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VIA: UTC Web Portal

Date: January 31, 2019

Mark L. Johnson
Executive Director and Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive S.W.
Olympia, Washington 98504-7250

Re: Docket No. U-161024 –Comments of Avista Utilities

Dear Mr. Johnson,

Avista Corporation, dba Avista Utilities (Avista or Company), submits the following comments in accordance with the Washington Utilities and Transportation Commission's ("Commission") Notice of Opportunity to Submit Written Comments ("Notice") issued in Docket U-161024 on December 31, 2018, regarding the Commission's rulemaking for Competitive Resource Acquisition by Request for Proposals (RFP), WAC 480-107.

Avista's comments begin with some high level concerns with the current draft rules. As a general matter, any rule adopted by the Commission in this proceeding should assist utilities in their resource acquisition decisions and should ultimately benefit utility customers. The old solicitation rule was burdensome, and therefore, the process that it provided for was generally underutilized. Avista hoped that this rulemaking would result in rules that would be simpler and therefore more useful. In essence, the rule should clearly state when the rule applies and should set out a straightforward process for issuing and evaluating any RFP issued pursuant to such rule. Unfortunately, the draft rule as proposed would create additional burdens greatly outweighing

their benefits to the company or its customers. Simply stated, the draft rules attempt to provide too much detail, and as a result, fail to provide clear guidance, and in many instances, are too cumbersome to be useful. Certain requirements in the draft rule, such as requirements to publicly disclose sensitive commercial information (e.g., proposed rule at 480-107-035(5), (9)) are unworkable and likely would be opposed by utilities and developers alike.

In short, unless the proposed rule is significantly revised, it is likely that the process prescribed by any rule that is adopted will continue to be underutilized. Avista provides the following recommendations for purposes of strengthening the rules, but such recommendations should not be viewed as exhaustive.

Comments:

WAC 480-107-015

In subsection (4)(a), the proposed rule includes an 80 MW threshold. If a utility's identified resource need for capacity is less than the 80 MW threshold, the utility is not required to issue an RFP. Avista appreciates that the rule proposes a higher threshold than was proposed in the original draft. However, it is not clear what the 80 MW is based on. To the extent that it is tied to the 80 MW size limit for most PURPA resources (other than certain co-generation resources), it is not clear that there is a need to tie this threshold to federal PURPA law. Avista recommends increasing the threshold to 100 MW.

Subsection (4)(b) is ambiguous. Specifically, the draft rule provides an exemption from the RFP process if the utility's identified resource need is for "delivery system resources." As a threshold matter, it does not appear that "delivery system resources" is a defined term. Accordingly, "delivery system resources" should be defined. More fundamentally, it is not clear that the exemption should apply in all circumstances where the identified resource need is for "delivery system resources." For example, if a utility finds that 5 MW distributed solar resources are cost competitive and determines that such resources should be placed on 100 feeders (i.e., a total of 500 MW), it may be appropriate for the utility to use the RFP process. Accordingly, Avista recommends that the Commission consider whether it is appropriate to subject any distribution system resource acquisitions, that when combined with other distribution system resource acquisitions, exceed the exemption threshold stated in subsection (4)(a), to the RFP process.

Avista recommends that the Commission strike both uses of "precisely defined" from subsection (4)(c). Limiting the exception to only those instances involving the "same precisely defined resource need" would effectively render the exception meaningless. Instead, the exception should apply if the utility has previously issued an RFP for substantially the same resource need.

In subsection (4)(d)(i), the word "all" should be deleted from the first sentence. Requiring the utility to consider "all" available information is unreasonable. In order to satisfy this requirement, a utility will need to expend substantial time and resources to determine that it has identified "all" of the available information. More fundamentally, a utility relying on this exception would be at substantial risk if any additional information could be identified.

In subsection (4)(d)(ii), the proposed rule appears to tie market reliance to the results of Northwest Power and Conservation Council's (NPCC) work. Avista is not certain why binding a utility and the Commission's own authority to NPCC's work is in the interest of the Commission, ratepayers, or even developers. There is no mandate at NPCC to publish this report, no required schedule for its release, and no reason why NPCC could not simply stop publishing the report. Instead, the NPCC report should, at most, be listed as an example of a regional reliability study the utility may consider if it is relevant (i.e., a recently published version exists and its analyses remains consistent with the scope presently in the report).

In subsection (5), Avista requests that the comment timeline be reduced from 60 days to 30 days. This window should allow adequate time for review and ensures the RFP can be conducted in an efficient manner.

