

January 31, 2019

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**RE: Comments of Renewable Northwest, Docket U-161024**

Utilities and Transportation Commission's December 31, 2018, Notice of Opportunity to File Written Comments on Competitive Resource Acquisition by Request for Proposals (RFP), WAC 480-107.

**I. INTRODUCTION**

Renewable Northwest thanks the Washington Utilities and Transportation Commission ("the UTC" or "the Commission") for this opportunity to comment in response to the Commission's December 31, 2018 Notice of Opportunity to File Written Comments ("the Notice"). We are pleased to offer these Comments following our earlier submissions on September 21, 2018 and October 26, 2018, as well as our participation in the Commission's workshop on October 2, 2018. We continue to applaud the Commission's efforts to increase the transparency and fairness of Washington's competitive procurement process.

In these Comments, we offer responses to certain changes in the December 31, 2018 revised Draft Rules ("Draft Rules"). Specifically, we support three elements of the Draft Rules:

- the new language regarding when a utility may rely on short-term market purchases to fill resource needs;
- the new language regarding use of utility transmission assets in bids; and
- several changes to the language regarding engagement of Independent Evaluators ("IEs").

We also offer brief observations regarding a number of other changes to the Draft Rules, including affiliate bids, scoring criteria, ranking modification, and stakeholder participation, as well as seeking clarity on the definition of delivery system resources.

Once again, we thank the Commission for its efforts to strengthen the competitive procurement process for Washington investor-owned utilities (“IOUs”), and we hope that our feedback contributes to final rules that establish a fair, transparent, and competitive process.

## II. COMMENTS

Because the Notice presented its request for feedback in broad terms, Renewable Northwest has structured comments around our observations of salient changes in the Draft Rule.

### 1. Short-Term Market Purchases

Renewable Northwest appreciates the Draft Rules’ new language providing additional clarity regarding the definition of short-term market purchases and the circumstances under which a utility may rely on such purchases to satisfy a resource need in lieu of going out to competitive tender.

The Draft Rules define “short-term market purchases” as “purchases of energy or capacity on the spot or forward market contracted for a term less than four years.”<sup>1</sup> The Draft Rules go on to provide that “[u]tilities may choose not to issue an RFP” under circumstances including when “the utility, in its IRP, considered all available information on sufficient regional adequacy . . . and . . . [s]ufficient regional adequacy to support these forecasted market purchases has been identified by the Northwest Power and Conservation Council.”<sup>2</sup>

The Draft Rules’ definition of short-term market purchases and the requirement that a utility “consider[] all available information on sufficient regional adequacy” including price information are new additions since the last draft rules. In our October 2018 comments, we noted that “[w]hile the NWPPC assessment is a good place to start, additional analysis by the utility, with Commission oversight, is necessary in order to prevent against double-counting across multiple utilities,” and we recommended “that the Commission amend proposed WAC 480-107-015(4)(b) [now 480-107-015(4)(d)] to include the requirement of a separate utility resource adequacy assessment subject to Commission oversight and approval.”<sup>3</sup> We support the Draft Rules’ new language and appreciate the Commission’s attention to our earlier comments on this topic.

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<sup>1</sup> Draft Rules at WAC 480-107-007.

<sup>2</sup> Draft Rules at WAC 480-107-015(4)(d).

<sup>3</sup> U-161024 Reply Comments of Renewable Northwest at 5 (Oct. 26, 2018).

## **2. Use of Utility Transmission Assets**

Renewable Northwest supports the Draft Rules' new language regarding use of utility transmission assets in competitive resource acquisition processes.

The Draft Rules include a new requirement that “[t]he RFP must identify utility-owned transmission assets that are made available by the utility to be used by bidders to assist in meeting the resource need, and allow the use of such assets to be included in bids.”<sup>4</sup> This language implicitly encourages utilities to consider how they might make transmission assets available to bidders, and it explicitly requires utilities to include any such availability in an RFP. The potential use of utility transmission assets for third-party bidders helps ensure that any resulting resource acquisition will in fact provide the least cost and greatest benefit to utility customers.

The language regarding utility transmission assets is given additional strength by the Draft Rules' requirement that “[t]he utility must indicate in its RFP how it will ensure that [a] utility-owned resource ... will not gain an unfair advantage over bids for a resource that will be owned and operated by an independent power producer during its operation.”<sup>5</sup> If an RFP process results in acquisition of an otherwise higher-cost utility-owned project using utility transmission rights over an otherwise lower-cost third-party project without recourse to those utility transmission rights, it would be difficult for the utility to demonstrate no unfair advantage. Read together, therefore, the rules encourage use of utility transmission rights to the benefit of utility customers and least-cost resource acquisition.

## **3. Role of the Independent Evaluator**

Renewable Northwest supports the Draft Rules' revisions relating to the role of the IE in competitive resource acquisition processes.

In particular, we appreciate the following changes and additions:

- Requiring IE engagement not only for processes in which the utility intends to submit a benchmark bid but also when “[t]he RFP accepts bids with ownership structures under which ownership of the project will be transferred to the utility”<sup>6</sup>;
- Providing the IE with “full access to examine and test the utility's production cost and risk models and any other model or data that is necessary”<sup>7</sup>;

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<sup>4</sup> Draft Rules at WAC 480-107-025(8).

<sup>5</sup> Draft Rules at WAC 480-107-135(2).

<sup>6</sup> Draft Rules at WAC 480-107-AAA(1)(c).

