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Washington Utilities and Transportation Commission
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COMMISSION

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

Dear Mr. Johnson:

Puget Sound Energy (“PSE” or the “Company”) appreciates the opportunity to respond to the questions posed in this docket and submits the following comments in response to the request in the Washington Utilities and Transportation Commission’s (“Commission”) Notice of Opportunity to File Written Comments issued in Docket UE-190837 (“Notice”) on February 6, 2020.

Introduction

The Clean Energy Transformation Act (CETA) will have a dramatic impact on utility resource needs over the next couple of decades. PSE has the largest CETA compliance obligation of any utility in the state, and the success of CETA depends heavily on PSE’s success in achieving its targets. The ambitious timing, magnitude and scope of CETA will transform PSE’s resource mix over the next 25 years by adding thousands of megawatts of new, clean generation contracts and assets to its portfolio. This is the largest and most rapid acquisition and integration of resources the company has ever undertaken, and will more than double our existing portfolio of renewable resources. To be successful, PSE will need processes that are efficient, the ability to move nimbly and quickly to achieve the state’s clean energy goals, and a regulatory framework that supports these efforts.

PSE appreciates the Commission’s efforts to address the power procurement process in the context of CETA in this rulemaking, and submits the following comments, recommendations, and questions in response to the Commission’s request.

Responses to Commission 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? If yes:

- 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?**
- 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)?**
- 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)?**
- 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.)?**

PSE Response

As mentioned in PSE's most recent comments in the Clean Energy Implementation Plan (CEIP) rulemaking, PSE believes that utilities will demonstrate their progress towards achieving compliance with RCW 19.40.040(8) in their respective CEIPs. Implicit in demonstrating compliance is that there is a precise definition of equity (and a corresponding goal) against which progress can be measured. At the present time, the Commission and stakeholders are in the process of developing such a definition in the CEIP rulemaking.

A common understanding of what equity means under CETA will likely be an ongoing discussion in the near term. Until a more precise and measurable definition of equity is developed, PSE believes that a more qualitative approach to equity in RFPs may be appropriate. A more precise response to the questions posed above will be possible when this issue is addressed in the current CEIP rulemaking, and as the Commission and utilities gain more experience with CETA.

- 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?**

PSE Response

PSE supports the Commission’s revisions to WAC 480-107-015 which provide, in pertinent part, that “[t]he utility must solicit bids for its resource needs identified during the IRP process.” This language is consistent with PSE’s view that the primary purpose of an RFP should be as a procurement tool that enables utilities to competitively acquire resources to meet the needs of their customers, rather than a price discovery mechanism. As a corollary to this view, the CEIP should not trigger an RFP by rule.

A rule that triggers an RFP at the completion of a CEIP could be problematic both administratively and from a policy perspective. Administratively, requiring utilities to conduct an RFP after completing a CEIP could be duplicative and unnecessary from a procurement perspective. Given the compressed timeline between the IRP, RFP, and CEIP, it is likely that the RFP triggered by the IRP will overlap with the CEIP. Moreover, there is a possibility that the CEIP may show that an additional RFP is not necessary. Consequently, a rule that triggers a mandatory RFP at the completion of a CEIP could result in the utility conducting an RFP without the intent to procure resources. Conducting RFPs without an intent to actually procure resources is significant from a policy perspective because it could have a chilling effect on vendors’ willingness to bid in an RFP.

A distinct but related issue that arose during the February 25 workshop is whether an RFP triggered by the IRP would inform a utility’s CEIP. Given the compressed timeline between the IRP and CEIP, the RFP that results from the IRP will likely have a minimal impact on the development of the CEIP. As a result, PSE acknowledges that there is a strong possibility that a separate RFP will be necessary at the completion of a utility’s CEIP. As discussed above, however, PSE does not believe that such an RFP should be mandated by rule.

- 3. The draft rules rely on the results 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?**
 - b. To what extent should transmission modeling be required in the resource adequacy analysis?**

PSE Response

The Commission should take a flexible approach to resource adequacy (RA) in the context of this rule. A flexible approach is necessary for two primary reasons. First, there is some risk associated with relying solely on the results of the Council's RA study in determining whether an exemption should be granted from the RFP requirement because the Council is not required, legally or otherwise, to perform the study. While PSE appreciates the excellent work that the Council does on the study, the fact that the Council is not required to perform the study is a risk.

