

## Chapter 480-107 WAC

**WAC 480-107-001 Purpose and scope.** (1) The rules in this chapter require utilities to solicit bids, rank project proposals, and identify any bidders that meet the minimum selection criteria. The rules in this chapter do not establish the sole procedures utilities may use to acquire new resources. Utilities may construct electric resources, operate conservation and efficiency resource programs, purchase power through negotiated contracts, or take other action to satisfy their public service obligations.

(2) The commission will consider the information obtained through these bidding procedures when it evaluates the performance of the utility in rate and other proceedings.

**WAC 480-107-002 Application of rules.** (1) The rules in this chapter apply to any utility that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

(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.

**WAC 480-107-004 Additional requirements.** (1) These rules do not relieve any utility from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains its authority to impose additional or different requirements on any utility in appropriate circumstances, consistent with the requirements of law.

**WAC 480-107-006 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

**WAC 480-107-007 Definitions.** "Affiliate" means a person or corporation that meets the definition of an "affiliated interest" in RCW 80.16.010.

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"**Commission**" means the Washington utilities and transportation commission.

"**Conservation and efficiency resources**" has the same meaning as defined by WAC 480-100-238(2).

"**Conservation supplier**" means a third-party supplier or utility affiliate that provides equipment or services that save capacity or energy.

"**Generating facilities**" means plant and other equipment used to produce electricity purchased through contracts entered into under these rules.

"**Independent evaluator**" means a third party, not affiliated with the utility, that provides an evaluation of the utility's request for proposal process, evaluation, selection criteria, and related analyses of all project bids and project proposals discussed in this chapter received in response to a request for proposal.

"**Independent power producer**" means a non-utility entity that owns generating facilities or portions thereof that are not qualifying facilities as defined in WAC 480-106-xxx.

**Commented [A1]:** Does the way this sentence is constructed inadvertently exclude certain bidders?

**"Integrated resource plan"** or **"IRP"** means the filing made every two years by a utility in accordance with WAC 480-100-238 Integrated resource planning.

**"Project developer"** or **"bidder"** means an individual, association, corporation, or other legal entity that can enter into a contract with the utility to supply a resource need.

**"Project proposal"** or **"bid"** means a project developer's document containing a description of a project and other information in response to the requirements set forth in a request for proposal.

**"Qualifying facilities"** means generating facilities that meet the criteria specified by the FERC in 18 C.F.R. Part 292 Subpart B as described in WAC 480-106.

**"Request for proposals"** or **"RFP"** means the documents describing a utility's solicitation of bids for generating or delivering a resource need.

**"Resource need"** has the same meaning as defined by WAC 480-100-238(2).

**"Resource supplier"** means a third-party supplier or utility affiliate that provides equipment or services that serve a resource need.

**"Subsidiary"** means any company in which the utility owns directly or indirectly five percent or more of the voting securities, and that

may enter a power or conservation contract with that electric utility. A company is not a subsidiary if the utility can demonstrate that it does not control that company.

**"Utility"** means an electrical company as defined by RCW 80.04.010.

**WAC 480-107-015 The solicitation process.** (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; electricity from independent power producers; and, at the utility's election, electricity from utility subsidiaries, and other electric utilities, whether or not such electricity includes ownership of property.

(2) A utility may participate in the bidding process as a resource supplier, or may allow a subsidiary or affiliate to participate in the bidding process as a resource supplier, pursuant to conditions described in WAC 480-107-135 Conditions for purchase of resources from a utility's subsidiary or affiliate and WAC 480-107-AAA Independent Evaluator for Large Resource Need or Utility or Affiliate Bid.

(3) The solicitation process in this section is required whenever a utility's most recently acknowledged integrated resource plan or clean energy implementation plan demonstrates that the utility has a resource need within [~~xx34~~] years. The Commission may require RFPs for need outside this timeframe if it is determined through the IPR or CEIP that a long lead-time resource may qualify as a lowest reasonable cost resource.

