

**COMMENTS OF UTILITY CONSERVATION SERVICES, LLC (UCONS)  
ON PROPOSED RULES REGARDING COMPETITIVE RESOURCE ACQUISITION  
BY REQUEST FOR PROPOSALS (RFP), WAC 480-107**

September 21, 2018

Tom Eckhart, PE  
CEO, UCONS, LLC  
10612 NE 46th Street  
Kirkland, WA 98033  
(425) 576-5409 (office)  
(425) 827-2489 (fax)  
[tom@UCONS.com](mailto:tom@UCONS.com)  
[www.ucons.com](http://www.ucons.com)

**UTC Dkt. No. U-161024**

**I. 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.

**II. 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 7<sup>th</sup> 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 7<sup>th</sup> Plan, the MH sector has seen a precipitous decline in utility funding.

### **III. 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.

### **IV. 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.

**V. OTHER COMMENTS**

**A. 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

## **VI. 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.

## Chapter 480-107 WAC

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

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

~~(3) The rules in this chapter are consistent with the provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA), Title II, sections 201 and 210, and related regulations promulgated by the Federal Energy Regulatory Commission (FERC) in 18 C.F.R. Part 292. To the extent of any conflict between these rules and PURPA, or the related rules promulgated by FERC in 18 C.F.R. Part 292, PURPA and those related rules~~



~~control. Purchase of electric power under these rules satisfies a utility's obligation to purchase power from qualifying facilities under section 210 of PURPA.~~

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

(2) Any affected person may ask the commission to review the interpretation or application of these rules by a utility or customer by making an informal complaint under WAC 480-07-910, Informal complaints, or by filing a formal complaint under WAC 480-07-370, Pleading—General.

(3) ~~No exception~~The commission may grant an exemption from the provisions of any rule in this chapter ~~is permitted without prior written authorization by~~in the ~~commission. Such exceptions may be granted only if same manner and~~ consistent with the ~~public interest, standards and according to~~ the ~~purposes underlying regulation, and applicable statutes. Any deviation~~procedures set forth in WAC 480-07-110 Exceptions from and modifications to the ~~provisions of any rule~~rules in this chapter ~~without prior commission authorization will be subject to penalties as provided by law; special rules.~~

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

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

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

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

~~"Avoided costs" means the incremental costs to a utility of electric energy, electric capacity, or both, that the utility would generate itself or purchase from another source, but for purchases to be made under these rules. A utility's avoided costs are the prices, terms and~~

~~conditions, including the period of time and the power supply attributes, of the least cost final contract entered into as a result of the competitive bidding process described in these rules. If no final contract is entered into in response to a request for proposal (RFP) issued by a utility under these rules, the utility's avoided costs are the lesser of:~~

~~(1) The price, terms and conditions set forth in the least cost project proposal that meets the criteria specified in the RFP; or~~

~~(2) Current projected market prices for power with comparable terms and conditions.~~

~~"**Back-up power**" means electric energy or capacity supplied by a utility to replace energy ordinarily supplied by utility-owned generation or purchased through contracts that is unavailable due to an unscheduled outage.~~

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

~~"**Conservation**" means any reduction in electric power consumption that results from increases in the efficiency of energy use, production or distribution, or from demand response, load management or efficiency measures that reduce peak capacity demand.~~

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

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

~~"Economic dispatch" means modifying the scheduling of power purchases from a generating facility within contractually specified limits to minimize the costs of delivering electricity.~~

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

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

"Independent power producer" means a non-utility entity that owns generating facilities or portions thereof that are not ~~included in a utility's rate base and that are not~~ qualifying facilities as defined in ~~this section~~WAC 480-106-xxx.

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

~~"Interruptible power" means electric energy or capacity supplied to a utility by a generating facility, the availability of which may be interrupted under certain conditions.~~

~~"Maintenance power" means electric energy or capacity supplied by a utility during scheduled outages of a generating facility.~~

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

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

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

**"Request for proposals"** or **"RFPs"** means the documents describing a utility's solicitation of bids for delivering ~~electric capacity, energy,~~ or capacity and energy, or conservation a resource need.

