

SUMMARY OF STAKEHOLDER COMMENTS
June 13, 2003, BIDDING RULES
Chapter 480-107 WAC (UE-030423)

Updated: June 17, 2003

Issue	Interested Party	Comments
A. CONDITIONS THAT TRIGGER A RFP		
Conditions triggering RFP	Avista	<p>480-107-060(2)(a): Avista proposes that the competitive bidding process be initiated by a company's need to acquire new resources. WAC 480-107-060 currently requires that a solicitation for resources begin within 90 days of the release a company's integrated resource plan (IRP). The current rule has the effect of preparing a request for proposals (RFP) that will generate time-consuming effort by bidders with an uncertain chance of selection or the preparation of a waiver filing. The current rule assumes that the electric utility is always in resource deficit from load growth and resource retirements. But this is not always the case. To require a utility to issue an RFP just because it issued an IRP is costly. Furthermore, issuing an RFP to meet a WAC rule may not garner serious consideration by generation developers and compromise future relationships with the company. Developers may not spend the time and dollars developing a response to an RFP if an IRP shows the utility is not in need of new resources. The RFP WAC rules should be changed to only be applicable when the utility has demonstrated a defined need for future supplies of electrical energy.</p>
	ICNU	<p>ICNU supports the Commission's efforts to review Chapter 480-107. Competitive resource acquisition is an important part of a utility's least cost strategy. To the extent possible, the Commission should encourage utilities to rely on market forces to minimize costs. Both supply and demand side resources should be allowed to bid into competitive solicitations. In addition, the Commission should consider allowing large customers to bid in load reduction in exchange for market access. One concern that needs to be addressed in competitive solicitations is potential bias toward projects sponsored by a utility or its affiliates.</p>
	PacifiCorp	<p>(WAC 480-107) The current rule suggests that the RFP solicitation is required every two years, at the same interval as the development of an IRP. This 2-year requirement is probably too frequent. Rather, the triggering event should be (a) a utility's recognized need to acquire a long-term (i.e., greater than 15 years) resource, or (b) at the specific direction of the Commission, such as in response to changes in the industry.</p> <p>The existing WAC 480-107-50 requires the utility to determine it's avoided costs and file an avoided cost schedule and supporting documentation with its proposed RFP. There is no need to link an obligation imposed on the utility to file an avoided cost estimate every 2 years—which is a requirement based on the FERC rule (18 CFR § 292.302(b))—with a requirement to issue an RFP at the same interval (every 2 years). The Commission should consider revising the rule in this proceeding to separate these requirements, and to retain the 2-year interval only with respect to the filing of avoided cost information. The issuance of a Commission-approved RFP would be an option for the utility, but a utility choosing not to issue a Commission-approved RFP would nonetheless have the obligation to file the required avoided cost information every 2 years.</p>

Issue	Interested Party	Comments
	<p>PSE</p>	<p>While the scope of the current rule is not limited to issuance of RFPs for QF purchases, the rule explicitly provides that it is not the only means of acquiring resources: "These rules do not preclude electric utilities from constructing electric resources, operating conservation programs, purchasing power through negotiated purchase contracts, or otherwise taking action to satisfy their public service obligations." WAC 480-107-001(1). Nevertheless, it has been suggested that the current rule is far broader, and that the Commission should have an expectation that RFPs filed through the WAC 480-107 process are the preferred vehicle for <i>all</i> resource acquisition. PSE believes that the Commission should develop and articulate its current views in this rulemaking about any preferred process for resource acquisitions.</p> <p><i>Timing of RFP</i>- With respect to timing, the current rule contemplates that RFPs be issued every two years, in conjunction with a company's LCP. PSE suggests that the current rule be amended to permit regulated companies to issue RFPs under the rule at timing of the companies' discretion rather than on a set schedule. If possible, the procedure should also be shortened.</p>

