs for staff review prior to formally submitting a proposed RFP to the commission.” Public Counsel recommends other stakeholders also be included in this consultation and suggests the following modification to the draft rule:

(6) Utilities are encouraged to consult with commission staff and other interested stakeholders during the development of the RFP. Utilities may submit draft RFPs for staff and stakeholder review prior to formally submitting a proposed RFP to the commission.

WAC 480-107-025(4)

11. The Draft Rules state,

(4) The RFP must clearly explain the specific ranking procedures and assumptions that the utility will use in accordance with WAC 480-107-035 Project ranking procedure. The RFP must include a sample evaluation rubric that quantifies the weight each criterion will be given during the project ranking procedure. The RFP must also specify any minimum criteria and qualifications that bidders must satisfy to be eligible for consideration in the ranking procedure.

12. Public Counsel supports the inclusion of a clear explanation of the ranking procedures, as well as the inclusion of a sample evaluation rubric that shows how each criterion is weighed in the evaluation process. These requirements will increase the transparency of the RFP process and provide bidders and stakeholders an explanation of why a particular project was chosen by the utility. Public Counsel is open to the use of numerical weights for each criterion, but is also open to a narrative explanation of the specific aspects of a criterion that would result in one bid being given higher priority over another.

13. Public Counsel, therefore, recommends the following modification to the draft rule:

(4) The RFP must clearly explain the specific ranking procedures and assumptions that the utility will use in accordance with WAC 480-107-035 Project ranking procedure. The RFP must include a sample evaluation rubric that either quantifies the weight each criterion will be given during the project ranking procedure or provides a detailed explanation of the aspects of each criterion that would result in the bid receiving higher priority. The RFP must also specify any minimum criteria and qualifications that bidders must satisfy to be eligible for consideration in the ranking procedure.

14. Public Counsel discusses this further in response to Question 11, below.

WAC 480-107-035(3)

15. The Draft Rule states:

(3) The utility must evaluate project bids that meet only a portion of the resource need in conjunction with other proposals in developing the lowest reasonable cost portfolio. The utility must consider the value of any additional net benefits that are not directly related to the specific need requested.

16. Capturing the value of all benefits and costs related to resource acquisitions is valuable to understand the full range of impacts associated with new electric generation projects, such as environmental costs. However, the term “net benefits,” as proposed in the draft rules, has a very specific meaning in the context of utility regulation and, thus, using the term in this context could create confusion. Specifically, RCW 80.12.020 uses the term in regards to the sale, merger, or transfer of ownership of a public service company and is at the center of two utility transactions currently before the Commission. Although weighing the benefits offered by a utility sale or merger against inherent transactional risks could be seen as similar to weighing the costs and benefits of resource acquisitions, the two types of transactions are not equivalent, and Public Counsel opposes using the “net benefits” language in the context of RFPs. Public Counsel therefore recommends the following language for WAC 480-107-035(3):

(3) The utility must evaluate project bids that meet only a portion of the resource need in conjunction with other proposals in developing the lowest reasonable cost

portfolio. The utility must consider the value of all costs and benefits ~~any additional net benefits~~ that are not directly related to the specific need requested.

17. Adopting the language, as suggested above, removes ambiguity from the Draft Rules. Utilities will understand that they must evaluate bids on a wide range of criteria and weigh the costs and benefits, rather than apply a standard with a specific meaning and application.

WAC 480-107-035(7)

18. The Draft Rules state,

(7) The utility may reject all project proposals if it finds that no proposal adequately serves ratepayers' interests. The commission will review, as appropriate, such a finding together with evidence filed in support of any acquisition in the utility's relevant general rate case or other cost recovery proceeding.

19. The Draft Rules clearly state that a utility may reject all project proposals but, confusingly, includes a statement regarding the actions of the Commission to review this decision in the midst of other, utility specific rules (e.g., proposed subsections 7, 8, and 9). Public Counsel recommends moving the rules regarding the Commission's review of utility decisions to its own subsection. Public Counsel also recommends that the rules specifically state that all utility acquisitions stemming from the RFP process will be reviewed by the Commission.

20. Public Counsel recommends the following edits and additions:

(7) The utility may reject all project proposals if it finds that no proposal adequately serves ratepayers' interests. ~~The commission will review, as appropriate, such a finding together with evidence filed in support of any acquisition in the utility's relevant general rate case or other cost recovery proceeding.~~

(10) The commission will review any acquisitions resulting from the RFP process in the utility's relevant general rate case or other cost recovery proceeding.

(11) The commission will review, as appropriate, a utility's finding that no proposal adequately serves ratepayer' interests together with evidence filed in support of any acquisition in the utility's relevant general rate case or other cost recovery proceeding.

WAC 480-107-065(3)

21. The Draft Rules state,

(3) A utility must acquire conservation and efficiency resources through a competitive procurement process. A utility must use one of the following options:

(a) Option 1. A utility achieves at least thirty-three percent of the utility's conservation and efficiency resource program savings each biennium through competitively procured programs;

(b) Option 2. A utility solicits competitive proposals for each conservation and efficiency resource program in the portfolio at least every six years; or

(c) Option 3. A utility develops a competitive procurement framework in consultation with their conservation advisory group, as described in WAC 480-109-110 Conservation advisory group. If a utility develops a competitive procurement framework:

(i) The framework must define the minimum proportion of the utility's budgeted conservation and efficiency resource programs that must be submitted for competitive bidding over a specified time frame;

(ii) The utility must document that the framework was supported by the advisory group;

(iii) The framework must be filed as an appendix to each biennial conservation plan, as described in WAC 480-109-120 Conservation planning and reporting; and

(iv) The first competitive procurement framework for conservation and efficiency may be filed with the 2020-2021 biennial conservation plan.

22. Public Counsel appreciates the Commission including several options for the competitive procurement of conservation and efficiency resources. However, Public Counsel recommends that options one and two be removed from the draft language, and option three be the required method for the development of a competitive procurement process for conservation and efficiency resources. Public Counsel believes that option three allows the utility and stakeholders a more flexible approach to achieving conservation and energy efficiency goals. Furthermore, a competitive procurement process created in consultation with the utility's conservation advisory group will allow stakeholders to collaborate with the utility in developing a framework that reflects the needs and characteristics of the individual utility and its customers.

