

March 13, 2020

Mark Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop SE
Lacey, WA 98504-7250

RE: Comments of Renewable Northwest, Docket UE-190837

Utilities and Transportation Commission’s February 6, 2020, Notice of Opportunity to File Written Comments in the Matter of Amending, Adopting, and Repealing WAC 480-107, Relating to Purchases of Electricity.

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 February 6, 2020, Notice of Opportunity to File Written Comments (“Notice”) in the Matter of Amending, Adopting, and Repealing WAC 480-107, Relating to Purchases of Electricity. The Notice explains that this proceeding follows on work the Commission began in prior Docket UE-161024, which was closed following passage of the Clean Energy Transformation Act (“CETA”).¹ While Docket U-161024 offered many distinct topics for stakeholder engagement, Renewable Northwest was particularly engaged in proposed changes to WAC 480-107, and offered comments on the matter on September 21, 2018, October 26, 2018, and January 31, 2019; we also participated in the Commission’s workshop on October 2, 2018. We are pleased the Commission is again considering the important issue of updating its competitive procurement rules, and we offer our comments below.

In these comments, we first highlight some changes between the draft rules filed in Docket U-161024 on December 31, 2018 and the draft rules filed in Docket UE-190837 on February 6, 2020 that may represent inadvertent backtracking.² We then discuss some general language changes that may be warranted due to developments in stakeholders’ understanding of the way

¹ RCW ch. 19-405.

² In comparing these versions of the Commission’s draft rules, we draw liberally from material from Docket U-161024, some of which we have attached to these comments as exhibits in response to the Notice’s encouragement that “stakeholders ... re-submit, or revise and re-submit, their comments filed in Docket UE-161024.”

diverse resources may interact to meet the needs of a modern grid. Finally, we offer responses to the Commission’s questions presented in the Notice regarding opportunities to strengthen the levels of competition, equity, and transparency in the resource procurement process. Overall, Renewable Northwest appreciates the Commission’s recognition that procedures guiding utilities’ RFP solicitation processes can be improved in multiple ways, such that not only can Washington ratepayers realize the benefits of a competitive process but also resource procurement can support Washington’s nation-leading and deeply important decarbonization goals.

II. COMMENTS

A. Changes to the Draft Rules

Renewable Northwest understands that Commission staff intended for the draft rules presented for comment in this docket (“2020 Draft Rules”³) to track the last set of draft rules filed in Docket U-161024 (“2nd Round Draft RFP Rules”⁴); nevertheless, it appears that there are a number of differences between these two sets of draft rules. In this section of our comments, we highlight some of these differences.

The 2nd Round Draft RFP Rules included a definition of “Short-term market purchases” -- “purchases of energy or capacity on the spot or forward market contracted for a term less than four years.” In our January 31, 2019 comments, we noted that this definition appeared to be responsive to our earlier comments, and we “support[ed] the Draft Rules’ new language and appreciate[d] the Commission’s attention to our earlier comments on this topic.”⁵ The 2020 Draft Rules, however, appear to omit this definition. Renewable Northwest recommends that the definition be restored to the rules.

Relatedly, the 2nd Round Draft RFP Rules provided an exception for short-term market purchases ...

... so long as:

³ “UE-190837 Draft WAC 480-107_Redline.pdf” (Feb. 6, 2020), *available at* https://www.utc.wa.gov/_layouts/15/CasesPublicWebsite/GetDocument.ashx?docID=16&year=2019&docketNumber=190837.

⁴ See “U-161024 - 2nd Round Draft RFP Rules (Redline).pdf” (Dec. 31, 2018), *available at* https://www.utc.wa.gov/_layouts/15/CasesPublicWebsite/GetDocument.ashx?docID=472&year=2016&docketNumber=161024, and attached to these Comments as Exhibit A.

⁵ January 31, 2019 Comments of Renewable Northwest, Docket U-161024 at 2, attached to these Comments as Exhibit B.

(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.⁶

In contrast, the 2020 Draft Rules provide an exemption (which appears to be procedurally different from the exception contemplated in the 2nd Round Draft RFP Rules) that requires only reference to the Power Council's analysis, and not additional independent analysis. In our January 31, 2019 comments we supported the approach presented in the 2nd Round Draft RFP Rules⁷; however, given developments in stakeholder conversations around regional resource adequacy over the past year, we discuss our thoughts on an appropriate update to this rule provision below as part of our responses to the Notice.

The 2nd Round Draft RFP Rules included a 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."⁸ Our January 31, 2019 comments supported this change, noting that "[t]he 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."⁹ Nevertheless, this provision appears to have been omitted from the 2020 Draft Rules. We recommend bringing this provision back.

Similarly, the 2nd Round Draft RFP Rules required for procurements that include benchmark resources that a "utility must indicate in its RFP how it will ensure that the utility-owned resource, or the resource of its subsidiary or affiliate, through association with the utility, 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."¹⁰ Our January 31, 2019 comments observed that, read in concert with the transmission language discussed above, this language would "encourage use of utility transmission rights to the benefit of utility customers and least-cost

⁶ 2nd Round Draft RFP Rules at WAC 480-107-015(4)(d).

⁷ January 31, 2019 Comments of Renewable Northwest, Docket U-161024 at 2.

⁸ 2nd Round Draft RFP Rules at WAC 480-107-025(8).

⁹ January 31, 2019 Comments of Renewable Northwest, Docket U-161024 at 3.

¹⁰ 2nd Round Draft RFP Rules at WAC 480-107-135(2).

resource acquisition.”¹¹ Again, though, this language appears to have been omitted from the 2020 Draft Rules, and we encourage its return.

The 2nd Round Draft RFP Rules required engagement “of an independent evaluator to evaluate and report on the solicitation process if ... [t]he 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.”¹² The provision also appears to be omitted from the 2020 Draft Rules. Again, we supported this provision in our January 31, 2019 comments¹³ and would recommend its return, as discussed further below in our responses to the Notice.

Several other elements of the draft rules relating to independent evaluators (“IE”) appear to have undergone similar changes, including:

- Omission of the provision that the IE must have “full access to examine and test the utility’s production cost and risk models and any other model or data that is necessary”¹⁴;
- Omission of the direction that the IE, “upon request, 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”¹⁵;
- Omission of “capital costs” as part of the inputs and assumptions subject to testing by the IE¹⁶; and
- Omission of the requirement that the IE “[a]ssess whether the utility’s scoring of the bids and selection of the initial and final shortlists are reasonable.”¹⁷

We supported all of these elements of the 2nd Round Draft RFP Rules in our January 31, 2019 comments, noting that they correlated to the significant benefits that an IE can bring to a competitive procurement process.¹⁸ Again we recommend the return of some of these robust rule provisions regarding the role of an IE in utility procurement processes, and we include further discussion of the role of an IE in our comments below.

Finally, while the observations above reflect some of Renewable Northwest’s priorities in this rulemaking, there may well be other provisions of the 2nd Round Draft RFP Rules that were inadvertently omitted from the 2020 Draft Rules but that Renewable Northwest and other stakeholders have not yet identified. We recommend that Commission staff conduct a thorough

¹¹ January 31, 2019 Comments of Renewable Northwest, Docket U-161024 at 3.

