

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of)	DOCKET U-161024
)	
WASHINGTON UTILITIES AND)	REPLY COMMENTS OF THE
TRANSPORTATION COMMISSION)	ALLIANCE OF WESTERN ENERGY
)	CONSUMERS
Rulemaking for Integrated Resource)	
Planning.)	
_____)	

I. INTRODUCTION

1 Pursuant to the Washington Utilities and Transportation Commission’s (“Commission”) October 11, 2018 Notice of Opportunity to File Written Reply Comments (“Notice”) in the above-referenced docket, the Alliance of Western Energy Consumers (“AWEC”) submits these comments in response to the Commission’s questions for consideration. AWEC reiterates, however, that, as noted in its initial comments on the draft RFP rules, it continues to believe that a detailed competitive bidding process like the one contemplated by the draft rules is not in customers’ interest. AWEC’s responses below, therefore, are provided only in the event that its primary recommendation provided in its initial comments is not adopted.

II. COMMENTS

1. *Independent Evaluator Requirement*

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

2 AWEC strongly opposes use of a truncated evaluation period to incentivize use of
an Independent Evaluator (“IE”) in the RFP development process. The cost of an IE is an
unnecessary expense when an RFP does not include a self-build or ownership option (at any
point in the resource’s life).

3 The IE has only one purpose - to identify and guard against utility self-dealing in
the RFP resource acquisition process. Where the utility is not in direct competition with other
available resources, an IE is not needed.^{1/} Furthermore, the IE’s oversight typically reduces the
utility’s risk of cost disallowance when acquiring resources.^{2/} If nothing else, this alone would
likely incent a utility to opt for the expedited review process, particularly when ratepayers are
forced to cover the IE’s costs. The Commission should not encourage or condone this outcome.
After all, why should ratepayers be asked to pay more for a resource acquired through
competitive bidding reflecting market-driven prices? Unless the utility is in direct competition
with independent bidders, the services and costs of an IE are unnecessary and avoidable.

4 Even though AWEC opposes the use of an IE to expedite RFP review, it could
support a limited review period for those RFPs that do not allow for utility ownership (at any
point in the resource’s life). In this circumstance, the risk of an unfair process is largely

^{1/} To this point, the IE does not independently score RFP bids and does not have the in-depth knowledge of the utilities’ systems to do so; it is reliant on the utility’s models and software to double-check the bid scores. The problem lies in the modeling itself, not the transparency of the process. The only benefit the IE provides is to give the Commission and stakeholders comfort that there is someone looking over a utility’s shoulder while it runs the RFP.

^{2/} At the recent workshop, one utility volunteered the fact that it hires an IE for every RFP it issues. So long as the ratepayers are covering the cost of reducing shareholder risk, this appears to be sound strategy for the utility.

eliminated. While an RFP could potentially still unfairly favor certain bids, AWEC believes the lowered risk justifies a less burdensome, and less expensive, review process. Customers bear the cost associated with a resource procurement process. Accordingly, this process should be as efficient and inexpensive as possible while still ensuring a fair and unbiased result.

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?

5 This question appears to be premised on two unfounded suppositions. The first supposition is that the 60-day review period set forth in the draft rule creates a regulatory burden that works against the public interest. AWEC believes this is a false premise in all but a few circumstances. The second supposition is that an IE would always be needed to review RFPs chosen by the utility for an expedited review period. For the reasons expressed above, an IE would only be needed when a utility self-build or acquisition is being compared with independent resources. Moreover, controversies of this type are not likely to be resolved in an expedited review.

6 To begin, the draft rule's 60-day review period has not been demonstrated to place an undue regulatory burden upon the utilities. Let's presume for the sake of argument that the proposed 30-day review period would result in certain savings to the utility. Next, the savings realized from the truncated review period must be netted against the very real cost of involving an IE in RFP development and presentation. In Oregon, these costs ranged between

\$190,000 and \$929,000, with an average of \$329,000 per event.^{3/} Unless it can be shown that the “full cost” of the expedited review proposal would reliably outweigh the costs of a 60-day review period, it should not be considered.^{4/}

7 When reflecting on the proposition offered by this question, the Commission should also consider the fact that the utility’s RFP filing costs are front-loaded, in that the costs to analyze and develop the RFP are incurred *prior* to the 60-day review period. Since the majority of costs to obtain regulatory approval are incurred before filing, it is difficult to fathom how reducing the review period to 30-days would result in real and dependable cost savings, particularly when the additional costs of an IE are rolled into the final calculation. Unless and until such cost savings can be demonstrated, the Commission should not experiment with the expedited review process proposed in its Notice.