WAC 480-107-AAA

23. The Draft Rules state,

(1) If required to solicit bids under WAC 480-107-015(3), a utility must engage the services of an independent evaluator to oversee the solicitation process if:

- (a) The resource need is greater than 50 megawatts; or
- (b) The utility, its subsidiary, or an affiliate is allowed to submit a bid.

24. Public Counsel fully supports the inclusion of an independent evaluator as part the RFP rules. Furthermore, we agree with the two conditions that require the use of an independent evaluator. However, we recommend a third condition be added for instances when a utility states it plans or prefers to own or operate the facility after it is built. Public Counsel believes this addition will facilitate a fair and transparent solicitation process.

III. NOTICE QUESTIONS

1. **Natural Gas: The proposed draft rules apply to electric utilities only. Should the Commission propose similar competitive procurement rule language for natural gas utilities? How would the competitive procurement rules for natural gas utilities need to be different than those for electric utilities? Should there be similar language for natural gas conservation and delivery services procurement?**

25. In short, yes. The Commission should propose natural gas competitive procurement rules that are similar to those proposed for electric utilities. Of course, the market purchase dynamics are different in the natural gas industry. The proposed competitive procurement of natural gas would have to consider the following differences:

- *Resource options are more limited:* As opposed to electric service delivery, there are a limited number of options to procure gas and deliver it to customers. Rather than a large number of fossil fuel or renewable resource options, the natural gas industry is limited to a smaller number of options, including long-term contracts, spot market purchases, storage extraction, and emerging renewable natural gas options.
- *Hedging:* Natural gas utilities are able to purchase natural gas futures with the expectation that it will be the lowest-cost option at the time the commodity is delivered. The same dynamic does not apply to electric utilities.
- *Contract structure:* In the natural gas industry, long-term contracts are often structured as take-or-pay. At the time the contract is signed, this may or may not be a prudent option, even if the utility ultimately does not deliver the gas they agree to purchase.

26. Much like competitive procurement for electric utilities, competitive procurement guidelines for natural gas utilities provides a better opportunity to deliver the lowest-cost options

to customers while also providing documentation for a later prudence review. This will assist all parties when reviewing prudence in a cost recovery proceeding.

27. Furthermore, the electric conservation RFP Draft Rules—as supported and amended by Public Counsel—should also apply to gas conservation. Although the measures to achieve gas conservation are not the same as electric, gas utilities must still go through the same planning, implementation, and verification processes. A competitive RFP process for natural gas conservation would help ensure that all available cost-effective options are pursued, and ratepayer dollars are being spent most effectively for both electric and gas conservation efforts.

2. Language Request: To the extent possible, commenters should provide example language for consideration throughout the document. Stakeholder input on the precise language used, in the form of a redline response, would be particularly helpful in the following instances.

- a. **Is the language in the draft rule at WAC 480-107-015 sufficient to require an allsource RFP for most resource needs, while allowing sufficient flexibility in the process to allow limited scope RFPs when they are most useful?**
- b. **In WAC 480-107-035(3) the draft contains the term net benefits. Language around this concept has been evolving recently. Would using a different phrase, such as costs and benefits, or impacts, be clearer?**

28. Public Counsel provided comments and proposed draft language for WAC 480-107-035(3) in the general comments section, above.

3. RFP timing: In order to accommodate long lead-time resources, such as non-wires alternatives for distribution needs or distributed generation for capacity needs, the commission has considered expanding the window of time in which a resource need triggers an RFP from three years to ten years. Under the previous guideline, by the time a utility solicits bids for a need, many resources with lead times longer than three years are no longer eligible to compete.

While there is good reason to use the longest lead-time resource as a guide for this rule, the extended time frame to solicit bids to meet needs also creates significant challenges. Integrated resource plans are less accurate at ten years than at three. Utilities may be issuing RFPs for a need that never materializes. A resource should not be built until it will be used and useful and thus, if a long lead time resource is not chosen, this may require a utility to issue a second RFP to identify the lowest cost resource when it comes time to build. This would result in additional cost and effort and could lead to vendor fatigue.

Is there a way to ensure long-lead time technologies have an equal opportunity to meet resource needs anticipated ten years out without requiring RFPs at such an early stage?

29. Public Counsel would like to ensure that all technologies have an equal opportunity to compete in an RFP. However, we do not have a recommendation for an appropriate timeframe, in which a resource need triggers an RFP. We look forward to discussions on this topic at the October 2 workshop.

- 4. Thresholds for exemption: In the proposed draft language for WAC 480-107-015(3) there are thresholds and circumstances that would exempt utilities from issuing an RFP without requesting an exemption.**
 - a. Are the thresholds proposed appropriate?**
 - b. Are there other circumstances appropriate to qualify for exemption from the rule?**
 - c. Are there other types of thresholds that should be incorporated for these resource needs?**
 - d. What other types of resources would benefit from a threshold?**

30. Under the proposed language, utilities would be exempt from the RFP requirements of 480-107-015 if (a) the utility's identified resource need of capacity is less than 50 megawatts; (b) the utility plans to satisfy the remainder of its resource need with short-term market purchases when there is sufficient regional adequacy to support the market purchases; (c) the utility's

resource needs are for conservation and efficiency; or (d) the resource need is for a distribution system or local transmission resources project estimated to cost less than \$10 million. Public Counsel believes the proposed thresholds in subsections a, b, and c, are appropriate and should be adopted. However, Public Counsel does not support an exemption for distribution and local transmission system projects smaller than \$10 million. Public Counsel discussed this issue in greater depth in the general comments section above and below in Question 5.