¹² 2nd Round Draft RFP Rules at WAC 480-107-AAA(1)(c).

¹³ January 31, 2019 Comments of Renewable Northwest, Docket U-161024 at 3.

¹⁴ 2nd Round Draft RFP Rules at WAC 480-107-AAA(4).

¹⁵ *Id.* at WAC 480-107-AAA(5)(c).

¹⁶ *Id.* at WAC 480-107-AAA(5)(d).

¹⁷ *Id.* at WAC 480-107-AAA(5)(f).

¹⁸ January 31, 2019 Comments of Renewable Northwest, Docket U-161024 at 3-4.

comparison to ensure that the current rulemaking reflects the full benefit of stakeholder comments and participation in the U-161024 rulemaking process.

B. Recommended Language Updates

Renewable Northwest appreciates the challenge of updating competitive procurement rules at a time of rapid system change that is deeply affecting utilities' resources, operations, and planning. Utilities are increasingly meeting their needs with diverse resource portfolios that include not only generating resources but also efficiency, demand-side management, energy storage, and sometimes related solutions that might be best described as technological advances in system operation. We recommend that the Commission consider as part of this rulemaking changing the title of WAC 480-107 from "Purchases of Electricity" to something that better reflects this emerging paradigm, perhaps "Resource Procurement."

Similarly, we appreciate the Commission's efforts to encompass this range of potential resources in the 2020 Draft Rules. For example, the 2020 Draft Rules require utilities to accept bids from "energy resources ... including ... 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 utility subsidiaries, and other electric utilities, whether or not such electricity includes ownership of property."¹⁹ Even that expanded list, however, could benefit from including more resource types including distributed energy resources and resources procured for eventual customer subscription or ownership. While we have not identified other specific provisions of the 2020 Draft Rules that may benefit from a broader construct of what might constitute a resource or resource need, we will continue to review language through the lens of the modernizing grid, and we encourage the Commission and other stakeholders to do the same.

C. Responses to the Notice

1. RCW 19.405.040(8) states: In complying with this section, an electric utility must, consistent with the requirements of RCW 19.280.030 and 19.405.140, ensure that all customers are benefiting from the transition to clean energy: Through the equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health and environmental benefits and reduction of costs and risks; and energy security and resiliency.

Do the requirements of RCW 19.405.040(8) affect how utilities acquire resources?

¹⁹ 2020 Draft Rules at WAC 480-107-015(1).

Potentially.

If yes:

a. Will utilities ever need to solicit requests for proposals (RFPs) solely to comply with RCW 19.405.040(8) (e.g., acquire equity-specific resources)? Or should compliance with RCW 19.405.040(8) be evaluated only with respect to generation, conservation, and other resources acquired by utilities as a result of other regulatory and system needs?

There may be scenarios where a utility solicits an RFP solely to comply with RCW 19.405.040(8). Some possibilities include the following: 1) where marginalized customers are not realizing proportionate benefits from the transition to clean energy, 2) where a particularly vulnerable group is overly burdened by the risk of infrastructure failure, and 3) where bids do not fairly represent women, minority groups, or veteran-owned businesses. Given the potential for these and other equity issues to require resource additions, Renewable Northwest recommends the Commission leave open the potential for equity-specific RFP solicitation.

b. What, if any, revisions should be made to the solicitation content requirements in WAC 480-107-025(1) to incorporate the provisions of RCW 19.405.040(8)?

To ensure that compliance with RCW 19.405.040(8) is fully incorporated into the bidding process and can be assessed as part of the project ranking procedures in WAC 480-107-035, as opposed to alongside the ranking procedures as a separate criterion, WAC 480-107-025(1) should be amended to include language generally calling out equity measures as mandatory input for the RFP solicitation process.

c. What, if any, revisions should be made to the project ranking procedures in WAC 480-107-035 to incorporate the provisions of RCW 19.405.040(8)?

Renewable Northwest supports the incorporation of the equity-related provisions of RCW 19.405.040(8) into the project ranking procedures in WAC 480-107-035 as the most straightforward and effective way for CETA's equity requirements to inform competitive bidding processes and help ensure equitable results. One possible approach is to revise WAC 480-107-035 to include the following in 480-107-035(2):

At minimum, the ranking criteria must recognize resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, credit and financial risks to the utility, the risks imposed on ratepayers, the equity-associated considerations within RCW 19.405.040(8), public policies regarding

resource preference adopted by Washington state or the federal government and environmental effects including those associated with resources that emit carbon dioxide. The ranking criteria must recognize differences in relative amounts of risk inherent among different technologies, fuel sources, financing arrangements, equity measures, and contract provisions.

Referencing equity as a consideration in project ranking, while also encouraging utilities to rank various equity-related criteria, is a flexible approach that allows future expansion of our understanding of equity as it relates to resource procurement, as well as the potential to tailor equity considerations to meet a utility's specific needs or circumstances.

d. What, if any, additional summaries of solicitation responses would assist with understanding bid proposals pursuant to the requirements of RCW 19.405.040(8) (e.g., geographic location of proposed projects, bidder information such as women and minority owned business certifications, etc.)?

Renewable Northwest supports a requirement that utilities incorporate information related to the equity considerations of RCW 19.405.040(8) into their summaries of RFP responses. Specific information that could be helpful includes the number of community-sited projects, data regarding projects' ownership by or contracting with women-, minority-, and veteran-owned businesses, and projects that used the varying levels of labor standards referenced in the Clean Energy Transformation Act as reflected in current emergency and proposed permanent rules of the Department of Labor and Industries.²⁰

2. Utilities may issue an RFP at any time for a wide variety of purchases. Under existing PoE rules, issuing an RFP is only required if the utility's IRP finds a capacity need within a three year horizon. In the draft rules accompanying this notice, a number of refinements to this requirement have been developed. In light of the resource requirements of CETA, such as those for renewable and non-emitting resources, equity, and resource adequacy, and the creation of clean energy implementation plans (CEIPs), what is the relationship between the trigger for requiring utilities to follow the RFP rules in the PoE, and the rules under consideration in the IRP rulemaking and the CEIP?

In an effort to maximize alignment of the various plans and proposals, and given the timelines for submissions of IRPs and CEIPs, Renewable Northwest recommends that the Commission establish a procedural order that flows from IRP to CEIP to RFP, with the CEIP serving as the

²⁰ See, e.g., WAC ch. 296-140, "Clean Energy Labor Standards Certification," available at <https://lni.wa.gov/rulemaking-activity/AO19-30/1930CR103EAdoption.pdf>.

ultimate trigger for an RFP. In this scenario, each submission informs the next such that the final proposals are most complete.

For this scenario to support the procurement of lowest reasonable cost resources that help to achieve CETA's greenhouse-gas and clean-energy targets, however, it is important that the timing of a utility's IRP and CEIP be carefully aligned. If a CEIP triggering an RFP follows too distantly on the heels of an IRP, the resource price and characteristics used in the IRP modeling may become stale and the utility's RFP may not be designed to capture the best available resources to meet its needs. Alternatively, because the CEIP is only approved every four years, the RFP process may need to be triggered when updated resource needs are identified during the biennial IRP check-in, upon acknowledgment by the Commission.

