

March 13, 2020

**Docket UE-190837**

Mark Johnson, Executive Director/Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250  
Olympia, Washington 98504-7250

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**Re:** Utilities and Transportation Commission’s February 6, 2020, Notice of Opportunity to File Written Comments in the Matter of Amending, Adopting, and Repealing WAC 480-107, Relating to Purchases of Electricity.

Dear Mr. Johnson:

The NW Energy Coalition (Coalition) submits the following written comments in UE 190837 pursuant to the Notice of Opportunity to File Written Comments dated February 6, 2020. These comments respond to questions posed in that notice and provide comments on additional topics related to WAC 480-107. Additionally, the Coalition is attaching a redline version of the draft rules for consideration along with these written comments.

The notice explains that this matter follows the work done by the Commission in Docket UE-161024. The Coalition participated in this docket and offered comments on November 2, 2016, October 26, 2018 and January 31, 2019. In several instances, we refer to our previous comments.

**Overarching Comments regarding WAC 480-107**

NWEC strongly suggests that the rules refer to Resource Procurement, rather than to Purchases of Electricity; the latter implies acquisitions are limited to generation resources. The Clean Energy Transformation Act (CETA) calls for the intentional reliance on a well-managed mix of energy savings from efficiency and conservation measures and programs, the reduction of peak loads by the strategic use of demand response and storage and the transition to renewables and non-emitting resources, both centralized and distributed, to meet the remaining energy loads.

In the same spirit, as we stated in our comments to UE-161024 in September, 2016,

*“..the utility industry is in a time of some transition, moving from systems dominated by large power plants to a more diverse system made up of smaller and dispersed resources – energy efficiency, demand response, distributed generation, storage, etc. ....The overall system, in moving from a limited firm capacity approach toward a*

*broader, flexible resource adequacy construct, may need to evolve to one that is more reactive to changing circumstances.”<sup>1</sup>*

We cannot assume measures that exist and are available today are the only measures that will be available going forward, so RFPs should be open-ended and not specify specific measures that will be considered; we welcome the new language at 480-107-025(3). And urge the Commission to consider whether this language needs to be broader still, for example, incorporating distributed energy resources in this subsection.

### **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?***

Yes.

***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?***

Possibly. For the most part, these two approaches may be inextricably intertwined – meaning that in most situations the evaluation of resource choices necessary for broad utility regulatory and system needs will be measured through an equity specific lens. For example, there may be opportunities to address severe energy burdens or correct historic imbalances by deliberately choosing resources or measures that benefit certain communities or geographic areas when expanding new conservation programs, just as the need for new generation may be best met by installing micro-grid systems in isolated communities. In this instance, the utility is meeting a system need but using equity criteria to inform the decision about the resources that best fit the system need and equity considerations at the same time.

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<sup>1</sup> U-161024, ‘Comments of NW energy Coalition and Renewable Northwest’, November 2, 2016, p 7.

Notwithstanding the above response, the Coalition recommends that the UTC not rule out the circumstance where a resource may be needed specifically to comply with RCW 19.405.040(8). One potential example might be resources needed to ensure that a specific vulnerable community is not unduly burdened by resiliency risk due to wildfire or other factors.

**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)?***

To ensure equitable treatment of all customers, the rules should require bidders to address not only the technical qualifications of their proposal, but also how their proposal will meet the standards set forth in 19.405.040(8);

*“Through the equitable distribution of energy and non-energy 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.”*

Metrics established in relation to RCW 19.405.040 (8) should be utilized as criteria in the ranking of RFP evaluation. These criteria should be given adequate weight in the RFP evaluation process such that the criteria have a meaningful impact on outcomes. Specific criteria and their weighting should be clearly described in the RFP, as well as any specific equity related objectives of the particular RFP. The new language at WAC 480-107-025(4) is an improvement over existing rules, however, the Coalition recommends that more explicit requirements for criteria representing RCW 19.405.040 (8) be included in the rules, either integrated into WAC 480-107-025 (4), integrated into WAC 480-107-035 (2) or as a stand-alone subsection. Please refer to attached NW Energy Coalition redlines to the proposed Chapter 480-107 WAC and specific language we recommend for WAC 480-107-035 (2).

Ideally, especially in the first few RFP’s completed under the new WAC, the utility will seek input and assistance from stakeholders in how to integrate these new criterion and weighting factors into RFP development and evaluation.

Further, utility announcements for new resources must be prominently advertised and widely distributed, as well as displayed on the website. All resource acquisition should ensure minority/woman/veteran/disabled contractors and subcontractors are solicited to submit bids and are fairly considered in awarding of contracts. This may require more explicit language be added to 480-107-015(7).

**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)?***

This is perhaps the most logical place to integrate straightforward revisions to incorporate the provisions of RCW 19.405.040(8).

First, by integrating specific ranking criteria related to this provision (see answer to (b) above).

