

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of)	DOCKET U-161024
)	
WASHINGTON UTILITIES AND)	COMMENTS OF THE ALLIANCE OF
TRANSPORTATION COMMISSION)	WESTERN ENERGY CONSUMERS
)	
Rulemaking for Integrated Resource)	
Planning.)	
_____)	

I. INTRODUCTION

Pursuant to the Washington Utilities and Transportation Commission’s (“Commission”) December 31, 2018 Notice of Opportunity to File Written Comments in the above-referenced docket, the Alliance of Western Energy Consumers (“AWEC”) submits these comments regarding the Commission’s draft rules for utility requests for proposals (“RFP”). AWEC reiterates its primary recommendation, articulated in the comments it filed on September 21, 2018, that the Commission refrain from adopting a detailed competitive bidding framework. Nevertheless, AWEC appreciates the improvements that have been made to the draft rules and will continue to substantively participate in this portion of the IRP rulemaking to ensure that the final rules adequately protect customer interests.

II. DISCUSSION

1. Definitions (480-107-007)

Currently, the draft rules’ definition of “Resource need” refers to WAC 480-100-238(2). This rule is also under development in this docket, and it appears that a draft of 480-100-

238 was last released in April 2018. At that point, 480-100-238(2) contained only a placeholder noting that definitions would be made available for public comment in summer 2018.^{1/} To the best of AWEC’s knowledge, these definitions have not been released. “Resource need” is an important term in these rules, and it would be beneficial to release a draft definition to aid review of this subchapter.

2. *The Solicitation Process (480-107-015)*

a. *The Short-Term Market Purchases Exemption (480-107-015(4))*

As written, 480-107-015(4)(ii) requires utilities to rely on the Northwest Power and Conservation Council’s (“Council”) most recent power supply adequacy assessment to determine if “[s]ufficient regional adequacy to support these forecasted market purchases” exists. AWEC reiterates its opposition to this requirement. It is problematic to effectively give a non-jurisdictional entity veto power over a utility resource selection. The Commission has little input into, or ability to influence, this assessment, which may not incorporate all information that is relevant to each individual utility. The utilities are in the best position to determine whether short-term market purchases represent the resource with the best combination of cost and risk for their customers, and the prudence of their resource decisions should be based on the analyses they perform, not on the analysis of an unrelated third party.

Further, subpart (i) of this rule appears to make reliance on the Council’s assessment unnecessary, as it only allows a utility to rely on market purchases if it “considered

^{1/} See Electric Distribution Planning Draft Rules (April 17, 2018).

all available information on sufficient regional adequacy” in its most recent integrated resource plan (“IRP”). This would seem to necessarily include the Council’s assessment, while balancing it with information from other sources, including the utilities’ own knowledge, thereby providing a full picture of resource adequacy, rather than relying on a single assessment.

b. Delivery System Resources (480-07-015(4)(b))

480-107-015(4)(b) exempts a utility from the RFP requirement if its identified resource need “is for delivery system resources.” AWEC supports what appears to be the intent of this rule – to exempt local transmission and distribution system resources from competitive bidding requirements – but recommends that the term “delivery system resources” be defined to ensure clarity and avoid potential future disputes over the applicability of these rules. AWEC recommends that “delivery system resources” be defined as “all transmission and distribution facilities of a utility that are subject to the Commission’s jurisdiction.”

3. Independent Evaluator Requirement (480-107-AAA)

a. RFPs requiring an Independent Evaluator (480-107-AAA(1))

AWEC requests clarification of the purpose of section 480-107-AAA(1)(a)-(c). These rules require a utility to contract with an independent evaluator (“IE”) if (a) the resource need is greater than 80 MW, (b) the RFP allows for utility, subsidiary, or affiliate bids, or (c) the RFP allows bids that will transfer ownership of a project to the utility, a subsidiary, or an affiliate. However, the draft rules already exempt from the competitive bidding requirements resource needs of less than 80 MW, so subpart (a) appears to effectively create an obligation to

use an IE in all procurements conducted pursuant to these rules.^{2/} AWEC believes that the intent of this section is to require an IE if the resource need is greater than 80 MW and either the RFP allows for utility/subsidiary/affiliate bids, or the RFP allows for transfer of a project to a utility/subsidiary/affiliate. However, it would not require an IE for RFPs for resource needs larger than 80 MW that do not allow for utility ownership. Accordingly, AWEC suggests the following change to this section:

- (a) The resource need is greater than 80 megawatts~~+~~, and:
~~(b)~~ (i) The utility, its subsidiary, or an affiliate is allowed to submit a bid; or
~~(c)~~ (ii) 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.

AWEC would also support eliminating subpart (a) in its entirety, while retaining subparts (b) and (c) as currently drafted. This change would have the same effect as the modification suggested above, as section 480-107-015(4)(a) obligates a utility to issue an RFP for resource needs greater than 80 MW. Taken with 480-107-AAA(1)(b)-(c), this would require an IE in any RFP for a resource need greater than 80 MW that allows for utility ownership.

