**COMMENTS OF UTILITY CONSERVATION SERVICES, LLC (UCONS)**

**ON PROPOSED RULES REGARDING COMPETITIVE RESOURCE ACQUISITION BY REQUEST FOR PROPOSALS (RFP), WAC 480-107**

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1. **INTRODUCTION AND SUMMARY**

Utility Conservation Services, LLC (UCONS) has reviewed the Notice of Opportunity to File Written Comments, dated August 24, 2018, and the accompanying draft revisions to WAC 480-107. We appreciate the Commission’s efforts to clarify that demand-side resources should play a central role as a utility fulfills its duty to serve its customers.

After providing some background on UCONS, we (1) make some general comments on the overall draft rule and its approach; (2) respond to several of the specific questions posed in its Notice; and (3) add a few comments not covered in the Commission’s questions.

In addition to these Comments, we attach a version of the draft rule in which our suggested edits are redlined on top of tracked changes the draft circulated by the Commission. For ease of reference, our edits are highlighted in yellow.

1. **BACKGROUND**

UCONS is a national leader in the development and implementation of residential conservation programs, headquartered in Kirkland, Washington. UCONS has done or is doing business in Washington, California, Oregon, Idaho, Texas, Utah, and New York. We provide services under contract to a large number of utilities, both investor-owned and publicly-owned, as well as to major property management firms. Since 1993, UCONS has delivered direct‑install energy efficiency programs to over 320,000 multifamily tenants and over 100,000 manufactured home MH) utility customers. The aggregate energy savings from these efforts total nearly 500,000,000 kWh and 10,000,000 therms. Since the adoption by the Pacific Northwest Power and Conservation Council of its 7th Power Plan, we have attempted to focus our work on hard-to-reach (HTR) markets, especially in the Manufactured Home (MH) sector. However, our work over the past three years has almost exclusively been on multi-family dwellings because utilities have not provided funding to reach the cost-effective conservation potential remaining in the MH sector. Since passage of the 7th Plan, the MH sector has seen a precipitous decline in utility funding.

1. **GENERAL COMMENTS**

The draft rule revisions will enhance the Commission’s focus on energy conservation as the resource of first choice in Washington. That is consistent with, and mandated by, the state law requirement that utilities acquire all cost-effective conservation. RCW 19.285.040. We recommend that the Commission state in the proposed rules that in adopting them, it is fulfilling the legislative directive that utilities should “develop innovative approaches designed to promote energy efficiency and conservation that have limited rate impacts on utility customers.” Ch. 245, §1(2), Laws of 1993.

We further recommend that the Commission coordinate the I-937 and IRP administrative processes and emphasize that utilities, through the development of their IRPs, are implementing the requirement in I-937 that they acquire all cost-effective conservation. In doing so, the Commission should expand its role, and that of its Staff, in the development and implementation of resource acquisition programs. While a utility has the obligation to engage in planning, the Commission has the obligation to ensure that state law, the law requiring the acquisition of energy conservation, is followed.

1. **COMMENTS IN RESPONSE TO “QUESTIONS FOR CONSIDERATION” IN THE AUGUST 24, 2018, NOTICE**

We respond to the following selected questions.

**2. Language Request (“Net Benefits”)**

The Commission seeks comments on the use of the term “net benefits” in proposed WAC 480-107-035(3). Use of that term could imply that it incorporates the meaning of “net benefit” in RCW 80.12.020 relating to transfer of property. The Commission has yet to fully interpret and define that term, so its use in the IRP rule may result in an undesired ambiguity. We recommend that, whatever term is used, the Commission adopt the meaning of the term “cost-effective” as defined in I-937, RCW 19.285.030(7), and its implementing regulations. The Commission should clarify that any determination of cost-effectiveness (or “net benefits” if that is the term used) must consider the benefits from reduction of greenhouse gas emissions attributable to conservation and renewable energy, and other societal benefits attributable to energy conservation.

**4. Thresholds for Exemption**

Draft WAC 480-07-015(4) contains proposed exemptions from the RFP process. While it may make sense to not require competitive bidding for every resource acquisition, some of the proposed exemptions could be used to inappropriately avoid competitive solicitation of efficiency and conservation resources, thereby failing to meet the legislative direction on innovation described above. Ch. 245, §1(2), Laws of 1993.

Paragraph (4)(a) would exempt from the RFP process the acquisition of up to 50 megawatts of capacity resources.

Paragraph (4)(b) would permit a utility to rely on short-term market purchases. While such purchases may sometimes be necessary, the proposed rule’s language suggests that a utility may rely on them to a significant extent to meet its service obligations, to the exclusion of competitively-acquired conservation resources. Moreover, the availability of some short-term resources in the market does not relieve a utility from meeting its I-937 energy conservation obligations. Therefore, any exemption for market purchases from RFP processes should not excuse a utility from seeking and competitively acquiring available demand-side resources.

