

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

In the matter of

Amending, Adopting, and Repealing
WAC 480-107, Relating to Purchases of
Electricity

DOCKET NO. UE-190837

NORTHWEST & INTERMOUNTAIN
POWER PRODUCERS COALITION
COMMENTS

I. INTRODUCTION

The Northwest & Intermountain Power Producers Coalition (“NIPPC”) appreciates this opportunity to submit comments on the Washington Utilities and Transportation Commission (the “Commission” or “WUTC”) rulemaking regarding competitive procurement for electric utilities (WAC 480-107). NIPPC recommends that the Commission significantly modify its request for proposal (“RFP”) and competitive bidding rules to attract innovative resource proposals and achieve lower customer rates by fostering the development of competitive electricity markets and diverse ownership of generating facilities.

In the prior docket on this topic, Docket UE-161024, NIPPC participated extensively, including by submitting comments. NIPPC understands that the Commission seeks to build a record in this new docket, and for this purpose, as well as to support a robust stakeholder discussion, NIPPC provides its relevant prior comments as attachments to this filing.¹ NIPPC continues to support its original substantive

¹ *Rulemaking for Integrated Resource Planning, WAC 480-100-238, WAC 480-90-238, and WAC 480-107, Docket No. UE-161024, NIPPC Comments (Nov. 2, 2016) (Attachment A); Rulemaking for Integrated Resource Planning, WAC 480-100-238, WAC 480-90-238, and WAC 480-107, Docket No. UE-161024, NIPPC*

recommendations regarding specific rule language, but in the interest of brevity does not repeat them herein.

Although NIPPC continues to support its recommendations, a significant amount of time has passed since the comments were filed. To the extent that the comments endeavor to provide context on market conditions or historical events, NIPPC has not updated its attached comments to reflect changes that have occurred, whether good or bad, since the comments were filed. NIPPC does note that the Clean Energy Transformation Act (“CETA”) includes a new provision that allows utilities to earn a return on electricity procured through power purchase agreements (“PPAs”),² and believes that this is a welcome change that could better ensure that the utilities acquire the least-cost and least-risk generation resources. Overall, NIPPC is more optimistic now than it was when it filed its original comments in 2016 that the regulatory process and utility decisions will result in a greater diversity of generation ownership for the benefit of ratepayers.

NIPPC recommends that the Commission:

- Require a utility to hold a Commission-supervised RFP prior to acquiring 50 megawatts (“MWs”) or more of new generation resources and certain energy storage with a term of five years or more in an RFP, with limited exceptions;
- Include a cost-based threshold for when storage projects require an RFP;

Comments Regarding Proposed RFP Rules (Sept. 21, 2018) (Attachment B); *Rulemaking for Integrated Resource Planning, WAC 480-100-238, WAC 480-90-238, and WAC 480-107*, Docket No. UE-161024, NIPPC Reply Comments Regarding Proposed RFP Rules (Oct. 26, 2018) (Attachment C); *Rulemaking for Integrated Resource Planning, WAC 480-100-238, WAC 480-90-238, and WAC 480-107*, Docket No. UE-161024, NIPPC Additional Comments Regarding Proposed Revised RFP Rules (Jan. 31, 2019) (Attachment D).

² RCW 19.405.010(5).

- Revise the rules to prevent project disaggregation by utilities in order to avoid the thresholds;
- Modify the definition of subsidiary to be based on ownership alone, rather than ability to control the related company;
- Remove language that could be interpreted as making the RFP process just one of many options utilities can use to acquire new resources;
- Retain an independent evaluator (“IE”) to protect against utility bias and a due diligence expert to ensure ownership bids are fairly priced;
- Include a due diligence review of utility-ownership bids as one of the IE’s duties, to help ensure utility-ownership bids are fairly priced and evaluated equivalently with third-party bids;
- Expand the IE’s duties to include managing, rather than just evaluating the RFP;
- Use an RFP process to select the IE;
- Have the IE be paid by the Commission and reimbursed, and have the IE be managed by the Commission Staff;
- Relieve the utility of the requirement to hire an IE when there is no utility ownership bid in response to an RFP;
- Provide stakeholders an opportunity to comment on both the draft and final RFPs, which must be approved by the Commission;
- Encourage utilities to consult with all interested parties during the development of the RFP;
- Adopt highly-specific RFP scoring and evaluation criteria to ensure that they are transparent to all bidders;
- Require a Commission-approved PPA and other transaction documents, so that bids can be submitted and evaluated on a level playing field;
- Require the RFP to specify interconnection requirements;
- Require that utilities’ return on utility-owned generation be built into the price and collected on a per-megawatt-hour (“MWh”) basis, in order to put these projects on equal footing with PPAs;
- Require that utility-owned transmission assets be made available for use by third-party bidders;
- Make clear that utilities cannot make RFPs overly prescriptive by mandating generation technologies or locations without a statutory mandate or other regulatory requirement;
- When the utility could own a generation asset at the completion of the RFP, require a two-stage RFP with the price scores of the ownership options made available prior to the bidding for the PPA options, which may attempt to “beat” the utility-ownership score;
- If a utility-ownership bid wins the RFP, subject the utility’s resource short list to an acknowledgement proceeding that has the same effect as Integrated Resource Plan (“IRP”) acknowledgment;
- Cap the costs included in rates for utility-owned generation at the cost included in the bid used for comparative analysis in the RFP; and

- Require the utility to release the winning bid score to customers, the public, and bidders.