- 5. Delivery System RFP: On May 17, 2018, the Commission received comments on draft rules related to distribution system planning (WAC 480-100-238). These comments are in the process of being evaluated. The proposed draft rules for RFPs are intended to ensure investments are being made at the lowest reasonable cost and that new technologies are allowed to compete on equal footing with standard practice. As these two parts of the proposed IRP rule evolve, the areas of overlap and interdependency will be continually reconciled.**
 - a. With this in mind, should the proposed definition of Resource Need include local transmission and distribution needs?**
 - b. The proposed draft language in WAC 480-107-015(3)(e) identifies an automatic exemption from the rule for distribution system or local transmission projects that are projected to cost less than \$10 million. Should the term “project” be there placed with “Major distribution capital investment” as defined in the proposed draft rules for WAC 480-100-238 to clearly connect the two rules? If not, what would be a reasonable definition of project in this case?**
 - c. In the notice accompanying the draft distribution system planning rules, the Commission asked for criteria to consider when defining a “Major distribution system capital investment.” In the proposed draft RFP rules, a similar set of criteria could be used to allow an automatic exemption from the rule to relieve the burden of issuing an RFP for smaller projects identified in a distribution system plan. Is a \$10 million threshold appropriate? Would a threshold that is not cost-based be more appropriate for delivery system resources? If so, what should be the criteria of this threshold?**
 - d. Are there other circumstances concerning the delivery system that are appropriate to qualify for exemption from the RFP rule?**

- e. **Some commenters on the draft distribution system planning rules suggested a utility-specific criteria, approved by the Commission or with input from an advisory group. Many other commenters suggested flexibility in the distribution system planning rule. The draft RFP rules propose a utility-specific framework for conservation RFPs. Would a similar framework be useful for delivery system RFPs? If so, what would the process of developing, approving, and renewing the framework entail?**

31. Public Counsel believes that the Resource Need should be expanded to include distribution needs. We are also open to including local transmission, and would like to discuss this issue further at the October 2 workshop.

32. As we discussed above, Public Counsel believes WAC 480-107-015(4)(d) should be amended as follows, “The utility’s identified resources need is for a traditional distribution system ~~or local transmission resources investment project estimated to cost less than \$10 million.~~” By defining the scope and characteristics of a traditional distribution investment and distinguishing those investments from major capital distribution investments in the distribution rules and DSP, we believe the exemption will be clear and not require a cost threshold for use in the RPF process.

33. Finally, Public Counsel presumes it would be helpful to have a separate RFP process for distribution system planning RFPs; however, we are open to discussing alternatives on how best to handle distribution RFPs.

- 6. **Reliance on the Market: In order to reduce the need for exemptions and to allow resource needs to be covered by short-term market purchases without additional process, the proposed rules rely on a third-party determination of regional resource adequacy. This is not intended to eliminate the need for a utility to perform its own resource adequacy assessment within an IRP and has no bearing on the determination of market risk. In this version, the**

Commission has chosen to reference the Northwest Power and Conservation Council's resource adequacy assessment.

- a. Are there other third-party sources that would be more appropriate to reference?**
- b. Are there other methods that are easier, more transparent, or more accurate than relying on third-party analysis?**

34. Public Counsel agrees with the Commission's inclusion and reference of the Northwest Power and Conservation Council's (Power Council) resource adequacy assessment, as well as the Commission's intent that the Power Council's adequacy assessment not replace a utility's own assessment.

35. We are currently unaware of other appropriate third-party resource assessments that can be applied instead of the Power Council's. Conversely, Public Counsel is open to discussing other third-party sources and methods for assessing resource adequacy.

7. Independent Evaluator: The draft rule WAC 480-107-AAA requires the use of an independent evaluator under certain circumstances.

- a. Does this section identify the proper circumstances or are there other circumstances under which an independent evaluator should be required?**
- b. Is there value in requiring an independent evaluator for large projects when a utility will not be bidding? If so, is a 50 megawatt resource need an appropriate threshold?**
- c. Does this subsection provide enough specificity concerning the independent evaluator's role, or is additional rule language needed?**
- d. Should the Commission require that the independent evaluator be certified or accredited? If yes, provide specific qualifications the independent evaluator should possess.**

36. Public Counsel strongly supports the requirement for an independent evaluator to oversee the solicitation process. The use of an independent evaluator to assess the risks associated with

each bid increases the transparency of the solicitation process and provides stakeholders with a greater assurance that bids will be evaluated fairly. Public Counsel does not, at this time, have additional recommendations for the evaluator's role, but looks forward to discussing the issue further at the October 2 workshop.

37. Public Counsel notes one minor issue in the wording of the proposed subsection 480-07-AAA 1(a). The language requires the use of an independent evaluator in instances where the resource need *is greater than* 50 megawatts. The proposed language in section 480-107-015(3)(a) exempts utilities from engaging in a solicitation process when the resource need *is less than* 50 megawatts. This discrepancy in language makes it unclear what process is required for resource need that is exactly 50 megawatts. In other words, does a 50 megawatt resource need trigger a solicitation process and would that solicitation also require an independent evaluator?

8. IE Report: The draft rules require an initial and then a final report from the independent evaluator. We envision the final report to be the initial report plus the evaluator's response to the reconciliation process and stakeholder comments. The purpose of this two-step process is to ensure that the evaluator's report is free from editorial influence.

However, we recognize that a two-step reporting process will increase the cost and length of the independent evaluator's review. Could the Commission require the reconciliation process to occur prior to the issuance of a single final report and still ensure that the evaluator's work is free from outside influence?

38. Public Counsel supports the two-step process proposed in the draft language as a means of ensuring that the evaluator's work is free from outside influence. It is unclear to Public Counsel how the reconciliation process could occur prior to the issuance of a single final report, while providing the intended security of a two-step process. Public Counsel is open to

discussing how this process may be streamlined and looks forward to further discussions at the October 2 workshop on this topic.

9. **Conservation RFP: A periodic conservation RFP issued to explore what is available in the competitive market is useful to confirm that conservation resources are being delivered at least cost to ratepayers, and that all cost-effective conservation is being pursued by helping to identify innovative approaches and technologies. However, since utility conservation programs operate on a different cycle than the IRP, tying conservation acquisition directly to the IRP schedule could make program planning unworkable.**
 - a. **Does the proposed rule language in WAC 480-107-015(3)(d) and WAC 480-107-065 adequately encourage competitive procurement of conservation resources without negatively affecting current program planning and implementation?**
 - b. **The proposed language describes a role for the advisory group that is not currently explicit in rule, approving a framework for issuing conservation RFPs. Does this advisory group role fit with the current function of the conservation advisory group? The proposed rule specifies the competitive procurement framework must receive the support of the advisory group. Is this a reasonable condition?**
 - c. **Do the minimum procurement percentages provide reasonable guidance in the development of a competitive procurement framework for conservation?**

39. Public Counsel believes the current language in WAC 480-107-015(3)(d) and WAC 480-107-065 encourages competitive procurement of conservation and efficiency resources. As previously mentioned, Public Counsel believes the competitive procurement process in option three provides the best option for utilities and their customers. Furthermore, we support the collaboration of the conservation advisory group and the utility in determining an appropriate competitive procurement framework for its conservation programs and believe this consultation will assist in averting any negative impacts that may result from the competitive procurement process.