Paragraph 4(e) would relieve a utility from using RFPs where the resources are acquired under an existing tariff. It is not clear what this may entail. Tariffs can be changed. If a resource is provided under a tariff but less expensive conservation resources are available, existing tariff language should be clarified so that those resources should be acquired first, assuming there are no legal limitations on changing that tariff.

**7. Independent Evaluator**

The Notice asks several questions about the need for and roles of an independent evaluator.

**a. Are there other circumstances when an independent evaluator may be useful?**

Independent evaluators should be the norm for the entire resource solicitation process, as they are in Oregon. The draft rules, in WAC 480-107-AAA(1), would only require independent evaluators where the resource need is greater than 50 megawatts or where the utility bids.

Fifty megawatts is a high threshold for triggering the requirement for independent evaluation and should not apply to conservation resources which also require an independent evaluation in order to achieve the goals of I-937. The draft rules, appropriately, would allow providers of energy conservation to bid on any supply-side RFP (WAC 480-107-015(1)) and would allow conservation bidders to bid on a portion of the resource need. WAC 480-107-025(3). In a solicitation for proposals to meet a resource need totaling 50 megawatts or more, an independent evaluator would serve to ensure that small bidders offering demand-side resources are not shunted aside because a utility decides to meet its need with one large supply-side resource. Ignoring smaller bidders offering demand-side resources would frustrate the policy that utilities acquire innovative, cost-effective energy efficiency and conservation resources. Demand-side resources may come in smaller bundles than many supply-side resources. I-937 should be understood to require that an independent evaluation be performed and performed well. An independent evaluator would help ensure that a utility’s obligations under I-937 are met.

**b. Is an independent evaluator of value when the utility is not bidding?**

Independent evaluators should be used whether or not a utility itself is bidding. Recall that the Washington Legislature has stated a preference for “innovative approaches designed to promote energy efficiency and conservation that have limited rate impacts on utility customers.” Ch. 245, §1(2), Laws of 1993. Utilities historically have been reluctant to innovate; use of independent evaluators may facilitate the awarding of bids for innovative projects.

**c. Is there enough clarity in the draft rule on the role of the independent evaluator?**

UCONS strongly agrees with the proposal that Independent Evaluators be approved by the Commission. The Commission must ensure that Independent Evaluators are qualified and truly independent. The Commission should further clarify, in addition to the functions described in draft WAC 480-107, that independent evaluators should review and comment on bid evaluation criteria, prior to the issuance of RFPs. Independent evaluators should review the entire RFP process, including the qualifications of those evaluating bids, and should also review final contracts; their evaluation of final contracts should be included in their report to the Commission.

**d. Should the independent evaluator be accredited?**

In our experience, it is not necessary to have a formal accreditation for independent evaluators. However, it is important that the Commission, through its Staff, have confidence that the evaluator is competent and truly independent. Independent evaluators must have both supply-side and demand-side experience. The supply and demand side of the energy industry require very different skill sets and experience. Without an explicit requirement for both supply- and demand-side qualifications, independent evaluators cannot fairly compare supply-side and demand-side alternatives. The utilities should consult with Commission Staff on their proposed independent evaluator bidding processes and criteria prior to the issuance of bids.

**8. Conservation IRP**

**a. Impact on current program planning and implementation**

Washington has two statutes governing utility resource planning. RCW 19.285 (I-937) governs renewable and conservation resource planning, and RCW 19.280 governs “integrated resource” planning. While it may make sense at some point for the Legislature to combine these statutes, the Commission should make every effort to coordinate their implementation. One way to do that would be change the IRP schedule to mesh with the I-937 schedule, perhaps melding the required plans as well.

**b. Roles of advisory groups**

The draft rule would give a significant role to the conservation resource advisory group (CRAG). WAC 480-107-065(3)(c)(ii) would permit a utility to develop a competitive framework for acquisition of conservation resources if there is “support” from the CRAG. That would seem to give the CRAG an approval function. The CRAGs are policy advisors and serve an important role by providing useful input from the needs of customer groups to the entire conservation effort. The CRAGs do not have technical staff nor do they have the budgets for going beyond the important role of providing “customer input” and their stakeholder members are stretched. The Commission should consider (1) using independent evaluators as additional technical resources to support the CRAGS and (2) empowering Commission Staff to serve that more technical role, with oversight from the Commission.

**c. Minimum procurement percentages**

The draft rule would allow utilities to meet their conservation solicitation needs by acquiring at least 33% of their “conservation resource program” through a competitive process. There is nothing wrong with a minimum percentage. However, for the competitive process to result in acquisition of more cost-effective conservation, and we believe it will, then the percentage should be set to maximize that acquisition. So, 33% may be fine starting point but the rule should escalate that over time, to 50% by 2022, 75% by 2025, and as high as 100% by 2030.