Further, Renewable Northwest recommends that the Commission consider extending the three-year horizon for capacity needs that trigger RFP requirements to a four-year horizon. This timing would better align with the CEIP process and provide more lead time for utilities to meet capacity needs. We note, however, that even a four-year lead time may be insufficient to allow for the robust participation of certain long lead-time resources such as pumped hydro storage. We recommend that the Commission ensure that there is a potential path to procurement for such resources when determined to meet utilities' needs at the lowest reasonable cost. One possibility is the general exemption process set forth in WAC 480-07-110 and incorporated into the 2020 Draft Rules at proposed WAC 480-107-002(3); however, a better approach may be to add a more tailored exemption to the list set forth in WAC 480-107-015(4).

a. To what extent should the requirement to issue an RFP under WAC 480-107-015 be tied to the IRP versus the CEIP? Should the PoE rule contain the triggers for invoking sections of the PoE? If so, which rule, CEIP or IRP, should describe the measurement of the metrics on which the threshold trigger is based?

As indicated above, the IRP should inform the CEIP, which should then identify a resource need requiring issuance of an RFP.

3. The draft rules rely on the results of the of the Northwest Power and Conservation Council's (Council) resource adequacy study in determining whether an exemption from issuing an RFP may be granted (WAC 480-107-015(4)(b)). In addition to the work of the Council, members of the Northwest Power Pool are working to develop a resource adequacy program.

a. Should the rules allow the use of a resource adequacy analysis conducted by other entities in addition to the Council?

Renewable Northwest appreciates the Commission's efforts to ensure that a utility's proposal to rely on short-term market purchases for its capacity needs is based on thoughtful analysis of the availability of market resources. We support looking to the Council's analysis as a starting point, but believe additional analysis is necessary as regional resource adequacy concerns and increasing market reliance across utilities may lead to market constraints. Any such reliance should be consistent across utilities in methodology -- a point which speaks in favor of the Power Pool's resource adequacy efforts -- but also utility-specific in application. In other words, while the Power Pool's studies may strengthen the region's understanding of load and resource reliability, it is vital to have independent analysis supporting the scope of each utility's access to low-risk market purchases.

One possibility for bridging methodological consistency with utility-specific analysis is that the Commission could prescribe a methodology by which a utility could perform its own additional resource adequacy analysis, subject to rigorous testing by Staff and potential Stakeholders. In our October 2018 comments, we noted that “[w]hile the NWPCC 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.”²¹ The 2nd Round Draft RFP Rules provided a good start by requiring additional analysis regarding market reliance in a utility's IRP as a precursor to a competitive bidding exemption, but as stakeholder concerns over regional resource adequacy have grown since 2018, further attention may be necessary to include additional language, ensuring methodological consistency. Alternatively, as the 2nd Round Draft RFP Rules pointed to independent analysis in a utility's IRP, it may be that the 2nd Round Draft RFP Rules provided the cleanest approach, and pending Commission IRP rulemaking is the appropriate venue for addressing this question of methodology.²²

²¹ October 26, 2018 Comments of Renewable Northwest, U-161024 at 5.

²² We recommended that the Commission adopt a consistent methodology to guide utilities' approaches to modeling resource adequacy in our December 20, 2019 comments in Docket UE-190698, *available at* <https://www.utc.wa.gov/layouts/15/CasesPublicWebsite/GetDocument.ashx?docID=1116&year=2019&docketNumber=190698>.

b. To what extent should transmission modeling be required in the resource adequacy analysis?

Renewable Northwest supports regionalization as a key driver for achieving resource adequacy with diverse renewables and other non-emitting resources, and the effort to scale up the power system will likely require new transmission builds. Therefore, transmission modeling should be integrated into the resource adequacy analysis. An example of this exercise can be seen in PacifiCorp's 2019 IRP, wherein the company recognizes the potential of its transmission projects to enable its evolving resource portfolio.²³ While PacifiCorp took steps toward more robust transmission modeling in its 2019 IRP cycle, the company also acknowledged in the IRP that "transmission options that interact with multiple or complex elements of the IRP transmission topology ... are too complex" for even their enhanced modeling to fully analyze.²⁴ Because approaches to transmission modeling are complex and still developing, to the extent the rules include a transmission modeling requirement Renewable Northwest recommends that the rule language be sufficiently broad to allow for new methodological developments.

4. The draft rule at WAC 480-107-AAA requires the use of an Independent Evaluator under certain circumstances.

Before moving on to the specific prompts under this question, Renewable Northwest notes that the 2020 Draft Rules could benefit from additional clarity regarding the process and criteria for selecting an IE. We recommend looking to Oregon's competitive bidding rules as an example.²⁵ These rules provide that selection of an IE will be "based in part on the consideration of: (a) Input received from the electric company and interested, non-bidding parties; (b) Review of the degree to which the IE is independent of the electric company and potential bidders; (c) The degree to which the cost of the services to be provided is reasonable; (d) The experience and competence of the IE; and (e) The public interest."²⁶

a. Should the utility be required to have an independent evaluator examine the utility's performance as a developer in the case of a utility proposing to self-build or a utility's subsidiary or affiliate bidding in a build-to-lease or build-to-own project?

Renewable Northwest recommends that the Commission's rules allow for broad and robust IE participation in RFP processes. In our experience, IEs can add marked value to a utility's bidding

²³ PacifiCorp 2019 IRP at 71, available at https://www.pacificorp.com/content/dam/pcorp/documents/en/pacificorp/energy/integrated-resource-plan/2019_IRP_Volume_1.pdf.

²⁴ *Id.* at 168.

²⁵ See OAR ch. 860-089.

²⁶ OAR 860-089-0200(2).

process, not only through independent analysis offered to regulators but also through increased bidder confidence in a fair and transparent procurement process. This value holds true both in procurements that allow for a self-build by a utility or utility subsidiary and in those that allow bids for build-transfer projects. In either case, a robust procurement process will depend on bidders' confidence that their projects will be assessed on equal footing regardless of utility incentives. As noted in our October 26, 2018 Comments in Docket U-161024, "the value that an IE brings to a procurement process [is] by instilling market confidence. The IE also offers important context on RFP best practices as stakeholders, the utility, Commission Staff, and the Commission work to ensure that an RFP leads to procurement of lowest reasonable cost resources for customers."²⁷

b. Should there be a MW or MWh threshold to determine whether an independent evaluator should be used? Should it be different than the threshold triggering a utility to comply with the requirements regarding an RFP?

To encourage stronger and more transparent competition in the bidding process, Renewable Northwest supports a 50 MW threshold for mandatory IE involvement, which aligns with a utility's requirements regarding an RFP. As to a MWh threshold, this approach may be the most appropriate metric for determining when solicitations of battery storage resources may trigger the competitive bidding rules or the IE requirement; however, Renewable Northwest does not have a recommendation as to a specific MWh trigger to incorporate into the rules at this time.

c. The draft rule at WAC 480-107-035 provides a list of items that must be included in the ranking criteria. Those items may expand under CETA, especially for RCW 19.405.040(8). What items should be in the criterion list and included in the independent evaluator's scope of work?