Moreover, entities in the region have embarked on developing a region-wide RA program that may supplant the need for the Council to perform its RA study in the near future. If the rule only permits use of the Council's study, a more robust analysis performed as a result of the cooperative effort throughout the region will be disregarded.

In light of the circumstances and risks described above, PSE supports the approach proposed by Commission staff at the February 25 workshop to make the Council's analysis the minimum upon which to base an exemption from the RFP requirement. PSE understands this approach to permit entities to provide an RA analysis, regardless of the source, that is more robust than the Council's analysis as the basis for granting an exemption from conducting an RFP. PSE believes this approach is appropriately flexible to mitigate the risks set forth above because it does not make the Council's analysis the sole basis for granting the exemption on the basis of RA considerations.

The issue of whether transmission modeling should be included in an RA analysis is difficult and highly technical. PSE believes that this question is beyond the scope of this rule, and would be more appropriately addressed through the IRP process.

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?**
- 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?**
- 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?**

PSE Response

PSE opposes the use of an independent evaluator (IE). The proposed rule imposes a burden on utilities and RFP processes that could impact PSE's ability to be agile, and to quickly and efficiently act to implement the requirements of CETA. PSE has an enormous challenge to meet, and the proposed IE process will require a significant commitment of time and staff resources, and result in a more cumbersome RFP process that includes: (a) vetting and selecting an IE, awaiting public comment and commission approval of the IE prior to the RFP process; (b) onboarding and training the IE in the use of our complex models, metrics, resource needs and requirements; (c) ensuring that the IE receives all information uncovered by the RFP team and all updates provided by bidders in the midst of a fast-paced RFP evaluation; (d) reviewing and preparing a response to the post-RFP IE report and subsequent public comments, and completing the reconciliation process with the IE. At a time when utilities should be empowered to be more nimble and efficient, and to act quickly and with confidence to meet the state's clean energy goals, the revised regulatory framework should not result in additional complexity, uncertainty and administrative burdens that could delay the acquisition process.

In addition, there are existing mechanisms that provide transparency and oversight of the RFP process. First, the RFP is guided and informed by the IRP process. The RFP uses models and methodologies vetted by the IRP Technical Advisory Group. The RFP also uses assumptions consistent with the IRP process, many coming directly from the IRP process. Other processes are updated (using the same sources and methods utilized in the IRP) to reflect the most current information at the time the RFP is conducted. And second, the RFP solicitation itself, which contains PSE's projected resource need, the resources eligible to fill that need, and details about the evaluation, is also subject to public review and comment, and Commission approval.

Furthermore, there is a long-standing and successful process in place wherein utilities share broad and deep information about their evaluation processes, assumptions, the proposals they

receive, and their findings and results. This process occurs when a utility seeks a determination of prudence for a resource decision in a rate case. The information disclosed in a rate case already offers transparency into the RFP evaluation process for commission staff and stakeholders, and allows for a deep dive review of the specific resource decisions made by the company. The rate case remains the most appropriate and expedient venue for reviewing the company's evaluation process and decisions, and for determining the prudence of those decisions.

The question of prudence is the central focus of the rate case process. As such, PSE disagrees that there is a need to fund an IE (at ratepayer expense) as that function is envisioned in the draft rule. The IE as proposed in the draft rule duplicates the work performed by the Commission in a general rate case. If the Commission determines there is value in an IE notwithstanding this position, the IE should function as a facilitator of the RFP process and an advisor to the Commission and the utility. PSE addresses these concerns in further detail below in its comments on specific sections of the draft rule.

Comments, Suggested Revisions or Clarifications to the February 6 Draft Rules

1. WAC 480-107-015 sets forth the solicitation process and lists the resources from which utilities must accept bids when conducting an all source RFP. The proposed revisions to the rule add efficiency resources, demand response, and energy storage to this list. PSE believes that a one-size-fits-all approach to procurement of efficiency and conservation, and demand response resources may not be the best solution because it is difficult to reasonably compare these resources to utility-scale resources.¹

A more appropriate approach to procurement of efficiency, conservation, and demand response resources in many instances is targeted solicitations. This approach would allow utilities to compare like competitors while focusing on meeting reasonable, achievable CEIP targets that will help utilities develop balanced portfolios consistent with the goals of CETA.