(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;

**Commented [A2]:** This subsection is unclear as to how the NWPCC assessment will be used in this context. Needs clarification and perhaps accompanying Commission policy guidance.

(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.

(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 the commission. Interested persons will have sixty days from the RFP's filing date to submit written comments to the commission on the RFP. The commission will approve, approve with conditions, or suspend the RFP within thirty days after the close of the comment period.

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

(7) A utility must solicit bids for resource needs within thirty days of a commission order approving the RFP, with or without conditions, as applicable. To solicit bids, a utility must post a copy of the RFP on the utility's public web site and place notices in relevant industry

publications. The utility must maintain a list of potential vendors and communicate to those vendors when an RFP is issued.

(8) The utility must ensure that all bids remain sealed until the expiration of the solicitation period specified in the RFP.

(9) A utility may issue RFPs more frequently than required by this rule.

(10) Any person interested in receiving commission notice of utility proposed RFP filings may place their name on the IRP listserv on the commission's website.

**WAC 480-107-025 Contents of the solicitation.** (1) 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.

(2) The RFP must document that the size and operational attributes of the resource need requested are consistent with the range of estimated new resource needs identified in the utility's integrated resource plan.

**Commented [A3]:** We recommend modifying and restoring this definition.

(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.

(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.

(5) The utility's RFP submittal must declare if the utility or an affiliate is allowed to bid into the RFP.

(6) The RFP must specify the timing of process including the solicitation period, the ranking period, and the expected selection period.

(7) The RFP must identify all financial security requirements and the rationale for such requirements.

**WAC 480-107-AAA Independent Evaluator for Large Resource Need or**

**Utility or Affiliate Bid.** (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.

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

(3) The independent evaluator will contract with and be paid by the utility. The utility will also manage the contract terms with the independent evaluator.

(4) The independent evaluator will, at a minimum:

(a) Ensure that the RFP process is conducted fairly and properly;

(b) Verify that the utility's inputs and assumptions including capacity factors are reasonable; and

(c) Evaluate the unique risks of each bid.

(5) The independent evaluator will provide 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

**Commented [A4]:** Timing of the IE may need to be clarified here. We recommend they begin at the start of the process, before the design of the RFP.

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 significantly from the initial report and must explain any significant ranking 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.

(6) The utility must give the independent evaluator full access to examine and test 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.

**WAC 480-107-035 Project ranking procedure.** (1) The commission must approve the procedures and criteria the utility will use in its RFP to evaluate and rank project proposals.

(2) 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

**Commented [A5]:** We recommend that this section of the rules be revised to continue the UTC proceeding through this stage to allow interested parties to participate throughout the process.

financial risks to the utility, the risks imposed on ratepayers, public policies regarding resource preference adopted by Washington state or the federal government, compliance with RCW 19.405.040 (8), environmental effects including those associated with resources that emit carbon dioxide, resiliency 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.

(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.

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

(5) Within five days after the sealed project proposals have been opened for ranking, the utility must make available for public inspection on the utility's website a summary of each project proposal.

**Commented [A6]:** This should be filed at the UTC in an open docket and interested parties should be invited to review and provide comment.

(6) The utility may reject any project proposal that does not specify, as part of the bid, the costs of complying with environmental laws, rules, and regulations in effect at the time of the bid.

(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.

**Commented [A7]:** Should review in an open docket and provide an opportunity for interested parties to comment.

**Commented [A8]:** Both of these steps should require IE review.

(8) After the process is concluded, the utility will provide access to each bidder to its own confidential scoring information.

(9) Within five days after executing an agreement for acquisition of a resource 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, including specific performance on each criteria area identified in subsection(2) of this section, of results for all proposals.

**Commented [A9]:** This should be filed with the UTC .

**WAC 480-107-045 Pricing and contracting procedures.** (1) Once project proposals are ranked in accordance with WAC 480-107-035 Project ranking procedure, the utility must identify the bidders that best meet the selection criteria and that are expected to produce the relevant

attributes as defined by that portion of the resource need to which the project proposal is directed.