<sup>7</sup> Draft Rules at WAC 480-107-AAA(4).

- Directing the IE, “upon request, [to] provide the commission with ... notes of all conversations and the full text of written communications between the [IE] and the utility and any third-party”<sup>8</sup>;
- Adding “capital costs” to the inputs and assumptions subject to testing by the IE<sup>9</sup>; and
- Requiring that the IE “[a]ssess whether the utility’s scoring of the bids and selection of the initial and final shortlists are reasonable.”<sup>10</sup>

These changes and additions are consistent with our October 2018 comments, which acknowledge that “an IE brings significant benefits to a competitive procurement process” and points to specific benefits the IE can bring with the opportunity for meaningful engagement, active commission oversight, and testing of the bid-scoring results—particularly in cases where utility resource ownership is a possible outcome.<sup>11</sup> Again we appreciate the Commission’s responsiveness to stakeholder feedback in proposing these important changes and additions.

#### **4. Additional Observations**

##### *a. Affiliate employee lists*

Renewable Northwest appreciates the Draft Rules’ requirements that a utility affiliate bidding into an RFP must “include with its bid a list of all its employees during the last three years” and that “[t]he utility must identify any employees of the affiliate that worked for the utility in the utility’s final report to the commission.”<sup>12</sup> These requirements will help to ensure that third-party bidders are on equal footing with utility affiliates in RFP processes.

##### *b. Scoring criteria transparency*

Renewable Northwest supports the Draft Rules’ language regarding scoring criteria transparency. As we stated in our October 2018 comments:

[T]he requirement either to quantify the weight the utility will afford to its scoring criteria or to provide a detailed narrative explanation regarding the relative priority of the scoring criteria should give bidders important information that allows them to tailor their bids to the utility’s needs. Ultimately, the result of this additional transparency will likely be the submission of more competitive bids

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<sup>8</sup> Draft Rules at WAC 480-107-AAA(5)(c).

<sup>9</sup> Draft Rules at WAC 480-107-AAA(5)(d).

<sup>10</sup> Draft Rules at WAC 480-107-AAA(5)(f).

<sup>11</sup> U-161024 Reply Comments of Renewable Northwest at 3-4 (Oct. 26, 2018).

<sup>12</sup> Draft Rules at WAC 480-107-025(5).

and, at the conclusion of the RFP process, a better chance that the utility procures lowest reasonable cost resources.<sup>13</sup>

We stand by those comments and appreciate the Commission’s commitment to improving RFP transparency.

*c. Modifying rankings in response to learnings*

Renewable Northwest supports the Draft Rules’ new language regarding modifying ranking criteria in response to learnings from bids. The Draft Rules state that “[i]f, as a result of unexpected contents in the bids, the utility deems it necessary to modify the ranking criteria, notification must be sent to all bidders describing the change and an opportunity must be granted to bidders that choose to subsequently modify submitted bids.”<sup>14</sup> When the Commission first entertained the possibility of allowing a utility to modify its bid-scoring criteria during the RFP process, we said in our October 2018 comments: “To the extent the Commission considers alternative language that contemplates a utility’s changing its bid-scoring criteria mid-process, ... we recommend that the Commission ensure bidders have the opportunity to amend their bids in response to any such change.”<sup>15</sup> We very much appreciate that the Draft Rules both allow for flexibility in response to unanticipated bid contents in this time of rapid changes in the energy sector and afford bidders the opportunity to amend their bids accordingly.

*d. Stakeholder participation*

In reviewing changes to the Draft Rules, Renewable Northwest noted an increase in references to stakeholder engagement and participation.<sup>16</sup> Because stakeholder engagement and participation improve the RFP process and the likelihood of procuring least cost, least risk resources, Renewable Northwest appreciates and supports these changes.

*e. Exception for delivery system resources*

Renewable Northwest encourages the Commission to add clarity to the term “delivery system resources” in the Draft Rules’ exceptions to the RFP process. While the previous draft rules exempted “a distribution system or local transmission resources project estimated to cost less than \$10 million,”<sup>17</sup> the current Draft Rules instead provide an exemption where “[t]he utility’s identified resource need is for delivery system resources.”<sup>18</sup> It is not entirely clear what is meant

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<sup>13</sup> U-161024 Reply Comments of Renewable Northwest at 6 (Oct. 26, 2018).

<sup>14</sup> Draft Rules at WAC 480-107-035(4).

<sup>15</sup> U-161024 Reply Comments of Renewable Northwest at 7 (Oct. 26, 2018).

<sup>16</sup> See, e.g., Draft Rules at WAC 480-107-015(6), 480-107-015(7), and 480-107-AAA(6).

<sup>17</sup> August 24, 2018 Draft Rules at WAC 480-107-015(4)(d).

<sup>18</sup> Draft Rules at WAC 480-107-015(4)(b).

by “delivery system resources,” and we are concerned that this term could be extended to apply to resource needs that could benefit from competitive procurement such as energy storage assets. We encourage the Commission to define the term “delivery system resources” in the rule or, at a minimum, to provide a list of resources that are *not* included in the term.

### III. CONCLUSION

Renewable Northwest again thanks the Commission and Commission Staff for their work to ensure that procurement processes in Washington are fair and transparent, and that they instill market confidence that ultimately supports Washington utility customers. Again, we hope that these comments help the Commission to establish final rules that establish a fair, transparent, and competitive process.

Respectfully submitted this 31st day of January, 2019.

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