8 In sum, the “deal” offered by the proposal is patently one-sided. The significant costs to secure IE services are ultimately paid by utility ratepayers, and as noted in AWEC’s earlier comments, there is no reason to burden ratepayers with these costs unless the potential for self-dealing threatens to increase resource costs. This potential arises when the utility is in direct competition with non-utility bidders. Because the utility will not compete in all RFP processes, there is no reason to burden ratepayers with IE costs just to speed up the Commission’s decision-making process. Should a utility be able to show demonstrable benefits from the expedited

^{3/} See OPUC Docket AR 600, Staff’s Initial Comments at 2 (June 13, 2018).

^{4/} Here, the term “reliably outweigh” is intended to reinforce the conclusion that such an incentive cannot show occasional or periodic benefits, but must, when analyzed on a case-to-case basis, show tangible benefits to ratepayers and the regulatory process.

review of an RFP, the Commission can act to waive the 60-day period on a case-by-case basis.

2. Role of the Independent Evaluator

- 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?*

9 As expressed above, an IE should only be considered when the RFP does not include a self-build or ownership option (at any point in the resource's life). In this circumstance, the IE's primary responsibilities are to assess a utility's bids (or those of its affiliates) and independent bids to ensure that a utility is not giving its own proposals a preference. AWEC does not support the IE independently scoring all bids, as this is likely to be a cumbersome and expensive process that is unlikely to yield net benefits to customers. Other IE duties, like the obligation to review the RFP prior to its issuance, should also respond to the need for a fair process to prevent biased procurement.

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

10 AWEC has no position on this issue.

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

11 No, this requirement should not be imposed on the IE. First, similar to general discovery procedures, the Commission and its Policy Staff should not be copied on parties' requests for information and responses, whether conducted through formal or informal discovery processes, or other communications between the IE, its sponsoring utility, Commission Staff,

Public Counsel, and all interested parties and stakeholders. Second, AWEC also believes that requiring the IE to document every single communication will unnecessarily increase costs. The IE will prepare a report of its findings and evaluation, and the Commission and stakeholders should be allowed to question the IE on this report, but reviewing every communication the IE is privy to seems like overkill.

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

12 No. Evidence of a conflict between the conclusions of the IE and the utility in the RFP development process can be brought to the Commission for resolution during the RFP review process. Here, failure to resolve a material issue with the RFP would likely lead to rejection of the RFP.

13 If a conflict should arise between the IE and the utility in the bid review and evaluation process, the Commission should not attempt to resolve the disputed issue(s) prior to an irrevocable resource decision by the utility. Should this situation arise, the utility must decide whether to proceed without having resolved material conflicts with the opinion(s) of the IE. Ultimately, the Commission's cost recovery decision would be informed by the opinion(s) of the IE. Because prudence decisions are best informed by a complete record developed by the full participation and discovery of all parties, the Commission should not attempt to sort out prudence-related issues in a limited proceeding as part of the RFP review process.

3. Conservation RFP

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

14 For reasons set forth in its September 21, 2018 comments, AWEC opposes the creation of mandatory conservation RFPs, concluding that a mandate to acquire conservation resources by way of RFPs would be unnecessary given the successful history of utility-delivered conservation savings and the potential for incurred acquisition costs greater than utility-delivered programs.

15 However, assuming the Commission will proceed with mandatory program delivery RFPs, AWEC recommends that utilities be allowed the flexibility to self-deliver conservation programs when they find that the proposals received in response to an RFP would cost ratepayers more than the utility's costs to deliver the same program(s). Further, AWEC recommends that large volume and industrial customers that are well positioned to self-direct their conservation efforts be expressly excluded from the requirements of this rule. This would protect large volume customers from opening their facilities to bidders, contractors, or even competitors that otherwise have no relationship with the customer, its machinery, and maintenance schedules.