40. Public Counsel believes the conservation advisory groups can fulfill the role of consulting with the utility in developing a competitive procurement framework and considers this consultation similar to those listed under WAC 480-109-110(1). Moreover, Public Counsel is confident that the advisory group will find consensus and support the proposed framework for the utility.

10. Procurement Outside of an RFP: Utilities often have opportunities to procure low-cost resources that are owned by entities that typically will not bid their resources into an investor-owned utility RFP, but will enter into contracts with the IOUs. These types of opportunities can also require the construction of complex components that do not lend themselves to a bid in an RFP. Contracts such as these require proactive behavior from the investor-owned utility outside of the RFP. How can the Commission ensure that utilities are pursuing these low cost opportunities available outside of an RFP? How can this idea be incorporated in rule?

41. Public Counsel does not have a response to this question at this time and we look forward to reviewing comments from other stakeholders, as well as the discussion at the October 2 workshop.

11. Evaluation Transparency: One goal of this rulemaking is to increase transparency of the RFP evaluation process. In PSE's recent RFP in Docket UE-180271, several commenters supported applying a weighted percentage to each criteria in order to give bidders an idea of the relative importance of those criteria and make the evaluation process more transparent. However, the utility expressed concerns that providing weighting information creates the potential for bidders to "game" the system. Proposed draft rule 480-107-025(4) requires RFPs to "include a sample evaluation rubric that quantifies the weight each criterion will be given during the project ranking procedure." What are the implications of this language?

42. Public Counsel supports the inclusion of an evaluation rubric that weighs each criterion utilized during the ranking procedure. Such a rubric will allow stakeholders to understand how the different bids compared to one another, in addition to how and why a particular bid was

selected. Including the relative weight assigned to each evaluation criterion provides a necessary level of transparency to the process. Without demonstrating how the various characteristics of a bid interact, the rankings that ultimately emerge from a process will be—or appear—arbitrary. It is important for both stakeholders and the individual bidders to understand how projects are ranked before and after the bids are evaluated.

43. Public Counsel is open to a quantified weight for the criteria, but understands that a numerical weight may not be the only approach to increasing the transparency of this process. The evaluation rubric could, instead or additionally, provide a detailed explanation of what specific aspects of a criterion would result in one bid being given higher priority over another. As such, Public Counsel recommends modifications to the language of this rule, as previously stated in the general comment section, above.

12. Two Stage Bidding: In the first round of comments, the Northwest and Intermountain Power Producers suggested that the Commission require a two-stage bidding process to address the inherent utility preference to own a generation asset. First, all utility-owned generation bids are made, and then purchase power agreement bids are informed of the target price and provided an opportunity to beat the first round of bids. Please discuss the advantages and disadvantages of this approach including whether the bidding structure proposed creates asymmetrical bidding opportunities between IPPs that offer power purchase agreements and those offering to sell their generation. How should the sequence of bid offers be designed if the IPP is offering two differently structured offers for the same project, one that is PPA and one that is a contract with transfer of ownership?

44. Public Counsel does not have a response to this question at this time and we look forward to reviewing comments from other stakeholders, as well as the discussion at the October 2 workshop.

IV. CONCLUSION

45. Public Counsel appreciates the opportunity to submit these comments on the RFP Draft Rules. We look forward to the discussions at the workshop on October 2, 2018. If there are any questions regarding these comments please contact Carla Colamonici at CarlaC@ATG.WA.GOV or at (206) 389-3040, Corey Dahl at CoreyD@ATG.WA.GOV or at (206) 464-9380, or Nina Suetake at NinaS@ATG.WA.GOV or at (206) 389-2055.

Docket U-161024

Reply Comments on Request for
Proposals of Public Counsel
dated October 16, 2018

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

Rulemaking for Integrated Resource Planning,
WAC 480-100-238, WAC 480-90-238, and
WAC 480-017

DOCKET U-161024

**REPLY COMMENTS ON REQUESTS FOR PROPOSALS (RFPS) ON BEHALF OF
PUBLIC COUNSEL**

October 16, 2018

I. INTRODUCTION

1. Pursuant to the Commission's request for Reply Comments issued at the October 2, 2018 Workshop and the October 11, 2018 Notice of Opportunity to File Written Reply Comments on the Request for Proposals (RFPs) Draft Rules, the Public Counsel Unit of the Washington State Attorney General's Office (Public Counsel) respectfully submits these comments. While the Workshop encompassed robust discussion, we would like to clarify one issue regarding the exemptions from the solicitation process in the proposed Draft Rules WAC 480-107-015(4), in addition to responding to the Notice questions.

II. CLARIFICATION ON EXEMPTIONS

2. Currently WAC 480-107-002(3) Application of Rules states,
- No exception from the provisions of any rule in this chapter is permitted without prior written authorization by the commission. Such exceptions may be granted only if consistent with the public interest, the purposes underlying regulation, and applicable statutes. Any deviation from the provisions of any rule in this chapter without prior commission authorization will be subject to penalties as provided by law.

3. Under the proposed Draft Rules, the Commission has two provisions for exemptions.

First, WAC draft rules 480-107-002(2) and (3) state,

(2) Any affected person may ask the commission to review the interpretation or application of these rules by a utility or customer by making an informal complaint under WAC 480-07-910, Informal complaints, or by filing a formal complaint under WAC 480-07-370, Pleading—General.

(3) The commission may grant an exemption from the provisions of any rule in this chapter in the same manner and consistent with the standards and according to the procedures set forth in WAC 480-07-110 Exceptions from and modifications to the rules in this chapter; special rules.

Second, draft rule WAC 480-107-015(4) states:

(4) Utilities are exempt from the RFP requirement under this section under the following circumstances:

(a) The utility's identified resource need of capacity is less than 50 megawatts;

(b) The utility plans to satisfy the remainder of its identified resource need for capacity with short-term market purchases so long as sufficient regional adequacy to support these forecasted market purchases has been identified by the Northwest Power and Conservation Council in their latest published power supply adequacy assessment over the entire period of the utility's resource need or the next five years, whichever period is shorter;

(c) The utility's identified resource needs are for conservation and efficiency resources and the utility has previously issued an RFP in accordance with WAC 480-107-065;

(d) The utility's identified resource need is for a distribution system or local transmission resources project estimated to cost less than \$10 million; or

(e) The utility's identified resource need will be acquired under an existing tariff.