Issue	Interested Party	Comments
B. CONDITIONS TO WAIVE A RFP		
C. RFP SOLICITATION PROCESS (WAC 480-107-060)		
Resource specific RFPs	Avista	(WAC 480-107-060(2)(a)) Avista proposes that a utility should have the option to issue resource-specific RFPs. There are technologies, such as wind and coal that would benefit from being scoped through a resource-specific RFP process.
	PSE	Want to discuss the wisdom of periodic or occasional Renewable RFP process. This would need “preapproval” of the notion that such resources may cost more than non-renewable resources.
Resources with long lead-times	Avista	<p>(WAC 480-107-060(1)) To Avista’s knowledge, the longest “lead-time” resource bid under the existing rule has been a combined cycle combustion turbine (CCCT). The lead-time for CCCT construction is approximately 30 months. Avista questions how a longer lead-time resource would be considered and processed under the existing rule. For example, a coal plant may take five to seven years to design, permit, and build, and that does not account for transmission from remote load centers. Furthermore, the size and scale of coal plant construction and operation has historically involved a consortium of parties.</p> <p>Generally, the consideration of a large project begins with a Request for Qualifications (RFQs) and preliminary discussions with potential contractors. This is not contemplated under the current rule. Avista suggests that specific consideration be provided in 480-107 for RFQs relating to resources with long lead-times.</p>
Public comment period	Avista	(WAC 480-107-060(2)(b)) Instead of the current 60-day requirement for public comment, a 30-day notice period should be sufficient. The Commission has the authority to extend this time period in the event of an inadequate proposed RFP.
Streamlining the RFP process	PacifiCorp	<p>(WAC 480-107) The RFP process should be sufficiently streamlined to enable the utility to act expeditiously to fulfill its load-serving obligation and to respond to constantly changing market circumstances. In addition, the RFP process should be sufficiently flexible to accommodate utility-specific policies such as the provision of adequate credit assurances or the customization of contractual terms and conditions for circumstances unique to the transaction and counter parties. A cumbersome, lengthy or inflexible RFP process could potentially deny utility customers the benefits that flow from competition among would-be suppliers, or introduce an unacceptable level of risk in the event a chosen supplier subsequently fails to fulfill its contractual commitments.</p> <p>The existing rule’s requirement to a 60-day comment period and a 90-day review period probably too lengthy to allow the desired responsiveness on the utility’s part. At the same time, the length of the process followed by the Commission should bear a relationship to the significance of the Commission’s actions in approving an RFP solicitation. If a resource acquired pursuant to a Commission-approved RFP is presumptively prudent, then it is reasonable to expect a more thorough process associated with approval of the RFP solicitation.</p>

Issue	Interested Party	Comments
D. RANKING PROCEDURES (WAC 480-107-070)		
Relationship to plan	Avista	(WAC 480-107-070) Resource proposal evaluations should not rely exclusively on the IRP and market conditions at the time of its most recently filed IRP. Current information should be allowed where it can be shown to better represent market conditions at the time of evaluation. The Commission, in its approval process pursuant to 480-107-060(2)(a), has the authority to review any such update without the need to have a formally updated IRP.
Confidentiality of bids	Avista	(WAC 480-107-070(4)) Regarding the need to ensure that only non-interested parties are reviewers of the RFP and the bidding process, the RFP submittals must be confidential. The bidders expect such in order to ensure that their market information is not available to their competitors. To do otherwise may limit the number of bidders. The RFP should outline how confidentiality will be addressed as the bids are processed.
Prioritize acquisition of cost-effective conservation	DCTED	(WAC 480-107) Preference should be given first to acquire all cost-effective conservation prior to making any purchases of thermal generating plants (consistent with the Northwest Electric Power Planning and Conservation Act - Public Law 96-501 Section 4(e) 1 and the State Energy Strategy).
	NWEC	(WAC 480-107) WAC 480-107-070 requires utilities to rank project proposals according to various criteria, including risks imposed on ratepayers. In particular, “the ranking procedures shall recognize differences in relative amounts of risk inherent among different technologies, fuel sources, financing arrangements, and contract provisions.” We suggest taking the reference to contract provisions a step further to specify, in the case of long-term contracts, which risks the utility (and therefore ratepayers) will bear and which risks the power provider will bear. For example, who has responsibility for risks related to fuel price volatility, market volatility, carbon and other emissions mitigation, etc? The ranking procedures also should consider the cost to the utility of bearing these risks versus the cost of the utility as a result of the developer bearing these risks.
Externalities	NRDC	(WAC 480-107) WAC 480-107-001 states that the Commission’s intent that “bids under these rules shall include the costs of compliance by the project with environmental laws, rules and regulations in effect at the time of the bid and those reasonably anticipated to be in effect during the term of the project.” Section 5 of WAC 480-107-020 echoes that intent. WAC 480-107-070, section 2, lists the minimum criteria used to rank project proposals, including those associated with resources that emit carbon dioxide.” We strongly suggest revisiting these provisions to ensure more specificity with regard to how CO2 emissions are considered in project evaluation and selection. Washington’s electric utilities need clear specific guidelines from the Commission for addressing this issue in RFPs and resource selection processes, including treatment of CO2 emissions mitigation costs, risks and environmental implications.