An added benefit of targeted solicitations for these programs is that these types of RFPs are typically completed more quickly than all source RFPs. PSE's all source RFPs generally draw a much larger pool of proposals for evaluation. Most of these proposals are for generation or storage resources requiring detailed quantitative analyses, including optimization analysis, and a thorough due diligence review of complex project risks. Multiple benefits can be achieved by excluding efficiency and conservation, and demand response resources in all source RFPs and procuring them through targeted solicitations instead. These benefits include: more efficient all source and targeted RFP processes; the elimination of duplicative efforts between overlapping all source and targeted RFPs

¹ These resources have characteristics, benefits, and challenges that differ significantly from utility-scale resources. Moreover, demand response programs struggle to compete against utility-scale renewable resources when a lowest reasonable cost test is applied.

competing for the same resources; and the ability to move more quickly to execute agreements for the targeted resources.

To achieve the benefits discussed above, the following proposed changes clarify: (1) that a utility may solicit energy efficiency and conservation, and demand response resources as part of its all source RFP or through targeted competitive RFPs based on the specific targets determined through its public participation process and in its CEIP; and (2) that a utility is not required to include these resources in all RFPs.

*(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 savings associated with conservation and efficiency resources; demand response;~~ energy storage; electricity from qualifying facilities; and electricity from independent power producers; ~~and, at the utility's election,~~. **The utility may elect to include: electricity from utility subsidiaries, and other electric utilities, whether or not such electricity includes ownership of property; electrical savings associated with conservation and efficiency resources; and demand response.***

2. WAC 480-107-015(3) provides that an RFP must “allow any resources that meet a portion of the amount or a subset of the characteristics or attributes of the resource need to bid...” including conservation and efficiency resources for a capacity need. For the reasons set forth in Comment 1 above, PSE believes that it should be permitted to elect to include conservation and efficiency resources in an all source RFP rather than be required to do so. The proposed changes below address this concern.

(3) The RFP must allow any resources that meet a portion of the amount or a subset of the characteristics or attributes of the resource need to bid, including unbundled renewable energy credits for a renewable resource need, ~~or conservation and efficiency resources for a capacity need.~~

3. WAC 480-107-105(3) also contains a placeholder for when an RFP is triggered by a utility's IRP. The current rules require a utility to conduct an RFP when the utility's most recently acknowledged IRP demonstrates a resource need within three years. PSE recommends retaining the three year trigger. This timeframe represents an appropriate balance between maintaining an adequate planning horizon and the increasing uncertainty associated with forecasts as they extend further into the future. The three year timeframe has historically worked well for PSE.
4. WAC 480-107-015(4) sets forth the circumstances for exemptions from the RFP requirement. WAC 480-107-105(4)(d) provides for an exemption when a resource need is for a distribution or local transmission resource estimated to cost less than \$10 million. PSE does not support the inclusion of distribution and transmission system planning in this rule. At the present time, the definition of “Resource Need” as used in the IRP process does not include local transmission and distribution needs, nor does the draft rule require a utility to

accept bids for this type of infrastructure as part of an all source RFP.² PSE believes that the Commission should first address the issue of whether “Resource Need” includes local transmission and distribution needs before considering the type of exemption this type of infrastructure requires in the RFP process.

5. Currently, WAC 480-107-015(5) requires utilities to submit an RFP “no later than one hundred thirty-five days after [an IRP] is due to be filed with the commission.” PSE recommends changing this rule to instead require utilities to submit an RFP within one hundred thirty-five days of when an IRP is submitted. This change will ensure that the timing of utilities’ IRPs and RFPs stay in lockstep and that utilities won’t have to request (and the Commission have to go through the process of approving) an explicit exemption from the timing requirement in this rule in the event that the utility does not timely submit an IRP. PSE suggests the following change in this regard:

“(5) A utility must submit to the commission a proposed RFP and accompanying documentation no later than one hundred thirty-five days after the utility’s integrated resource plan is ~~due to be filed with~~ submitted to the commission.”

6. WAC 480-107-025(4) requires utilities to explain the ranking procedures and assumptions a utility will use to rank projects. In addition to other requirements, the rule requires that utilities include a “sample evaluation rubric that quantifies the weight each criterion will be given...” PSE generally opposes rigid scoring criteria because they do not permit the utility to account for the complexity of bids in the evaluation process, and can prevent the utility from incorporating new learnings during the evaluation process that should be judged during the prudence process on their reasoning and rationale. Additionally, eroding utility flexibility to make reasoned decisions increases the potential for unintended consequences in the RFP process.