- 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?*

16 AWEC recommends that draft WAC 480-107-065(3)(c) be amended as follows, with changes shown in redline:

(c) Option 3. A utility develops a competitive procurement framework in consultation with their 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, excluding conservation resources that are either self-delivered by the customer, the result of a written agreement between the utility and customer, or otherwise approved by Commission order; provided, however, that the utility shall acquire conservation resources identified by its resource procurement framework only when it finds that such resources would result in cost savings to ratepayers when compared with similar programs offered and delivered by the utility;

(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.

4. Market Purchases Resource Adequacy Exemption

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

17 The degree to which a utility relies on market purchases to meet system demand is not subject to a uniform metric applicable to all utilities. Rather, each utility must balance its risk tolerance with the obligation to provide safe and reliable service at the lowest reasonable cost. AWEC is not in the position to opine on the optimal degree of market risk acceptable to serving utilities or to the Commission. It does, however, support short-term market purchases to balance system load as such purchases tend to price below the utilities’ cost to serve the same load. In the end, a utility, relying on internal and external analyses, experience, and judgment, is best suited to determine the mix of resources best for it in the long and short terms and its tolerance for risk.

18 In sum, optimal resource mix and risk tolerance are not subjects easily or perhaps even reasonably addressed by rule and uniformly applied to utilities possessing diverse and individualized resource portfolios. Instead, the Commission should consider and address these factors in its recurring IRP process, allowing the utilities’ expertise and judgment to inform the Commission’s opinions on resource mix and attendant risk.

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

19 See comment above.

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

20 Again, AWEC believes that a determination of whether there is “significant market risk” should be ascertained when a utility’s then-existing resource portfolio is considered.

AWEC does not support a blanket determination of what would constitute “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.”

21 AWEC finds the proposed definition of “short-term market purchases” to be acceptable.

5. RFP Transparency

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

22 AWEC supports the amendments to WAC 480-107-025(4) proposed by Public Counsel and Staff. The proposed rule language improves bidder transparency into the key elements affecting the outcome of the RFP. In essence, the proposed RFP rules should create a level playing field for non-utility bidders, and the new language moves the Commission closer to that goal.

23 Utility flexibility should be a secondary concern. The RFP is designed by the utility to meet an identified need, and its terms and conditions should identify the qualities necessary to satisfy the utility’s resource gap. Utility “flexibility” suggests that the RFP failed to identify certain qualities the utility later finds important. RFPs cannot be “moving targets” for responders and the Commission. The purpose of transparency is to protect the integrity of the RFP processes from unnecessary or gratuitous changes to resource criteria or the weight given

them. To this end, transparency requirements help ensure that the utility's most refined and best need analysis is captured by the final RFP.

24 Finally, bidder participation is thwarted by uncertainty in the RFP's terms and processes. Why invest in preparing a bid package if the RFP's terms and conditions are subject to change throughout the process? This is particularly true when a utility has a demonstrated history of modifying RFPs before the bid deadline. Rules promoting transparency and certainty will promote robust bidder participation for the benefit of ratepayers and the utility.

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?

25 For the reasons expressed above, the "limitations" set forth in an RFP should not unduly restrict the utility, assuming its analyses feeding into the RFP are robust and the final product accurately portrays the utility's desired characteristics.

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?

26 Again, the Commission's final rule should protect the integrity of the RFP and its evaluation processes by creating a level playing field for all participants. To this end, the utility should not be given the flexibility to make "contemporaneous" changes to the RFP, even if the changes are later explained. How would the Commission propose to contain the scope of permitted modifications given the breadth of possible changes to key terms and conditions? As each RFP is distinctive, how would it determine by rule the changes that would materially impact

the outcome of the RFP? As noted above, the RFP cannot be a “moving target” for bidders and the Commission, and the final rule should not encourage this behavior.

Dated this 26th day of October, 2018.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Patrick J. Oshie

Patrick J. Oshie, WSB # 17796

Tyler C. Pepple, WSB # 50475

1750 SW Harbor Way, Suite 450

Portland, Oregon 97201

(503) 241-7242 (phone)

(503) 241-8160 (facsimile)

pjo@dvclaw.com

tcp@dvclaw.com

Of Attorneys for the

Alliance of Western Energy Consumers