

October 26, 2018

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RE: Reply Comments of Renewable Northwest, Docket U-161024 Utilities and Transportation Commission's October 11, 2018, Notice of Opportunity to File Written Reply Comments on Competitive Resource Acquisition by Request for Proposals (RFP), WAC 480-107.

I. INTRODUCTION

Renewable Northwest thanks the Washington Utilities and Transportation Commission ("the UTC" or "the Commission") for this opportunity to comment in response to the Commission's October 11, 2018 Notice of Opportunity to File Written Reply Comments ("the Notice"). We are pleased to offer these Reply Comments following our earlier submission on September 21, 2018, and our participation in the Commission's workshop on October 2, 2018. We continue to support the Commission's efforts to introduce greater fairness and transparency to Washington's competitive procurement process.

In these Reply Comments, we offer responses to the Questions for Consideration included in the Notice. Specifically, we support robust inclusion of an Independent Evaluator ("IE") in competitive procurement processes, we recommend an additional layer of scrutiny beyond the Northwest Power and Conservation Council's assessment when a utility proposes to rely on market purchases to achieve resource adequacy, and we support Commission Staff's proposal to adopt a modified version of Public Counsel's proposed language on transparency. Additionally, we indicate in our answers to some of the questions that we currently take no position on that particular issue.

Altogether, we again thank the Commission for this effort to strengthen the competitive procurement process for Washington investor-owned utilities ("IOUs"), and we hope that our feedback helps lead to final rules that establish a fair, transparent, and competitive process.

II. COMMENTS

Renewable Northwest has structured comments around the questions posed in the Notice. While we appreciate the Commission's guidance that "[c]ommenters need not restrict their comments to the questions presented here," we have no feedback outside the scope of the questions in the Notice.¹

1. Independent Evaluator Requirement

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

Renewable Northwest is concerned that the proposal to shorten the regulatory approval process when a utility works with an IE may undermine the Commission's goals of ensuring a fair and transparent process that results in the procurement of lowest reasonable cost resources. Specifically, reducing the timeline for stakeholder engagement by half would significantly limit opportunities for stakeholders to analyze the RFP and would therefore deprive the Commission, Commission Staff, the IE, and the utility of feedback that may be critical to a fair and robust process.

Stakeholders and Commission Staff often provide important regional perspectives to complement and inform the IE, the Commission, and the utility. A recent proceeding that exemplifies that role is the 2018 RFP by the Oregon utility Portland General Electric. An IE worked with the utility to prepare the RFP. Still, stakeholder engagement prior to RFP approval by the Oregon Public Utility Commission complemented the IE's participation by offering additional information on issues of particular significance to that utility, including explaining how regional transmission constraints could impact competition in the RFP and how scheduling requirements could impact the value proposition for customers.² The Oregon Commission ultimately found that feedback valuable and incorporated elements of it as conditions attached to RFP approval,³ resulting in a relatively competitive process and Final Short List composed of a variety of technologies and transaction types that PGE and the IE project will result in customer savings.⁴ But that level of feedback likely would not have been available absent a comment

¹ Notice at 1.

² Oregon Public Utility Commission, Docket No. UM 1934, Renewable Northwest Comments on Staff Report (May 1, 2018), available at <https://edocs.puc.state.or.us/efddocs/HAC/um1934hac102944.pdf>.

³ Oregon Public Utility Commission, Docket No. UM 1934, Order No. 18-171 (May 21, 2018), available at <https://apps.puc.state.or.us/orders/2018ords/18-171.pdf>. See, e.g., the Oregon Commission's resolution of an issue relating to bidders' proposed use of conditional firm transmission service at pages 3-4.

⁴ See generally Oregon Public Utility Commission, Docket No. UM 1934, Request for Acknowledgement of the Final Short List of Bidders in Portland General Electric Company's 2018 Request for Proposals for Renewable Resources (Oct. 3, 2018), available at <https://edocs.puc.state.or.us/efddocs/HAH/um1934hah171931.pdf>.

period sufficient for stakeholders to request information, engage with the utility, and formulate careful responses.

