

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

Rulemaking for Integrated Resource
Planning, WAC 480-100-238, WAC 480-90-
238, and WAC 480-017

DOCKET U-161024

THIRD COMMENTS ON REQUEST FOR PROPOSALS (RFP)

ON BEHALF OF PUBLIC COUNSEL

January 31, 2019

I. INTRODUCTION

1 Pursuant to the Commission’s Notice of Opportunity to File Written Comments issued on December 31, 2018, the Public Counsel Unit of the Washington State Attorney General’s Office (Public Counsel) respectfully submits these comments on WAC 480-107 competitive resource acquisition by request for proposals (RFPs). Public Counsel agrees with the majority of amendments the Commission included in the Second Draft Rules. However, we continue to support some of our recommendations from our previous comments on RFPs filed on September 21, 2018, and October 26, 2018. Public Counsel appreciates the opportunity to comment on the Second RFP Draft Rules and looks forward to further conversations on WAC 480-107.

II. SUPPORTED AMENDMENTS

2 Public Counsel generally agrees with and supports the Commission’s Second RFP Draft Rules. We appreciate the Commission’s consideration of all stakeholder feedback. Specifically, we value the Commission’s inclusion of our following recommendations into the Draft Rules:

- **WAC 480-107-015(1):** ...It must accept bids that are identified in the solicitation process for a variety of energy resources which may have the potential to fill the

identified needs including, but not limited to: electrical savings associated with conservation and efficiency resources; demand response; energy storage; electricity from qualifying facilities; electricity from independent power producers; and, at the utility's election, electricity from the utility, utility subsidiaries, and other electric utilities, whether or not such electricity includes ownership of property.

- **WAC 480-107-015(6)**: Utilities are encouraged to consult with commission staff and other interested stakeholders during the development of the RFP. Utilities may submit draft RFPs for staff and stakeholder review prior to formally submitting a proposed RFP to the commission.
- **WAC 480-107-035(3)**: The utility must evaluate project bids that meet only a portion of the resource need in conjunction with other proposals in developing the lowest reasonable cost portfolio. The utility must consider the value of all costs and benefits that are not directly related to the specific need solicited.
- **WAC 480-107-065(3)**: Public Counsel did not recommend specific language for this section but supported the inclusion of only a single option, Option Three, for the competitive procurement of conservation in the RFP rules; thus, we support the removal of the Options One and Two.
- **WAC 480-107-AAA(1)**: When required to solicit bids under WAC 480-107-015(3), a utility must engage the services of an independent evaluator to evaluate and report on the solicitation process if:
 - (a) The resource need is greater than 80 megawatts;
 - (b) The utility, its subsidiary, or an affiliate is allowed to submit a bid; or

(c) The RFP accepts bids with ownership structures under which ownership of the project will be transferred to the utility, its subsidiary, or an affiliate upon project completion.

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Additionally, the Commission incorporated other modifications to the Second Draft Rules suggested by other stakeholders and/or discussed at the October 2, 2018, workshop. Public Counsel supports the following amendments:

- **WAC 480-107-015(4)(a):** The utility's identified resource need for capacity is less than 80 megawatts;
- **WAC 480-107-015(4)(c):** The utility has previously issued an RFP for the same precisely defined resource need in accordance with WAC 480-107-065, or has previously issued an RFP for the same precisely defined resource need within the last 12 months;
- **WAC 480-107-015(4)(d):** The utility plans to satisfy its identified resource need for capacity with short-term market purchases, so long as:
 - (i) The utility, in its IRP, considered all available information on sufficient regional adequacy and expressly modeled and considered the risk of high market prices that can result from changes in existing capacity available in the markets from which the utility expects to purchase capacity to meet its capacity needs; and
 - (ii) Sufficient regional adequacy to support these forecasted market purchases has been identified by the Northwest Power and Conservation Council in their latest published power supply adequacy assessment over the entire

period of the utility’s resource need or the next five years, whichever period is shorter.

- **Short-term market purchases definition:** While Public Counsel did not have any comments on what should be considered short-term market purchases, we are comfortable with the new definition as, “means purchases of energy or capacity on the spot or forward market contracted for a term less than four years.”
- **WAC 480-107-065(3)(a) through WAC 480-107-065(3)(d):**
 - (a) A utility may develop, and update each biennium, a competitive procurement framework for conservation and efficiency resources in consultation with its conservation advisory group, as described in WAC 480-109-110 Conservation advisory group.
 - (b) The first competitive procurement framework for conservation and efficiency resources may be filed with the 2020-2021 biennial conservation plan.
 - (c) The competitive procurement framework for conservation and efficiency resources must:
 - (i) Define the specific criteria that will be used to determine to the frequency of competitively bidding a conservation and efficiency resource program or parts of a program;
 - (ii) Address appropriate public participation and communication of evaluation and selection criteria;

- (iii) Enhance or, at minimum, not interfere with the adaptive management of programs;
- (iv) Include documentation of support by the advisory group;
- (v) Be filed as an appendix to each biennial conservation plan, as described in WAC 480-109-120 Conservation planning and reporting; and
- (d) The competitive procurement framework for conservation and efficiency resources may:
 - (i) Exempt particular programs from competitive procurement, such as low-income, market transformation, or self-directed programs; and
 - (ii) Consider if and when to use an independent evaluator.

We look forward to reviewing the responses from other stakeholders to the Commission's Second RFP Draft Rules.