4. Public Counsel supports the two provisions of exemptions in the Draft Rules.

Nonetheless, given the additional provision for specific instances in which the utility can qualify for an exemption from the RFP requirement, Public Counsel recommends that the Commission add clear language under WAC 480-107-015(4) stating that these exemptions are subject to the requirements of WAC 480-07-110 and that the Commission can deny an exemption or waiver of the RFP rules. Presently, it is not clear in the Draft Rules whether or not the utility must prove

that an exemption requested under WAC 480-107-015(4) is appropriate, in the public interest, and/or in the interest of a utility's customers, as required by section 110. Public Counsel, therefore, recommends that WAC 480-107-015(4) be modified as follows:

(4) Utilities may file for an exemption from the RFP requirement following the procedures set forth in WAC 480-07-110, and the Commission will determine if it is in the public interest to grant such an exception. Utilities are exempt from the RFP requirement under this section under the following circumstances:

5. Additionally, Public Counsel believes that all interested stakeholders should have the opportunity to comment on the utility's proposed exemption. While stakeholders should have this opportunity through existing procedures under WAC 480-107-110, Public Counsel recommends that the exemption procedures mirror the proposed process for filing an RFP to ensure stakeholder involvement and sufficient opportunity to comment. Specifically, Public Counsel proposes the following additions to WAC 480-107-115(5).

(5) A utility must submit to the commission a proposed RFP or petition for exemption and accompanying documentation no later than one hundred and thirty-five days after the utility's integrated resource plan is due to be filed with the commission. Interested persons will have sixty days from the RFP's filing date of the RFP or petition for exemption to submit written comments to the commission on the RFP or petition. The commission will approve the RFP, approve the RFP with conditions, suspend the RFP, or grant the requested exemption from the RFP within thirty days after the close of the comment period.

III. NOTICE QUESTION

1. Independent Evaluator Requirement

Draft rule WAC 480-107-AAA requires the use of an independent evaluator (IE) when the resource need is greater than 50 megawatts or the utility, its subsidiary, or an affiliate plans to submit a bid. During the workshop stakeholders discussed requiring the use of an IE when bids contain a utility ownership option and how that requirement may in practice result in requiring an IE in all RFPs.

The Commission requests feedback on a new proposal to encourage the use of an IE in circumstances that differ from what is required in the draft rule. WAC 480-107-015(5) prescribes a ninety day process between when a utility files a proposed RFP

with the Commission and Commission approval of the RFP. The new proposal would allow a utility to shorten this to a 30 day comment period with Commission approval at the next regularly scheduled open meeting after the comment period closes when the utility has obtained the services of an IE for the RFP and early enough to allow the IE to participate in the formulation of the RFP.

a. Does the incentive of a shortened regulatory approval process for the RFP encourage the use of an IE?

b. Does the use of an IE adequately assure sufficient review of the RFP considering the tradeoff in the length of the stakeholder comment period?

6. Public Counsel believes the new proposal is ambiguous, given the lack of details on (1) when utilities should retain the IE, (2) the role of the IE, and (3) the overall timeline of the regulatory approval process for the RFP. Public Counsel would like to ensure that the IE has sufficient time to assist in the development and the review of the draft RFP.¹ Without these clear guidelines, Public Counsel cannot definitively support a shortened stakeholder comment period.

7. Public Counsel generally opposes shortening public comment. In this instance, Public Counsel believes the shortening of the public comment period may prevent stakeholders and other interested parties from participating. We would like to ensure that all parties have sufficient time to review and participate in the RFP process. Furthermore, Public Counsel believes that the public participation process benefits all filings before the UTC and should not be hindered.

8. Public Counsel would like to offer an alternative proposal. As we discuss below, we believe that the IE should be retained prior to or soon after the completion and/or filing of the IRP. This will allow the utility sufficient time to obtain and employ the IE in drafting, developing, and reviewing the RFP. Public Counsel supports lengthening the 135 day deadline

¹ We further explain our views on the role and responsibilities of the IE in response to question two below, and will not list them in response to this question.

between submission of the IRP and issuance of an RFP, if necessary, in order to allow the utility time to retain an IE and allow IE adequate time to assist in the formulation of the RFP, while maintaining the existing 90 day review process for the public and the Commission.

2. Role of the Independent Evaluator

During the workshop there was significant discussion on the proper role of an IE. General ideas were that an IE will oversee a bidding process to make sure there is no bias or perception of bias in the bidding process, or that an IE will monitor each step of the RFP evaluation process to determine that the utility has acted in a fair and impartial manner in conducting the evaluation.

Keeping in mind the proposed role of the IE in rule will be the minimum role and that a utility may contract for more in depth involvement at their discretion, specifically describe what you envision to be the proper role of an IE in the draft rule. In doing so please address the following specific questions.

- a. How deeply should the IE be involved in the development of the RFP? Should an IE independently score all bids, a sampling of bids, or only bids resulting in utility ownership?**
- b. How should the IE be involved in communication between the utility and bidders?**
- c. Should there be a requirement that the IE document and file all communications with the Commission?**
- d. In situations where there is a direct conflict between the IE and the utility should additional process be proscribed?**

9. Public Counsel believes the IE's responsibility should be to increase transparency and fairness of the RFP process. At a minimum, the IE's role should be as follows:

- Development and Review of the Draft RFP: The IE will assist in the development of the draft RFP. The IE will also review the RFP in order to identify whether there is any bias in the draft RFP or any other issues. If there are any identified issues with the draft RFP and the utility chooses not to follow the advice of the IE, the IE should be able to present at the Open Meeting and bring these issues to the attention of the Commission and other interested parties.

- Monitoring of Evaluation Bids: The IE will review the bids after the utility has scored them. The IE will not independently score the bids, but the IE may question and/or disagree with the weighted or detailed explanation of a bid's evaluation. The disagreements and the discrepancies should appear in the final report.
- Final Report: The IE will write a report on their findings. This report should include all discrepancies and identified bias and/or issues within the entire RFP process.

10. Public Counsel recommends that the role of the IE be clearly defined in rules in order to ensure the uniform application and role of the IE in the drafting of the RFP. Additionally, Public Counsel believes that rules should be drafted requiring the utility to retain the IE by a specific time, so they may assist in the development of the RFP. Specifically, Public Counsel recommends that the utility be required to retain an IE prior to or soon after the filing of the IRP in order to assist in the development of the draft RFP.