"Resource ~~block~~need" has the same meaning as defined by WAC 480-100-238(2). [Does this clearly include demand-side resources?]

"Resource supplier" means ~~the deficit of capacity and associated energy~~a third-party supplier or utility affiliate that ~~the IRP shows for the near term~~provides equipment or services that serve a resource need.

"Subsidiary" means any company in which the utility owns directly or indirectly five percent or more of the voting securities, and that may enter a power or conservation contract with that electric utility. A company is not a subsidiary if the utility can demonstrate that it does not control that company.

~~"Supplementary power"~~ means ~~electric energy or capacity supplied by a utility that is regularly used by a generating facility in addition to that which the facility generates itself.~~

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

**WAC 480-107-015 The solicitation process.** (1) ~~Any owner of a generating facility, developer of a potential generating facility, marketing entity, or provider of energy savings may participate in~~The utility must solicit bids for its resource needs identified during the IRFP process. ~~Bidders may propose~~It must accept bids ~~for~~ from 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. ~~Qualifying facility producers with a generation capacity of one megawatt or less may choose to participate in the utilities' standard tariffs without filing a bid.~~

(2) A utility may participate in the bidding process as a powerre-  
source supplier, or may allow a subsidiary or affiliate to participate in the bidding process as a powerresource supplier, ~~onpursuant to~~ conditions described in WAC 480-107-135 Conditions for purchase of ~~elec-~~  
~~trical power or savings~~resources from a utility's subsidiary or affiliate. ~~The utility's RFP submittal must declare the utility's or affil-~~  
~~iate's participation and must demonstrate how the utility will satisfy~~  
~~the requirements of~~ WAC 480-107-135.AAA Independent Evaluator for Large  
Resource Need or Utility or Affiliate Bid.

(3) ~~Timing of the~~The solicitation process.

~~(a) The rules in this section do not apply when~~ is required whenever a utility's most recently acknowledged integrated resource plan, prepared pursuant to WAC 480-100-238, demonstrates that the utility does not has a resource need additional capacity within three[XX] years.

~~(b)(4) Utilites are exempt from the RFP requirement under this section under the following circumstances:~~

(a) The utility's identified resource need of capacity is less than 50 megawatts; [This number seems arbitrary and could eliminate cost effective demand-side programs that provide innovative solutions at the end use. A 20-40 MW conservation or energy efficiency program is substantial, and this language would rule that out without any consideration.]

(b) The utility plans to satisfy the remainder of its identified resource need for capacity with short-term market purchases so long as sufficient regional adequacy to support these forecasted market purchases has been identified by the Northwest Power and Conservation Council in their latest published power supply adequacy assessment over the entire period of the utility's resource need or the next five years, whichever period is shorter; [As noted above, this arbitrarily rules out cost effective conservation and energy efficiency programs. These programs may be able to meet resource needs less expensively than a series of short-term market purchases.]

(c) The utility's identified resource needs are for conservation and efficiency resources and the utility has previously issued an RFP in accordance with WAC 480-107-065;

(d) The utility's identified resource need is for a distribution



system or local transmission resources project estimated to cost less than \$10 million; or [Again, this is arbitrary. Targeted conservation and energy efficiency have been used in other jurisdictions to meet local distribution needs. It is bad policy to rule out a GHG-resource in favor of traditional "steel in the ground". Instead, the utility should provide area-specific marginal costs and allow third parties the opportunity to develop cost effective conservation and energy efficiency programs through an RFP process. Maybe set a much lower amount, e.g. \$1 million.]

(e) The utility's identified resource need will be acquired under an existing tariff.

(5) A utility must submit to the commission a proposed ~~request for proposals~~RFP and accompanying documentation no later than one hundred thirty-five days after the utility's integrated resource plan is due to be filed with the commission. Interested persons will have sixty days from the RFP's filing date ~~with the commission~~ to submit written comments to the commission on the RFP. The commission will approve, approve with conditions, or suspend the RFP within thirty days after the close of the comment period.

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

(7) A utility must solicit bids for ~~electric power and electrical savings~~resource needs within thirty days of a commission order approving the RFP.

