

**SUPPLEMENTAL COMMENTS OF UTILITY CONSERVATION SERVICES, LLC  
ON PROPOSED RULES REGARDING COMPETITIVE RESOURCE ACQUISITION  
BY REQUEST FOR PROPOSALS (RFP), WAC 480-107**

January 31, 2019

Tom Eckhart, PE  
CEO, UCONS, LLC  
10612 NE 46th Street  
Kirkland, WA 98033  
(425) 576-5409 (office)  
(425) 827-2489 (fax)  
[tom@UCONS.com](mailto:tom@UCONS.com)  
[www.ucons.com](http://www.ucons.com)

**UTC Dkt. No. U-161024**

**I. INTRODUCTION AND SUMMARY**

Utility Conservation Services, LLC (UCONS) appreciates the efforts of the Commission and its Staff to develop the draft resource acquisition rule in WAC 480-107. As the draft rule now stands, however, we believe the Commission is missing an opportunity to further and fully implement the mandate of Washington's Energy Independence Act (I-937) that utilities acquire *all* cost-effective conservation. RCW 19.285.040(1).

Though it would be a positive step to require the use of third-party evaluators for resource acquisition, by requiring such evaluators only where the resource need is at least 80 Mw, the draft rule would effectively excuse utilities from using third-party evaluators for the acquisition of demand-side resources.

As we argued in our initial Comments and in our Reply Comments on the Proposed Rules,<sup>1</sup> the use of independent evaluators when a utility acquires demand-side resources is essential to the fulfillment of I-937's conservation mandates, as is additional direction of utility conservation programs by Commission Staff. Simply put, though utilities run many good conservation programs, they are falling short of meeting the statutory mandate.

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<sup>1</sup> Comments of Utility Conservation Services, LLC (UCONS) on Proposed Rules Regarding Competitive Resource Acquisition by Requests for Proposals (RFPs), WAC 480-107, UTC Dkt. No. U-161024, at 3-4 (September 21, 2018) (UCONS Initial Comments); Reply Comments of Utility Conservation Services, LLC (UCONS) on Proposed Rules Regarding Competitive Resource Acquisition by Requests for Proposals (RFPs), WAC 480-107, UTC Dkt. No. U-161024, at 2 (October 26, 2018) (UCONS Reply Comments). UCONS has advocated this to the Commission in others contexts as well. *See, e.g.*, Comments of Utility Conservation Services, LLC (UCONS) on Puget Sound Energy's 2019 Annual Conservation Plan, UTC Dkt. No. UE-171-087, at 2-4 (Dec. 10, 2018); Proposed Energy Efficiency Program Submitted on behalf of Low-Income Customers in Manufactured Homes in Puget Sound Energy's Service Territory by Utility Conservation Services (UCONS), UTC Dkt. No. UE-171087 (June 19, 2018); Comments of Utility Conservation Services, LLC (UCONS) on Puget Sound Energy's Biennial Conservation Plan (Dec 1, 2017).

## II. THE ISSUE

The draft rule would impose a general requirement that utilities use an RFP process to meet a utility's "resource needs." WAC 480-107-105. The draft rule states that "Resource need" "has the same meaning as defined by WAC 480-10-238(2)." However, that term is not explicitly defined in WAC 480-100-238(2). As that rule section discusses both supply and demand-side resources, we assume that "resource need" includes conservation.<sup>2</sup>

The draft rule's requirements for the resource solicitation process would exempt a utility from using an RFP process if the utility's need for capacity is less than 80 megawatts (Draft WAC 480-107-015(4)(a)), and it would not require the use of an independent evaluator unless the "resource need" is greater than 80 megawatts. Draft WAC 480-107-AAA(1)(b). So, while the draft rule recognizes in a general way that supply and demand-side resources are to be treated in a similar fashion, the draft would apply the benefits from using independent evaluators only to supply-side resources.

Of course, it is possible that the Commission could require, on a case-by-case basis, the use of RFPs and independent evaluators in the course of reviewing and approving a utility's biennial conservation plan (BCP) under WAC 480-109-120. To date, however, that has not happened in a comprehensive fashion. In any event, even if the Commission were by rule or order to require utilities to inject a more robust competitive solicitation process into the BCP process, it would make sense to coordinate the competitive solicitation rules now under consideration.

## III. PROPOSED REVISIONS TO DRAFT RULE

### A. Specific Provision for Solicitation of Demand-Side Resources

We offer two overall suggestions, both designed to ensure that the I-937 mandates are addressed and met.

First, we suggest that the draft rule highlight the primacy of energy conservation over solicitation of supply-side resources. This could be done by adding a subsection (3) to WAC 480-107-002 "Application of rules," (and then renumbering the existing subsection (3) to subsection (4)). We propose the following language:

(3) A utility should solicit and obtain supply-side resources only when it has obtained all cost-effective conservation as required by RCW 19.285.