11. Given the role and responsibilities mentioned above, Public Counsel believes that the role of the IE is generally one of an active auditor, not an active *participant*. We do not believe that the IE should be independently scoring bids, nor do we believe that the IE will be making any decisions for the utility. However, the IE should be identifying any bias or possible discrepancies in the RFP process; thus, the utility will continue to be the decision maker in any resource acquisition decisions.

12. At this time, Public Counsel does not have a position on how involved the IE should be in communications between the utility and the bidders. We believe more details on the time and the cost of this involvement are necessary before making any recommendations. Nevertheless, we do believe that any communications with the IE should be logged and retained, but not filed

at the UTC, unless directed to do so.² The communications should be retrievable and held for a period of time, in the instance that the Commission or any other party requests the communication in an adjudicative proceeding.

13. Finally, Public Counsel believes that if there are any instances of direct conflict with the utility and the IE, these instances should be reported and filed within the RFP docket. If the direct conflict is not resolved in a reasonable and timely manner, then it will be scheduled for resolution at a regularly scheduled Open Meeting. We believe that all interested parties should have the ability to review the conflict in question, file comments, and participate at the Open Meeting.

3. Conservation RFP

In the draft rules, three options for conservation RFPs were presented at WAC 480-107-065(3). Option 3, under which the utility develops a competitive procurement framework in consultation with their conservation advisory group, appears to be the only option that commenter would utilize.

a. What additional guidance on the development of such a framework would be useful, either in rule or in an adoption order?

b. What particular rule language would allow sufficient flexibility to the utility while ensuring conservation RFPs are performed on a cadence to ensure the utility pursues all cost-effective conservation at the lowest reasonable cost?

14. In Public Counsel's comments filed on September 21, 2018, we exclusively supported the use of Option Three under WAC 480-107-065(3). While we support the conservation advisory groups' consultation on the competitive procurement framework, we do believe two rules should be considered within this context.

² Public Counsel believes that the 'communications' that should be retained and/or logged consist of, but are not limited to: emails, mailings, faxes, and telephone calls, including the identity of the caller, date, and time the call occurred.

15. First, Public Counsel believes that low-income programs should be exempted from the competitive procurement process. Considering that low-income conservation receives separate treatment under WAC 480-109-100(10), we believe that it is appropriate to continue this separate treatment and allow the community action agencies in partnership with the utilities to administer the low-income programs without the use of competitive bidding. Additionally, low-income conservation programs are discussed not only in the conservation advisory groups, but also in each utility's low-income advisory group. During these meetings, stakeholders and community action agency representatives are able to ask and answer questions about the administration of programs intended to benefit low- or moderate-income customers. Thus, the agencies that are directly working in the community are able to address any issues on program implementation and ensuring the agencies are pursuing all cost-effective conservation at the lowest reasonable cost.
16. Second, as was discussed at the Workshop on October 2, 2018, Public Counsel would accept proposed language in which the utilities should *consider*, but not be required to competitively bid 100 percent of their non-low income programs. We believe it would be overly burdensome and expensive to bid 100 percent of programs every biennium. However, we do believe the conservation advisory group should discuss and consider all non-low income programs for every biennium and consult on which programs should be competitively procured. We believe this language is flexible and ensures that the utility is actively pursuing all cost-effective conservation at the lowest reasonable cost.
17. Public Counsel looks forward to reviewing other stakeholder comments and recommendations regarding the competitive procurement framework of conservation RFPs.

4. Market Purchases Resource Adequacy Exemption

The draft rules at WAC 480-107-015(3)(b) rely on the Northwest Power and Conservation Council’s resource adequacy assessment to reduce the number of requests for exemptions from rule and allow resource needs to be covered by short-term market purchases. This is not intended to eliminate the need for a utility to perform its own resource adequacy assessment within an IRP and the exemption has no bearing on the determination of market risk. During the workshop, stakeholders suggested adding additional language to limit the degree of reliance on the market a utility may have in order to qualify for this type of automatic exemption.

- a. If this idea were to be incorporated into rule, what level of reliance on the market would be reasonable?**
- b. Should the degree of reliance be tied to a separate metric? If so, what metric should be used?**
- c. Should an RFP be required for firm resources whenever there is significant market risk?**
- d. This section also uses the undefined term “short-term market purchases.” Please provide comments on the following proposed definition: “Purchases of energy or capacity on the spot or forward market contracted for a term less than four years.”**

18. Public Counsel does have considerable concern regarding a utility’s over-reliance on market purchases for meeting its need, given the new exemption in WAC 480-107-015(4). However, we are uncertain as to what threshold and metric represents a reasonable level of reliance for a utility, while also maintaining compliance with the current lowest reasonable cost definition under WAC 480-100238(2)(b). However, as we described in our earlier comments, Public Counsel believes that the exemptions under WAC 480-107-015(4) should be reviewed similarly to a draft RFP and must be shown to be in the public interest. We look forward to further discussion on this topic.

19. Public Counsel believes that the term “short-term market purchases” should be defined within the context of these rules. Public Counsel believes this definition is necessary in order for the Commission, all interested stakeholders, and utilities to have clear parameters on what is and

is not considered an exemption for short-term market purchases under this section. We generally agree with the definition provided in (d), but are not convinced whether the timeframe identified, “for a term less than four years”, is appropriate and have some concerns that this timeframe may be too long. We look forward to reading other parties’ comments and further discussion on this topic.

5. RFP Transparency

In their September 21, 2018, comments Public Counsel provided redline edits to the draft rules that state “The RFP must include a sample evaluation rubric that either quantifies the weight each criterion will be given during the project ranking procedure or provides a detailed explanation of the aspects of each criterion that would result in the bid receiving higher priority.”

Here Staff will provide one additional edit for comment. “The RFP must include a sample evaluation rubric that either quantifies the weight each criterion will be given during the project ranking procedure or provides a detailed explanation of the aspects of each criterion specifically identified that would result in the bid receiving higher priority.”

- a. Is this language sufficient to elicit the transparency stakeholder’s desire in an RFP? Is this language reasonably flexible?**
- b. Will this requirement result in the utility being tied to and limited to criterion established prior to review of the bids that does not fit or account for the complexity of the evaluation of actual bids?**
- c. Should instead the utility be required to establish contemporaneous documentation of its criterion prior to receipt of bids and provide its contemporaneous reasoning for any changes to its criterion?**

20. Public Counsel disagrees with the suggested amendment. We continue to support our original language as follows, “The RFP must include a sample evaluation rubric that either quantifies the weight each criterion will be given during the project ranking procedure or provides a detailed explanation of the aspects of each criterion that would result in the bid receiving higher priority.”