~~(d) All, with or without conditions, as applicable. To solicit bids will,~~ a utility must post a copy of the RFP on the utility's public web site and place notices in relevant industry publications. The utility

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

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

~~(4) In addition to the solicitation process required by these rules, a utility may, at its own discretion, issue an RFP that limits project proposals to resources with specific characteristics. In addition, a utility, at its own discretion,~~ (9) A utility may issue RFPs more frequently than required by this rule.

~~(5) Persons~~ (10) Any person interested in receiving commission notice of ~~a specific utility's~~ utility proposed RFP filings ~~can request the commission to~~ may place their ~~names on a mailing list for notification of future RFP filings by that utility~~ name on the IRP listserv on the commission's website.

**WAC 480-107-025 Contents of the solicitation.** (1) The RFP must identify the resource ~~block, consisting of the overall~~ need, including any specific attributes or characteristics the utility is soliciting, such as the amount and duration of power ~~the utility is soliciting, the initial estimate of,~~ the avoided cost ~~schedule as calculated in WAC 480-~~

~~107-055 Avoided cost schedule~~ identified in the integrated resource plan,  
the type of technology necessary to meet a compliance requirement, and  
any additional information necessary for potential bidders to make a  
complete bid.

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

(3) The RFP must allow any resources that meet a portion of the  
amount or a subset of the characteristics or attributes of the resource  
need to bid, including unbundled renewable energy credits for a renewable  
resource need, or conservation and efficiency resources for a capacity  
need.

(4) The RFP must clearly explain ~~general evaluation and~~ the specific  
ranking procedures and assumptions that the utility will use in accord-  
ance with WAC 480-107-035 Project ranking procedure. The RFP must include  
a sample evaluation rubric that quantifies the weight each criterion  
will be given during the project ranking procedure. The RFP must also  
specify any minimum criteria and qualifications that bidders must sat-  
isfy to be eligible for consideration in the ranking procedure.

~~(4)(5) The utility's RFP submittal must declare if the utility or an affiliate is allowed to bid into the RFP.~~

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

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

~~(6) Utilities are encouraged to consult with commission staff during the development of the RFP. Utilities, at their own discretion, may submit draft RFPs for staff review prior to formally submitting an RFP to the commission.~~

**WAC 480-107-AAA Independent Evaluator for Large Resource Need or Utility or Affiliate Bid.** (1) If required to solicit bids under WAC 480-107-015(3), a utility must engage the services of an independent evaluator to oversee the solicitation process if:

(a) The resource need is greater than 50 megawatts; [see earlier comment on this arbitrary limit] or

(b) The utility, its subsidiary, or an affiliate is allowed to submit a bid.

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

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

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

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

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

(c) Evaluate the unique risks of each bid.

(5) The independent evaluator will provide an initial report to the commission at the conclusion of the process, before reconciling project rankings with the utility, and a final report after reconciling rankings with the utility in accordance with WAC 480-107-035(4) Project ranking procedure. ~~(1) The~~

(a) No stakeholder, including the utility or staff, shall have any editorial control over the independent evaluator's initial report.

(b) The final report should not differ significantly from the initial report and must explain any significant ranking differences and

why the independent evaluator and the utility were, or were not, able to reconcile the differences.

(c) The utility, staff, and stakeholders may file responses to the final report with the commission.

(6) The utility must have the independent evaluator under contract prior to starting an RFP process and must give the independent evaluator full access

to examine and test the utility's production cost and risk models and any other model or data that is necessary for the independent evaluator to complete its work.

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

(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 ~~and,~~ environmental effects including those associated with resources that emit carbon dioxide greenhouse gases 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, ~~and~~ contract provisions. ~~The ranking process must complement power acquisition goals identified, and be consistent with the avoided cost methodology developed in the utility's~~ utility's most recently acknowledged integrated resource plan.

~~(3) After the~~ (3) The utility must evaluate project bids that meet only a portion of the resource need in conjunction with other proposals in developing the lowest reasonable cost portfolio. The utility must consider the value of any additional net benefits that are not directly related to the specific need requested.