The IE's scope of work should at minimum follow the project ranking criteria in WAC 480-107-035, and would ideally include all communication between the utility and the bidders. Additionally, as noted in our October 26, 2018 Comments in Docket U-161024, "Renewable Northwest recommends that the Commission require the IE to document and file all communications. This requirement would help the Commission to ensure that the RFP process is fair and competitive."²

²⁷ U-161024 Reply Comments of Renewable Northwest at 2 (Oct. 26, 2018), attached to these Comments as Exhibit C.

III. CONCLUSION

Renewable Northwest again thanks the Commission and Commission Staff for their work to ensure that electricity purchasing processes in Washington are equitable and transparent, and that they instill market confidence that ultimately supports Washington's utility customers and decarbonization goals. We look forward to continued engagement in this rulemaking and the remainder of the Clean Energy Transformation Act implementation process.

Respectfully submitted this 13th day of March, 2020,

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EXHIBIT A

Chapter 480-107 WAC

WAC 480-107-001 Purpose and scope. (1) The rules in this chapter require utilities to solicit bids, rank project proposals, and identify any bidders that meet the minimum selection criteria. The rules in this chapter do not establish the sole procedures utilities must use to acquire new resources. Utilities may construct electric resources, operate conservation and efficiency resource programs, purchase power through negotiated contracts, or take other action to satisfy their public service obligations.

(2) The commission will consider the information obtained through these bidding procedures and actions the utility has taken or failed to take to find resources that might not otherwise bid into its request for proposals when it evaluates the performance of the utility in rate and other proceedings.

~~(3) The rules in this chapter are consistent with the provisions of the Public Utility Regulatory Policies Act of 1978 (PURPA), Title II, sections 201 and 210, and related regulations promulgated by the Federal Energy Regulatory Commission (FERC) in 18 C.F.R. Part 292. To the extent~~

~~of any conflict between these rules and PURPA, or the related rules promulgated by FERC in 18 C.F.R. Part 292, PURPA and those related rules control. Purchase of electric power under these rules satisfies a utility's obligation to purchase power from qualifying facilities under section 210 of PURPA.~~

WAC 480-107-002 Application of rules. (1) The rules in this chapter apply to any utility that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

(2) Any affected person may ask the commission to review the interpretation or application of these rules by a utility or customer by making an informal complaint under WAC 480-07-910, Informal complaints, or by filing a formal complaint under WAC 480-07-370, Pleading—General.

(3) ~~No exception~~The commission may grant an exemption from the provisions of any rule in this chapter ~~is permitted without prior written authorization by the commission. Such exceptions may be granted only if~~in the same manner and consistent with the ~~public interest, standards~~and according to the ~~purposes underlying regulation, and applicable~~

~~statutes. Any deviation~~procedures set forth in WAC 480-07-110 Exemptions
~~from the provisions of any rule in this chapter without prior~~and
~~modifications to~~ commission ~~authorization will be subject to penalties~~
~~as provided~~rules; conflicts with other rules. Any exemption granted by
the commission does not remove or reassign the exclusive cost and risk
borne by lawthe utility.

WAC 480-107-004 Additional requirements. (1) These rules do not relieve any utility from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains its authority to impose additional or different requirements on any utility in appropriate circumstances, consistent with the requirements of law.

WAC 480-107-006 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

WAC 480-107-007 Definitions. "Affiliate" means a person or corporation that meets the definition of an "affiliated interest" in RCW 80.16.010.

~~"Avoided costs" means the incremental costs to a utility of electric energy, electric capacity, or both, that the utility would generate itself or purchase from another source, but for purchases to be made under these rules. A utility's avoided costs are the prices, terms and conditions, including the period of time and the power supply attributes, of the least cost final contract entered into as a result of the competitive bidding process described in these rules. If no final contract is entered into in response to a request for proposal (RFP) issued by a utility under these rules, the utility's avoided costs are the lesser of:~~

~~(1) The price, terms and conditions set forth in the least cost project proposal that meets the criteria specified in the RFP; or~~

~~(2) Current projected market prices for power with comparable terms and conditions.~~

~~"Back-up power" means electric energy or capacity supplied by a utility to replace energy ordinarily supplied by utility-owned~~

~~generation or purchased through contracts that is unavailable due to an unscheduled outage.~~

"Commission" means the Washington utilities and transportation commission.

~~**"Conservation"** means any reduction in electric power consumption that results from increases in the efficiency of energy use, production or distribution, or from demand response, load management or efficiency measures that reduce peak capacity demand.~~

"Conservation and efficiency resources" has the same meaning as defined by WAC 480-100-238(2).

"Conservation supplier" means a third-party supplier or utility affiliate that provides equipment or services that ~~save capacity or energy.~~

~~**"Economic dispatch"** means modifying reduce the scheduling of power purchases from a generating facility within contractually specified limits to minimize the costs of delivering electricity need for capacity or energy.~~

"Generating facilities" means plant and other equipment used to ~~generate~~produce electricity purchased through contracts entered into under these rules.

~~"Independent power producers"~~ "evaluator" means a thirdparty, not affiliated with the utility, that provides an evaluation of the utility's request for proposal process, evaluation, selection criteria, and related analyses of all project bids and project proposals discussed in this chapter.

"Independent power producer" means a non-utility entity that develops or owns generating facilities or portions thereof that are not ~~included in a utility's rate base and that are not~~ qualifying facilities as defined in ~~this section~~WAC 480-106-007.

"Integrated resource plan" or **"IRP"** means the filing made every two years by a utility in accordance with WAC 480-100-238 Integrated resource planning.

~~"Interruptible power"~~ means ~~electric energy or capacity supplied to a utility by a generating facility, the availability of which may be interrupted under certain conditions.~~

~~"Maintenance power"~~ means ~~electric energy or capacity supplied by a utility during scheduled outages of a generating facility.~~

"Project developer" or "bidder" means an individual, association, corporation, or other legal entity that can enter into a ~~power or conservation~~ contract with the utility to supply a resource need.

"Project proposal" or "bid" means a project developer's document containing a description of a project and other information ~~responsive in response~~ to the requirements set forth in a request for proposal, ~~also known as a bid.~~

"Qualifying facilities" means generating facilities that meet the criteria specified by the FERC in 18 C.F.R. Part 292 Subpart B as described in WAC 480-106-007.

"Request for proposals" or "~~RFPs~~RFP" means the documents describing a utility's solicitation of bids for generating or delivering ~~electric capacity, energy, or capacity and energy, or conservation~~ a resource need.

"Resource ~~block~~need" has the same meaning as defined by WAC 480-100-238(2).

"Resource supplier" means ~~the deficit of capacity and associated energy~~ third-party supplier, utility, or utility affiliate that provides equipment or services that serve a resource need.

"Short-term market purchases" means purchases of energy or capacity on the IRP showspot or forward market contracted for the neara term less than four years.

"Subsidiary" means any company in which the utility owns directly or indirectly five percent or more of the voting securities, and that may enter a power or conservation contract with that electric utility. A company is not a subsidiary if the utility can demonstrate that it does not control that company.

