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

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COMMISSION

**Re: Docket U-161024: Comments of Puget Sound Energy on Commission Rulemaking for Integrated Resource Planning, Competitive Resource Acquisition by Request for Proposals (RFP), Chapter 480-107 WAC**

Dear Mr. Johnson:

Puget Sound Energy (“PSE”) appreciates the opportunity to respond to the questions proposed and draft rules proposed 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 U-161024 (“Notice”) on August 24, 2018.

**1. Natural Gas**

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

PSE Response:

PSE believes that the proposed rules for electric utilities for competitive resource acquisition are not well suited to address competitive procurement for natural gas. Moreover, PSE is not aware of any controversy regarding competition to provide resources to natural gas utilities. Simply put, extending these rules to natural gas utilities is a solution in search of a problem and riddled with challenges.

For instance, natural gas is regulated by federal rules that govern natural gas commodity markets and pipeline transport. Additional state requirements regarding competitive procurement could be duplicative or contradictory to these existing federal regulatory regimes.

Additionally, natural gas is purchased and sold as a commodity through a transparent natural gas market, which cannot be holistically replaced by long-term requests for proposal. PSE believes

that it would not be desirable to replace the well-functioning, transparent natural gas market with long-term RFP bids for supply. Indeed, it is PSE's experience that very few producers are willing to commit natural gas supplies for more than two or three years.

Finally, if the biddable natural gas resource is intended to be pipeline capacity, establishment of rules for pipeline capacity pricing and bidding could contradict the already strictly regulated procedures established by the Federal Energy Regulatory Commission ("FERC") or the National Energy Board of Canada.

For these reasons, PSE does not support the expansion of the proposed draft rules for competitive procurement by electric utilities to natural gas utilities.

## **2. Language Request**

*a. Is the language in the draft rule at WAC 480-107-015 sufficient to require an all-source RFP for most resource needs, while allowing sufficient flexibility in the process to allow limited scope RFPs when they are most useful?*

*b. In WAC 480-107-035(3) the draft contains the term net benefits. Language around this concept has been evolving recently. Would using a different phrase, such as costs and benefits, or impacts, be clearer?*

### PSE Response:

- a) PSE would support revisions to the proposed regulations to allow for limited scope requests for proposal. The language in proposed WAC 480-107-015(4) provides exemptions from the request for proposal requirements under a prescribed set of circumstances but does not allow for a limited scope request for proposal process. In circumstances in which an exemption would not apply, a more limited process may be a warranted and useful mechanism to allow utilities to efficiently take opportunities that (i) do not have a large number of potential supplies, (ii) have a limited scope or contain other unique circumstances that require expeditious action to reduce customer bills, or (iii) ensure reliability or integrate new technologies.
- b) PSE agrees that use of the term "net benefits" in proposed WAC 480-107-035(3) creates unnecessary confusion due to the evolving definition ascribed to that term. PSE supports revising this section to replace "net benefit" with "costs and benefits."

## **3. RFP Timing**

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

### PSE Response:

PSE appreciates this inquiry by the Commission to ensure that long-lead time or new technologies are given an equal opportunity to meet resource needs. PSE believes the best way to

provide an equal opportunity to all resources including long-lead time and emerging technologies is to provide the flexibility to incorporate these new technologies when and as they are needed. Given the number of variables involved in incorporating new technologies into a utility system, the best way to ensure that long-lead time technologies have an equal opportunity to meet resource needs is to support and allow appropriate rate treatment of these new technologies rather than providing more perspective time periods. The Commission can do this through a variety of accounting and rate methodologies, such as pilot programs, deferred accounting, forecasted rate treatment, and true-up mechanisms. PSE would welcome the opportunity to discuss further how these and other tools can assist in ensuring long-lead time technologies have an equal opportunity to assist in resource needs.