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

(5) Within five days after the sealed project proposals have been opened for ranking, the utility must make available for public inspection ~~at~~ on the utility's ~~designated place of business~~ website a summary of each project proposal ~~and a final ranking of all proposed projects.~~

~~(46)~~ The utility may reject any project proposal that does not specify, as part of the ~~price~~ bid, the costs of complying with environmental laws, rules, and regulations in effect at the time of the bid.



(57) The utility may reject all project proposals if it finds that no proposal adequately serves ratepayers' interests. The commission will review, as appropriate, such a finding together with evidence filed in support of any acquisition in the utility's ~~next~~relevant general rate case or other cost recovery proceeding.

~~(6) When the utility, the utility's subsidiary or an affiliate submits a bid in response to an RFP, one or more competing bidders may request the commission to appoint an independent third party to assist commission staff in its review of the bid. Should the commission grant such a request, the fees charged by the independent third party will be paid by the party or parties requesting the independent review.~~

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

(9) Within five days after executing an agreement for acquisition of a resource or determining that all proposals or bids will be rejected, the utility must make available for public inspection on the utility's website a final detailed ranking of results for all proposals.

**WAC 480-107-045 Pricing and contracting procedures.** (1) Once project proposals ~~have been~~are ranked in accordance with WAC 480-107-035 Project ranking procedure, the utility must identify the bidders that

best meet the selection criteria and that are expected to produce the ~~energy, capacity, and electrical savings~~relevant attributes as defined by that portion of the resource ~~block~~need to which the project proposal is directed.

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

**WAC 480-107-065** ~~Eligibility for long-run~~Acquisition of conservation ~~purchase rates and efficiency resources.~~ (1) ~~Any~~A conservation ~~and efficiency resource~~ supplier may participate in the bidding process ~~for any resource need.~~ A utility ~~may allow~~or a utility subsidiary ~~to~~may participate as a conservation supplier, on conditions described in WAC 480-107-135 Conditions for purchase of ~~electrical power or savings~~resources from a utility's subsidiary or affiliate. ~~A decision to allow a utility subsidiary to participate must be explained in the utility's RFP submittal.~~

(2) All conservation and efficiency measures included in a project proposal must:

~~(a) Produce electrical savings over a time period greater than five years, or a longer period if specified in the utility's RFP. A measure~~

~~with an expected life that is shorter than the contract term must include replacements through the contract term;~~

~~(b) Be consistent with the utility's integrated resource plan; and~~

~~(c) Produce~~ produce savings that can be reliably measured or estimated with accepted engineering, statistical, or meter-based methods.

(3) A utility must acquire conservation and efficiency resources through a competitive procurement process. A utility must use one of the following options:

(a) Option 1. A utility achieves at least ~~thirty-three~~ 33 percent of

the utility's conservation and efficiency resource program savings each biennium through competitively procured programs ~~in~~ by the end of 2020, 50 percent by the end of 2022, 75 percent by the end of 2025, and 100 percent by the end of 2030.

(b) Option 2. A utility solicits competitive proposals for each conservation and efficiency resource program in the portfolio at least every ~~six~~ two years; or

(c) Option 3. A utility develops a competitive procurement framework in consultation with ~~their~~ its conservation advisory group, as described in WAC 480-109-110 Conservation advisory group. If a utility develops a competitive procurement framework:

(i) The framework must define the minimum proportion of the utility's budgeted conservation and efficiency resource programs that must be submitted for competitive bidding over a specified time frame;

(ii) The utility must document that the framework was supported by the advisory group;

(iii) The framework must be filed as an appendix to each biennial conservation plan, as described in WAC 480-109-120 Conservation planning and reporting; and

(iv) The first competitive procurement framework for conservation and efficiency may be filed with the 2020-2021 biennial conservation plan.

**WAC 480-107-075 Contract finalization.** (1) Unless otherwise prohibited by law, a utility ~~has discretion to~~may decide whether to enter into a final contract with any project bidder that meets the selection criteria of the RFP. Any ~~such~~ bidder may petition the commission to review a utility's decision not to enter into a final contract.

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

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

(4) If material changes are made to the project proposal after project ranking, including material price changes, the utility must suspend contract finalization with that party and rerank, and have the independent evaluator re-rank when applicable, projects according to the revised project proposal. If the material changes cause the revised project proposal to rank lower than projects not originally selected, the utility must instead pursue contract finalization with the next ranked project.