Further, a minimum percentage should be included in the other options available under proposed 480-107- 065(3)(c), and the Commission should retain administrative discretion to increase the percentage in the course of reviewing and approving a utility’s biennial conservation plan if appropriate to ensure that all cost-effective conservation is acquired.

**10. Procurement Outside of an IRP**

The Commission asked how it can “ensure that utilities are pursuing . . . low cost [resource acquisition] opportunities available outside of an RFP.” Regarding demand side resources, there is a regulatory requirement that a utility “adaptively manage” its conservation portfolio to take advantage of new opportunities. WAC 480-109-100(1)(a)(iv). The Commission could include a similar obligation in these draft rules. With such a regulatory obligation in place, the Commission could enforce it as it does with other regulatory obligations. *See* RCW 80.04.110(1); 80.04.380.

1. **OTHER COMMENTS**
   1. **Draft WAC 480-107-015(1) – Determination of “Resource Need”**

Subsection (1) to draft WAC 480-107-015 establishes as a predicate for the competitive process the existence of a “resource need.” The existence and the magnitude of that need is a function of the utility’s IRP. Because IRPs in Washington are not “approved” as they are in a number of other states, there would be no Commission imprimatur on that resource need.

At least on the demand side of the resource need analysis, the Commission should have a stronger role. If the utility IRP shows no “resource need” because of the availability of supply side resources, that utility conclusion should not obviate the I-937 requirement to acquire cost-effective demand-side resources. It may be to the utility’s benefit, and the region’s benefit, for the utility to acquire conservation resources and then sell what then would be surplus supply resources in the market

**B. Draft WAC 480-107-015(2) – Utility Bidding**

Subsection (2) would allow the utility to also bid on meeting its identified resource need. While it may be appropriate for a utility to bid on supply side resources, it would not be appropriate for it to bid on demand side resources unless there is an open RFP process and independent evaluator.

**C. Need to Disclose Avoided Costs**

The definition of “request for proposals” in draft WAC 480-107-007 is very broad. Granted, the draft rule would require the Commission to approve any RFP, so the details of an RFP could be articulated in the approval process. However, there are some essential pieces that should be described and mandated in the rules. Perhaps the most important is the need for the utility in any RFP to disclose its avoided costs. How else can potential bidders respond if they do not know what they are competing against? We would like to see a rule requiring utilities to disclose their avoided costs to bidders, perhaps in WAC 480-17-055.

**D. Cycle of Solicitation for Conservation Proposals**

Draft WAC 480-107-065(3)(b) would offer a utility an option for compliance with the conservation solicitation requirements if it “solicits competitive proposals for each conservation and efficiency resource program in the portfolio at least every six years . . . .” Six years is far too long a time between solicitations. Markets and technologies change rapidly. A six-year hiatus would deny customers the innovative programs that the state needs and result in some cost-effective conservation not being acquired, contrary to I-937’s requirements. That technical and economic reality suggests that solicitations should be ongoing, perhaps on a rolling basis, with some solicitations being issued every year or two. That would be similar to the process that is used in California. *See* California Public Utilities Commission Decision 18-01-004, pp 27 – 30. Whenever a bidder can point to a “demonstrable new cost effective resource, then that need would be brought promptly to the UTC and to the utility (similar to PURPA).

**E. Focus on Hard-to-Reach Customers**

The Pacific Northwest Power and Conservation Council appropriately focused on hard-to-reach (HTR) customers, including those in manufactured homes. Many of the HTR customers are low-income. As a matter of equity, the draft rules should require conservation RFPs to serve an equitable portion of all classes of customers. The goal should not just be to acquire conservation, but to help all classes of customers obtain it. Accordingly, we suggest a new subsection in draft WAC 480-107-065 that requires utilities, when developing conservation RFPs -- and evaluators, when reviewing them -- to ensure that conservation measures are equitably allocated among customer classes. This could be enforced in the power reserved to the Commission, in draft WAC 480-107-015(5).

**F. Financial Incentives to Utilities**

In other proceedings, we have urged the Commission to consider additional means by which utilities could be financially incentivized to implement or acquire conservation programs. Such incentives would be an additional way to encourage innovation and the further acquisition of energy efficiency resources. Although creating financial incentives would be beyond the scope of this rulemaking, the Commission might at least keep this additional approach in mind when developing these new rules, in order to increase the Commission’s commitment to conservation as the first resource acquired

1. **CONCLUSION**

These draft rules would make good strides toward furthering state policies for energy conservation and the acquisition of all cost-effective conservation as required by state law. As the Commission continues through this rulemaking process, we encourage it to maintain a focus on those goals.