Issue	Interested Party	Comments
E. POWER CONTRACT MARKETS, RESOURCE MARKETS, AND REGULATED UTILITIES: Fairness for Suppliers and least cost for rate payers		
	NIPPC	(WAC 480-107) Suggests revision to subject title to read: “the need to clarify benefits of competitive wholesale markets for consumers under regulated retail service.”
	PSE	<p>Since the Commission last examined the LCP and RFP rules, there has been a sea change in the electric power industry. Then, the industry was struggling to come to grips with issues related to retail competition and anticipated reliance on purchases from wholesale markets and independent power producers or qualifying facilities under PURPA. In the interim, the State and Commission have reaffirmed their continued commitment to full regulation of retail service. Wholesale markets have proven to be volatile. The business and financial models upon which much of the wholesale marketplace was structured have been questioned and even rejected by some members of the financial community. Capital and credit requirements to support wholesale markets were not widely recognized and even now are not clear. Many market participants are wary of wholesale markets, and service providers must give serious consideration to constructing additional generation of their own to meet future load. At the same time, regulated companies are facing significant challenges to their ability to attract and retain the capital to construct generating plant and to create the debt incurrence capacity that is required to provide the liquidity and credit support facilities necessary to conduct basic day-to-day portfolio management activities.</p>

Issue	Interested Party	Comments
F. CONSISTENCY WITH CHAPTER 480-146 WAC (AFFILIATED INTERESTS)		
Consistency with Chapter 480-146 WAC	ICNU	ICNU supports the Commission’s efforts to review Chapter 480-107. Competitive resource acquisition is an important part of a utility’s least cost strategy. To the extent possible, the Commission should encourage utilities to rely on market forces to minimize costs. Both supply and demand side resources should be allowed to bid into competitive solicitations. In addition, the Commission should consider allowing large customers to bid in load reduction in exchange for market access. One concern that needs to be addressed in competitive solicitations is potential bias toward projects sponsored by a utility or its affiliates.
	PacifiCorp	<p>(WAC 480-107) PacifiCorp is not opposed to the adoption of rules or guidelines with respect to participation by affiliates in RFPs. If the Commission decides that such rules or guidelines are necessary, PacifiCorp recommends that the Commission provide flexibility to accommodate responding to industry changes. Any rules or guidelines relating to affiliate participation should include the following elements:</p> <ul style="list-style-type: none"> ○ must be specific in their applications, ○ should not result in a process that involves lengthy approval delays, ○ should not duplicate or contradict Federal law, and ○ should provide specific guidance for multi-state utilities in the event rules or guidelines in another state are contradictory. <p>Whether or not affiliates are allowed to bid into a given competitive solicitation should be determined on a case-by-case basis. If participation is allowed, PacifiCorp proposes that an independent 3rd party be retained to either perform the bid evaluations or to validate that the evaluations were completed without discrimination.</p>
G. CONSISTENCY WITH FERC 888/889 AND EPACT		
Consistency	Avista	(WAC 480-107) The Company believes that the RFP rule is consistent with the Energy Policy Act (EPACT) and FERC 888/889 for wheeling issues. Avista has always had a policy of providing wheeling to other parties as long as there is capacity available on the wheeling path.