Second, project ranking procedures should be opened up to interveners as is done in other states. Interested parties should have the right to observe, comment on, and provide feedback about the RFP selection process and not be limited to commenting on just the RFP itself. The current draft rules do not contemplate a role for stakeholders to comment or provide feedback. Nor do the draft rules provide clarity regarding how the Commission will confirm that the utility complied with the rules specified in this section. We urge the Commission to reconsider this section of the rules. Ideally, a process at the Commission will be active through the RFP development process, continuing through project ranking and selection.

At a minimum, language in WAC 480-107-035(5), (7) and (9) should be more specific, ensuring that the “summary” of each project proposal and the “final detailed ranking of results for all proposals” is also filed at the UTC and stakeholders are provided an opportunity to comment.

Additionally, a definition of “lowest reasonable cost”, referenced at WAC 480-107-035(3), may need to be added. As we suggested in our comments to UE-161024 in September of 2016, the definition could build off the definition in WAC 480-100-238, with one clarification:

*“Lowest reasonable cost” means the lowest cost mix of resources determined through a detailed and consistent analysis of a wide range of commercially available sources. At a minimum, this analysis must consider resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, the risks imposed on ratepayers, current and future public policies regarding resource preference adopted by Washington state or the federal government and the cost of risks associated with environmental effects including emissions of carbon dioxide.”*

- 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.)?***

Summaries of solicitation responses should include information submitted pursuant to criterion related to RCW 19.405.040 (8) in addition to summary information about other requirements. The Coalition envisions that information such as geographic location, relevant bidder characteristics, as well as other information will be necessary.

Utilities should also provide granular and summary data on the number of women/veteran/minority/disabled owned entities solicited, and the number of such entities that ultimately responded to the RFPs or RFIs. The summaries should describe

the efforts each bidder made to reach out to certain categories of possible vendors, subcontractors or suppliers (if applicable), the bidder's plans for hiring local workers, etc.

480-107-035(9) should require not just the relative ranking of all received proposals, but also details of how various aspects of the proposal ranked, such as environmental aspects or how well the proposal addressed energy burden concerns.

***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?***

Given other planning changes stemming from CETA, four years seems like a reasonable timeframe, to align better with the CEIPs. However, any specific time limit such as three or four years may inadvertently omit longer lead-time resources such as pumped storage. Perhaps the rules should contain an exception for circumstances where the IRP indicates that a long lead-time resource is the lowest reasonable cost resource to fulfill a utility's need.

***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?***

With the introduction of CETA, it is conceivable that a utility need for resources could be identified through either the IRP or the CEIP. Additionally, the CEIP might further refine the resource needs identified through the IRP. The Coalition recommends that the rules reflect that a resource need can be identified through the IRP or the CEIP. In terms of sequence, RFP's should not be issued until after the CEIP is approved, as it is a necessary step to understanding the specific parameters of a utility's resource need.

***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 program.***

***a) Should the rules allow the use of a resource adequacy analysis conducted by other entities in addition to the Council?***

We support using the Northwest Power and Conservation Council's resource adequacy study as one element to determine exemptions under WAC 480-107-015(4)(b), however, the draft rules as written lack clarity about how the Northwest Public Power and Conservation Council's power supply adequacy assessment will be utilized at a utility specific level to determine adequate supply for one utility's planned reliance on the short-term market.

We do not know of another regional resource adequacy study that would be appropriate to reference at this time. It might be useful for the Commission to require utility specific resource adequacy analysis and issue policy guidance to prescribe approaches and methodologies utilities are required to use in the performance of this requirement. This will allow the Commission more flexibility to update the methodologies as this aspect of utility system analysis develops (see attached redlines).

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

Resource adequacy depends on resources of all kinds rather than just constant acquisition of generation resources. We have commented a number of times in UE-161024 that we support detailed distribution and transmission system analyses as part of every IRP, which brings into one focus all the elements of transmission and generation and how they interact. Transmission is essential for accurate resource adequacy analysis. Distribution systems are critically important as well.

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

**Overarching Comments Regarding the Independent Evaluator Requirement**

We are concerned that the description of the responsibilities of the IE are too limited in the proposed new section. An IE should be able to fully evaluate each bid, not just the "unique risks of each bid" 480-107-035 (4)(c), which seems to imply the IE can only look at the costs, not benefits, of each proposal. While a utility might manage the contract with an IE, it does not seem unreasonable for the rules to either define the parameters of such a contract or direct the staff to develop such a model contract. That ensures consistency of approach between IOUs. Here we also refer to comments submitted by Renewable Northwest in response to this Notice that detail several aspects of the previous draft rules from December 31, 2018 related to the IE requirements, that seem to have been omitted in this current version of the draft rules. We urge the Commission to consider restoring those aspects of the rules.

Additionally, an IE should document and file all communications between utility and bidders, as the IE must be involved in all communications between the utility and any bidders, including phone calls and mailed or emailed correspondence.

And, it is important to note that use of an IE does not replace stakeholder feedback, as the Commission should be seeking input from other interested parties.