PSE supports including a provision in this section that would allow utilities to include a qualitative narrative explanation of the aspects of each criterion of an RFP that would result in a proposal receiving higher priority. The revision proposed below would provide utilities with flexibility to take into account aspects or characteristics of a project that may satisfy a rigid metric but are not the right choice for customers or the utility for qualitative or other reasons.

*“(4) The RFP must include a sample evaluation rubric that 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.**”*

7. WAC 480-107-AAA requires utilities to use an independent evaluator (IE) in RFPs under specified circumstances, and generally sets forth rules for the IE’s participation. As noted in PSE’s response to Question 4 above, PSE opposes the use of an IE. PSE offers the following

² The Commission was previously considering this issue in U-161024, which has since been closed. It is unclear whether, and if so in what proceeding, the Commission intends to address this issue.

comments and recommendations should the Commission elect to move forward with an IE requirement notwithstanding those concerns.

- a. WAC 480-107-AAA(1) sets forth the triggers for when a utility must utilize an Independent Evaluator (IE) in the RFP process. With respect to the trigger related to project size, PSE believes that a 100 MW threshold would be a more appropriate limit because anything less could likely be readily met through short-term market purchases or similar arrangements. Moreover, as a practical matter, a 50 MW threshold would likely result in every PSE RFP requiring an IE.
- b. WAC 480-107-AAA(2) requires utilities to design an RFP for an IE, consult with Commission staff, and subsequently seek approval for that IE by the Commission. As explained above in the response to Question 4, this requirement increases time and complexity in already compressed timelines. PSE proposes the following language to address this concern:

*(2) The utility, after consulting with commission staff and ~~the appropriate stakeholders, must recommend an~~ **notify the commission of its choice** for an independent evaluator. ~~for approval by the commission.~~*

- c. WAC 480-107-AAA(4) sets forth the obligations of the IE. PSE recommends that the IE role be closer to that of a facilitator rather than an umpire. The obligations as currently described in this section are closer to those of an umpire. Specifically, inputs, assumptions, risks, and scoring are elements that should be considered in a prudence hearing. An IE attempt to evaluate and determine the reasonableness of those elements could be viewed as tacit pre-approval, and could add considerable time and expense to conducting an RFP. PSE recommends the following to address this concern:

Delete Section (4) and replace with the following:

- (4) The functions of the independent evaluator shall include the following:*
- (a) Provide input to the utility on the development of screening and evaluation criteria, ranking factors and evaluation methodologies that are reasonable and designed to ensure the solicitation process is fair;*
 - (b) Verify that all bids are treated in a fair and non-discriminatory manner;*
 - (c) Monitor and offer feedback to the utility on the solicitation and evaluation process including:
 - (i) content of the solicitation;*
 - (ii) evaluation of bid responses;*
 - (iii) any re-evaluation of short list bids as a result of material updates prior to contract execution.**
 - (d) Offer feedback to the utility on possible adjustments to the scope or nature of the solicitation or required resources in light of bid responses;*
 - (e) Advise the commission on the fairness and reasonableness the solicitation process;*

(f) Participate in and testify at commission hearings on approval of the solicitation and solicitation process.

- d. WAC 480-107-AAA(5) explains the IE's reporting requirements, and assumes that the IE will independently score bids. As explained above, PSE does not believe that independently scoring bids is an appropriate role for the IE. Removing this requirement seems to obviate the need for an initial report. PSE recommends the following language to address this concern:

(5) The independent evaluator will prepare ~~an initial report to the commission at the conclusion of the process, before reconciling project rankings with the utility, and a final report after reconciling rankings with the utility in accordance with WAC 480-107-035(4) Project ranking procedure.~~ (a) No stakeholder, including the utility or staff, shall have any editorial control over the independent evaluator's initial report. (b) The final report should not differ from the initial report and must explain any significant differences and why the independent evaluator and the utility were, or were not, able to reconcile the differences. (c) The utility, staff, and stakeholders may file responses to the ~~final~~ report with the commission.

