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*Filed Via Web Portal*

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

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

Dear Mr. Johnson:

Puget Sound Energy (“PSE”) appreciates the opportunity to respond to the questions for consideration posed in this docket and submits the following comments in response to the request in the Washington Utilities and Transportation Commission’s (“Commission”) Notice of Opportunity to File Written Comments issued in Docket U-161024 (“Notice”) on October 11, 2018.

**1. Independent Evaluator Requirement**

Draft rule WAC 480-107-AAA requires the use of an independent evaluator (IE) when the resource need is greater than 50 megawatts or the utility, its subsidiary, or an affiliate plans to submit a bid. During the workshop stakeholders discussed requiring the use of an IE when bids contain a utility ownership option and how that requirement may in practice result in requiring an IE in all RFPs.

The Commission requests feedback on a new proposal to encourage the use of an IE in circumstances that differ from what is required in the draft rule. WAC 480-107-015(5) prescribes a ninety day process between when a utility files a proposed RFP with the Commission and Commission approval of the RFP. The new proposal would allow a utility to shorten this to a 30 day comment period with Commission approval at the next regularly scheduled open meeting after the comment period closes when the utility has obtained the services of an IE for the RFP and early enough to allow the IE to participate in the formulation of the RFP.

a. Does the incentive of a shortened regulatory approval process for the RFP encourage the use of an IE?

b. Does the use of an IE adequately assure sufficient review of the RFP considering the tradeoff in the length of the stakeholder comment period?

PSE Response:

a.) No. The incentive of a shortened regulatory approval process for an RFP would not influence the use of an IE.

b.) Yes, an IE would help assure sufficient review in a shortened regulatory approval process, however, the adequacy of the review will be better if the role of the IE is clearly defined. The IE should be involved in the early stage design of the RFP in conjunction with the utility and later serve, at most, an auditing function over the implementation of the RFP process by the utility. Requiring the IE and utility to work together to design the RFP will reduce conflicts and misunderstandings later in the auditing process as both parties will be familiar with the IRP characteristics, metrics, etc. The IE should not independently score proposals.

## **2. Role of Independent Evaluator**

During the workshop there was significant discussion on the proper role of an IE. General ideas were that an IE will oversee a bidding process to make sure there is no bias or perception of bias in the bidding process, or that an IE will monitor each step of the RFP evaluation process to determine that the utility has acted in a fair and impartial manner in conducting the evaluation.

Keeping in mind the proposed role of the IE in rule will be the minimum role and that a utility may contract for more in depth involvement at their discretion, specifically describe what you envision to be the proper role of an IE in the draft rule. In doing so, please address the following specific questions.

a. How deeply should the IE be involved in the development of the RFP? Should an IE independently score all bids, a sampling of bids, or only bids resulting in utility ownership?

b. How should the IE be involved in communication between the utility and bidders?

c. Should there be a requirement that the IE document and file all communications with the Commission?

d. In situations where there is a direct conflict between the IE and the utility should additional process be proscribed?

PSE Response:

a.) The IE should be involved, at most, in the early stage design and development of the RFP in conjunction with the utility. The IE can provide feedback on a real-time basis to the utility during

the design phase so that the utility has a chance to respond and make appropriate changes. Later the IE could, potentially, also serve an auditing function over the implementation of the RFP process by the utility. Requiring the IE and utility to work together to design the RFP will reduce conflicts and misunderstandings later in the auditing process, if such an auditing process is mandated by the WUTC, as both parties will be familiar with the IRP characteristics, metrics, etc. The IE should not independently score any proposals (or sample of proposals) for the reasons provided in PSE's previous comments and described during the workshop. The rule should not require that an IE review proposals that result in a utility ownership, because that would result in the IE reviewing a high percentage of the proposals in today's market and for the foreseeable future. For example, in PSE's current RFP for capacity, approximately 30% of approximately 100 proposals include a utility ownership option.