~~(5) A project developer must provide evidence that the developer has obtained or will obtain a generation site (e.g., letter of intent) before signing a contract with the purchasing utility.~~

**WAC 480-107-135 Conditions for purchase of electrical power or savings resources from a utility, a utility's subsidiary or affiliate.**

(1) The utility, its subsidiary, or affiliate may participate in the utility's bidding process. In these circumstances, the solicitation and bidding process will be subject to additional scrutiny by an independent

evaluator, pursuant to WAC 480-107-AAA Independent evaluator for large resource need or utility or affiliate bid, and the commission to ensure that no unfair advantage is given to the utility's utility, its subsidiary, or affiliate. ~~Commission scrutiny will ensure that ratepayer interests are protected.~~

~~(2) As part of its RFP, a utility must include specific notice if it intends to submit a bid or intends to allow its subsidiaries and affiliates to participate in its bidding process. The utility must indicate in its RFP how it will ensure that its subsidiary or affiliate, through association with the utility, will not gain an unfair advantage over potential nonaffiliated competitors. A utility's disclosure of~~ (2) A utility, its subsidiaries or affiliates may not submit a bid unless the utility provides notice this may occur in the RFP.

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

~~(3) The commission may not allow a utility to recover in its rates all or part of the costs associated with the utility's project, or a subsidiary's or affiliate's project(s), if any unfair advantage was given to any bidder.~~

**WAC 480-107-145 Filings—Investigations.** (1) The commission retains the right to examine project proposals as originally submitted by potential developers. The utility must keep all documents supplied by project bidders or on their behalf, and all documents created by the utility relating to each bid, for at least seven years from the close of the bidding process, or the conclusion of the utility's ~~next~~ general rate case in which the fully-developed project was reviewed for prudence, whichever is later.

(2) The utility must file with the commission ~~and maintain on file for inspection at its place within 30 days of business, the current rates, prices,~~ conclusion of any resource RFP process a summary report of responses including, at a minimum:

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

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

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

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

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

(f) Median and charges established in accordance with this chap-

teraverage bid price categorized by technology type. Categorization should be broad enough to limit the need for confidential designation whenever possible.

**WAC 480-107-999 Adoption by reference.** In this chapter, the commission adopts by reference all or portions of regulations and standards identified in subsections ~~(1) and (2)~~ of this section. The publication, effective date, reference within this chapter, and availability of the resources are as follows:

~~(1) Public Utilities Regulatory Policies Act of 1978 (PURPA), Title II, Sections 201 and 210, cited as 16 U.S.C. Sec. 796 and 824a-3, including all amendments is published by the United States Government Printing Office.~~

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

(a) The commission adopts the ~~version in effect on August 8, 2005.~~



~~(b) This publication is reference in WAC 480-107-001 (Purpose and scope).~~

~~(c) Copies of U.S. Code are available from the U.S. Government Printing Office in Washington, D.C. or online at <http://www.gpo.gov/>.~~

~~(2) **Title 18 Code of Federal Regulations Part 292**, cited as 18 C.F.R. Sec. 292, including all appendices and amendments is Pacific Northwest Power Supply Adequacy Assessment for 2023 published by the United States Government Printing Office in 2018.~~

~~(a) The commission adopts the version in effect on April 1, 2015.~~

(b) This publication is referenced in WAC 480-107-~~001 (Purpose and scope).~~015.

(c) Copies of ~~Title 18 Code of Federal Regulations~~Pacific Northwest Power Supply Adequacy Assessment for 2023 are available from the ~~U.S. Government Printing Office in Washington D.C. or online~~Northwest Power and Conservation Council at <https://www.gpo.gov/> and from various third-party vendors. It is also available for inspection at the commission branch of the state library.

[nwccouncil.org/energy/energy-topics/resource-adequacy/pacific-northwest-power-supplyadequacy-assessment-for-2023.](http://nwccouncil.org/energy/energy-topics/resource-adequacy/pacific-northwest-power-supplyadequacy-assessment-for-2023)