4. Independent Evaluator Obligations (480-107-AAA(5))

AWEC also requests clarification as to what subpart (5)(e), “Evaluate the unique risks of each bid,” is intended to mean. Typically, unique risks are accounted for in either price or non-price scores, more often in the latter. If this language is intended to require the IE to

^{2/} AWEC would not support this interpretation. Utilities should be allowed to avoid the IE requirement for RFPs that do not allow for utility ownership. See AWEC Comments at 11-12 (Sept. 21, 2018); AWEC Reply Comments at 1-6 (Oct. 26, 2018).

consider such risks within the RFP's scoring framework, AWEC suggests its deletion, as it would duplicate subpart (f), which requires an assessment of bid scoring. If the language is intended to allow the IE to raise concerns about bids that are not reflected in price or non-price scores, AWEC objects and recommends deletion. Bids should be evaluated solely on the basis of known, transparent criteria. Additionally, an evaluation of the "unique risks of each bid" implies that the IE would be required to independently score every bid into an RFP. Such a requirement would not only be cumbersome and time-consuming, but also dramatically increase the cost of the IE. AWEC recommends that, at most, the IE independently score a sample of bids to ensure that the utility is undertaking a proper evaluation. Accordingly, AWEC recommends that current subpart (e) be replaced with the following language, or be deleted:

(e) Independently score a subset of bids and reconcile those bids with the utility's scores ~~Evaluate the unique risks of each bid;~~

5. *The Initial and Final Reports (480-107-AAA(6))*

AWEC is not sure what the point of the IE's initial report is, discussed in 480-107-AAA(6). First, it may be filed simultaneously with the final report, so it will not provide parties with any greater knowledge while the RFP process is ongoing. Second, to the extent that it contains valuable information about the process that occurs before the utility and the IE reconcile their bids, that information can (and should) be included in the final report. AWEC recommends eliminating the requirement for an initial report and deleting all related references in 480-107-AAA(6), as shown in attachment A to these comments.

Finally, the draft rules do not make clear when the IE's final report should be issued. Accordingly, AWEC recommends the addition of a new subpart to 480-107-AAA(6):

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(d) The independent evaluator must issue its final report within 60 days of reconciling project rankings with those of the utility.

6. Project Ranking Procedure (480-107-035)

a. Unexpected Contents in Bids (480-107-035(4))

480-107-035(4) anticipates that “unexpected contents in the bids” received may justify “modify[ing] the ranking criteria” used in the RFP. AWEC believes an example of what might qualify as “unexpected contents” that would justify “modify[ing] the ranking criteria” would be helpful. As drafted, this language appears to give a utility broad discretion to change how it ranks bids after they are received. While there may be circumstances in which such a change is appropriate, the draft rule language is insufficiently specific to identify such circumstances. Because an after-the-fact modification of ranking criteria has the potential to undermine the transparency and fairness of the RFP process and, thereby, depress bidder participation to the detriment of customers, AWEC recommends that the rule narrowly define the “unexpected contents” in bids that could justify modifying the ranking criteria.

b. Bids That Do Not Serve Ratepayer Interests (480-107-035(6))

As currently drafted, 480-107-035(6) allows a utility to reject any bid that “otherwise does not adequately serve ratepayers’ interest.” The need for this term is unclear, as the same rule gives a utility the ability to reject bids that do not “comply with the minimum requirements within the RFP,” or do not “identify and specify the costs of complying with environmental laws, rules, and regulations in effect at the time of the bid.”^{3/} AWEC supports

^{3/} Draft rule 480-107-035(6).

rejecting all bids that do not serve ratepayer interests, but the point of the RFP process is to create a logical way to make this determination. Allowing utilities to determine that a bid is not in ratepayer interests outside of this process is unnecessary. If a bid is truly not in ratepayers' interest, then the RFP scoring mechanism should place it at the bottom of the list, or knock it out immediately if it does not meet minimum requirements.

Further, application of this draft rule could create the appearance of unfairness. If a bid is disqualified because it does not meet minimum requirements, or if it is not selected because its benefits are lower than those of other projects, there is little to complain about, assuming that criteria were applied fairly. But rejecting a bid on the hazy grounds that it does not "serve ratepayers' interest" requires a value judgment, which is far more debatable. Given that any bid that "does not adequately serve ratepayers' interest" will be rejected during the RFP process, there is no reason to retain this language. AWEC recommends the following change:

(6) The utility may reject any project proposal that does not comply with the minimum requirements within the RFP and, as part of the bid, does not identify and specify the costs of complying with environmental laws, rules, and regulations in effect at the time of the bid ~~or otherwise does not adequately serve ratepayers' interests.~~

7. Acquisition of conservation and efficiency resources (480-107-065)

This rule is generally acceptable to AWEC with the modifications that have been made from the first draft. AWEC's only comment is that 480-107-065(3)(c)(iii) requires the "competitive procurement framework for conservation and efficiency resources" to "[e]nhance or, at minimum, not interfere with the adaptive management of programs." AWEC simply

requires clarification of what it means to enhance or not interfere with “the adaptive management of programs.”

III. CONCLUSION

AWEC continues to believe that competitive bidding rules such as those proposed in new chapter 107 do not serve ratepayer interests. However, if the Commission chooses to adopt competitive bidding rules, they should be simple, transparent, and fair.

Dated this 31st day of January, 2019.

Respectfully submitted,

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