- e. WAC 480-107-AAA(6) requires the utility to give the IE full access to the utility's production cost, risk, and other internal proprietary models. In addition to proprietary concerns, this requirement could significantly increase the costs and time required to conduct an RFP. Having access to a utility's modeling software would not be sufficient for an IE to generate a quality report or evaluation. Modeling software (and various inputs) are complex and would require several months, perhaps up to a year, for an IE to completely grasp. PSE proposes the following to address this concern:

*(6) The utility must ~~give the~~ **educate the** independent evaluator ~~full access to examine and test on~~ the utility's production cost and risk models and any other model or data that is necessary for the independent evaluator to complete its work.*

8. WAC 480-107-035(2) sets forth minimum RFP criteria for projects. PSE recommends a revision to this section that recognizes that IRP and RFP processes can use slightly different analytical tools and processes to reach prudent outcomes. For example, the utility may receive a discounted proposal in response to the RFP or may have to move quickly to take advantage of an obvious market opportunity that would benefit customers. In those cases, the IRP analytical framework may hamstring or delay the ability of the utility to act quickly through the RFP. PSE proposes the following language to ensure utilities have the necessary flexibility to act quickly and prudently to take advantage of market opportunities:

*“(2)...and be consistent with the ~~avoided cost methodology~~ **analytical methods** developed in the utility's most recently acknowledged integrated resource plan **or prudent utility decision making.**”*

9. WAC 480-10-035(9) requires the utility to post specified information on its website within five days of executing an agreement to acquire a resource or determining that all proposals or bids will be rejected. PSE believes the rule should be revised to require utilities to post the information specified in the rule after executing agreements with all of the RFP short list resources (or determining that all proposals or bids will be rejected). Requiring utilities to disclose a final detailed ranking of results to the public prior to executing contracts for all of its shortlisted RFP resources would unfairly advantage other shortlisted bidders in ongoing negotiations with the utility, to the detriment of the utility and its ratepayers, by providing information about the bidder's ranking relative to other alternatives, and by revealing the relative cost and risk performance of their nearest competitors. The changes proposed below address this concern.

*“(9) Within five days after executing ~~an~~ agreements for all of the RFP short list resources or determining that all proposals or bids will be rejected, the utility must make available for public inspection on the utility’s website a final ~~detailed~~ ranking of results for all proposals **and the reason each proposal was selected or not selected. The utility shall not be required to disclose any confidential information in these results.**”*

10. WAC 480-107-035(4) requires the utility and IE to each rank and score qualifying bids. As explained in Comment 7 above, PSE does not believe that independent project ranking is an appropriate role for the IE. To address this concern, PSE recommends the following:

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

11. WAC 480-107-065 sets forth rules for the procurement of conservation and efficiency resources. WAC 480-107-065 (1) permits a conservation and efficiency resource supplier to participate in any bidding process for any resource need. For the reasons discussed in Comment 1 above, PSE believes that it should be permitted to elect to include conservation and efficiency resources in an all source RFP rather than be required to do so.

More generally, PSE does not believe that the proposed revisions to the existing rule will improve PSE's current conservation RFP process, which is well-vetted and transparent with input from and review by the Conservation Resources Advisory Group (CRAG) for several biennia (the most recent examples include 2017 and 2019). Two of the options in the proposed rules could potentially add significant delays, increase costs to PSE ratepayers, reduce conservations programs' direct benefit to customer ratio, and negatively affect the implementation of conservation programs. The draft proposed rules stipulating extensive review and approval periods could also have a potentially negative effect on conservation program planning, implementation, and ultimately the achievement of conservation targets.

PSE is concerned that the requirement to submit conservation RFPs to the Commission for review and public comment could interfere with the established bidder selection process, and

potentially reveal sensitive or confidential information about bidders. The current process involves hundreds of program staff hours and a significant amount of review, evaluation, potential bidder interview, contract negotiations, and implementation set-up. The entire process typically spans over six months in a planning year.

In reference to the proposed revision in 480-107-065(1):

“A utility or utility subsidiary may participate as a conservation supplier, on conditions described in WAC 480-107-135 Conditions for purchase of resources for a utility’s subsidiary or affiliate.”

PSE is unclear as to whether it will be required to bid on programs that it plans to manage using conservation program staff (for instance, custom grant or Low Income Weatherization programs).

With respect to the minimum procurement percentages referenced in the rule, PSE is unclear how the percentages were established. It is also unclear as to whether those percentages pertain to overall conservation programs or overall planned savings. The rule is also not clear about the applicable conservation programs. Programs related to low income weatherization, measures in connection with Northwest Energy Efficiency Alliance, pilot programs in evaluating new technology, and transmission/distribution efficiency efforts do not lend themselves to competitive bidding. The proposed rule also does not address the requests for information process.

