NW Energy Coalition
for a clean and affordable energy future

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To: Washington Utilities and Transportation Commission
Mr. Mark L. Johnson
Executive Director and Secretary

Re: Docket No. U-161024: competitive Resource Acquisition by Request for Proposals, WAC 480-107

Implementing comprehensive, thoughtful and judicious rules that govern utility resource procurement processes and resource for proposals (RFP) is a critically important and contentious process because of the current utility business model, the amount of money potentially involved, and the long-term nature of utility resources. Most importantly, the potential risk to ratepayers from a poorly conducted and executed RFP is substantial. Fair and robust rules governing RFPs and procurement should provide the greatest benefits and security to ratepayers.

The NW Energy Coalition (Coalition) thanks the Utilities and Transportation Commission (UTC) for the opportunity to respond to the questions provided in the notice to stakeholders in Docket U-161024 related to RFPs. Below are our responses to the questions regarding RFPs in the order in which they were provided stakeholders in the August 24, 2018 notice. Attached with these comments are some proposed edits to the referenced revised WAC rules.

1. Natural Gas

The Coalition supports the Commission proposing, evaluating and ultimately implementing similar competitive procurement rule language for natural gas utilities. Generally, the Coalition believes that the electricity and natural gas utilities should be subject to similar, if not identical, regulations and rules, particularly those that are administrative in nature. Doing so provides a number of benefits to UTC Staff, stakeholders, potential bidders and ultimately ratepayers.

Implementing parallel RFP rules has the potential to benefit ratepayers the most because increased transparency, recurring reporting, independent evaluation and stakeholder engagement should result in healthier competition. Assuming healthy markets are achieved with adequate competitors partaking, strong competition should result in lower costs for customers. Depriving benefits of competition for gas customers by limiting the rules only to electric utility customers makes no sense and could potentially lead to consumer harm in the future.

In addition to both gas and electric customers benefiting from consistent rules, vendors and potential bidders would benefit from the consistencies and efficiencies afforded by parallel rules, as would any interested stakeholders.

Competitive procurement rules for natural gas utilities would need to accommodate the different types of services the utilities offer, e.g., firm and transport services, as well as the role of the gas utility as fundamentally a distribution company of its utility service. Therefore, Rules for natural gas utilities should prioritize optimizing competitive procurement for distribution and demand-side management investments. Ideas to facilitate this include lowering the threshold that necessitates a competitive process, requiring specifically identifying qualifying natural gas investments in the rules, and strengthening the use of evaluator methodologies to increase "non-wire" alternatives to increased pipeline capacity.

The Coalition does support language for natural gas conservation, but with strong customer protection and contracting language to ensure that neither customers nor the delivery system are compromised. Furthermore, demand response (DR) should be explicitly mentioned in any natural gas rules in case the definition of "conservation" does not explicitly include it. The Coalition at this time does not provide an opinion on the proposal to offer similar language for delivery services procurement. Overall, the Coalition believes that customers ultimately benefit when all utilities are subject to similar rules to the maximum extent possible.

Question 2

a. Please see attached comments to the Staff redlined version of rules for most of the Coalition's comments and proposed edits. Our biggest concerns regard the exemptions, which are addressed separately in question 4.

b. The Coalition supports language that maximizes comprehensiveness in any evaluation or methodology, i.e., identifies and assigns a value to as many costs and benefits as possible. Rather than "net benefits", which we think is confusing in light of other statutory language using the same term, we support the following language: "The utility must utilize an evaluation methodology that is as comprehensive as possible in order to capture as many costs and benefits as possible."

Question 3

The Coalition has significant concerns regarding a window of 10 years for triggering a resource need and subsequently an RFP. Two reasons influence the Coalition's position. The primary concern is the one stated in the notice: that a resource determination with such a long lead time could risk running afoul of the "used and useful" principle. Factors that affect load, such as new demand-side management technologies or customer migration, in the interim could result in the resource being no longer necessary, from either a capacity or energy aspect.

Second, technology innovations during the interim period of resource selection and deployment could render the selected resource obsolete or inefficient compared to a newer version of the selected resource or even an altogether new technology. As stakeholders in the energy industry have seen over the past two decades, the acceleration of distributed energy resources, grid communication and monitoring services, and regional market development likely will continue. We can expect these developments to continue as a result of growing innovation, new investment and increasing demand by customers for choice. Because of this likely scenario, a long lead time like 10 years seems contradictory to the momentum supporting the changing industry.

In response to UTC Staff's question to how long-lead time technologies can achieve an equal opportunity to meet resource needs, the Coalition recommends the UTC create a regulatory environment that is strongly supportive of utilities implementing a variety of pilots coupled with a regulatory framework that creates a clear and defined pathway for piloted technologies to transition into a utility-wide implementation phase. Because many of these new utility technologies require investments in both utility back-end and front-end infrastructure, affect operational protocols and require significant outreach and investment in customer participation, the risk in relying on these new technologies is high, especially when they are envisioned as a way to meet an identified resource need.