b.) The IE should not be involved in communication between the utility and the proposers because it would increase complexity and the potential for misunderstandings between proposers, utilities and IEs. Requiring IE communication between utilities and proposers would make the RFP process even more cumbersome and burdensome and, in practice, reduce communication. In addition, the Commission should not include any provisions in the rules that attempt to require communication or specify types of communication between the IE, proposers and utilities. The utility should be the entity communicating with proposers to ensure that the lines of communication are clear. Those proposers should continue to have the right to file a complaint against the utility with the Commission if a dispute cannot be resolved.

c.) No. There is no need to require an IE to document and file all communications with the Commission. This requirement is unnecessary, burdensome and would likely have a dampening effect on quality communication between parties that occurs today in order to ensure proposals are accurate and in the best interest of customers. The practical effect of this requirement will be increased friction between parties, less communication and more misunderstandings. This could mean the Commission has more workload to help mediate or resolve those misunderstandings or miscommunications. Quality communication in the RFP process occurs when parties have the chance to communicate without a dampening cloud overhead. In addition, the prudence standard in Washington State already provides for discovery of communication between parties and PSE submits much of its documented communication during that process. Those prudence rules and processes are sufficient as they exist today.

d.) PSE is unclear what is meant by "additional process" in this context. Any conflict, biases or bath faith should first be brought to the utility in real-time so the parties can work toward resolution. Extreme examples of conflict could be resolved before the Commission. It's important to note that PSE foresees little potential for direct conflict when the IE's role is limited to help design the RFP and serve as an implementation auditor. PSE would expect more direct conflict (requiring Commission resolution) if an IE were required to score proposals independently or attempt to replicate utility scoring.

### 3. Conservation RFP

In the draft rules, three options for conservation RFPs were presented at WAC 480-107-065(3). Option 3, under which the utility develops a competitive procurement framework in consultation with their conservation advisory group, appears to be the only option that commenter would utilize.

a. What additional guidance on the development of such a framework would be useful, either in rule or in an adoption order?

b. What particular rule language would allow sufficient flexibility to the utility while ensuring conservation RFPs are performed on a cadence to ensure the utility pursues all cost-effective conservation at the lowest reasonable cost?

#### PSE Response:

a.) Although utilities should indicate the portion of their portfolio that is managed through a competitive bidding process, the rule should not set a requirement that a minimum portion of a utility's portfolio must be submitted for competitive bidding. Such requirements can be arbitrary, difficult to measure, and vary from biennium to biennium. It is also difficult to quantify in programs that use a hybrid approach where specific activities within a program are outsourced to a vendor, but another portion of that same program is managed by utility staff. PSE examples of this hybrid approach include appliance or retail lighting rebate processing.

The rule should provide some guidance on criteria to consider when determining if a conservation program should be competitively bid. A utility could be required to review and determine the need to bid applicable conservation programs at a routine cycle. However, the rule should avoid an arbitrarily set number of years for re-bidding work. Suggested criteria to include in either the rule or adoption order:

- Ability to provide superior customer service in a timely manner;
- Evaluation of existing vendor performance and pricing;
- The time span since the last RFP for the applicable programs;
- Availability of in-house expertise and available resources to offer and implement the program;
- Ability to achieve targeted savings through the prudent application of ratepayer funds, cost effectively with acceptable acquisition cost.

It would be helpful if the rule provided minimal guidelines of the framework contents including: Justification of implementation method, by program;

- Overview of the competitive bidding process, and schedule in relation to the Biennial Conservation Plan;
  - the selection process
  - utility's contracting process
  - implementation oversight and vendor management
- An outline of the major steps undertaken in competitive bidding process;

- Criteria to consider if/when a program should be competitively bid;
- How the RFP is made available to potential bidders.

Lastly, PSE requests that the Commission avoid requiring an independent evaluator for conservation RFPs. In the recent biennia, PSE has closely engaged its CRAG in a review of PSE's RFP process, evaluation, and results, all with positive feedback. PSE's RFP process strictly follows corporate Purchasing guidelines for the fair treatment of bidders and potentially-awarded vendors. The additional administrative burden of an independent evaluator would be onerous for program staff, could possibly impede program implementation (and thus, achievement of savings goals), and potentially cause frustration for potential vendors.

b.) It is in the best interest of the customer to allow the utility the flexibility to determine how each program would be optimally implemented and managed. PSE believes that the basic framework outline suggested in its response to question (3a) would ensure that utilities apply fair and equitable standards in their approach to competitively bidding their applicable conservation programs.

