



March 13, 2020

Mark L. Johnson  
Executive Director and Secretary  
Washington Utilities and Transportation Commission  
621 Woodland Square Loop SE  
Lacey, WA 98503

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COMMISSION

Re: In the Matter of Amending, Adopting, and Repealing WAC 480-107, Relating to Purchases of Electricity, **Docket UE-190837**

Dear Mr. Johnson,

Thank you for the opportunity to participate in the process of updating the purchases of electricity (PoE) rules in WAC 480-107 to ensure utility compliance with Clean Energy Transformation Act (CETA) requirements.

Front and Centered is a statewide coalition of organizations and groups rooted in communities of color and people with lower incomes. Our mission is to advocate for and represent these communities in connection with economic and environmental change. Communities of color and people with lower incomes are the first hit by extraction, pollution, and climate change, which exacerbates existing health and economic disparities. Frontline communities are often left out of, or are the last to be included in, the transition to a healthy, resilient, and sustainable future. We appreciate being included in this rulemaking process.

In carrying out our mission, we comment here on the draft rules in response to the “questions for consideration” published by the UTC on February 6, 2020. We appreciate the UTC’s attempt in this rulemaking to take robust and full consideration of the CETA’s equity mandate in RCW 19.405.045(8).

*1. RCW 19.405.040(8) states: In complying with this section, an electric utility must, consistent with the requirements of RCW 19.280.030 and 19.405.140, ensure that all customers are benefiting from the transition to clean energy: Through the equitable distribution of energy and non energy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health and environmental benefits and reduction of costs and risks; and energy security and resiliency. Do the requirements of RCW 19.405.040(8) affect how utilities acquire resources?*

Washington State’s choice and mix of energy sources are fundamental to meeting the statutory requirement of ensuring all customers are benefiting from the clean energy transition, especially for those with lower incomes and communities of color. Utilities must consider and incorporate these and other equity considerations into their CEIP as noted in our recent comments on that matter (Docket UE-191023).

*a. Will utilities ever need to solicit requests for proposals (RFPs) solely to comply with RCW 19.405.040(8) (e.g., acquire equity-specific resources)? Or should compliance with RCW 19.405.040(8) be evaluated only with respect to generation, conservation, and other resources acquired by utilities as a result of other regulatory and system needs.*

We support utilities soliciting requests for proposals (RFPs) to comply with RCW 19.405.040(8). There are three circumstances under which utilities will need to solicit RFPs to comply with the equity mandate:

First, the UTC or utilities themselves should convene a series of widely promoted workshops to affirmatively, actively, and specifically seek out a bigger field of applicants – of many scales, backgrounds, and experiences – who could submit proposals for equity transition project proposals. CETA intends that a number of new parties be brought into the bidding process and ultimately into the provision of energy services to utilities. In order to achieve that aim, and to level the playing field for new entrants, either the UTC or the utilities should conduct expansive outreach to consider new proposals from all corners of the state. Further, after 12 to 18 months of active outreach, every utility should launch an initial, free-standing “equity transition resources” RFP no later than January 2022. This would allow interested and diverse parties to begin to understand the process, and it would allow utilities to see an initial pool of potential projects, gain experience incorporating the projects into a ranking system, and provide that ranking and evaluation feedback to applicants to prepare for future RFPs.[1]

Second, if any utility has not sufficiently progressed in meeting the equity mandate in RCW 19.405.040(8), then that utility would need to solicit an additional freestanding RFP limited to the provision of equity-transition projects designed to comply with the mandate. “Sufficiently progressed” here may be invoked at a time deemed relevant and appropriate by the UTC. In significant measure, this process would rely on the UTC’s yet-to-be-determined application of interim targets for equity in a utility’s Clean Energy Implementation Plan (CEIP).

Third, utilities must incorporate equity into every RFP they issue to meet existing regulatory and system needs. If a utility has not sufficiently progressed on equity metrics but has only minimal need for additional power, then they will need to focus every RFP they issue on equity. If a utility does not anticipate any need for additional power for many years, they still may need to consider early retirement of polluting resources or reduced reliance on market purchases to make space for earlier acquisition of clean, equity-focused resources.

*b. What, if any, revisions should be made to the solicitation content requirements in WAC 480-107-025(1) to incorporate the provisions of RCW 19.405.040(8)?*

The equity mandate of RCW 19.405.040(8) should be written expressly into the solicitation content requirements. WAC 480-107-025(1) in the “clean” version of the docket discussion draft rule proposal reads:

(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.

This language should be revised to read (changes underlined):

(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, the contribution to the equity requirements of RCW 19.405.040(8), and any additional information necessary for potential bidders to make a complete bid.

Though these would not need to appear in the rule, by guidance the UTC might suggest that the solicitation content requirements could include but not be limited to:

1. A plan for the education, engagement, enrollment, and access for customers with lower incomes, and specific numbers met for each when available.
2. The specific location in communities with high cumulative health impacts, and the specific environmental benefits both short- and long-term.
3. The specific workforce development plan and past outcomes, and participation by minority- and women-owned business, along with additional specific, tangible economic benefits to customers and communities with lower incomes.
4. Specific ways communities will be part of the design, plan, implementation and on-going engagement in the proposed project.

We also recommend the broadening of allowable energy sources to include distributed and customer-owned energy as a means to meet equity specific resources. These resources play an important role in bringing environmental and economic benefits to impacted communities and ensuring greater energy security and resiliency.