- 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?***

Yes. As we stated on October 18, 2018 in U161024, we “see significant value in having an Independent Evaluator (IE) involved in the development of an RFP, as well as in reviewing resulting bids. For an RFP, an IE can bring added experience from other utilities that would add value. For independently reviewing bids, we understand the concern that utilities may have that an IE is only replicating the process they are undertaking, so at a minimum, we would suggest that an IE review any bids resulting in utility ownership along with a sampling of the remaining bids”<sup>2</sup>.

- 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?***

At minimum, an IE should be employed when any project might be owned by the utility, when market risk is excessive, or when a project exceeds 50 MW.

- 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?***

The IE scope of work should include all items in the ranking criteria, including metrics developed for compliance with RCW 19.405.040 (8).

## **OTHER COMMENTS REGARDING WAC 480-107**

### **Avoided Cost Definition**

WAC 480-107-035(2) specifically states the proposals should be consistent with the avoided cost methodology developed in the utility's most recently acknowledged IRP, but the definition of “avoided cost” under 480-107 has been eliminated in the draft. There are several kinds of avoided costs and it may be necessary to define this term.

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U-161024, ‘Comments of the NEW energy Coalition to the Washington Utilities and Transportation Commission on the Request for Reply Comments in U-161024, 2018’, October 26, 2018, p 2.

Furthermore, it is important that avoided cost calculations be transparent and readily understood by participants in utility planning processes. Avoided costs should be reported with detailed calculations and assumptions clearly spelled out. There should also be consistency in how avoided costs are calculated by all utilities.

Overall, the notion of a single resource type representing avoided cost should be replaced by something that is more of a net system cost. For BPA's full requirement utilities, it is already the case – the avoided cost is effectively the market price for Tier 2 resources. Clearly, avoided costs should look at energy and capacity needs, which might differ with various resource types, depending on application.

### **WAC 480-107-065 Acquisition of Conservation and Efficiency Resources**

Subsection 3 outlines the competitive procurement process for utilities under the acquisition of conservation and efficiency resources. The Coalition offers the following comments on this section, which are an adaptation of our comments from U-161024 in September 2018.

The proposed rule language in WAC 480-107-065 provides three options for a utility to meet its conservation and efficiency resource needs. We provide comments on each of these methods, below. However, we note that we do not think that these are equal in ensuring that all cost-effective conservation is acquired, at the best cost to ratepayers.

We would propose that a combination of these ideas be deployed. For example, the language could be:

*A utility must acquire conservation and efficiency resources through a competitive procurement process.*

- a. *A utility should achieve 100% of its conservation and efficiency resource program savings through competitively procured programs by 20xx.*
- b. *The utility should work with its conservation advisory group, as described in WAC 480-109-110 Conservation advisory group, to determine its plan for reaching the 100% achievement target, including procurement schedule. The utility should describe this plan beginning in the 2022-2023 biennial conservation plan, as described in WAC 480-109-120, Conservation planning and reporting.*
- c. *If there is a conservation and efficiency program that the utility believes should not be competitively procured, the utility should consult with its conservation advisory group, and document the group's support or opposition before seeking commission approval as part of the utility's biennial conservation plan.*

**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.**



While this option would encourage some competitive procurement, we see no reason to limit the percentage to 33%, at least in the long-term. If a utility is able to provide those conservation programs in a way that best meets its RFP criteria, then all of the possible savings should be open for competitive procurement. If there are certain program needs that the utility feels should not be met by competitive procurement, the onus should be on the utility to make that case.

**Option 2: A utility solicits competitive proposals for each conservation and efficiency resource program in the portfolio at least every six years.**

Though it is not stated explicitly, we would imagine that a utility would implement this option by seeking competitive procurements on a rolling basis—for example, one year, its residential portfolio, the next year, its industrial program. While we think that a rolling basis of program solicitation would be beneficial for ensuring cost-effective conservation is being acquired while limiting disruption to program implementation, we think the six-year requirement is too long and would hamper program innovation. As a floor, we suggest every four years, but there should also be flexibility that encourages new technology and program design methods be brought forward outside of these procurement windows.

**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. [etc.]**

While the other two options lay out prescribed requirements in terms of schedule or procurement amount, this option gives the opportunity for a utility to make their case to its conservation advisory group about why their competitive procurement approach may be better than the above. We appreciate the collaborative nature of this option, and we do think that this fits within the advisory nature of the groups. However, we are concerned that the result would be that each utility comes up with a different framework for competitive procurement. We would prefer a situation where the Commission sets the framework and then the utility confers with its advisory group when the utility feels it must deviate from that standard.

If some option such as proposed in the draft rule goes forward, it should be clear what “support” means in the context of “the advisory group *supports* the framework.” “

The Coalition appreciates the opportunity to comment on the proposed rules.

Respectfully submitted,

Wendy Gerlitz  
Policy Director

Joni Bosh  
Senior Policy Associate