Issue	Interested Party	Comments
H. PURPA & OTHER ISSUES		
Connection between LCP & RFP	Avista	<p>It would be helpful for the Commission to true up the current LCP and RFP rules to its current thinking on a variety of matters in a manner that helps reduce potential disputes among the parties with varying interests on these issues and that maximizes the ability of regulated companies to conduct business in a manner that will be found prudent for future cost recovery. The LCP and RFP process rules should permit regulated companies to make timely and reasonable resource decisions, recognizing that “reasonable” does not mean “perfect,” and that such decisions are always made in the context of uncertain and changing conditions.</p>
Requirement of Avoided Cost Schedule	Avista	<p>(WAC 480-107-050) The avoided cost schedule in the bidding process should be eliminated. The avoided cost schedule should be set up after the bidding information becomes available to the utility. When an avoided cost schedule is included in the RFP it effectively becomes a price ceiling. Bidders then submit proposals that are not based on the actual cost of resources, but are aimed at being as close to the price ceiling as possible. Thus, utilization of the avoided cost schedule does not initiate a true market bidding process. Without the avoided cost schedule, bidders are likely to submit their best estimate of actual costs. This should result in lower cost bids for the utility and consequently for the customers.</p> <p>Because the RFP would no longer be triggered by the IRP, Avista recommends that an alternative process be implemented to meet the requirements of PURPA. In its Idaho jurisdiction, Avista uses a methodology that ensures that all PURPA resources will be acquired under then current avoided costs, no matter when a resource is bid to the Company. The methodology requires that the Company’s IRP model be run with and without the proposed PURPA resource, recognizing its unique characteristics (e.g., contract term, on-/off-peak generation, seasonal shaping). The new resource is included in the IRP model assuming it is obtained at no cost. The net power supply cost difference between the two IRP model runs is identified, leveled, and used as the avoided cost.</p>
Consistency with PURPA	CCW	<p><u>Long-Standing Policy Encourages Cogeneration Technology</u> – In 1978, the Public Utility Regulatory Policies Act was passed to encourage the conservation and efficient use of energy and to spur development of alternative power supplies. At that time, electric utilities were forecasting that additional generation was needed to meet demand. PURPA calls for utilities to buy power from Qualifying Facilities, provided that the cost to do so is no more than what the utility would have paid to supply the power itself.</p> <p>PURPA required the Federal Energy Regulatory Commission (FERC) to prescribe rules necessary to encourage cogeneration. Among the adopted rules was a mandatory purchase obligation requiring electric utilities to purchase electric power from and sell electric power to cogeneration facilities. The rules provide that QFs may provide energy to the utility, as it is available at the purchasing utility’s avoided costs, calculated at the time of delivery. Additionally, PURPA authorized the FERC to exempt</p>

Issue	Interested Party	Comments
		<p>QFs from certain federal and state laws and regulations.</p> <p>Washington’s role in implementing these rules is memorialized in WAC Section 480-107-001, “[t]hese rules are consistent with the provisions of the Public utility Regulatory Policies Act of 1978 (PURPA), Title II, Sections 201 and 210, and regulations promulgated by the Federal Energy Regulatory Commission (FERC) in 18 C.F.R. Part 292 . . .” States are required under the federal statutory scheme to implement the federal rules. State regulators act as delegates of FERC in administering QF contracts and must act consistent with FERC guidelines. Under the Supremacy Clause of the United States Constitution, a federal agency acting within the scope of its congressionally delegated authority has the power to preempt state regulation and render unenforceable, state or local laws which are otherwise not inconsistent with federal law.</p> <p>CCW recommends no change to the WAC Section 480-107, as many of the provisions pertaining to QFs are a result of federal laws and FERC rules. Changes at the state level would be inappropriate.</p>
Compulsory or Optional	PacifiCorp	<p>(WAC 480-107) PacifiCorp interprets the Commission’s existing RFP process as being optional, and urges retention of this feature. As in the existing rule, following a Commission-approved RFP process should be one, but not the exclusive, means for a utility to acquire resources.</p>
Flexibility	PacifiCorp	<p>(WAC 480-107) As a multi-state utility, a critical issue for PacifiCorp is preserving the ability to achieve compliance with various state requirements concerning the resource acquisition process. Any requirements imposed in this proceeding should provide sufficient flexibility to avoid conflict with requirements imposed by other jurisdictions. Moreover, any rules should include specific guidance for multi-state utilities in the event rules or guidelines in another state are contradictory.</p>
	PSE	<p>The Commission will need to address PURPA requirements in this rulemaking. However, PSE recommends that the Commission consider starting from scratch in addressing competitive bidding issues in the context of the significant changes in the industry. Such inquiry should keep in mind that resource acquisition is not typically best performed on the basis of lowest price bids, but rather through much more sophisticated procurement approaches that, among other things, preserve a company's flexibility with respect to the resource in the context of its overall portfolio. The rule should also be flexible enough to respond to actual circumstances and information available at the time of the resource acquisition decision.</p> <p>PSE believes that the parties should grapple with the balancing the desire to put in place processes that can be, by their very nature, rigid, time consuming and potentially confining in the face of rapidly changing market conditions and the need of regulated companies for flexibility to effect transactions, the assessment of which may be far more complex and an overly rigid rule might assume. PSE believes that it is ultimately in the public interest to empower regulated companies to take advantage of resource acquisition opportunities as they arise. In short, new rules ought to reflect the new market realities facing the industry.</p>