#### **4. Thresholds for Exemption**

*In the proposed draft language for WAC 480-107-015(3) there are thresholds and circumstances that would exempt utilities from issuing an RFP without requesting an exemption.*

*a. Are the thresholds proposed appropriate?*

*b. Are there other circumstances appropriate to qualify for exemption from the rule?*

*c. Are there other types of thresholds that should be incorporated for these resource needs?*

*d. What other types of resources would benefit from a threshold?*

#### **PSE Response:**

Insofar as the 50 MW limit is concerned, PSE believes that 100 MW would be a more appropriate limit, as anything less could readily be met through short-term market purchases or similar arrangements. PSE generally supports the proposed draft language in WAC 480-107-015(3) that establishes thresholds and circumstances that would exempt utilities from issuing an RFP without requesting an exemption. As noted elsewhere in the comments, PSE encourages the Commission to receive comments on whether (i) the Northwest Power and Conservation Council is the right body to assess and identify a resource adequacy target, (ii) the shorter of a five year horizon or the period of the utility's resource need is the appropriate time period for resource adequacy review, and (iii) utilizing short-term market purchases to satisfy identified resource need should be capped based on a regional resource adequacy target or on other criteria. Furthermore, as discussed elsewhere, PSE does not support a rule requiring an RFP subject to Commission oversight for projects to address local transmission and distribution needs or a dollar threshold with respect to any such requirement, but PSE does encourage the Commission to craft rules that would not require an extended request for proposal process for relatively small projects, which could add unnecessary costs to customer rates.

## 5. Delivery System RFP

*On May 17, 2018, the Commission received comments on draft rules related to distribution system planning (WAC 480-100-238). These comments are in the process of being evaluated. The proposed draft rules for RFPs are intended to ensure investments are being made at the lowest reasonable cost and that new technologies are allowed to compete on equal footing with standard practice. As these two parts of the proposed IRP rule evolve, the areas of overlap and interdependency will be continually reconciled.*

*a. With this in mind, should the proposed definition of Resource Need include local transmission and distribution needs?*

*b. The proposed draft language in WAC 480-107-015(3)(e) [sic – should be (4)(d)] identifies an automatic exemption from the rule for distribution system or local transmission projects that are projected to cost less than \$10 million. Should the term “project” be the [sic] replaced with “Major distribution capital investment” as defined in the proposed draft rules for WAC 480-100-238 to clearly connect the two rules? If not, what would be a reasonable definition of project in this case?*

*c. In the notice accompanying the draft distribution system planning rules, the Commission asked for criteria to consider when defining a “Major distribution system capital investment.” In the proposed draft RFP rules, a similar set of criteria could be used to allow an automatic exemption from the rule to relieve the burden of issuing an RFP for smaller projects identified in a distribution system plan. Is a \$10 million threshold appropriate? Would a threshold that is not cost-based be more appropriate for delivery system resources? If so, what should be the criteria of this threshold?*

*d. Are there other circumstances concerning the delivery system that are appropriate to qualify for exemption from the RFP rule?*

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

### PSE Response:

a) Based on the revised draft language provided by the Commission to date, PSE would not support the inclusion of local transmission and distribution needs. PSE appreciates the Commission’s consideration of the comments submitted by PSE with regard to the draft rules related to distribution system planning issued on May 17, 2018 but the issues raised by PSE related to distribution system planning have not been addressed (i.e., how has the Commission ensured that its request for proposal process will not impede compliance with needs identified by FERC or through regional planning organizations such as ColumbiaGrid). Therefore, PSE cannot support the inclusion of local transmission and distribution needs in this rulemaking at this time.

- b) As noted in PSE's response in part (a) above, PSE does not support any requirement to submit RFPs for local distribution and transmission investments. However, to the extent the Commission elects to do so, PSE would reluctantly prefer tying this requirement to the definition of "Major distribution capital investment."
- c) PSE does not support a dollar threshold. A dollar threshold assumes knowledge of a solution and cost of a resource need at the time of a request for proposal, which is not always possible. Additionally, investment cost will vary widely based on type of solution, location, and other requirements that come during implementation, making a dollar threshold hard to use as an input criteria for this process. A utility should have the flexibility of developing transparent criteria as its process evolves. The advisory group proposed by the Commission can assist in formulating fact specific criteria to ensure that projects falling within the proposed request for proposal requirements are appropriate. Notwithstanding PSE's opposition to a dollar threshold, PSE encourages the Commission to craft rules that would not require an extended request for proposal process for relatively small projects, which could add unnecessary costs to customer rates.
- d) As stated in PSE's response to part (a) above, PSE does not support the inclusion of local transmission or distribution needs in this rulemaking. However, if the Commission decides to move forward with the inclusion of these assets, PSE would encourage the consideration of the following exemptions:
- The Commission should analyze and provide an estimate of the cost of the draft rule changes.
  - Explicit exemptions when the planning process is under the authority of another entity or set of regulations (e.g., federal, regional, reliability, safety, and environmental requirements).
  - Explicit exemptions of any needs that the utility or advisory group determines must be met within three years or less.
  - Explicit exemptions of needs associated with emergency and outage response, aging infrastructure or maintenance replacement with like kind assets, customer and third-party requests, such as public improvement work that requires relocations or services and work required to serve a customer or developer request, and reliability work required to meet service quality indices.
  - Explicit exemptions relative to system work until a mature integration with the Integrated Resource Plan is achieved.
- e) As stated in PSE's response in part (a) above, PSE does not support the inclusion of local transmission or distribution needs in this rulemaking. PSE would encourage the Commission to thoroughly vet the costs associated with implementation of a request for proposal process for local transmission and distribution needs and the integration of this approach with the Commission's existing rules.