This is more than optics, though it does send a message about conservation as a resource priority. It is necessary to help ensure that all utilities are on board with long-established state law and policy.

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<sup>2</sup> It may be clearer if the definition of "Resource need" in the draft rule were to read:

"Resource need" includes both supply and demand-side resources consistent with WAC 480-100-238(2).

Second, we recommend that solicitation of demand-side resources be called out in a separate section, as follows:

NEW SECTION. WAC 480-107-BBB Demand-side Resources

- (1) Because RCW 19.285.040 requires utilities to pursue all cost-effective conservation before acquiring supply-side resources, a utility shall pursue such resources pursuant to this section.
- (2) Each utility shall retain a third-party evaluator approved by Commission Staff to assist the Commission in the review of proposals to acquire conservation resources.
- (3) A utility shall periodically, but at least annually, solicit proposals for provision of demand-side resources by third parties. Any such solicitation may include requests for specific programs but also must include open-ended requests for ideas to meet the resource needs of the utility. Such solicitation shall also disclose the utility's avoided costs to facilitate proposals from third parties. All requests must be submitted to the Commission staff for review and approval prior to their issuance.
- (4) Any response to such a request shall be reviewed by Commission staff, with the assistance of the third-party evaluator retained pursuant to this section. The staff shall then recommend to the utility and to the Commission whether the proposal should be accepted by the utility. If the utility does not accept the proposal, either the staff or the entity making the proposal may request the Commission to require the utility to accept the proposal.
- (5) Any third party may suggest a program for provision of cost-effective conservation, including a proposal to serve low-income customers, at any time whether or not it is responsive to a formal solicitation, and it shall be processed pursuant to subsection (4).
- (6) The requirements of this section are in addition to any requirements contained in a utility's approved biennial conservation plan under WAC 480-109-120.
- (7) The Commission's executive director and secretary is authorized to act on behalf on Commission staff in those functions assigned to the staff in this rule and to set criteria, timelines, and format for solicitations and responses, as well as criteria for the disclosure of the utility's avoided costs.

We recognize that this would be a substantial change in current practice. However, as we have argued before, this process, or something like it, is essential to acquiring all cost-effective conservation. That effort, as required by law, is too important to leave it entirely in the hands of the utility.

Our suggestion in subsection (5) regarding proposals to serve low-income customers is intended to clarify what we believe is a misconception on the part of some regarding how services to low-income customers must or should be provided. In the open meeting at which PSE's BCP was considered, a representative from PSE indicated that the proper way to provide conservation services to low-income customers is through the low-income agencies.<sup>3</sup> While it certainly is true that serving such customers through the low-income agencies is appropriate, and those agencies do a wonderful job within their resources to serve such customers, there is nothing in statute or rule that limits the provision of cost-effective conservation to low-income customers that way. Indeed, the mandate of I-937 requires "all" cost-effective conservation be acquired. If there is cost-effective conservation for the benefit of low-income customers that can be provided, though not through the agencies, then it must be acquired. And if third-party providers can provide that service, the utility, as our draft rule amendment suggests, must pursue it.

Should there be issues from time to time that would make this process unduly burdensome or not effective to accomplish its goals, the utility, or Commission Staff, could seek an exemption from the rule pursuant to WAC 480-107-002(3).

### **B. Other Suggestions**

We offer the following additional suggestions:

First, as drafted, WAC 480-107-015(6) would provide the option for a utility to submit its RFP for staff and stakeholder review before submitting it to the Commission. Such a process should not be optional. It would be better to require such submittals. If there is an issue in any particular case, the exemption provision in WAC 480-107-002(3) would be available.

Second, in order to ensure that various stakeholders have the capacity to contribute to review of proposals, either demand side or supply side, the utility should be required to provide funding for such groups. That could be required in a variety of ways. It could be done by rule, either by a provision in this pending docket, in an amendment to WAC 480-109-110 regarding conservation advisory groups, or in an amendment to WAC 480-100-238 regarding the IRP process, or some combination of these. Alternatively, it could be done through the planning process, either the IRP process or the BCP process, in which the utility could offer to provide such funding and the Commission could approve it when approving those plans.

## **IV. CONCLUSION**

UCONS continues to advocate for acquisition of more conservation, particularly in hard-to-reach markets, and for the establishment of processes that will facilitate such acquisition. We urge the Commission to take advantage of the opportunity it has in this pending rulemaking proceeding to continue to fulfill the State's mandates and goals on energy conservation.

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<sup>3</sup> Recessed Open Meeting, Docket UE-171087, recording at 55:17 (Jan. 10, 2018).