21. As we stated in our comments filed on September 21, 2018 and at the Workshop on October 2, 2018, we recommended this language in order to provide utilities with flexibility in evaluating bids that may not be adequately evaluated with a numeral value. Hence, this detailed explanation can be used to address this issue. Moreover, we believe that the rubric is a standard, or a floor, by which all bids will be evaluated, but may not represent all known or accountable benefits or criterion.

22. Public Counsel interprets Commission Staff's language to limit utilities to only the criteria identified in the rubric. We disagree with this restriction. We understand that in almost all instances the criteria by which all bids are assessed, either with a numerical or qualitative weight, will be represented in the rubric. However, with the rapid change in and availability of new technologies, we believe there may be instances where a ratepayer benefit is not expressed in the RFP rubric. Public Counsel believes that it would be appropriate to consider this non-represented criterion in the bid's evaluation, with accurate documentation and detailed explanation as to why this criterion should be considered and how it was weighed and evaluated against the criteria identified in the existing rubric. Therefore, we believe that the Commission's amended language precludes this unforeseen benefit or criterion, and does not provide the flexibility that our original language is intended to encompass.

IV. CONCLUSION

23. Public Counsel appreciates the opportunity to submit reply comments on the proposed Draft RFP Rules. We look forward to reading other reply comments and further conversations on the Draft RFP Rules. If there are any questions regarding these comments please contact Carla Colamonici at CarlaC@ATG.WA.GOV or at (206) 389-3040.

Docket U-161024

Third Comments on Request for Proposals
of Public Counsel
dated January 31, 2019

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

Rulemaking for Integrated Resource
Planning, WAC 480-100-238, WAC 480-90-
238, and WAC 480-017

DOCKET U-161024

THIRD COMMENTS ON REQUEST FOR PROPOSALS (RFP)

ON BEHALF OF PUBLIC COUNSEL

January 31, 2019

I. INTRODUCTION

1 Pursuant to the Commission’s Notice of Opportunity to File Written Comments issued on December 31, 2018, the Public Counsel Unit of the Washington State Attorney General’s Office (Public Counsel) respectfully submits these comments on WAC 480-107 competitive resource acquisition by request for proposals (RFPs). Public Counsel agrees with the majority of amendments the Commission included in the Second Draft Rules. However, we continue to support some of our recommendations from our previous comments on RFPs filed on September 21, 2018, and October 26, 2018. Public Counsel appreciates the opportunity to comment on the Second RFP Draft Rules and looks forward to further conversations on WAC 480-107.

II. SUPPORTED AMENDMENTS

2 Public Counsel generally agrees with and supports the Commission’s Second RFP Draft Rules. We appreciate the Commission’s consideration of all stakeholder feedback. Specifically, we value the Commission’s inclusion of our following recommendations into the Draft Rules:

- **WAC 480-107-015(1):** ...It must accept bids that are identified in the solicitation process for a variety of energy resources which may have the potential to fill the

identified needs including, but not limited to: electrical savings associated with conservation and efficiency resources; demand response; energy storage; electricity from qualifying facilities; electricity from independent power producers; and, at the utility's election, electricity from the utility, utility subsidiaries, and other electric utilities, whether or not such electricity includes ownership of property.

- **WAC 480-107-015(6)**: Utilities are encouraged to consult with commission staff and other interested stakeholders during the development of the RFP. Utilities may submit draft RFPs for staff and stakeholder review prior to formally submitting a proposed RFP to the commission.
- **WAC 480-107-035(3)**: The utility must evaluate project bids that meet only a portion of the resource need in conjunction with other proposals in developing the lowest reasonable cost portfolio. The utility must consider the value of all costs and benefits that are not directly related to the specific need solicited.
- **WAC 480-107-065(3)**: Public Counsel did not recommend specific language for this section but supported the inclusion of only a single option, Option Three, for the competitive procurement of conservation in the RFP rules; thus, we support the removal of the Options One and Two.
- **WAC 480-107-AAA(1)**: When required to solicit bids under WAC 480-107-015(3), a utility must engage the services of an independent evaluator to evaluate and report on the solicitation process if:
 - (a) The resource need is greater than 80 megawatts;
 - (b) The utility, its subsidiary, or an affiliate is allowed to submit a bid; or

(c) The RFP accepts bids with ownership structures under which ownership of the project will be transferred to the utility, its subsidiary, or an affiliate upon project completion.

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Additionally, the Commission incorporated other modifications to the Second Draft Rules suggested by other stakeholders and/or discussed at the October 2, 2018, workshop. Public Counsel supports the following amendments:

- **WAC 480-107-015(4)(a):** The utility's identified resource need for capacity is less than 80 megawatts;
- **WAC 480-107-015(4)(c):** The utility has previously issued an RFP for the same precisely defined resource need in accordance with WAC 480-107-065, or has previously issued an RFP for the same precisely defined resource need within the last 12 months;
- **WAC 480-107-015(4)(d):** The utility plans to satisfy its identified resource need for capacity with short-term market purchases, so long as:
 - (i) The utility, in its IRP, considered all available information on sufficient regional adequacy and expressly modeled and considered the risk of high market prices that can result from changes in existing capacity available in the markets from which the utility expects to purchase capacity to meet its capacity needs; and
 - (ii) Sufficient regional adequacy to support these forecasted market purchases has been identified by the Northwest Power and Conservation Council in their latest published power supply adequacy assessment over the entire

period of the utility’s resource need or the next five years, whichever period is shorter.

- **Short-term market purchases definition:** While Public Counsel did not have any comments on what should be considered short-term market purchases, we are comfortable with the new definition as, “means purchases of energy or capacity on the spot or forward market contracted for a term less than four years.”
- **WAC 480-107-065(3)(a) through WAC 480-107-065(3)(d):**
 - (a) A utility may develop, and update each biennium, a competitive procurement framework for conservation and efficiency resources in consultation with its conservation advisory group, as described in WAC 480-109-110 Conservation advisory group.
 - (b) The first competitive procurement framework for conservation and efficiency resources may be filed with the 2020-2021 biennial conservation plan.
 - (c) The competitive procurement framework for conservation and efficiency resources must:
 - (i) Define the specific criteria that will be used to determine to the frequency of competitively bidding a conservation and efficiency resource program or parts of a program;
 - (ii) Address appropriate public participation and communication of evaluation and selection criteria;

- (iii) Enhance or, at minimum, not interfere with the adaptive management of programs;
- (iv) Include documentation of support by the advisory group;
- (v) Be filed as an appendix to each biennial conservation plan, as described in WAC 480-109-120 Conservation planning and reporting; and
- (d) The competitive procurement framework for conservation and efficiency resources may:
 - (i) Exempt particular programs from competitive procurement, such as low-income, market transformation, or self-directed programs; and
 - (ii) Consider if and when to use an independent evaluator.