Issue	Interested Party	Comments
Qualifying Facilities	BPWC	No new rulemaking is necessary to clarify the existing rights of Qualifying Facilities rules are consistent with PURPA and the commission's intent.
	NWEC	(WAC 480-107) Provisions on qualifying facilities should be reexamined and updated in light of significant changes since the rules were adopted.
Prototype Contracts	Avista	(WAC 480-107-010) Prototype contracts should not be required. Should the Commission desire contract templates; the Company would have available standard agreements for reference. Avista makes this request given that the types of energy products requested can be diverse and to require prototypes for each is impractical.
Pre-approval of Resource Acquisition	PacifiCorp	(WAC 480-107) If a utility chooses to follow the Commission-approved RFP process, there should be an identifiable benefit deriving from that strategy. In particular, acquisition of a resource through a Commission-approved RFP process should create a rebuttable presumption that such resource acquisition was prudent, so long as the utility demonstrates that its actions effecting the acquisition were reasonably executed.
	PSE	<p>PSE also recommends that the Commission consider expanding the scope of the RFP rule to extend to acquisition of generation and other resources, but on a voluntary basis. If a company chooses to go through the formal RFP process, then it would seem reasonable for there to be a rebuttable presumption that certain elements of the acquisition of the resource was prudent (at least with respect to size, type, location, etc. even if the Commission reserves the prudence question with respect to implementation of the acquisition). It is noteworthy that a number of other state commissions have moved toward certain "pre-approval" processes for resource acquisitions. The availability of processes that provide contemporaneous feedback such as this could be extremely helpful in the current capital and credit environment.</p> <p>PSE further recommends that the Commission consider instituting a process by which a ratemaking discussion and decision could be made up front as part of the acquisition process. As the Commission is aware, the settlement that the Commission approved in PSE's latest rate case provides for a power cost only rate case that is designed to adjust rates such that they include the new resource as of the time the resource goes into service. PSE suggests that the Commission investigate whether and how such a tool could be expanded and made more generally available to regulated companies in the future.</p>
Contract purchase rates	Avista	(WAC 480-107-020(1)) All contract terms and conditions should be subject to negotiations, including negotiations on price so as to ensure least cost resource acquisition.
General Comments	Avista	(WAC 480-107) Avista recommends that the implementation components of Chapter 480-107 WAC be revised to reflect the spirit of the rule, which calls for resources to be procured through a competitive process such that customers benefit from the best possible prices, terms, and conditions. Unless properly designed, an RFP can actually be detrimental to this spirit. A generic (or "one-size-fits-all") RFP process may work well for standard products, such as long-term power supply contracts and