*c. What, if any, revisions should be made to the project ranking procedures in WAC 480-107-035 to incorporate the provisions of RCW 19.405.040(8)?*

Equity needs to be a meaningful factor in how proposals are ranked such that it has a discernable, transparent, and definite effect on the selection of projects and moves a utility toward full compliance with RCW 19.405.040(8).

The ranking system should give more weight to those that are at a minimum:

- Located in communities that have higher levels of cumulative health impacts;
- Provide energy security and resilience, prioritizing non-transmission wire alternatives;
- Provide economic benefit and job opportunities for under- and unemployed individuals in impacted communities;
- Create more community owned and controlled, equitable, energy sources, ensuring economic benefits are widely available including to renters and rural lower income customers;
- Ensure lower long-term and short-term cost, considering not only the financial cost on consumers but the health and economic costs; and
- Programs that are coupled with energy efficiency efforts.

Utility owned and non-utility owned projects should be treated on par and ranked accordingly.

More specifically, we suggest a change to the proposed language of WAC 480-107-035(2) and (3). In the clean version of the docket discussion draft, these subsections read:

(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 financial risks to the utility, the risks imposed on ratepayers, public policies regarding resource preference adopted by Washington state or the federal government, 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.

This language should be amended to read (changes underlined):

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

*d. What, if any, additional summaries of solicitation responses would assist with understanding bid proposals pursuant to the requirements of RCW 19.405.040(8) (e.g., geographic location of proposed projects, bidder information such as women and minority owned business certifications, etc.)?*

In addition to the proposed information generically indicated in the question (geographic location and bidder information), the summaries should include more specific geographic reference to highly impacted communities, vulnerable populations, and the detailed results for the project area as indicated by the Department of Health cumulative impact analysis. As much as possible, the metrics required in these summaries should be the same as those used to measure progress toward the equity mandate in CEIPs and other compliance reports.

*2. Utilities may issue an RFP at any time for a wide variety of purchases. Under existing PoE rules, issuing an RFP is only required if the utility's IRP finds a capacity need within a three year horizon. In the draft rules accompanying this notice, a number of refinements to this requirement have been developed. In light of the resource requirements of CETA, such as those for renewable and non-emitting resources, equity, and resource adequacy, and the creation of clean energy implementation plans (CEIPs), what is the relationship between the trigger for requiring utilities to follow the RFP rules in the PoE, and the rules under consideration in the IRP rulemaking and the CEIP?*

*a. To what extent should the requirement to issue an RFP under WAC 480-107-015 be tied to the IRP versus the CEIP? Should the PoE rule contain the triggers for invoking sections of the PoE? If so, which rule, CEIP or IRP, should describe the measurement of the metrics on which the threshold trigger is based?*

The equity mandate is a freestanding duty on utilities that exists at all times. Any time that either an IRP process or CEIP process indicates that a utility is making insufficient progress on the equity mandate, this should trigger an RFP process to solicit additional projects that would ensure a discrete path of compliance with the equity mandate. Unless or until the UTC has a clearly unified planning path to ensure compliance with the equity mandate at all times, the UTC should err on the side of duplication: no matter which process indicates an equity shortfall, the UTC should direct a utility to address the shortfall through, among other things, an equity-focused RFP.

The language of WAC 480-107-015(1) through (3) in the clean version of the docket discussion draft reads:

- (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 demonstrates that the utility has a resource need within [XX] years.

We recommend that the language of WAC 480-107-015(1) through (3) should be amended to read (changes underlined):

- (1) The utility must solicit bids for its resource needs identified during either the IRP process or the CEIP 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; compliance with the equity provisions of RCW 19.405.040(8); 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 demonstrates that the utility has a resource need within [XX] years or its most recently acknowledged CEIP demonstrates that the utility has a clean energy or equity resource need within [XX] years.

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

*a. Should the utility be required to have an independent evaluator examine the utility's performance as a developer in the case of a utility proposing to self-build or a utility's subsidiary or affiliate bidding in a build-to-lease or build-to-own project?*

Yes, the utility should be required to have an independent evaluator (IE) examine these kinds of projects, as this would more likely level the playing field among utility-proposed projects and community-proposed or other outside bids.

*b. Should there be a MW or MWh threshold to determine whether an independent evaluator should be used? Should it be different than the threshold triggering a utility to comply with the requirements regarding an RFP?*

No, an independent evaluator should be used in all proposals, as a matter of fairness and in recognition that over time CETA may lead to a significant number of proposals from new-entrant, small-scale projects that deserve a third-party neutral evaluation.

*c. The draft rule at WAC 480-107-035 provides a list of items that must be included in the ranking criteria. Those items may expand under CETA, especially for RCW 19.405.040(8). What items should be in the criterion list and included in the independent evaluator's scope of work?*

Please see our response to question 1(c) above as to how we believe the scope of ranking criteria should be expanded. All items in the WAC 480-107-035 criterion list should be included within the scope of the IE's work, including all aspects of equity consideration.

Front and Centered appreciates the opportunity to comment, and we look forward to further discussions of their implementation and development.

Regards,

Deric Gruen  
Program and Policy Director

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[1] Ultimately, utilities will need to consider additional facilitative steps to allow more diverse entrants to submit and complete their proposed projects. A leveling of the playing field for smaller equity-transition energy projects might require such steps as providing technical support for submitting RFPs to prospective applicants who do not have staff or resources to complete the process; ensuring filing fees or deposits are not prohibitive and low, especially for new projects and those proposed by those less able to afford them; and ensuring transparency for potential resources and capacity for a proposed project, for example Massachusetts' SMART Tariff which provides specific and certain revenue for planning and incentives for priority criteria such as low income communities.