While we are concerned about the proposal to reduce opportunities for stakeholder feedback, we reiterate our earlier comments encouraging the Commission to adopt rules that require IE engagement in all or some RFPs as the IE's participation should add significant value to the process and provide important safeguards to ensure that an RFP is fairly designed.

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?

No. While the IE would provide an important layer of review, a 30-day period is not sufficient to allow for robust stakeholder comment. Renewable Northwest has emphasized throughout this RFP rulemaking the value that an IE brings to a procurement process by instilling market confidence. The IE also offers important context on RFP best practices as stakeholders, the utility, Commission Staff, and the Commission work to ensure that an RFP leads to procurement of lowest reasonable cost resources for customers. However, as we outlined above, stakeholder feedback is also important to ensure lowest reasonable cost results for customers. Stakeholders need a meaningful opportunity to inform the RFP process, and the Commission likewise needs a meaningful opportunity to consider all of the information presented to it. Respectfully, we do not consider that the proposed accelerated timeline would provide a meaningful opportunity.

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?

As stakeholders discussed at the Commission's October 2, 2018 workshop, an IE brings significant benefits to a competitive procurement process, but if the IE fully replicates the utility's process then its costs may outweigh those benefits. We consider an appropriate middle ground for the IE to score all bids resulting in utility ownership and a sampling of other bids. However, we note that our proposed role for the IE would only set the floor for IE engagement, and that a utility could choose to increase the sample of bids analyzed by the IE, potentially up to the full population of bids, in order to minimize any perception of bias in the bid-scoring process.

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

Renewable Northwest recommends that the IE be involved in all communications between the utility and bidders. This includes being on the line for phone calls, and copied on correspondence.

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

Renewable Northwest recommends that the Commission require the IE to document and file all communications. This requirement would help the Commission to ensure that the RFP process is fair and competitive.

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

Renewable Northwest encourages the Commission to ensure that the rules establish a process subject to Commission oversight when the IE and the utility are in direct conflict. This process is particularly important at two junctures: first, establishment of the RFP itself; and second, establishment of the ranked list of bids.

The current draft rules appear to offer sufficient process and oversight should a conflict occur at the first juncture, establishment of the RFP. Specifically, the rule provision requiring the Commission to “approve, approve with conditions, or suspend the RFP” allows for oversight and resolution of any conflicts that arise during the RFP design phase.⁵

We recommend that the Commission ensure similar oversight and opportunity for resolution should any conflict arise regarding a utility’s ranked list of bids. While the draft rules generally provide for review of utility decisions related to bids at a subsequent rate case⁶ or on application by a bidder who does not receive a contract from the utility,⁷ we can identify in the rules no such review opportunity following a conflict between the IE and the utility. The Commission may wish to consider the Oregon Public Utility Commission’s approach, which provides for Commission review and acknowledgement of a utility’s “Final Short List” of bids—a natural opportunity for resolution of any conflict between the IE, or any other stakeholder, and the utility.⁸

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?

Renewable Northwest takes no position on this issue at this time.

⁵ Draft WAC 480-107-015(5).

⁶ Draft WAC 480-107-035(7).

⁷ Draft WAC 480-107-075(1).

⁸ See OAR 860-089-0500 “Final Short List Acknowledgement and Result Publication.”

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?

Renewable Northwest takes no position on this issue at this time.

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?

The proposed rule presently relies on on the Northwest Power and Conservation Council’s (“NWPPCC”) resource adequacy assessment to establish an RFP exemption. Renewable Northwest appreciates Commission Staff’s clarification that the proposed rule “is not intended to eliminate the need for a utility to perform its own resource adequacy assessment with an IRP.”⁹ While the NWPPCC assessment is a good place to start, additional analysis by the utility, with Commission oversight, is necessary in order to prevent against double-counting across multiple utilities. Failing to prevent that double counting could result in market shortfalls, high energy prices, and possibly even power outages. As a result, we recommend that the Commission amend proposed WAC 480-107-015(4)(b) to include the requirement of a separate utility resource adequacy assessment subject to Commission oversight and approval.