(2) The project proposal's price, pricing structure, and terms are subject to negotiation.

**WAC 480-107-065 Acquisition of conservation and efficiency resources.**

(1) A conservation and efficiency resource supplier may participate in the bidding process for any resource need. A utility or a utility subsidiary may participate as a conservation supplier, on conditions described in WAC 480-107-135 Conditions for purchase of resources from a utility's subsidiary or affiliate.

(2) All conservation and efficiency measures included in a project proposal must produce savings that can be reliably measured or estimated with accepted engineering, statistical, or meter-based methods.

(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;

**Commented [A10]:** See written comment from the NW Energy Coalition for this section.

(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.

**WAC 480-107-075 Contract finalization.** (1) Unless otherwise prohibited by law, a utility may decide whether to enter into a final

contract with any project bidder that meets the selection criteria of the RFP. Any bidder may petition the commission to review a utility's decision not to enter into a final contract.

(2) Any project bidder and utility may negotiate changes to the selected project proposal for the purpose of finalizing a particular contract consistent with the provisions of this chapter.

(3) The utility may sign contracts for any appropriate time period specified in a selected project proposal for up to a twenty-year term. The utility may sign longer-term contracts if such provisions are specified in the utility's RFP.

(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, projects according to the revised project proposal. If the material changes cause the revised project proposal to rank lower than projects not originally selected, the utility must instead pursue contract finalization with the next ranked project.

**WAC 480-107-135 Conditions for purchase of resources from a utility, a utility's subsidiary or affiliate.** (1) The utility, its subsidiary, or affiliate may participate in the utility's bidding process. In these circumstances, the solicitation and bidding process will be subject to additional scrutiny by an independent evaluator, pursuant to WAC 480-107-AAA Independent evaluator for large resource need or utility or affiliate bid, and the commission to ensure that no unfair advantage is given to the utility, its subsidiary, or affiliate.

(2) A utility, its subsidiaries or affiliates may not submit a bid unless the utility provides notice this may occur in the RFP.

(3) A utility must not disclose the contents of an RFP or competing project proposals to its own personnel involved in developing the utility's bid, or to any subsidiary or affiliate prior to such information being made public. The utility must include in the RFP and notice the methods used to assure that inappropriate information is tightly controlled and not communicated internally or with affiliates or subsidiaries.

**WAC 480-107-145 Filings—Investigations.** (1) The commission retains the right to examine project proposals as originally submitted by potential developers. The utility must keep all documents supplied by

project bidders or on their behalf, and all documents created by the utility relating to each bid, for at least seven years from the close of the bidding process, or the conclusion of the utility's general rate case in which the fully-developed project was reviewed for prudence, whichever is later.

(2) The utility must file with the commission within 30 days of the conclusion of any resource RFP process a summary report of responses including, at a minimum:

(a) Specific reasons for any project rejected under WAC 480-107-035(6) Project ranking procedure.

(b) Number of bids received, categorized by technology type;

(c) Size of bids received, categorized by technology type;

(d) Number of projects received, categorized by technology type;

(e) Size of projects received, categorized by technology type; and

(f) Median and average bid price categorized by technology type.

Categorization should be broad enough to limit the need for confidential designation whenever possible.

**WAC 480-107-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified in subsection (1) of this section. The publication, effective

date, reference within this chapter, and availability of the resources are as follows:

(1) Pacific Northwest Power Supply Adequacy Assessment as published by the Northwest Power and Conservation Council.

(a) The commission adopts the Pacific Northwest Power Supply Adequacy Assessment for 2023 published in 2018.

(b) This publication is referenced in WAC 480-107-015.

(c) Copies of Pacific Northwest Power Supply Adequacy Assessment for 2023 are available from the Northwest Power and Conservation Council at <https://www.nwcouncil.org/energy/energy-topics/resource-adequacy/pacific-northwest-power-supplyadequacy-assessment-for-2023>.

**Commented [A11]:** Will this automatically be updated to include future assessments? We do not want to continue using this assessment once new ones are available.