Subsection (6) should be stricken. This provision, is at most, guidance. Incentives and precedent already exist for the utility to work with Commission staff and other stakeholders, prior to submitting an RFP for Commission review. The guidance provided in this subsection (6) is unenforceable and, in any event, unnecessary.

Fixing the issuance timeline of an RFP in rule will make it inflexible or require filings for exemption. Subsection (7) should be modified to require the utility, as part of the draft RFP

document, to define a timeline for the process, to include issuance after the order approving it. If the Commission is concerned with the timeline proposed by the utility, it could comment or modify the issuance date. A requirement to identify a timeline for issuing an RFP could be included along with other specifics in Section 480-107-025(6).

Subsection (7) also requires utilities to maintain a list of vendors, industry trade associations, and agencies. This requirement is not well defined and, in any event, unnecessary. Typically, when issuing an RFP utilities will issue a press release, posting on a website, and other trade association and regulatory stakeholder outreach. It is not necessary to define how the RFP is to be distributed in rule. To the extent any guidance is necessary in this regard, Avista recommends language such as "utilities shall make reasonable efforts to ensure the RFP is known to industry and potential bidders, including such efforts as a press release sent out to relevant industry associations and trade publications."

Subsection (8) requires the utility to keep all bids sealed. This requirement is not practical. Bids are no longer submitted via hard copy in packages that can remain sealed. Instead, bids are generally submitted electronically. It is unclear how a utility would ensure that an electronic submission remains sealed or how that could be demonstrated. This language should therefore be removed. Bids already are protected by confidentiality provisions. Where the Commission has specific reasons it wishes the bids to not be distributed within the utility prior to its closing, consider replacement with new language defining more clearly the intent of the rule and recognizing the desire of bidders to submit via electronic communication.

Subsection (9) is unnecessary and is guidance only. Section 480-107-001 already envisions acquisition efforts beyond the solicitation process. Therefore, subsection (9) is unnecessary and should be stricken.

480-107-025

As noted above with regard to 480-107-015(4)(c), a requirement to "precisely define" the resource need in subsection (1) is problematic. The requirement of a subjective level of precision creates uncertainty in the rule and is not necessary. Avista recommends the Commission strike "precisely define" from this subsection.

Subsection (1) also references "including the avoided cost identified in the integrated resource plan." It is not entirely clear what is meant by this reference. Published avoided costs don't necessarily provide information useful in bidding. For example, an avoided cost likely would include various assumptions (e.g., capacity factor, capacity contribution, RECs, risk avoidance) that are unique to each bid resource. Further, the IRP itself includes this information, and thus bidders already would have access to it. This reference should be stricken from the final rule.

In subsection (2), there is a requirement that the RFP show its consistency with the IRP need. RFP bidders do not require this information to bid, but instead are interested in the information defined in subsection (1) of the proposed rule. Where the Commission is interested in how the RFP aligns with the IRP, this information could be presented along with the RFP draft, but not included within it. If the Commission still desires to have the connection between the documents linked, the Commission could require utilities to describe the linkage in the filing when the utility files the RFP.

The requirement in subsection (5) for affiliates to list all of its employees during the last three years is unduly burdensome and unnecessary. The rule requires the utility's RFP submittal to declare whether the utility or an affiliate is allowed to bid into the RFP. This requirement provides the transparency necessary to ensure that affiliates are not given any preference in the RFP process. Identifying an affiliate's employees that worked for the utility provides no additional benefit.

It is not clear whether subsection (8) is referring to utility-owned transmission generally, or only to merchant-owned contracts on utility or third-party transmission contract paths. More fundamentally, the transmission and merchant functions are separate and FERC prohibits certain types of information to flow between the two functions. The merchant side of the utility, which is the function that will issue the RFP, does not have information on the transmission side of the business, and therefore would not be able to provide information on the availability of the overall transmission system. Disclosing merchant rights in an RFP, up to and including the value of those rights, would not necessarily be in customer interests because it might compromise merchant business overall (e.g., daily trading). Subsection (8) is impractical and should be stricken.

480-107-AAA

Subsection (1) requires a utility to engage an independent evaluator (IE) under certain circumstances. Section 480-107-015 includes similar exemptions to the entire solicitation process. This language could be removed and clarified to simply state that an IE is to be used unless the utility is exempt from the process.

Subsection (2) allows, but does not require a utility to use an RFP to select an IE. Since each utility has the ability to make its own determination of whether an RFP should be used to select an IE, that language is unnecessary. Subsection (2) should simply require the utility to recommend an IE for approval by the Commission and the language indicating that a utility may issue an RFP should be struck.