## **6. Reliance on the Market**

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

*a. Are there other third-party sources that would be more appropriate to reference?*

*b. Are there other methods that are easier, more transparent, or more accurate than relying on third-party analysis?*

### PSE Response:

Before responding to the individual questions, it is important to differentiate between the need for exemptions and resource needs covered by short-term market reliance. Relatively recently in PSE's experience, Commission staff explained that if the IRP shows a resource need, even if that need will be covered by conservation targets identified in the IRP, the PSE must issue an RFP or request an exemption. This problem can be solved by clarifying the trigger for a supply-side/demand response RFP is when the IRP identifies a resource need after conservation.

a. PSE believes it would be reasonable to rely on the Northwest Power and Conservation Council's ("Council") annual resource adequacy report as an initial threshold. This report does not consider intra-regional transmission or commercial activity, but it is a reasonable high level threshold for whether additional attention is required for resource adequacy, if utilities are relying on short-term market for peak capacity. PSE recommends the language to be broad enough to encompass the entire report. Specifically, PSE does not rely on the Council's base Southwest import assumption, rather, PSE looks to a case that assumes transmission from the Southwest could be filled up to The Bonneville Power Administration's 95th percentile of capacity under emergency conditions. This is important. The Council's recent base case shows the region is short, whereas the case where the transmission line is filled shows the region will be adequate.

b. The Council's annual resource adequacy report is very transparent. That is, it is easy to read that report and understand whether the region appears to have adequate resources under different scenarios. The underlying analysis is complex, but the report itself is clear and conclusions are clearly articulated.

## **7. Independent Evaluator**

*The draft rule WAC 480-107-AAA requires the use of an independent evaluator under certain circumstances.*

*a. Does this section identify the proper circumstances or are there other circumstances under which an independent evaluator should be required?*

*b. Is there value in requiring an independent evaluator for large projects when a utility will not be bidding? If so, is a 50 megawatt resource need an appropriate threshold?*

*c. Does this subsection provide enough specificity concerning the independent evaluator's role, or is additional rule language needed?*

*d. Should the Commission require that the independent evaluator be certified or accredited? If yes, provide specific qualifications the independent evaluator should possess.*

### PSE Response:

PSE, on behalf of its customers, and to comply with the law on lowest reasonable cost in RCW 19.280.020, believes an independent evaluator is neither necessary nor valuable. PSE is also concerned that some might interpret this direction as the Commission headed toward pre-approval.

- a) For the reasons sent forth in earlier comments in this proceeding, PSE continues to oppose the proposal for an independent evaluator. Furthermore, Commission Staff has always done a reasonable job evaluating the prudence of utility acquisitions. The issue of prudence is not a new concept or issue facing the Commission. As such, PSE does not understand the need to fund additional review that is the requirement of the Commission and their staff at ratepayer expense beyond the regulatory fees already recovered in PSE's customers' rates. Notwithstanding that position, if an independent evaluator were required, it would only be necessary in the case a utility selected a self-build option as its preferred alternative, prior to acquisition.
- b) See response to part (a) of this question above.
- c) See response to part (a) of this question above.
- d) See response to part (a) of this question above. In addition, PSE is not aware of any specific certifications or accreditations for such work.