III. PUBLIC COUNSEL DIVERGENCES

4 Public Counsel would like to address a few revisions to the Second RFP Draft Rules that partially align with our recommendations from our comments filed on September 21, 2018, and October 26, 2018. While we appreciate the Commission's consideration of our language and comments, we continue to support our suggestions in their entirety.¹

¹ Public Counsel makes one concession regarding Exemptions in this section.

A. RFP Evaluation Rubric: WAC 480-107-025(4)

5 As Public Counsel stated in our October 26, 2018, comments, we disagree with the Commission’s insertion of “specifically identified” in this section.² We believe that our proposed language offers a floor, in which the bids can be evaluated, and not an inclusive list. Public Counsel considers its language as not only more flexible, but we believe it also accounts for unforeseen benefits or criterion that the utility may not have accounted for. Thus, we suggest the Commission consider our original language: “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.”

B. Commission Review of RFPs: WAC 480-107-035(7) through WAC 480-107-035(11)

6 In our September 21, 2108, comments, we recommended the Commission move the rules regarding the Commission’s review of utility decisions to its own subsection.³ The Commission incorporated Public Counsel’s suggestion into the rules and included one supplemental change. Public Counsel suggested WAC 480-107-035(10) as, “The commission will review any acquisitions resulting from the RFP process in the utility’s relevant general rate case or other cost recovery proceeding.” The Second RFP Draft Rules now states, “The commission may review any acquisitions resulting from the RFP process in the utility’s relevant general rate case or other cost recovery proceeding.” Public Counsel believes that the Commission should always review any acquisition resulting from the RFP process. We consider the language in the Second RFP Draft Rules to indicate that the Commission may not review some or all acquisitions from the

² Public Counsel Reply Comments, ¶¶ 20-22 (Oct. 26, 2018).

³ Public Counsel RFP Comments, ¶¶ 18-20 (Sept. 21, 2018).

RFP. As a result, we recommend the Commission modify the language to that proposed in our September 21, 2018, comments.

C. WAC 480-107-AAA

7 The Second RFP Draft Rules included more specification on the role of the Independent Evaluator (IE), as well as the minimum requirements of the IE. Public Counsel, in its October 26, 2018, comments, recommended similar requirements to those in WAC 480-107-AAA(5).⁴ We support the minimum requirements of the IE that are currently included in the draft rules. However, we also suggested the rules provide a timeframe in which the IE should be retained by the utility. We believe this should be added to the rules on IEs for uniformity and to ensure the IE has sufficient time to assist in the development and review of the draft RFP.

D. Exemptions: WAC 480-107-001(3), WAC 480-107-002(3), WAC 480-107-015(4), and WAC 480-107-115(5)

8 In Public Counsel’s October 26, 2018, comments, we recommended the Commission add clear language in WAC 480-107-015(4) and WAC 480-1047-115(5) regarding the treatment of exemptions in the Draft RFP Rules. Specifically, we suggested language in WAC 480-107-015(4) stating that “Utilities may file for an exemption from the RFP requirement following the procedures set forth in WAC 480-07-110, and the Commission will determine if it is in the public interest to grant such an exception.”⁵ The Commission did consider our suggestion and included the following language:

Utilities may choose not to issue an RFP without requesting a petition for exemption from the requirements in this section under the following circumstances. Commission grant of an exemption from an issuance of an RFP under this section or pursuant to WAC 480-07-110 does not expressly or implicitly determine the

⁴ Public Counsel Reply Comments, ¶¶ 9-13.

⁵ Public Counsel Reply Comments, ¶ 4.

prudence of the utility's actions under the exemption or its choice to seek an exemption.

While the new language is not the language Public Counsel proposed, we agree with the inclusion of this language in the section. Furthermore, we agree with the supplemental language on lack of utility action and exemptions included in WAC 480-107-001(2) and WAC 480-107-002(3), respectively. We believe that this additional language gives more clarity on instances when the Commission grants an exemption and the processes required, as well as the utility's responsibility in taking or failing to take action in a resource acquisition process.

9 Finally, Public Counsel recommended the Commission add language to WAC 480-107-115(5) directly stating that stakeholders have an opportunity to comment on the utility's exemption.⁶ The Second RFP Draft Rules, moves this subsection into WAC 480-107-015(5) and does not incorporate Public Counsel's recommendation. However, given the added language in WAC 480-107-001(3), WAC 480-107-002(3), and WAC 480-107-015(4), Public Counsel believes that our concerns have been reasonably addressed and concedes its recommendation.

IV. CONCERN

10 Public Counsel has one concern with the Second RFP Draft Rules, regarding the exemptions section under WAC 480-107-015(4)(d), which states, "The utility's identified resource need is for delivery system resources." While we believe this language is an improvement from the original language, "the resource need is for a distribution system or local transmission resources project estimated to cost less than \$10 million," we believe that "delivery system resources" needs to be defined in the definition section. Public Counsel believes this

⁶ Public Counsel Reply Comments, ¶ 5.

additional clarification is needed in order to eliminate any confusion between traditional or standard distribution investments and non-wires distribution upgrades that may be used as a resource for meeting energy or capacity needs.

V. CONCLUSION

11 Public Counsel appreciates the opportunity to submit comments on the proposed Second RFP Draft Rules. We look forward to reading other comments and further conversations on the RFP Rules. If there are any questions regarding these comments please contact Carla Colamonicci at CarlaC@ATG.WA.GOV or at (206) 389-3040.