In these comments, NIPPC provides: 1) responses to the questions posed by the Commission in its Notice; and 2) responses to other questions raised at the February 25, 2020 workshop.

II. COMMENTS

A. Questions Posed in the WUTC's Notice of Opportunity to Comment

1. The Trigger for RFPs and Intersection Between IRPs and Clean Energy Implementation Plans

NIPPC recommends that the trigger for issuing an RFP be based on any need for resource procurement shown by either a clean energy implementation plan ("CEIP") or an IRP. An IRP could show a need for capacity, demand-side management, or non-renewable resource needs, and will likely still be a solid basis for issuing RFPs. In addition, PacifiCorp and Avista are multi-state utilities, and other states may use the IRP as the basis for pursuing resource acquisitions. The CEIP could be more frequent than IRPs or on different schedules, and would also be appropriate to trigger a renewable resource RFP.

2. Usage of Northwest Power and Conservation Council's Resource Adequacy Study

a. Should the rules allow the use of a resource adequacy analysis conducted by other entities in addition to the Council?

NIPPC commented on the use of the Northwest Power and Conservation Council's ("Council's") work on September 21, 2018.³ NIPPC maintains its support for

³ See Attachment B at 11-12.

the use of the Council's resource adequacy study or of another independent third-party analysis.

b. To what extent should transmission modeling be required in the resource adequacy analysis?

NIPPC commented on transmission's importance to the RFP rules on November 2, 2016.⁴ Further, NIPPC has provided comments on transmission and resource adequacy in several related dockets currently before the WUTC. For example, in Docket UE-191023, NIPPC recommends that the Commission require utilities to be consistent in the assumptions and modeling used for both their power supply and transmission functions.⁵

3. The draft rule at WAC 480-107-AAA requires the use of an Independent Evaluator under certain circumstances.

a. Should the utility be required to have an independent evaluator examine the utility's performance as a developer in the case of a utility proposing to self-build or a utility's subsidiary or affiliate bidding in a build-to-lease or build-to-own project?

NIPPC maintains its earlier recommendation that an IE and due diligence expert should be retained in conjunction with all RFPs in which the utility itself plans to bid.⁶ Independent evaluators in other states have provided considerable value to ratepayers. NIPPC's position is that an IE is the minimum needed to ensure a fair RFP; however, history has shown that additional protections are necessary. NIPPC supports all of the additional protections included in its earlier comments. For example, NIPPC

⁴ See Attachment A at 35-36.

⁵ *In the matter of the Clean Energy Implementation Plans and Compliance with the Clean Energy Transformation Act Rulemaking*, Docket UE-191023, NIPPC Comments at 8 (Feb. 28, 2020).

⁶ See Attachment A at 28-29.

recommended in earlier comments for the adoption of a cost cap for developments pursuant to a utility or utility affiliate's winning bid.⁷ Such a cost cap should ideally be set at the winning bid price.

b. Should there be a MW or MWh threshold to determine whether an independent evaluator should be used? Should it be different than the threshold triggering a utility to comply with the requirements regarding an RFP?

NIPPC commented on the issue of setting appropriate thresholds on November 2, 2016; and September 21, 2018.⁸ NIPPC maintains its earlier recommendations that: 1) a utility be required to comply with the competitive bidding rules for all resource acquisitions in excess of 50 MW of nameplate capacity and certain energy storage⁹ with a term of five years or more;¹⁰ and 2) an IE be used for any RFP where the utility or a utility affiliate plans to bid.¹¹ NIPPC does not recommend the use of an IE when a utility does not plan to bid or could not otherwise have an ownership interest in the winning bid.¹²

⁷ See Attachment B at 25-27.

⁸ Attachment A at 22-23, 28-29; Attachment B at 12-15.

⁹ NIPPC continues to recommend that an RFP be conducted for energy storage amounts of 20 MW or greater. NIPPC welcomes further discussions about the appropriate size threshold for storage.

¹⁰ Attachment A at 22.

¹¹ Attachment A at 28-29; Attachment B at 12-15.

¹² Attachment B at 12-15.

- c. **The draft rule at WAC 480-107-035 provides a list of items that must be included in the ranking criteria. Those items may expand under CETA, especially for RCW 19.405.040(8). What items should be in the criterion list and included in the independent evaluator’s scope of work?**

NIPPC commented on the issue of items to be included in the ranking criteria on November 2, 2016 and October 26, 2018.¹³ Rather than recommend items to be included, NIPPC has recommended changing so-called “non-price” factors from being scoring criteria to being minimum bid requirements.¹⁴ Further, NIPPC does not recommend the use of a uniform score card, because the specific information relevant to each RFP will likely change from one RFP to the next.¹⁵ NIPPC believes an IE’s scope of work can be more expansive than merely scoring the criteria, and can include, for example, the development of the score card.¹⁶ NIPPC has not identified criteria due to CETA, but NIPPC looks forward to reviewing the comments provided by other stakeholders.