~~"Supplementary power" means electric energy or capacity supplied by a utility that is regularly used by a generating facility in addition to that which the facility generates itself.~~

"Utility" means an electrical company as defined by RCW 80.04.010.

WAC 480-107-015 The solicitation process. (1) ~~Any owner of a generating facility, developer of a potential generating facility, marketing entity, or provider of energy savings may participate~~Except as set forth in Section (4) below, the RFPutility must solicit bids for its resource needs identified during the IRP process. ~~Bidders may propose~~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: ~~Electrical~~, 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. ~~Qualifying facility producers with a generation~~
~~capacity of one megawatt or less may choose to participate in the~~
~~utilities' standard tariffs without filing a bid.~~

(2) A utility may participate in the bidding process as a
~~power~~resource supplier, or may allow a subsidiary or affiliate to
participate in the bidding process as a ~~power~~resource supplier,
~~on~~pursuant to conditions described in WAC 480-107-135 Conditions for
purchase of ~~electrical power or savings~~resources from a utility's
subsidiary or affiliate. ~~The utility's RFP submittal must declare the~~
~~utility's or affiliate's participation and must demonstrate how the~~
~~utility will satisfy the requirements of~~ WAC 480-107-135. AAA Independent
Evaluator for Significant Resource Needs or Utility or Affiliate Bid.

(3) ~~Timing of the~~The solicitation process.

~~(a) The rules in this section do not apply when~~ is required whenever a utility's most recently acknowledged integrated resource plan, prepared pursuant to WAC 480-100-238, demonstrates that the utility does not have a resource need additional capacity within three years.

~~(b)(4) 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 prudence of the utility's actions under the exemption or its choice to seek an exemption:~~

(a) The utility's identified resource need for capacity is less than 80 megawatts;

(b) The utility's identified resource need is for delivery system resources;

(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; or

(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.

(5) A utility must submit to the commission a proposed ~~request for proposals~~RFP and accompanying documentation no later than one hundred thirty-five days after the utility's integrated resource plan is ~~due~~submitted to ~~be filed with~~ the commission. Interested persons will have sixty days from the RFP's filing date ~~with the commission~~ to submit written comments to the commission on the RFP. The commission will approve, approve with conditions, or suspend the RFP within thirty days after the close of the comment period.

~~(e)~~(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.

(7) A utility must solicit bids for ~~electric power and electrical savings resource needs~~ within thirty days of a commission order approving the RFP.

~~(d) All, with or without conditions, as applicable. To solicit bids will,~~ a utility must post a copy of the RFP on the utility's public web site. The utility must maintain a list of potential vendors and industry trade associations and agencies and communicate to those vendors, associations and agencies when an RFP is issued.

(8) The utility must ensure that all bids remain sealed until the expiration of the solicitation period specified in the RFP.

~~(4) In addition to the solicitation process required by these rules, a utility may, at its own discretion, issue an RFP that limits project proposals to resources with specific characteristics. In addition, a utility, at its own discretion, may issue~~ (9) A utility may issue RFPs more frequently than required by this rule.

~~(5) Persons~~ (10) Any person interested in receiving commission notice of ~~a specific utility's~~ utility proposed RFP filings ~~can request the commission to~~ may place their ~~names on a mailing list for~~

~~notification of future RFP filings by that utilityname on the IRP listserv on the commission's website.~~

WAC 480-107-025 Contents of the solicitation. (1) The RFP must ~~identify~~precisely define the resource ~~block, consisting of the overall amount and duration of power~~need, including any specific attributes or characteristics the utility is soliciting, ~~the initial estimate of avoided cost schedule as calculated in WAC 480-107-055 Avoided cost schedules~~such as the amount and duration of power, any time and locational attributes, operational attributes, the type of technology necessary to meet a compliance requirement, and any additional information necessary for potential bidders to make a complete bid, including the avoided cost identified in the integrated resource plan.

(2) The RFP must ~~document~~indicate that the size and operational attributes of the resource ~~block is~~need solicited are consistent with ~~the range of estimated new~~a resource ~~needs~~need identified in the utility's integrated resource plan.

~~(3) The RFP must explain general evaluation and~~ (3) The RFP must allow any resources that meet a portion of the amount or a subset of the characteristics or attributes of the resource need to bid, such as

unbundled renewable energy credits for a renewable resource need, or conservation and efficiency resources for a capacity need.

(4) The RFP must clearly explain the specific ranking procedures and assumptions that the utility will use in accordance with WAC 480-107-035 Project ranking procedure. 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. The RFP must also specify any minimum criteria and qualifications that bidders must satisfy to be eligible for consideration in the ranking procedure. Non-price score criteria that seek to identify minimum thresholds for a successful bid and that may be converted into minimum bidder requirements must be converted into minimum bidder requirements.

~~(4) The~~ (5) The utility's RFP submittal must declare whether the utility or an affiliate is allowed to bid into the RFP. The utility must require the affiliate to include with its bid a list of all its employees during the last three years. The utility must identify any employees of the affiliate that worked for the utility in the utility's final report

to the commission required by WAC 480-107-145 Filings-Investigations
(2).

(6) The RFP must specify ~~the timing of a~~ detailed timeline for each
stage of the RFP process including the solicitation period, the ranking
period, and the expected selection period.

(57) The RFP must identify all financial security requirements and
the rationale for ~~them~~ such requirements.

~~(6) Utilities~~ (8) The RFP must identify utility-owned transmission
assets that are ~~encouraged~~ made available by the utility to ~~consult~~ be
used by bidders to assist in meeting the resource need, and allow the
use of such assets to be included in bids.

WAC 480-107-AAA Independent Evaluator for Significant Resource
Needs or Utility or Affiliate Bid. (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.

(2) The utility, after consulting with commission staff during the development of the RFP. Utilities, at their own discretion and the appropriate stakeholders, may submit draft RFPs for staff review prior to formally submitting an RFP to issue an RFP for an independent evaluator and must recommend an independent evaluator for approval by the commission.

(3) The independent evaluator will contract with and be paid by the utility. The utility will also manage the contract terms with the independent evaluator.

(4) The utility must give the independent evaluator full access to examine and test the utility's production cost and risk models and any other model or data that is necessary for the independent evaluator to complete its work.

(5) The independent evaluator will, at a minimum:

(a) Ensure that the RFP process is conducted fairly and properly;

(b) Participate in the design of the solicitation;

(c) Be available and responsive to the commission throughout the process, and, upon request, must provide the commission with the independent evaluator's notes of all conversations and the full text of written communications between the independent evaluator and the utility and any third-party that are related to the independent evaluator's execution of its duties;

(d) Verify that the utility's inputs and assumptions, including capacity factors and capital costs, are reasonable;

(e) Evaluate the unique risks of each bid; and

(f) Assess whether the utility's scoring of the bids and selection of the initial and final shortlists are reasonable.