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

Renewable Northwest takes no position on this issue at this time.

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

An RFP for new resources should be required when there is a resource need coupled with significant market risk, but Renewable Northwest recommends that any rule to this effect should omit the word “firm.” RFP processes around the country are yielding shortlists that include an ever-wider range of resources, including, for example, cost-competitive renewable-plus-storage projects. So too might Washington’s evolving grid be increasingly able to meet resource needs with a diverse set of resources that would not fit into a traditional, narrow definition of firm. Furthermore, variable generation is capable of providing firm capacity, albeit not at a resource’s full nameplate capacity (as measured through metrics such as effective load carrying capability or capacity credit/value). At best, the inclusion of the word firm adds unnecessary ambiguity; at worst, it could prevent potential lowest reasonable cost resources from participating in the RFP.

⁹ Notice at 3.

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.”

Renewable Northwest takes no position on this issue at this time.

5. RFP Transparency

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

Renewable Northwest appreciates both Public Counsel’s suggested language and Staff’s additional edit, and we agree that the final proposed language strikes an appropriate balance on transparency. Specifically, the requirement either to quantify the weight the utility will afford to its scoring criteria or to provide a detailed narrative explanation regarding the relative priority of the scoring criteria should give bidders important information that allows them to tailor their bids to the utility’s needs. Ultimately, the result of this additional transparency will likely be the submission of more competitive bids and, at the conclusion of the RFP process, a better chance that the utility procures lowest reasonable cost resources. Moreover, the inclusion of Public Counsel’s new “detailed explanation” language with Staff’s “specifically identified” addition offers flexibility to utilities in how they provide information to bidders while also potentially increasing the scope of the information provided to bidders—a win-win solution.

While we support the language in its current recommended form, we would also recommend that the Commission consider changing the “either ... or” construction to a “[both] ... and” construction under which utilities are required to quantify all criteria: “The RFP must include a sample evaluation rubric that quantifies the weight each criterion will be given during the project ranking procedure **and** provides a detailed explanation of the aspects of each criterion specifically identified that would result in the bid receiving higher priority.” Quantifying the value of each criterion is likely the best way to ensure scoring transparency.

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?

The intent of the proposed language appears to be to provide clarity to the market about what the utility needs and the best way to meet that need; the language should result in more competitive bids and therefore in the procurement of lowest reasonable cost resources. As we stated above, the narrative element of the rule language affords the utility considerable flexibility while providing additional clarity to bidders. Utility resource needs are unlikely to change materially

over the 90-day RFP process, so the utility should be able to establish at the outset of the process a scoring process that accurately reflects its needs.

Ensuring that bidders have access to an evaluation rubric that accurately reflects a utility's needs at the beginning of the RFP process is particularly important where an RFP allows a utility ownership option, in order to help ensure that third-party bidders are on equal footing with projects on which the utility stands to earn a return. At the October 2, 2018 utilities expressed concern that clearly specifying scoring criteria could result in "bidder gaming." However, a well-designed scoring rubric should mitigate any "gaming" risk while ensuring that potential bidders have sufficient information to present competitive 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?

Renewable Northwest supports the language recommended by Public Counsel with the edit suggested by Commission Staff. To the extent the Commission considers alternative language that contemplates a utility's changing its bid-scoring criteria mid-process, however, we recommend that the Commission ensure bidders have the opportunity to amend their bids in response to any such change.

III. CONCLUSION

Renewable Northwest again thanks the Commission and Commission Staff for their work to ensure that procurement processes in Washington are fair and transparent, and that they instill market confidence that ultimately supports Washington utility customers. Again, we hope that these comments help the Commission to establish final rules that establish a fair, transparent, and competitive process.

Respectfully submitted this 26th day of October, 2018.

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