To mitigate this risk and ensure that customers continue to receive low-cost, low-risk and reliable service, the UTC should strive to encourage the utilities, technology vendors and stakeholders to actively participate in a pilot-focused process. In doing so, utilities can bring different customer classes up to speed while also upgrading their systems to host these technologies. The Coalition believes that in the near-term, the lost-opportunity cost from delaying full-scale technology implementation due to robust piloting is outweighed by the mitigation of risk involved in implementing these technologies too early or reliant on a long-lead time that could result in stranded assets.

Question 4

a. The Coalition believes two of the thresholds are not satisfactory. First, we believe the threshold of 50 megawatts (MW) found in subsection 4, part a is too high. The act of selecting a value that ensures competition is maximized amongst the vast majority of resource procurements while also enabling the utility to effectively and expeditiously manage its own system is exceedingly difficult. Ideally, the UTC should pursue a flexible process in which every resource decision is evaluated individually because context is so critical and circumstances are unique to every decision.

Recognizing that this preferred process is highly resource intensive and likely not feasible, the Coalition believes a more stringent value is appropriate in place of 50 MW. The Coalition suggests 5 MW but believes a thorough stakeholder process to consider an appropriate number is warranted. From the Coalition's experience in other states, a high value of 50 MW could result in resource decisions that have critical impacts on ratepayers yet are never scrutinized by stakeholders or the UTC. For example, if a utility identifies a need of 49.5 MW in its IRP, conducts a procurement process that does not have the rigor envisioned by these rules, and the process results in procurement of more than 50 MW as a result of undisclosed circumstances in the selection process, how does anyone know if ratepayers are actually benefiting from this loophole?

Furthermore, if the UTC pursues a more conducive regulatory environment for pilots, DER planning, and DER implementation, the utilities may rely more on short-term contracts for capacity in smaller increments until technologies come to fruition. If this is the case, 50 MW is likely to high of a threshold to capture the types of resources utilities would acquire in this scenario. In addition to the potential abuse of a higher threshold by utilities and the characteristics of short-term resource acquisitions, the Coalition believes that any utility expenditure of ratepayer funds should receive reasonable scrutiny and the benefits of a competitive process in order to protect ratepayers.

The second threshold that the Coalition has concerns about is the $10 million value for distribution or local transmission resources found in subsection 4, part d. The Coalition in its comments on DER planning filed on May 17, 2018 in the same docket supported a more flexible approach aligned with what the UTC proposed in its draft rules. We support our position and reasons in those comments and refer to them in this matter. In summary, the Coalition supports a flexible approach, one that does not rely on a hard, financial limit and instead encourages consideration of context.

b. One exemption that the Coalition believes is worth considering is if an unexpected and significant development occurs, such as a natural disaster or major economic event, that results in an IRP-identified resource no longer being available and the ensuing IRP's acknowledgement by the Commission is distant enough such that the utility may have to pursue a secondary resource choice that has a more expedited time frame. The Coalition believes the qualifying circumstances would have to be extenuating enough and explicit in rules to warrant this exemption in order to protect customers and prevent the utilities from avoiding the requirement under spurious circumstances.

c. The Coalition has no suggestions for additional thresholds at this time.

d. In addition to a capacity resource, the Coalition believes identified resources for energy, ancillary services, reliability and resiliency should also face thresholds. The Coalition would suggest a reasonable average MW value for a threshold for any energy resource and a more flexible, undefined threshold for the remaining suggested resources.

Question 5

a. Yes, the proposed definition of "resource need" should include local transmission and distribution needs. Consistency across all utility investments is beneficial to ratepayers, regulators, and potential bidders.

b. The Coalition supported the language of "major distribution capital investment" in its DER planning comments submitted in this docket in May. The Coalition supports replacing "project" with identical language in the RFP draft rules.

c. The Coalition in its May DER planning comments stated

> *The definition proposed in the draft rules is preferable to setting a static threshold mostly because the Coalition believes the proposed definition affords the flexibility and attention to investment context that will be essential in producing outcomes that deliver the most value to the system and customers. The Coalition is concerned that a static threshold could prevent necessary scrutiny of investments that fall under the limit yet have viable and beneficial alternatives. Value streams of projects may have social, economic, or environmental benefits that cannot be easily monetized or do not work favorably with traditional cost-effective methodologies.*

If the majority of stakeholders support a financial threshold, the Coalition recommends that a more granular analysis of historical distribution system investments occur so that threshold assigned is less arbitrary. For example, the utilities could segregate investments into various classes and within each class determine a median investment value that serves as investment threshold.