(6) The independent evaluator will prepare an initial report to the commission at the conclusion of the bid evaluation process, before reconciling project rankings with the utility, and a final report after reconciling rankings with the utility in accordance with WAC 480-107-035 (4) Project ranking procedure. ~~(1) The~~ The initial report may be filed with the commission simultaneously with the final report. The final

report must include an evaluation of the competitive bidding process in selecting the lowest reasonable cost acquisition or action to satisfy the identified resource need, including the adequacy of communication with stakeholders and bidders. The commission may request that additional analysis be included in the final report.

(a) No stakeholder, including the utility or staff, shall have any editorial control over the independent evaluator's initial report, other than routine processes, such as administrative corrections or to remove bids that do not comply with the minimum criteria identified in the RFP.

(b) The final report should not differ significantly from the initial report and must explain ranking differences and why the independent evaluator and the utility were, or were not, able to reconcile the differences.

(c) The utility, staff, and stakeholders may submit responses to the final report with the commission.

WAC 480-107-035 Project ranking procedure. (1) The commission must approve the procedures and criteria the utility will use in its RFP to evaluate and rank project proposals ~~are subject to commission approval.~~

Evaluation criteria should be standardized and applied equally to all bids and bidders.

(2) At a minimum, the ranking criteria must ~~recognize~~consider resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, credit and financial risks to the utility, the risks imposed on ratepayers, public policies regarding resource preference adopted by Washington state or the federal government~~and,~~ environmental effects including those associated with resources that emit carbon dioxide,resiliency attributes, and reliability costs and benefits. The ranking criteria must recognize differences in relative amounts of risk inherent among different technologies, fuel sources, financing arrangements, ~~and~~ contract provisions.~~The ranking process must complement power acquisition goals identified,~~ and be consistent with the analytical methods developed in the ~~utility's~~utility's most recently acknowledged integrated resource plan.

~~(3) After the~~(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.

(4) The utility and, when applicable as determined in the contract, the independent evaluator will separately score and produce a ranking of the qualifying bids following the RFP ranking criteria and methodology. If, 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.

(5) Within thirty days after the sealed project proposals have been opened for ranking, the utility must make available for public inspection at on the utility's ~~designated place of business~~ website a summary of each project proposal and a final ranking of all proposed projects.

(46) The utility may reject any project proposal that does not ~~specify~~ comply with the minimum requirements within the RFP and, as part of the ~~price~~ 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.

~~(57) The utility may reject all project proposals if it finds that no proposal adequately serves ratepayers' interests. The commission will review, as appropriate, such a finding together with evidence filed in support of any acquisition in the utility's next general rate case or other cost recovery proceeding.~~

~~(6) When the utility, the utility's subsidiary or an affiliate submits a bid in response to an RFP, one or more competing bidders may request the commission to appoint an independent third party to assist commission staff in its review of the bid. Should the commission grant such a request, the fees charged by the independent third party will be paid by the party or parties requesting the independent review.~~

(8) After the ranking process is concluded, the utility will provide access to each bidder to its own confidential scoring information.

(9) Within five days after executing an agreement for acquisition of a resource or determining that all proposals or bids will be rejected, the utility must make available for public inspection on the utility's website a final detailed ranking of results for all proposals and the details of the winning bid pricing and scores.

(10) The commission may review any acquisitions resulting from the RFP process in the utility's relevant general rate case or other cost recovery proceeding.

(11) The commission will review, as appropriate, a utility's finding that no proposal adequately serves ratepayers' interests together with evidence filed in support of any acquisition in the utility's relevant general rate case or other cost recovery proceeding.

WAC 480-107-045 Pricing and contracting procedures. (1) Once project proposals ~~have been~~are ranked in accordance with WAC 480-107-035 Project ranking procedure, the utility must identify the bidders that best meet the selection criteria and that are expected to produce the ~~energy, capacity, and electrical savings~~relevant attributes as defined by that portion of the resource ~~block~~need to which the project proposal is directed.

(2) The project proposal's price, pricing structure, and terms are subject to negotiation subject to thresholds defined in the RFP.

WAC 480-107-065 ~~Eligibility for long-run~~Acquisition of conservation ~~purchase rates and efficiency resources.~~ (1) AnyA conservation and efficiency resource supplier may participate in the bidding process ~~for~~

any resource need. A utility ~~may allow,~~ a utility subsidiary ~~to, or~~ affiliate may participate as a conservation supplier, on conditions described in WAC 480-107-135 Conditions for purchase of ~~electrical power~~ or savings resources from a utility's subsidiary or affiliate. ~~A decision to allow a utility subsidiary to participate must be explained in the utility's RFP submittal.~~

(2) All conservation and efficiency measures included in a project proposal must:

~~(a) Produce electrical savings over a time period greater than five years, or a longer period if specified in the utility's RFP. A measure with an expected life that is shorter than the contract term must include replacements through the contract term;~~

~~(b) Be consistent with the utility's integrated resource plan; and~~

~~(c) Produce~~ produce savings that can be reliably measured or estimated with accepted engineering, statistical, or meter-based methods.

(3) A utility must acquire conservation and efficiency resources through a competitive procurement process as described in this rule unless implementing a competitive procurement framework for conservation and efficiency resources as approved by the commission.

(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.

WAC 480-107-075 Contract finalization. (1) Unless otherwise prohibited by law, a utility ~~has discretion to~~may decide whether to enter into a final contract with any project bidder that meets the selection criteria of the RFP. Any ~~such~~ bidder may petition the commission to review a utility's decision not to enter into a final contract.

(2) Any project bidder and utility may negotiate changes to the selected project proposal, subject to any limitation established in the RFP, for the purpose of finalizing a particular contract consistent with the provisions of this chapter.

(3) The utility may sign contracts for any appropriate time period specified in a selected project proposal for up to a twenty-year term. The utility may sign longer-term contracts if such provisions are specified in the utility's RFP.

(4) If material changes are made to the project proposal after project ranking, including material price changes, the utility must suspend contract finalization with that party and rerank, and have the independent evaluator rerank when applicable, projects according to the revised project proposal. If the material changes cause the revised project proposal to rank lower than projects not originally selected, the utility ~~must~~may instead pursue contract finalization with the next ranked project, or close the RFP with no bids selected if all other bids have been rejected.

~~(5) A project developer must provide evidence that the developer has obtained or will obtain a generation site (e.g., letter of intent) before signing a contract with the purchasing utility.~~

~~**480-107-115 System emergencies.** (1) A generating facility entering into a power contract under these rules is required to provide energy or capacity to a utility during a system emergency only to the extent:~~

~~(a) Provided by agreement between such generating facility and utility; or~~

~~(b) Ordered under section 202(c) of the Federal Power Act.~~

~~(2) During any system emergency, a utility may discontinue or curtail:~~

~~(a) Purchases from a generating facility if such purchases would contribute to such emergency; and~~

~~(b) Sales to a generating facility, if such discontinuance or curtailment:~~

~~(i) Does not discriminate against a generating facility; and~~

~~(ii) Takes into account the degree to which purchases from the generating facility would offset the need to discontinue or curtail sales to the generating facility.~~

~~(3) System emergencies resulting in utility action under this chapter are subject to verification by the commission upon request by either party to the power contract.~~

~~**480-107-125 Interconnection costs.** (1) Any costs of interconnection are the responsibility of the owner or operator of the generating facility entering into a power contract under this chapter. The utility must assess all reasonable interconnection and necessary system or~~

~~network upgrade costs the utility incurs against a generating facility on a nondiscriminatory basis.~~

~~(2) The owner or operator of the generating facility must reimburse the utility for any reasonable interconnection costs the utility may incur. Such reimbursement shall be made, at the utility's election:~~

~~(a) At the time the utility invoices the owner or operator of the generating facility for interconnection costs incurred by the utility;~~
~~or~~

~~(b) Over an agreed period of time not greater than the length of any contract between the utility and the generating facility.~~

WAC 480-107-135 Conditions for purchase of ~~electrical power or savings~~resources from a utility, a utility's subsidiary or affiliate.