Subsection (4) effectively is a blank check for the IE to have full access to and examine and test the utility's models and other data. "Full access" of models and data will enable an IE to do a never-ending review of such models and data. Further, a seasoned IE will have their own models to evaluate the RFP bids against, and as such should be much less reliant on utility analyses. Any discrepancies between utility results and IE results due to model or data differences should be discussed in the IE report. In addition, if the utility fails to provide the IE reasonable access to information that it needs to evaluate the RFP bids, the IE can bring that fact to the Commission's attention. Therefore, there is no need to mandate unfettered access and, thus, this subsection should be struck in its entirety.

480-107-035

The first sentence of subsection (3) is covered in previous language—see 480-107-025(3)—and the rule and should be struck.

Subsection (5) is problematic for several reasons. First, as noted above, the reference to "sealed project proposals" is unworkable where bids are submitted electronically rather than in hard copy. More fundamentally, publicly releasing even a summary of project proposals is problematic. Generally, RFP responses are provided pursuant to confidentiality agreements. Those confidentiality arrangements are essential to developers who do not want their proprietary information released and to utilities who want to obtain as much information as possible from

developers so that they can make informed resource acquisition decisions. Any requirement to publicly disclose information will jeopardize the usefulness of this rule.

Subsection (7) is redundant to the last part of subsection (6) and, therefore, should be stricken.

Subsection (8) requires the utility to provide each bidder access to its own confidential scoring information. Since all scoring will include some subjective components, this requirement opens the door to disputes. Simply stated, unsuccessful bidders will have every incentive to use this information to further their interests. This requirement should be deleted.

Subsection (9) of the draft rule requires the utility to make its "final detailed ranking of results for all proposals and the details of the winning bid pricing and scores" available for public inspection on the utility's website. This requirement effectively overrides any protection for developers' proprietary and pricing information. Developers will be extremely reticent to provide information that they know will be publicly disclosed to their competitors.

Subsection (10) is unnecessary. The Commission has this authority and it is not necessary to state it here.

480-107-065

The first sentence in subsection (1) references a "conservation and efficiency resource supplier" and should be replaced with "conservation supplier" to be consistent with the rest of the rule.

Avista recommends striking "appropriate public participation and" from subsection (3)(c)(ii) since the language sounds more applicable to public utilities than investor owned utilities. Additional language should be added to subsection (3)(c)(iv) so it is clear what framework the subsection is applicable to. Avista submits the following language for the Commission's consideration: "Include documentation in support of the competitive procurement framework by the Conservation Advisory Groups." With respect to (3)(d)(i), it may be prudent to have market transformation savings go through the RFP process, as well as be subject to third-party evaluation.

480-107-135

Subsection (1) should be stricken. The language is redundant, prejudicial, and not necessary. The IE is required to ensure all bids, both from third-party and utility-related parties are properly evaluated. Even absent an IE, the Commission will ultimately have an opportunity to review any resource acquisitions.

Subsection (2) should be deleted. The obligation to "ensure that the utility-owned resource…will not gain an unfair advantage…" is not needed to ensure a successful RFP, and certainly does not need to be included in the RFP document itself. This requirement can be satisfied with boilerplate language (such as "all bids, including those from a utility-owned resource or resource of its subsidiary or affiliate will be evaluated in a fair and non-discriminatory manner by an IE") that will do nothing to advance its intended purpose. More fundamentally, sufficient safeguards already exist through the engagement of an IE and ultimately through Commission action.

480-107-145

Subsection (2) requires the utility to file with the Commission proprietary information provided by developers, and therefore, this requirement will likely conflict with confidentiality agreements necessary to obtain bids. As with other requirements to disclose confidential and proprietary information, this requirement should be deleted. To the extent any such information is provided, it should be submitted under seal subject to a protective order.

480-107-999

Avista remains concerned that the Commission is binding itself and utilities to a study performed by the Northwest Power and Conservation Council. While the Pacific Northwest Power Supply Adequacy Assessment may be instructive, it should not be adopted in its entirety by rule. It is not clear what purpose the Commission's adoption of that publication serves in this context.

Further iterations and review will almost certainly be required to ensure that any rule that is ultimately adopted is workable and will be useful to utilities, developers, and the Commission.

We encourage the Commission to hold a workshop so these issues can be discussed in greater detail. Avista appreciates the opportunity to provide these comments. Please direct any questions regarding these comments to Clint Kalich at (509) 495-4532 or myself at 509-495-4975.

Sincerely,

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