## **8. IE Report**

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

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

### PSE Response:

If an independent evaluator is required and there is an independent report, reconciliation of that report before it goes public seems imperative. Otherwise, it is virtually certain that the independent evaluator and the utility will reach different conclusions and there will be increased cost and time (ultimately borne by taxpayers and customers) required to resolve those differences in a regulatory proceeding.

## **9. Conservation RFP**

*a. Does the proposed rule language in WAC 480-107-015(3)(d) and WAC 480-107-065 adequately encourage competitive procurement of conservation resources without negatively affecting current program planning and implementation?*

*b. The proposed language describes a role for the advisory group that is not currently explicit in rule, approving a framework for issuing conservation RFPs. Does this advisory group role fit with the current function of the conservation advisory group? The proposed rule specifies the competitive procurement framework must receive the support of the advisory group. Is this a reasonable condition?*

*c. Do the minimum procurement percentages provide reasonable guidance in the development of a competitive procurement framework for conservation?*

### PSE Response:

After reviewing the draft rule language, it is unclear to PSE how the proposed WAC revisions 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"). Several of the proposed rules could potentially add significant delays, increase costs to PSE ratepayers, reduce conservation programs' direct benefit to customer ratio, and potentially affect the implementation of conservation programs negatively. Overall, the draft proposed rules stipulating extensive review and approval periods could have a potentially negative effect on



conservation program planning, implementation, and ultimately, the achievement of conservation targets.

- a) PSE is concerned that the requirement to submit conservation RFPs to the Commission for review and public comment could increase delays, interfere with the established bidder selection process, and potentially reveal sensitive or confidential information about bidders. The current conservation RFP process is well-vetted and has been reviewed by PSE's CRAG on at least two occasions (in 2017). The current process involves hundreds of program staff hours and significant amount of review, evaluation, potential bidder interviews, contract negotiations, and implementation set-up. The entire process typically spans over six months in a planning year.

In reference to the current Commission proposed draft 480-107-065(1):

“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.”

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 programs).

- b) 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 480-107-065(3). PSE reviews its conservation program RFP process with the CRAG on a regular basis, and provided the CRAG with a significant amount of 2018-2019 RFP results detail over the course of two CRAG meetings in 2017. Energy Efficiency'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.
- c) PSE is unclear as to how the percentages were established. PSE is also unclear as to whether those percentages pertain to overall conservation programs or overall planned savings. PSE is unclear as to how the percentages were established. PSE is also unclear as to whether those percentages pertain to overall conservation programs or overall planned savings. There also should be clarification provided in the WAC requirement about the applicable conservation programs. Programs related to low income weatherization, measures in connection with Northwest Energy Efficiency Alliance, pilot programs evaluating new technology, and transmission/distribution efficiency efforts do not lend themselves to be opened for competitive bidding. PSE would also note that this proposed rule does not address the requests for information process.

## **10. Procurement Outside of an RFP**

*How can the Commission ensure that utilities are pursuing these low cost opportunities available outside of an RFP? How can this idea be incorporated in rule?*

PSE Response:

The process outlining how and whether the Commission will allow into rates the costs associated with a resource acquisition requires utilities to demonstrate that the acquisition is “used and useful” in the service of providing electricity to customers and is already outlined in the law at RCW 80.04.250. Moreover, there is already ample Commission precedent in the application of its prudence tests related to utility acquisitions, including the continuous evaluation of alternatives that may come after a formal RFP process but before an acquisition.

**11. Evaluation Transparency**

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

PSE Response:

Please see PSE previously filed comments, which are still applicable. Lenders engaged in project finance, do the same sort of due diligence that PSE does as part of the RFP process. PSE’s experience in the project finance process is that, at the end of the day, it is a pass-fail system, not a grading system with weights. Pass-fail means that the project proponent has to have (nearly) “all of the bases covered.” The project does not get financed if the criteria are only, for example, 70% complete.

PSE also evaluates its purchase options on the best overall value to PSE and its customers. For example, in the case of conservation programs, although a vendor may meet evaluation criteria and offer a low cost, the process of providing services may be cumbersome, adding significant PSE labor hours and resource costs to effectively operate the program and track benefits to PSE’s customers. If it is not easy for customers to use, the conservation program will not meet the desired use benefit or energy savings objectives.