4. Equity Requirements and RFPs

The traditional regulatory model brought electrification and non-discriminatory access to Washington, but not all voices have been involved in regulatory discussions and decision-making. Electric service has been a powerful tool to promote equity and prosperity justice for all consumers whatever their economic status or residency. The present moment brings the prospect of genuine competition and innovation, which would benefit all ratepayers. NIPPC looks forward to better understanding how equity issues

¹³ Attachment A at 33-35; Attachment C at 7-10.

¹⁴ Attachment A at 33-34.

¹⁵ Attachment C at 10.

¹⁶ See Attachment C at 4-5.

could potentially be addressed in RFPs, including the potential for RFPs in which developers would submit bids for the utilities to acquire renewable resources tailored to meet the unique needs of different communities.

NIPPC recognizes regulatory and economic changes create risks, and that some customer groups are better positioned to benefit from a transition to a less carbon intensive, more efficient, and innovative energy economy. Special care must be taken to ensure that all customers benefit from industry changes, including economically disadvantaged and other underserved communities. NIPPC does not presume to know the best ways to address the concerns highlighted by the equity and social justice stakeholders, but more voices need to be heard, acknowledged and their interests protected.¹⁷

B. Questions Raised at the February 25, 2020 Workshop

1. Experience from Oregon’s Revised 80 MW Threshold is Limited

At the Commission’s workshop on February 25, 2020, a question was raised as to the experience, if any, under Oregon’s competitive rules, the application of which was recently changed from 100 MW to 80 MW. NIPPC maintains its recommendation that the WUTC should adopt a 50 MW threshold.

¹⁷ Issues related to equity and regulatory policy were broadly addressed by the Oregon Public Utility Commission in a proceeding related to Senate Bill (“SB”) 978, which revisited the utility business model and regulatory compact, and NIPPC provided similar comments in that proceeding. NIPPC recommends that the WUTC review the OPUC’s final SB 978 report and NIPPC’s longer comments on equity issues. Oregon Pub. Utility Comm’n, SB 978: Actively Adapting to the Changing Electricity Sector (Sept. 2018), *available at* <https://www.oregon.gov/puc/utilities/Documents/SB978LegislativeReport-2018.pdf>; NIPPC Comments to Oregon Pub. Utility Comm’n on SB 978 (April 20, 2018) (Attachment E); NIPPC Comments to Oregon Pub. Utility Comm’n on SB 978 (July 10, 2018) (Attachment F).

At this time, however, there is insufficient evidence with the new rule to ascertain if there is any benefit. None of Oregon's regulated utilities have completed an RFP since the threshold changed in August 2018. PacifiCorp has issued, and Portland General Electric Company is likely to issue, RFPs, but those RFPs are likely to be for substantially more than 100 MW. Thus, it is unlikely that there will be any substantive evidence regarding Oregon's rule in the near future. Instead of following Oregon's example, NIPPC recommends that the WUTC adopt a 50 MW threshold.

2. The Transparency of RFP Results Is a Crucial Issue

NIPPC commented on the issue of RFP transparency on November 2, 2016; September 21, 2018; and October 26, 2018.¹⁸ NIPPC maintains its earlier recommendations that: 1) RFP scoring should be detailed and transparent; 2) bidders should receive their scoring information at the end of the RFP; 3) bidders should be told the winning bid price; and 4) bidders should not otherwise receive any scoring information for their competitors.

3. The Selection of the IE Must be Robust

NIPPC commented on how the IE should be selected on September 21, 2018.¹⁹ NIPPC maintains its earlier recommendation that: 1) Staff, not the utility, should make the ultimate recommendation of IE to the Commission; and 2) an RFP be used to select the IE.

¹⁸ Attachment A at 33; Attachment B at 19-21; Attachment C at 7-10.

¹⁹ Attachment B at 40.

4. The IE's Role is to Mitigate Utility Bias

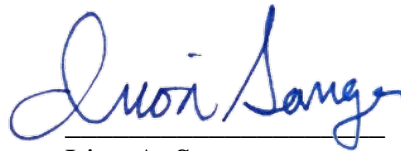
NIPPC commented on the appropriate role of an IE on November 2, 2016; September 21, 2018; October 26, 2018; and January 31, 2019.²⁰ NIPPC maintains its primary recommendations that: 1) an IE should be significantly involved in the RFP process; and 2) an IE's role is to mitigate utility bias.

III. CONCLUSION

NIPPC appreciates the opportunity to submit comments and looks forward to further engagement in this rulemaking.

Dated this 13th day of March 2020.

Respectfully submitted,



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²⁰ Attachment B at 12-17; Attachment C at 2-6; Attachment D at 3; see generally Attachment A (discussing the IE's role in varied steps of the RFP process).