Option (c) of the proposed rule also describes a role for a utility’s advisory group that is not currently explicit in WAC 480-109-110. However, PSE believes that the approval of an RFP framework should fit into the current roles and responsibilities of PSE’s CRAG. This requirement should be acceptable if PSE selects option (c) under WAC 480-107-065(3). PSE reviews its conservation program RFP process with the CRAG on a regular basis. For instance, in the most recent biennial conservation plan development process, PSE provided the CRAG with a significant amount of 2020-2021 RFP results detail over the course of two CRAG meetings in 2019. PSE’s conservation program RFP process is well-vetted, adheres to PSE corporate purchasing and contracting policies, and is thorough and transparent. Results and effects of PSE’s conservation programs are confirmed in an independent, biennial program-by-program savings review.

PSE recommends the following changes to address the concerns discussed above:

“(1) A conservation and efficiency resource supplier may participate in the bidding process for any resource need so long as the utility has elected to receive bids for conservation and efficiency resources.”

Delete section (3), and replace with the following:

(3) A utility must acquire conservation and efficiency resources through a competitive procurement process as described in this rule unless implementing a competitive procurement framework for conservation and efficiency resources as approved by the commission.

(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 2022-2023 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 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.

12. WAC 480-107-075(4) specifies actions that must occur in the event material changes are made to a project proposal after project ranking. Among these actions are a requirement that the utility and IE (when applicable) re-rank projects. As explained in Comment 7 above, PSE does not believe that independent project ranking is an appropriate role for the IE. To address this concern, PSE recommends the following:

“(4) If material changes are made to the project proposal after project ranking, including material price changes, the utility must suspend contract finalization with that party and rerank, ~~and have the independent evaluator rerank when applicable...~~”

13. WAC 480-107-135 requires the use of an IE in the event that a utility, its subsidiary, or affiliate participate in a utility’s bidding process. As explained in the response to Question 4 above, PSE opposes the use of an IE. If the Commission elects to move forward with an IE, it should be consistent with the changes that PSE suggests for WAC 480-107-AAA in Comment 7 above.

14. WAC 480-107-145(2) requires utilities to file a summary report of responses received in an RFP within 30 days of the conclusion of the RFP. The rule should clarify the trigger for filing this report should be upon the execution of contracts for all the selected RFP short list resources. Clarifying the trigger accomplishes three important goals. First, it allows the utility sufficient time to draft and fully review the report prior to filing it with the Commission. Second, it allows the utility to include the results associated with any material changes to any of the resource offers received after selecting the short list (but prior to executing contracts) that may trigger WAC 480-107-075(4).³ Third, it allows the utility to protect information about the outcome of the RFP that, if disclosed to the public prior to contract execution, could unfairly advantage a bidder to the detriment of the utility and its ratepayers.

Additionally, the rules should clarify whether the Commission may share this report with the public. As written, the requirement that certain information be provided in aggregate by technology type and the directive that the categories in WAC 480-1070145(2)(b)-(f) be “broad enough to limit the need for confidential designation whenever possible” appears to suggest that the report may be disclosed. If this is the case, the rule should be clear on this point, and WAC 480-107-145(2) should specify that the requirement to provide the specified information in broad categories in WAC 480-107-035(6) does not require the utility to disclose any confidential information that may violate the terms of the non-disclosure agreements utilities sign with RFP bidders.

Finally, utilities share broad and deep information about their evaluation processes, assumptions, the proposals they receive, and their findings and results when seeking a determination of prudence in a rate case. In a rate case, the disclosure of confidential RFP information is subject to the terms of a protective order. PSE believes that a rate case remains the appropriate venue for such disclosure because rate case procedures appropriately balance the interests of stakeholders and ratepayers by providing transparency and oversight, RFP bidders seeking to protect sensitive confidential information, and utilities legally bound to protect that information subject to the terms of non-disclosure agreements.

PSE suggests the following language to address these concerns:

“(2) The utility must file with the commission within 30 days of the execution of contracts for all of the selected RFP short list resources ~~the conclusion of any resource RFP process~~ a summary report of responses that the commission may elect to make public. ~~including, at a minimum:~~ The utility shall not be required to disclose any confidential information that may violate the terms of the non-disclosure agreement utilities sign with RFP bidders. The report must include, at a minimum...”

³WAC 480-107-075(4) requires utilities to re-evaluate alternatives under certain conditions.

PSE appreciates the opportunity to provide responses to the questions identified in the Commission's Notice of Opportunity to File Written Comments. Please contact Nate Moore at 425-456-2622 for additional information about these comments. If you have any other questions please contact me at (425) 456-2142.

Sincerely,

/s/ Jon Piliaris

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