**12. Two Stage Bidding**

*Please discuss the advantages and disadvantages of this approach including whether the bidding structure proposed creates asymmetrical bidding opportunities between IPPs that offer power purchase agreements and those offering to sell their generation. How should the sequence of bid offers be designed if the IPP is offering two differently structured offers for the same project, one that is PPA and one that is a contract with transfer of ownership?*

PSE Response:

The concept of two-stage bidding is being proposed by those that seem to be operating in a realm that no longer exists. Years ago, independent power producers (IPPs) were generally more similar in financial and organizational structure and had business models based on ownership of assets with utilities taking on power purchase agreements (PPAs). Although some IPPs still operate under this business model, others have an interest in developing a project and selling it. The current RFP gives a utility flexibility to weigh all of these alternatives against each other, whereas a two-stage process proposed favors PPAs. Although this two-stage process may be good for certain kinds of IPPs seeking to enter into PPAs, this process may not be good for utilities or their customers. Therefore, PSE, on behalf of its customers, and to comply with the law on lowest reasonable cost in RCW 19.280.020, is opposed to this proposal.

**13. Resource Need Definition**

*In the proposed draft rules the previous definition of resource block that focused solely on capacity has been replaced with a definition of resource need. This new definition is intended to capture all types of system deficits that may benefit from competitive procurement for example: capacity and associated energy, capacity needed to meet peak demand in any season, FERC-jurisdictional operational requirements, distribution plant investment, or resources required for regulatory compliance, such as renewable resources or cost-effective conservation and efficiency resources. Should the proposed definition of Resource Need above include specific resource needs that should be subject to competitive bidding? If so, what should be included in that list?*

PSE Response:

The term “resource” has historically been preceded repeatedly by the words “energy supply,” which PSE interprets to mean how energy is produced and delivered to the system. The expansion of the definition is very broad and assumes it all benefits from competitive bidding. The Commission should produce the basis for each example in the definition and how the value of competitive bidding has been determined to weigh against the process cost to both the utility and Commission. To cast the net wide without basis will create unnecessary process that will likely not result in the intended benefit.

The list of “system deficits” in the definition of “resource need” appears to include needs and solution types. For the purposes of trying to include transmission and distribution infrastructure, the basic needs or drivers of work include capacity, reliability, compliance, emergency/safety, and third-party requests. The only two needs that PSE feels may benefit from an RFP process overseen by the Commission are capacity and reliability. Of the two, capacity needs are the only ones that typically are foreseen with enough time to complete an RFP process as described in the Commission process. PSE would caution the Commission imposing processes relative to meeting compliance, emergency, or safety. Additionally, third-party requests, such as relocations required by jurisdictions or customer requests are generally local and small in nature and timely solutions and service is expected.

Regarding the specific system deficits listed, PSE is not clear on what “capacity and associated energy” means and how its interpretation differs from the phrase “capacity to meet peak demand in any season.” PSE delivery system planning targets peak demand. PSE does not know what the Commission means by the phrase “FERC-jurisdictional operational requirements”. PSE notes that FERC is the authority relative to transmission planning under Order 1000, <https://www.ferc.gov/industries/electric/indus-act/trans-plan.asp>. The Commission’s entry into this authority may create untenable jurisdictional conflicts. Adding “distribution plant investment” does not provide value due to the very broad nature of the language but, as already stated, is confusing with other terms. If resources required for regulatory compliance is only defined by the examples listed, then make this clear. One could interpret regulatory compliance as anything related to meeting pipeline safety codes and laws or the National Electrical Safety Code and so on. Again, PSE would expect the Commission to not want to dabble in this area or create a perception of discretion.

### **Conclusion**

PSE appreciates the opportunity to provide responses to the questions and proposed rule changes identified in the Commission’s Notice of Opportunity to File Written Comments. Please contact Nate Hill at (425) 457-5524 or Eric Englert at (425) 456-2312 for additional information about these comments. If you have any other questions please contact me at (425) 456-2142.

Sincerely,

*/s/ Jon Piliaris*

Jon Piliaris  
Director, Regulatory Affairs  
Puget Sound Energy  
PO Box 97034, EST07W  
Bellevue, WA 98009-9734  
425-456-2142  
[Jon.Piliaris@pse.com](mailto:Jon.Piliaris@pse.com)

cc: Lisa Gafken, Public Counsel  
Sheree Strom Carson, Perkins Coie