Issue	Interested Party	Comments
		<p>certain new resources. However, the RFP process is not as effective as other means for obtaining price information for short- to medium-term purchases (defined as up to five years), and procurement of non-standard resource technologies (e.g., coal plants and wind).</p> <p>Avista believes that short- to medium-term power purchases are best procured through the broker market. These markets can change quickly, requiring a nimble acquisition process to ensure the best prices are obtained. Implementing a 90-day review process reduces a utility’s ability to get the best price, as market conditions likely will have changed since the original decision to acquire power was made. Avista recognizes that 480-107-001 provides exceptions for events of this nature. However, the tone of the rule discourages such practices. Avista believes that the focus of the rule should be on long-term resource acquisition of standard products</p> <p>The Company is concerned that RFP rules could prevent the effective implementation of an IRP that relies on a least-cost strategy that includes less standardized resources including wind and coal. For these less-standardized projects, requests for qualifications (RFQs) or other means likely are more useful in obtaining competitive prices</p>
	<p>CCW</p>	<p><u>Cogeneration Technology Benefits the State and Electric Industry.</u> Even if PURPA did not exist, Washington would be prudent to embrace the regulations that were promulgated under PURPA to further the state’s energy security and future. Washington benefits from cogeneration development and operation in numerous ways. Some of these benefits are unique to cogeneration, while other benefits are shared with other forms of independent power generation. Notably:</p> <p><i>Cogeneration enables companies to manage and stabilize energy costs.</i> Cogeneration, as an alternative to utility or market energy purchases, serves as an important check on market prices. It provides a “hedge” for the company against market volatility and is the financial cushion necessary to keep the business profitable and employing workers.</p> <p><i>Cogeneration efficiently and cleanly uses fuel.</i> CCW cogeneration projects use natural gas as the fuel to run their turbines. Natural gas is cleaner burning than coal or oil. By using the heat that was formerly considered a waste product, the combined cycle units result in greater efficiencies. This means more power is produced per unit of fuel. Cogeneration facilities also employ sophisticated air emissions control systems that meet and often exceed local and federal air quality standards.</p> <p><i>Cogeneration increases electricity dedicated to serve Washington.</i> This supply – unlike other merchant generation – is committed to serve load within the state and reduces reliance on imports.</p> <p><i>Cogeneration enhances the reliability of the State’s transmission grid.</i> The diversity of supply locations of CCW facilities in Whatcom and Skagit Counties is a significant operating benefit to the electric transmission grid. It relieves congestion on the transmission system and forestalls costly grid expansions. Cogeneration may also provide voltage support to grid operations and reduce transmission line losses that would otherwise result if the power had to be imported from a distant generator. The “distributed” nature of cogeneration results in a more reliable system, compared with</p>

Issue	Interested Party	Comments
		<p>a system consisting of a few large generating units.</p> <p><i>Cogeneration results in customer self-sufficiency and creates private investment, jobs and tax revenues for Washington.</i> When the state relies on out-of-state generation rather than encouraging in-state investment, the opportunities for an increased tax base and employment are lost. The CCW cogeneration facilities support the economic base of the communities in which they are located, paying taxes, purchasing parts and equipment, hiring labor and using other support services.</p> <p><i>Cogenerators assume the risk.</i> There are risks in building any generating facility – risks in construction, cost overruns, and operations. Private companies take on this risk, rather than the utility’s ratepayers or shareholders. This enhances the financial stability of the utility.</p>
	NIPPC	Have there been unexpected outcomes, such as rejection of all proposals, or turnover of a project bid by a utility affiliate to the utility?
	NIPPC	How can a level playing field be established for purposes of ensuring that comparisons between Utility- and non utility-owned resources are undertaken fairly, and that the process results in Transparency, measurable accountability, contractual symmetry, and reliability?
	NIPPC	(WAC 480-107) How often has the procurement process been used? How often has the procedure been bypassed by utilities?
	NIPPC	(WAC 480-107) What has been the history over the past 10-15 years of least cost planning, and of resource acquisition, both through and outside the competitive procurement process established by the rules?
	NIPPC	What changes should be made to improve the Commission’s ability to compare utility-sponsored resource proposals to other proposals and to give recognition, as appropriate, to the expertise and Resources that independent power can utilize to create and manage power supplies and facilities with minimum risk to ratepayers?

Issue	Interested Party	Comments
-------	------------------	----------

Legend

BPWC	=	BP West Coast LLP
CCCT	=	Combined Cycle Combustion Turbine
CCW	=	Cogeneration Coalition of Washington
DCTED	=	Department of Community Trade & Economic Development
EPACT	=	Energy Policy Act of 1992
FERC	=	Federal Energy Regulatory Commission
ICNU	=	Industrial Customers of Northwest Utilities
IRP	=	Integrated Resource Plan
LCP	=	Least Cost Plan
NRCD	=	Natural Resources Defense Council
NWECA	=	NW Energy Coalition
NIPPC	=	Northwest Independent Power Producers Coalition
PC	=	Public Counsel
PSE	=	Puget Sound Energy
PURPA	=	Public Utility Regulatory Policies Act
QF	=	Qualifying Facility
RCW	=	Revised Code of Washington
RFP	=	Request for Proposals
RFQ	=	Request for Qualifications
WAC	=	Washington Administrative Code