

Comments of the NW Energy Coalition to the Washington Utilities and Transportation Commission on the Request for Reply Comments in U-161024, dated October 11, 2018

October 26, 2018

The NW Energy Coalition appreciates the opportunity to provide reply comments to the notice dated October 11, 2018 regarding rulemaking for competitive acquisition of resources through request for proposals (RFPs). Previously, the Coalition provided comments to the Utilities and Transportation Commission (UTC or Commission) in this docket on this topic (September 21, 2018) and participated in a Commission workshop with other stakeholders on October 2, 2018. We have also participated in workshops and commented on other topics discussed elsewhere in the integrated resource plan (IRP) rules and covered in this docket.

As the Coalition has stated, we need fair and robust rules governing requests for proposals (RFPs) and procurement that provide the greatest benefits and security to ratepayers, and we support the Commission's critically important efforts to amend the rules with these principles in mind.

Below we provide comments in response to the questions posed in the request for reply comments. In some cases, we do not have a comment at this time, but reserve the right to provide future comment on the issue as this rulemaking evolves.

1. Independent Evaluator Requirement

Question from UTC: *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?*

NWEC Response: The Coalition cannot comment for the utility whether a shorter regulatory approval process would encourage the use of an IE. However, for stakeholders like the Coalition, who are often engaged in these processes and can provide experience and lessons

learned from other states, we are concerned that the shortening of the time from 90 to 30 days would not give enough time for stakeholders to review and analyze the RFP. Shortening the time in this way would be a backward slide away from the fair and robust process that we are all seeking.

- 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?*

NWEC Response: No. An IE does not replace stakeholder feedback. Shortening the timeframe for stakeholder engagement will not benefit the process—it will prevent the Commissioners, the IE, and Commission staff from benefiting from any knowledge that other stakeholders could provide.

2. Role of the Independent Evaluator

UTC Question: 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?*

NWEC Response: We see significant value in having an IE involved in the development of the RFP, as well as in reviewing resulting bids. For an RFP, an IE can bring add experience from other utility processes that would add value. For independently reviewing bids, we understand the concern that utilities may have that an IE is only replicating the process they are undertaking, so at a minimum, we would suggest that an IE review any bids resulting in utility ownership and a sampling of the remaining bids.

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

NWEC Response: An IE should be involved in all communication between the utility and bidders, including on any phone calls and copied on mailed or emailed correspondence.

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

NWEC response: Yes, the Coalition believes that an IE should document and file all communications with the Commission to ensure that this is a fair and transparent process.

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

NWEC response: There should be sufficient process in the rules to ensure that the process is fair, transparent, and robust, regardless of whether there is a known direct conflict between an IE and utility or not. In both the development of the RFP and in the selection of the final shortlist of candidates, the Commission should retain the authority to approve, approve with conditions, or disapprove the RFP and shortlist, respectively, in the process. Some additional language regarding a shortlist may need to be added to the rules to ensure that it is clear that the Commission has this role in the review of the shortlist.

3. Conservation RFP

UTC Question: *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?*

NWEC Response: As suggested in our comments from September 21, 2018, any use of Option 3 in rule or adoption order should make clear what “approval” means in the context of the advisory group.

In addition, we note that, while the conservation advisory groups are a valuable venue for conversation on conservation, they are not public, and there could be other stakeholder voices that could provide valuable feedback in the procurement of these critical resources. As part of this rule, we urge the Commission to consider how best to incorporate broader stakeholder feedback on conservation RFPs. For example, the conservation RFP could be open for a period of public comment that would be reviewed in the advisory group and, with the advisory group’s recommendation, presented to the Commission.

- 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?*

NWEC Response: We refer to our suggested language in the comments dated September 21, 2018 as a potential model (copied below). This language gives a framework for what the Commission expects in terms of competitive procurement of conservation resources while

providing flexibility to the utility to work with its advisory group when modifications to that framework seem needed.

A utility must acquire conservation and efficiency resources through a competitive procurement process.

- (a) A utility should achieve 100% of its conservation and efficiency resource program savings through competitively procured programs by 20xx.*
- (b) The utility should work with its conservation advisory group, as described in WAC 480-109-110 Conservation advisory group, to determine its plan for reaching the 100% achievement target, including procurement schedule. The utility should describe this plan beginning in the 2020-2021 biennial conservation plan, as described in WAC 480-109-120, Conservation planning and reporting.*
- (c) If there is a conservation and efficiency program that the utility believes should not be competitively procured, the utility should consult with its conservation advisory group, and document the group's support or opposition before seeking commission approval as part of the utility's biennial conservation plan.*

4. Market Purchases Resource Adequacy Exemption

UTC Question: *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?*

NWEC Response: We do not have a suggested market reliance level at this moment, but agree that use of the Northwest Power and Conservation Council's resource adequacy assessment does not preclude the need for a utility to perform its own resource adequacy assessment.

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

NWEC Response: The Coalition does not have a comment on this question at this time.

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

NWEC Response: The Coalition notes that “market risk” is increasing and may not be known far in advance—the high summer market prices of 2018 and the short-term gas shortage in October due to the BC pipeline explosion are examples clearly on our minds now. RFPs should be required whenever there is a resource need, regardless of any perceived market certainty or risk.

We also question the use of the term “firm”, as that term has often only implicated thermal resources.

- 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.”*

NWEC Response: This definition seems sufficient at this time, but we look to other stakeholders for comment on whether this timeframe is too long.

5. RFP Transparency

UTC Question: *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?*

NWEC Response: Rather than an “or”, we would advocate that the rule should include an “and” – providing both the weight of each criterion AND a detailed explanation is valuable. To leave it as an option to the utility would mean that utilities would most likely just give some description of the attributes they will be reviewing, without any real guidance to a bidder or transparency to stakeholders once bids come in on how a utility is really evaluating them.

- 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?*

NWEC Response: No, a well-designed RFP should provide an opportunity for a utility to understand and elucidate its resource needs and for a bidder to provide the best response to those needs.

- 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?*

NWEC Response: If language is proposed that would allow a utility to alter criteria at any time during the process, a potential bidder should have time to revise a bid in response.

Thank you for the opportunity to provide comments in this docket. At this time, we do not have further comments on questions or comments that arose from stakeholders outside of this request for reply comments, but the Coalition will continue to engage on this topic in any further workshops and comment periods.

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