The Coalition maintains the position of flexibility in these comments, but if a threshold value is preferred, we support one this is not cost based such as the scale, e.g., feeder to subtransmission, or size of load on the distribution infrastructure under consideration.

d. The Coalition supports exemptions for emergency situations like natural disasters or human created, like terrorist or cyber attacks.

e. The Coalition supports a similar framework for delivery system RFPs and will provide comments on process and revision at the stakeholder workshop.

Question 6

In response to both parts, the Coalition strongly supports the use of the Northwest Power and Conservation Council (NWPCC) in determining regional resource adequacy. The NWPCC is the preeminent authority on regional modeling and regional utilities and stakeholders are familiar with the work they conduct and the Staff who conduct it. Any issues of transparency, accuracy, or ease should be pursued within NWPCC forums; the Coalition imagines those same issues would arise with other groups or models that would also accompany additional problems deriving from using a new, unfamiliar entity.

Question 7

a. The Coalition believes the circumstances in which an independent evaluator (IE) must be used as presented in the draft rules are conceptually satisfactory, but one element should change. First, the amount in MWs should reflect the ultimate value chosen for WAC 480-107-035(4), which the Coalition suggests should be 5 MW, as discussed n Question 4. An IE should also be required for the required criteria when a utility seeks to require a resource outside the IRP process.

b. Yes, there is significant value in requiring an IE in large projects, which the Coalition believes should be considered greater than 5 MW, regardless of whether the utility or an affiliate plans to submit a bid. An IE provides the UTC, stakeholders, and bidders value as a result of a more transparent, fair and standardized process.

c. The Coalition supports adding a requirement that an IE verify the outputs of any modeling, bidding evaluation framework, or methodology used in the bid selection process. This would be in addition to the verification of any inputs that the proposed rules already contemplate.

d. The Coalition is unsure of how burdensome or limiting a certification or accreditation process might be. Rather, the Coalition encourages the UTC to consider requiring any potential IEs demonstrate in detail previous experience evaluating utility RFPs as well as provide information about the staff of the IE who will be conducting the analysis, such as resumes and conflicts of interest.

Question 8

The Coalition supports the two reports as contemplated in the draft rules. Our experience in Oregon, which also requires two separate reports, has shown two reports provide greater integrity to the process. We believe the cost is outweighed by the transparency and robustness brought to the procurement process by requiring two reports.

Question 9

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 2020-2021 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. "

Question 10

The Coalition recognizes the difficulty in balancing utility flexibility in acquiring resources and implementing processes that ensure ratepayers are paying for resources that are cost-effective and meet the "used and useful" standard. Ideally, if a utility is pursuing a resource outside the IRP process and the utility claims a need exists to justify the acquisition or contracting of that resource, then that need should be independently verified and have the opportunity of being met with other resources through a competitive process. Doing so would ensure that ratepayers are receiving the most affordable power and that they are not paying for any resource that is not needed. An expedited competitive bidding process accompanied by an IE would provide strong assurance in the utility advancing with any procurement decision outside the IRP.

We recognize that utilities will say that impedes their ability to conduct business without jeopardizing competitive advantages, and therefore potentially endangering the best opportunity for ratepayers. One idea that warrants further discussion is that the UTC and stakeholders not affiliated with any potential bidder be given the opportunity to review materials associated with any resource acquisition outside the IRP prior to the finalization of any deal. This procedure could ensure that some amount of independent review and check is made on the expenditure of ratepayer funds while also enabling the utility to pursue an opportunity without it being compromised by competitive disadvantages.

Question 11

The Coalition believes the use of weighted percentages is highly valuable in creating a more transparent and fair process, especially one in which utilities participate in and oversee. Utility concerns regarding "gaming" are rendered moot by the use of an IE who has access to all bid data, utility methodologies and evaluator tools, and contact information of the bidders. At a minimum, some sort of criteria rubric like the one envisioned in the draft rules should be included. The Coalition's concern with the provided draft language is that it enables each utility to set the criteria and weights, which creates integrity problems if the utility is ultimately evaluating and deciding the winning bid in addition to issues of utilities selecting different values. The Coalition prefers that criteria be standardized across all investor-owned utilities and that they be set in an independent manner.

Question 12

With reference to two-stage bidding, the Coalition currently has no comment on this question and looks forward to discussing it in person at the upcoming stakeholder meeting.

Question 13

The Coalition supports a flexible definition like the one provided but has concerns about the phrase "recognized opportunity." Who officially does the recognizing and what constitutes an "opportunity?"

Thank you again for the opportunity to provide comments. Please reach out to Michael Breish at michael@nwenergy.org or (206) 621-0094 for any follow-up questions. We plan to have Coalition staff in attendance at the October 2, 2018 workshop.