(1) The utility, its subsidiary, or affiliate may participate in the utility's bidding process. In these circumstances, the solicitation and bidding process ~~will~~may be subject to the additional scrutiny ~~by of an independent evaluator, pursuant to WAC 480-107-AAA Independent evaluator for Significant Resource Needs or Utility or Affiliate Bid, and~~ the commission to ensure that no unfair advantage is given to the ~~utility's~~utility, its subsidiary ~~or, its~~ affiliate. ~~Commission scrutiny~~

~~will ensure that ratepayer interests are protected.~~, or any bid that might result in the utility owning the resource.

~~(2) As part of its RFP, a utility must include specific notice if it intends to submit a bid or intends to allow~~(2) A utility, its subsidiaries and/or affiliates to participate may not submit a bid or accept bids that will result in its bidding process. the utility owning the resource at

some point during its operation unless the utility provides notice this may occur in the RFP. The utility must indicate in its RFP how it will ensure that the utility-owned resource, or the resource of its subsidiary or affiliate, through association with the utility, will not gain an unfair advantage over potential nonaffiliated competitors. bids for a resource that will be owned and operated by an independent power producer during its operation.

(3) A utility's disclosure of utility must not disclose the contents or results of an RFP or competing project proposals to its own personnel involved in developing the utility's bid, or to its any subsidiary or affiliate prior to such information being made public will be construed. The utility must include in the RFP and notice the methods used to constitute an unfair advantage assure that inappropriate information is

tightly controlled and not communicated internally or with affiliates or subsidiaries.

~~(3) The commission may not allow a utility to recover in its rates all or part of the costs associated with the utility's project, or a subsidiary's or affiliate's project(s), if any unfair advantage was given to any bidder.~~

WAC 480-107-145 Filings—Investigations. (1) The commission retains the right to examine project proposals as originally submitted by potential developers. The utility must keep all documents supplied by project bidders or on their behalf, and all documents created by the utility relating to each bid, for at least seven years from the close of the bidding process, or the conclusion of the utility's ~~next general rate case~~general rate case, including any time period allowed for reconsideration or appeal, in which the fully-developed project was reviewed for prudence, whichever is later.

(2) The utility must file with the commission ~~and maintain on file for inspection at its place~~within 90 days of ~~business,~~ the ~~current rates,~~

prices, conclusion of any resource RFP process a summary report of responses including, at a minimum:

(a) Specific reasons for any project rejected under WAC 480-107-035(6) Project ranking procedure.

(b) Number of bids received, categorized by technology type;

(c) Size of bids received, categorized by technology type;

(d) Number of projects received, categorized by technology type;

(e) Size of projects received, categorized by technology type; and

(f) Median and charges established in accordance with this chapter average bid price categorized by technology type. Categorization should be broad enough to limit the need for confidential designation whenever practical.

WAC 480-107-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified in subsections subsection (1) ~~and (2)~~ of this section. The publication, effective date, reference within this chapter, and availability of the resources are as follows:

~~(1) Public Utilities Regulatory Policies Act of 1978 (PURPA), Title II, Sections 201 and 210, cited as 16 U.S.C. Sec. 796 and 824a-3, including all amendments is published by the United States Government Printing Office.~~

(1) Pacific Northwest Power Supply Adequacy Assessment as published by the Northwest Power and Conservation Council.

~~(a) The commission adopts the version in effect on August 8, 2005.~~

~~(b) This publication is reference in WAC 480-107-001 (Purpose and scope).~~

~~(c) Copies of U.S. Code are available from the U.S. Government Printing Office in Washington, D.C. or online at <http://www.gpo.gov/>.~~

~~(2) Title 18 Code of Federal Regulations Part 292, cited as 18 C.F.R. Sec. 292, including all appendices and amendments is Pacific Northwest Power Supply Adequacy Assessment for 2023 published by the United States Government Printing Office in 2018.~~

~~(a) The commission adopts the version in effect on April 1, 2015.~~

~~(b) This publication is referenced in WAC 480-107-001 (Purpose and scope).015.~~

(c) Copies of ~~Title 18 Code of Federal Regulations~~Pacific Northwest Power Supply Adequacy Assessment for 2023 are available from the ~~U.S. Government Printing Office in Washington D.C. or online~~Northwest Power and Conservation Council at ~~http~~https://www.gpo.gov/ and from various ~~third-party vendors. It is also available for inspection at the commission branch of the state library.~~

[nw council.org/energy/energy-topics/resource-adequacy/pacific-northwest-power-supplyadequacy-assessment-for-2023.](https://www.gpo.gov/)

EXHIBIT B

January 31, 2019

Mark Johnson
Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Drive S.W.
Olympia, WA 98504-7250

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.”¹ 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.”²

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.”³ We support the Draft Rules’ new language and appreciate the Commission’s attention to our earlier comments on this topic.

¹ Draft Rules at WAC 480-107-007.

² Draft Rules at WAC 480-107-015(4)(d).

³ 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.”⁴ 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.”⁵ 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”⁶;
- 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”⁷;

⁴ Draft Rules at WAC 480-107-025(8).

⁵ Draft Rules at WAC 480-107-135(2).

⁶ Draft Rules at WAC 480-107-AAA(1)(c).

⁷ 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”⁸;
- Adding “capital costs” to the inputs and assumptions subject to testing by the IE⁹; 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.”¹⁰

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.¹¹ 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.”¹² 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

⁸ Draft Rules at WAC 480-107-AAA(5)(c).

⁹ Draft Rules at WAC 480-107-AAA(5)(d).

¹⁰ Draft Rules at WAC 480-107-AAA(5)(f).

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

¹² 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.¹³

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.”¹⁴ 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.”¹⁵ 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.¹⁶ 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,”¹⁷ the current Draft Rules instead provide an exemption where “[t]he utility’s identified resource need is for delivery system resources.”¹⁸ It is not entirely clear what is meant

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

¹⁴ Draft Rules at WAC 480-107-035(4).

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

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

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

¹⁸ 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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EXHIBIT C

October 26, 2018

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RE: Reply Comments of Renewable Northwest, Docket U-161024 Utilities and Transportation Commission's October 11, 2018, Notice of Opportunity to File Written Reply 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 October 11, 2018 Notice of Opportunity to File Written Reply Comments ("the Notice"). We are pleased to offer these Reply Comments following our earlier submission on September 21, 2018, and our participation in the Commission's workshop on October 2, 2018. We continue to support the Commission's efforts to introduce greater fairness and transparency to Washington's competitive procurement process.