As indicated in PSE's response to question (3a), PSE recommends that the Commission establish basic guidelines for a utility's conservation portfolio makeup, but those guidelines should allow for the regional and market impacts related to vendor availability, scale (related to density and overall population) and adaptive management of programs.

Another area of flexibility that the rule should consider is the RFP cycle. Rather than stipulate a firm cycle, the rule should indicate that the appropriate time to submit RFPs depends on considerations outlined in PSE's response to question (3a), which suggests that RFP submissions be based on the following:

- Ability to provide superior customer service in a timely manner;
- Evaluation of existing vendor performance and pricing;
- Availability of in-house expertise and available resources to offer and implement the program;
- Ability to achieve targeted savings through the prudent application of ratepayer funds, cost effectively with acceptable acquisition cost.

Traditionally, PSE has re-bid its programs every biennium. The RFP process requires the contribution of many staff members and can take more than eight months to complete. It would be onerous, costly and unnecessary for utilities to re-bid all programs on a pre-set timeframe. It would not be in the best interest of customers to re-bid competent vendors that are meeting performance expectations and all of a utility's requirements. When these same competent vendors are reselected to that continue into the new biennium, the overall process creates a false "ramp down, ramp up" in implementation, which can impact savings performance in early months. If a vendor does not meet an agreed upon set of criteria and is competitively bid, PSE is better able to plan for the transition and focus resources on these activities instead.

For these reasons, utility conservation programs should maintain flexibility and work with their advisory groups to bid programs in the best interest of customers. PSE is committed to continued collaboration with its Conservation Resource Advisory Group (CRAG) to determine the appropriate RFP submittals for 2020-2021 in the 2019 planning year, for programs that do not meet its performance evaluation criteria.

#### **4. Market Purchases Resource Adequacy Exemption**

The draft rules at WAC 480-107-015(3)(b) rely on the Northwest Power and Conservation Council's resource adequacy assessment to reduce the number of requests for exemptions from rule and allow resource needs to be covered by short-term market purchases. This is not intended to eliminate the need for a utility to perform its own resource adequacy assessment within an IRP and the exemption has no bearing on the determination of market risk. During the workshop, stakeholders suggested adding additional language to limit the degree of reliance on the market a utility may have in order to qualify for this type of automatic exemption.

a. If this idea were to be incorporated into rule, what level of reliance on the market would be reasonable?

b. Should the degree of reliance be tied to a separate metric? If so, what metric should be used?

c. Should an RFP be required for firm resources whenever there is significant market risk?

d. This section also uses the undefined term "short-term market purchases." Please provide comments on the following proposed definition: "Purchases of energy or capacity on the spot or forward market contracted for a term less than four years."

#### **PSE Response:**

a.) For the purposes of reducing the paperwork of exemption filings, relying on the Northwest Power and Conservation Council's ("council") assessment seems reasonable. However, there are several limitations to that metric and PSE agrees that a utility should continue to perform its own resource adequacy and flexibility analyses and be able to file for an RFP (or a waiver) when its own analyses and metrics demonstrate a need, even if the analyses differ from the council. In general, determining market reliance is a complicated exercise that benefits from several sources of data. The utility should have the flexibility to use the appropriate metrics to make a reasonable decision. In some cases those metrics may include transmission availability or firmness, and in other cases a short term capacity or more general market assessment may be better metrics. Those are just examples demonstrating this exercise benefits from relying on several data sources. Relying on the council's metric should only be applicable for triggering the automatic exemption. A utility would not rely on that sole metric to assess resource adequacy because it has practical shortcomings such as it only forecasts five years into the future, which would make it difficult to use for accurately forecasting the shorter-term (1-3 years in the future). Finally, the council is not required by any law to conduct this analysis which means the rule would need to be changed in the future if the council abandoned this work.

