

**REPLY 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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I. INTRODUCTION AND SUMMARY

Utility Conservation Services, LLC (UCONS) has reviewed the Notice of Opportunity to File Written Reply Comments, dated October 11, 2018, and the comments filed by other stakeholders in this docket in response to the draft rules circulated for comment.

We first comment generally in response to the statements by some that the existing process for soliciting proposals for conservation resources is adequate. It is not adequate, and the Commission should take this opportunity to fully implement the mandate of the Energy Independence Act (I-937), RCW 19.280, that utilities acquire all “cost-effective” conservation. Second, we respond briefly to selected questions posed by the Commission in its October 11 Notice.

II. GENERAL COMMENTS ON THE ADEQUACY OF THE COMPETITIVE PROCESS TO SECURE CONSERVATION RESOURCES

In its comments, Puget Sound Energy (PSE) states:

[I]t 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 [CRA]. 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.

PSE Comments at 8.

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 Comments at 9 (emphasis added).

Other utilities made similar comments. *See* PacifiCorp Comments at 8 (“The draft rules are likely to have a negative impact on the conservation RFP process and appear unnecessary.”); Comments of Avista at 7th unnumbered page (“Avista is concerned that the requirement to submit conservation RFPs to the Commission for review and public comment could increase delays, [and] interfere with the established bidder selection process . . .”).

As the draft rule suggests, however, the status quo is not adequate to maximize the acquisition of all cost-effective conservation as required by state law. Leaving the acquisition process in the hands of the utility will not lead, and in fact has not led, to innovative new energy efficiency proposals from third-party providers. Other states, like California, have established vibrant third-party programs that Washington should emulate.

As we argued in our opening comments, it is not a solution to enhance the role of advisory groups. The draft rule would effectively assign governmental functions to advisory groups by assigning them an “approval function.” UCONS Comments at 4. That is too much to ask of a group representing customer needs which has no budget or staff to effectively engage with utility staff. Further, this enhanced role for advisory groups would expand their existing powers beyond what is contemplated for them in I-937. RCW 19.85.040(1)(e)-(f) authorizes the Commission to determine the cost-effectiveness of a utility’s conservation program based “on the commission’s policies and practice,” and in reviewing and approving conservation targets, the statute permits the Commission to “rely on its standard practice.” Those policies and standard practices limit the role of advisory groups to the advisory functions currently described in WAC 480-109-110. *See also* WAC 480-109-100(5)(b).

Indeed, in our meetings with each member of PSE’s Conservation Resource Advisory Group (CRAG) over the past two years, we have been reminded that simply fulfilling their *existing*, limited advisory functions stretches their resources. We have been reminded by most members that they have neither the budget nor adequate staff to support cost-effectiveness evaluations, let alone evaluations of alternate resource portfolios. Providing advice on the cost-effectiveness of a utility’s resource plan, reviewing proposed new conservation programs, determining if a resource plan will actually acquire “all cost-effective” conservation, and ensuring that all qualifying low-income consumers are equitably served would require resources that advisory groups simply have not been required to provide since the passage of I-937.

Accordingly, we have advocated that the Commission in this rule should assign a greater role to itself (and its staff) in developing and approving conservation plans, requests for proposals (RFPs), and bids responsive to those RFPs. That approach would place the responsibility where I-937 assigns it and where the public would expect it to be. The advisory groups would still have

an essential function and would inform the work of not just the utility but of the Commission and its staff as well.¹

III. COMMENTS IN RESPONSE TO “QUESTIONS FOR CONSIDERATION” IN THE OCTOBER 11, 2018, NOTICE

We respond to selected questions from the Commission.

1. Independent Evaluator Requirement

The Commission seeks comments on a new proposal that would allow a utility to shorten the period for review and approval of a proposed RFP to 30 days when the utility has obtained the services of an independent evaluator (IE). We believe that use of an IE is essential in this process as an extension of Commission Staff. An IE should not be optional. Whether 30 days is sufficient is a function of the Commission Staff’s workload. To protect Staff’s ability to evaluate RFPs at times of high workload, it may be advisable to permit Staff to extend the time limit.

2. Role of the Independent Evaluator

The Commission also seeks comment on the scope of an IE’s involvement in the RFP review process. We urge the Commission to articulate a robust role for the IE, including involvement in the development of the RFP and in scoring all bids, not just the bids in which the utility itself is involved. If there are unique situations that merit less intensive involvement, then the utility should seek an exception from the Commission.

The Commission should review the role that IEs play in California’s energy efficiency bidding process to ensure it is fair and transparent, and should consider adopting a similar role for IEs in Washington. In the California process, IE activities include, but are not limited to:

- Providing feedback to the IOU on draft solicitation materials (RFA/RFP), to ensure alignment with respect to California Public Utilities Commission (CPUC) rules and policies and approved IOU Business Plans and solicitation decision requirements;
- Playing an active role by reviewing procurement materials, processes, and all bids;
- Consistently participating in scoring conversations;
- Providing input during scoring;

¹ A less desirable alternative may be to have the utilities provide funding to members of the advisory group to cover their staff and consulting costs attributable to such enhanced functions. While better than the status quo, it would add some administrative burdens. However, such funding may be welcomed by representatives of the advisory groups, if indeed they wish to expand their current advisory role. This role would greatly add to the time to interface with the utility and for the utility to respond to the separate evaluations conducted by their advisory groups. That is why this role is typically provided at the regulatory level in most states.

- Independently scoring bids;
- Keeping a record of all solicitation activities, including through contracting, in preparation for solicitation reporting to energy efficiency Procurement Review Groups (PRGs) and the CPUC; and
- Writing semi-annual reports to PRGs and the CPUC on the energy efficiency bidding process and outcomes.

In California, the IOUs contract for IEs. IE selection is presented to each IOU's PRG for comment. The CPUC Energy Division must approve all IE selections. UCONS believes that this is a "second best" approach to engaging IEs. The preferred approach is for IEs to be under contract and directly report to the Commission.

3. Conservation RFP

Our response to the Commission's questions under this paragraph is substantially covered in our general comments above. We urge the Commission to require that the "competitive procurement framework" envisioned in Option 3 be approved by the Commission through its Staff, with input from customer advisory groups and other stakeholders.

In addition, the Commission's concerns that the RFPs "are performed on a cadence to ensure the utility pursues all cost-effective conservation at the lowest reasonable cost" can be met in part by allowing procurement of such conservation resources outside of an RFP. *See* UCONS Comments at 5.

5. RFP Transparency

UCONS supports the language proposed by Public Counsel and edited by Commission Staff in the Notice. That language would afford the utility some flexibility while providing guidance to bidders. However, our support is contingent on an IE scoring the bids, as that assures neutral and transparent decision-making. The Commission also should require that the rationale for the utility's RFP criteria be documented for the Commission and IE.

IV. CONCLUSION

UCONS appreciates the continued efforts of the Commission and its Staff to maximize the acquisition of cost-effective conservation by utilities with an increased focus on competitive processes. Such processes, if implemented, would allow third parties to creatively and effectively deploy measures to further state policies that encourage and require the acquisition of all cost-effective conservation resources.