We look forward to reviewing the responses from other stakeholders to the Commission's Second RFP Draft Rules.

III. PUBLIC COUNSEL DIVERGENCES

4 Public Counsel would like to address a few revisions to the Second RFP Draft Rules that partially align with our recommendations from our comments filed on September 21, 2018, and October 26, 2018. While we appreciate the Commission's consideration of our language and comments, we continue to support our suggestions in their entirety.¹

¹ Public Counsel makes one concession regarding Exemptions in this section.

A. RFP Evaluation Rubric: WAC 480-107-025(4)

5 As Public Counsel stated in our October 26, 2018, comments, we disagree with the Commission’s insertion of “specifically identified” in this section.² We believe that our proposed language offers a floor, in which the bids can be evaluated, and not an inclusive list. Public Counsel considers its language as not only more flexible, but we believe it also accounts for unforeseen benefits or criterion that the utility may not have accounted for. Thus, we suggest the Commission consider our original language: “The RFP must include a sample evaluation rubric that either quantifies the weight each criterion will be given during the project ranking procedure or provides a detailed explanation of the aspects of each criterion ~~specifically identified~~ that would result in the bid receiving higher priority.”

B. Commission Review of RFPs: WAC 480-107-035(7) through WAC 480-107-035(11)

6 In our September 21, 2108, comments, we recommended the Commission move the rules regarding the Commission’s review of utility decisions to its own subsection.³ The Commission incorporated Public Counsel’s suggestion into the rules and included one supplemental change. Public Counsel suggested WAC 480-107-035(10) as, “The commission will review any acquisitions resulting from the RFP process in the utility’s relevant general rate case or other cost recovery proceeding.” The Second RFP Draft Rules now states, “The commission may review any acquisitions resulting from the RFP process in the utility’s relevant general rate case or other cost recovery proceeding.” Public Counsel believes that the Commission should always review any acquisition resulting from the RFP process. We consider the language in the Second RFP Draft Rules to indicate that the Commission may not review some or all acquisitions from the

² Public Counsel Reply Comments, ¶¶ 20-22 (Oct. 26, 2018).

³ Public Counsel RFP Comments, ¶¶ 18-20 (Sept. 21, 2018).

RFP. As a result, we recommend the Commission modify the language to that proposed in our September 21, 2018, comments.

C. WAC 480-107-AAA

7 The Second RFP Draft Rules included more specification on the role of the Independent Evaluator (IE), as well as the minimum requirements of the IE. Public Counsel, in its October 26, 2018, comments, recommended similar requirements to those in WAC 480-107-AAA(5).⁴ We support the minimum requirements of the IE that are currently included in the draft rules. However, we also suggested the rules provide a timeframe in which the IE should be retained by the utility. We believe this should be added to the rules on IEs for uniformity and to ensure the IE has sufficient time to assist in the development and review of the draft RFP.

D. Exemptions: WAC 480-107-001(3), WAC 480-107-002(3), WAC 480-107-015(4), and WAC 480-107-115(5)

8 In Public Counsel’s October 26, 2018, comments, we recommended the Commission add clear language in WAC 480-107-015(4) and WAC 480-1047-115(5) regarding the treatment of exemptions in the Draft RFP Rules. Specifically, we suggested language in WAC 480-107-015(4) stating that “Utilities may file for an exemption from the RFP requirement following the procedures set forth in WAC 480-07-110, and the Commission will determine if it is in the public interest to grant such an exception.”⁵ The Commission did consider our suggestion and included the following language:

Utilities may choose not to issue an RFP without requesting a petition for exemption from the requirements in this section under the following circumstances. Commission grant of an exemption from an issuance of an RFP under this section or pursuant to WAC 480-07-110 does not expressly or implicitly determine the

⁴ Public Counsel Reply Comments, ¶¶ 9-13.

⁵ Public Counsel Reply Comments, ¶ 4.

prudence of the utility's actions under the exemption or its choice to seek an exemption.

While the new language is not the language Public Counsel proposed, we agree with the inclusion of this language in the section. Furthermore, we agree with the supplemental language on lack of utility action and exemptions included in WAC 480-107-001(2) and WAC 480-107-002(3), respectively. We believe that this additional language gives more clarity on instances when the Commission grants an exemption and the processes required, as well as the utility's responsibility in taking or failing to take action in a resource acquisition process.

9 Finally, Public Counsel recommended the Commission add language to WAC 480-107-115(5) directly stating that stakeholders have an opportunity to comment on the utility's exemption.⁶ The Second RFP Draft Rules, moves this subsection into WAC 480-107-015(5) and does not incorporate Public Counsel's recommendation. However, given the added language in WAC 480-107-001(3), WAC 480-107-002(3), and WAC 480-107-015(4), Public Counsel believes that our concerns have been reasonably addressed and concedes its recommendation.

IV. CONCERN

10 Public Counsel has one concern with the Second RFP Draft Rules, regarding the exemptions section under WAC 480-107-015(4)(d), which states, "The utility's identified resource need is for delivery system resources." While we believe this language is an improvement from the original language, "the resource need is for a distribution system or local transmission resources project estimated to cost less than \$10 million," we believe that "delivery system resources" needs to be defined in the definition section. Public Counsel believes this

⁶ Public Counsel Reply Comments, ¶ 5.

additional clarification is needed in order to eliminate any confusion between traditional or standard distribution investments and non-wires distribution upgrades that may be used as a resource for meeting energy or capacity needs.

V. CONCLUSION

11 Public Counsel appreciates the opportunity to submit comments on the proposed Second RFP Draft Rules. We look forward to reading other comments and further conversations on the RFP Rules. If there are any questions regarding these comments please contact Carla Colamonicci at CarlaC@ATG.WA.GOV or at (206) 389-3040.