b.) The most important aspect of establishing or codifying a regional metric (whatever that may be) is that the metric is consistent and applies across the market.

c.) It depends. PSE is unclear what constitutes “significant market risk” and the timeframe associated with that risk. Is it financial risk? Resource adequacy risk? Another risk? In the case of short-term resource adequacy risk, it would likely be impractical to address with an RFP, especially if the RFP must follow all of the current requirements applicable to the current process for longer-term resource procurement. For example, if the council’s metric applied and it showed a potential problem in its five-year window analysis, the best way to solve that problem could be with a short-term market purchase. Such a purchase would be made within the context of competitive power markets, but would not lend itself to a full-blown RFP process.

d.) Staff’s proposed definition of short term market purchases is a good start. Market purchases shorter than four years should not be subject to RFP processes and requirements as it would impact the ability of the utility to transact in the market. However, the bigger issue remains the proposed definition of “resource need” stated earlier to mean “any current or projected system deficit identified in the most recently acknowledged IRP, or recognized opportunity for more reliable, efficient or cost effective services.” This proposed definition greatly expands the number of things a utility could be required to solicit proposals (or file for waivers). This definition needs to be further clarified to ensure its clear what a utility will be required to issue an RFP to address. The current language has the potential to create a bureaucratic process for every IRP identified need, which in practice would likely lead to IRPs identifying fewer needs. This goes against the spirit of an IRP from PSE’s perspective.

## **5. RFP Transparency**

In their September 21, 2018 comments, Public Counsel provided redline edits to the draft rules that state “The RFP must include a sample evaluation rubric that either quantifies the weight each criterion will be given during the project ranking procedure or provides a detailed explanation of the aspects of each criterion that would result in the bid receiving higher priority.” Here Staff will provide one additional edit for comment. “The RFP must include a sample evaluation rubric that either quantifies the weight each criterion will be given during the project ranking procedure or provides a detailed explanation of the aspects of each criterion specifically identified that would result in the bid receiving higher priority.”

a. Is this language sufficient to elicit the transparency stakeholder’s desire in an RFP? Is this language reasonably flexible?

b. Will this requirement result in the utility being tied to and limited to criterion established prior to review of the bids that does not fit or account for the complexity of the evaluation of actual bids?

c. Should instead the utility be required to establish contemporaneous documentation of its criterion prior to receipt of bids and provide its contemporaneous reasoning for any changes to its criterion?

PSE Response:

a.) From PSE's perspective, Public Counsel's language would provide sufficient transparency in the RFP process, but will unlikely be sufficient for those who seek rigid and uniform scoring criteria. Providing a narrative explanation of aspects of the criteria used during the project ranking would create additional workload but still provide the utility with flexibility to take into account aspects or characteristics that may satisfy a hard metric, but aren't the right choice for customers or the utility.

b.) This requirement would be a step in the direction of reducing flexibility for utilities to take complexity into account, but it should not entirely eliminate that flexibility like a scoring system based on hard criteria would. In general, utilities should be allowed flexibility to take into account complexity when evaluating proposals and incorporate new learnings into the evaluation process, and be judged during the prudence process on their reasoning and rationale. Eroding utility flexibility to make reasoned decisions increases the potential for unintended consequences in the RFP process. The worst end of the spectrum would be requiring parties to blindly follow an evaluation system based on hard criteria, which would likely lead to proposals that may satisfy the criteria, but aren't the right choice for customers or the utility.

c.) This provision is unnecessary, unclear and burdensome and should not be written into the rule. It's not clear what problem this provision is trying to solve, and also to whom the utility would be providing this information. Also, the utility already provides as part of its prudence review a final report that includes notes and analyses from internal meetings and review of proposals. A final summary report and notes from meetings should be sufficient for transparency and prudence.

**Conclusion**

PSE appreciates the opportunity to provide responses to the questions for consideration proposed in the Commission's Notice of Opportunity to File Written Comments. Please contact Nate Hill at (425) 457-5524 for additional information about these comments. If you have any other questions, please contact me at (425) 456-2142.

Sincerely,

*/s/ Jon Piliaris*

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