In these Reply Comments, we offer responses to the Questions for Consideration included in the Notice. Specifically, we support robust inclusion of an Independent Evaluator ("IE") in competitive procurement processes, we recommend an additional layer of scrutiny beyond the Northwest Power and Conservation Council's assessment when a utility proposes to rely on market purchases to achieve resource adequacy, and we support Commission Staff's proposal to adopt a modified version of Public Counsel's proposed language on transparency. Additionally, we indicate in our answers to some of the questions that we currently take no position on that particular issue.

Altogether, we again thank the Commission for this effort to strengthen the competitive procurement process for Washington investor-owned utilities ("IOUs"), and we hope that our feedback helps lead to final rules that establish a fair, transparent, and competitive process.

II. COMMENTS

Renewable Northwest has structured comments around the questions posed in the Notice. While we appreciate the Commission's guidance that "[c]ommenters need not restrict their comments to the questions presented here," we have no feedback outside the scope of the questions in the Notice.¹

1. Independent Evaluator Requirement

a. Does the incentive of a shortened regulatory approval process for the RFP encourage the use of an IE?

Renewable Northwest is concerned that the proposal to shorten the regulatory approval process when a utility works with an IE may undermine the Commission's goals of ensuring a fair and transparent process that results in the procurement of lowest reasonable cost resources. Specifically, reducing the timeline for stakeholder engagement by half would significantly limit opportunities for stakeholders to analyze the RFP and would therefore deprive the Commission, Commission Staff, the IE, and the utility of feedback that may be critical to a fair and robust process.

Stakeholders and Commission Staff often provide important regional perspectives to complement and inform the IE, the Commission, and the utility. A recent proceeding that exemplifies that role is the 2018 RFP by the Oregon utility Portland General Electric. An IE worked with the utility to prepare the RFP. Still, stakeholder engagement prior to RFP approval by the Oregon Public Utility Commission complemented the IE's participation by offering additional information on issues of particular significance to that utility, including explaining how regional transmission constraints could impact competition in the RFP and how scheduling requirements could impact the value proposition for customers.² The Oregon Commission ultimately found that feedback valuable and incorporated elements of it as conditions attached to RFP approval,³ resulting in a relatively competitive process and Final Short List composed of a variety of technologies and transaction types that PGE and the IE project will result in customer savings.⁴ But that level of feedback likely would not have been available absent a comment

¹ Notice at 1.

² Oregon Public Utility Commission, Docket No. UM 1934, Renewable Northwest Comments on Staff Report (May 1, 2018), available at <https://edocs.puc.state.or.us/efddocs/HAC/um1934hac102944.pdf>.

³ Oregon Public Utility Commission, Docket No. UM 1934, Order No. 18-171 (May 21, 2018), available at <https://apps.puc.state.or.us/orders/2018ords/18-171.pdf>. See, e.g., the Oregon Commission's resolution of an issue relating to bidders' proposed use of conditional firm transmission service at pages 3-4.

⁴ See generally Oregon Public Utility Commission, Docket No. UM 1934, Request for Acknowledgement of the Final Short List of Bidders in Portland General Electric Company's 2018 Request for Proposals for Renewable Resources (Oct. 3, 2018), available at <https://edocs.puc.state.or.us/efddocs/HAH/um1934hah171931.pdf>.

period sufficient for stakeholders to request information, engage with the utility, and formulate careful responses.

While we are concerned about the proposal to reduce opportunities for stakeholder feedback, we reiterate our earlier comments encouraging the Commission to adopt rules that require IE engagement in all or some RFPs as the IE's participation should add significant value to the process and provide important safeguards to ensure that an RFP is fairly designed.

b. Does the use of an IE adequately assure sufficient review of the RFP considering the tradeoff in the length of the stakeholder comment period?

No. While the IE would provide an important layer of review, a 30-day period is not sufficient to allow for robust stakeholder comment. Renewable Northwest has emphasized throughout this RFP rulemaking the value that an IE brings to a procurement process by instilling market confidence. The IE also offers important context on RFP best practices as stakeholders, the utility, Commission Staff, and the Commission work to ensure that an RFP leads to procurement of lowest reasonable cost resources for customers. However, as we outlined above, stakeholder feedback is also important to ensure lowest reasonable cost results for customers. Stakeholders need a meaningful opportunity to inform the RFP process, and the Commission likewise needs a meaningful opportunity to consider all of the information presented to it. Respectfully, we do not consider that the proposed accelerated timeline would provide a meaningful opportunity.

2. Role of the Independent Evaluator

a. How deeply should the IE be involved in the development of the RFP? Should an IE independently score all bids, a sampling of bids, or only bids resulting in utility ownership?

As stakeholders discussed at the Commission's October 2, 2018 workshop, an IE brings significant benefits to a competitive procurement process, but if the IE fully replicates the utility's process then its costs may outweigh those benefits. We consider an appropriate middle ground for the IE to score all bids resulting in utility ownership and a sampling of other bids. However, we note that our proposed role for the IE would only set the floor for IE engagement, and that a utility could choose to increase the sample of bids analyzed by the IE, potentially up to the full population of bids, in order to minimize any perception of bias in the bid-scoring process.

b. How should the IE be involved in communication between the utility and bidders?

Renewable Northwest recommends that the IE be involved in all communications between the utility and bidders. This includes being on the line for phone calls, and copied on correspondence.

c. Should there be a requirement that the IE document and file all communications with the Commission?

Renewable Northwest recommends that the Commission require the IE to document and file all communications. This requirement would help the Commission to ensure that the RFP process is fair and competitive.

d. In situations where there is a direct conflict between the IE and the utility should additional process be proscribed?

Renewable Northwest encourages the Commission to ensure that the rules establish a process subject to Commission oversight when the IE and the utility are in direct conflict. This process is particularly important at two junctures: first, establishment of the RFP itself; and second, establishment of the ranked list of bids.

The current draft rules appear to offer sufficient process and oversight should a conflict occur at the first juncture, establishment of the RFP. Specifically, the rule provision requiring the Commission to “approve, approve with conditions, or suspend the RFP” allows for oversight and resolution of any conflicts that arise during the RFP design phase.⁵

We recommend that the Commission ensure similar oversight and opportunity for resolution should any conflict arise regarding a utility’s ranked list of bids. While the draft rules generally provide for review of utility decisions related to bids at a subsequent rate case⁶ or on application by a bidder who does not receive a contract from the utility,⁷ we can identify in the rules no such review opportunity following a conflict between the IE and the utility. The Commission may wish to consider the Oregon Public Utility Commission’s approach, which provides for Commission review and acknowledgement of a utility’s “Final Short List” of bids—a natural opportunity for resolution of any conflict between the IE, or any other stakeholder, and the utility.⁸

3. Conservation RFP

a. What additional guidance on the development of such a framework would be useful, either in rule or in an adoption order?

Renewable Northwest takes no position on this issue at this time.

⁵ Draft WAC 480-107-015(5).

⁶ Draft WAC 480-107-035(7).

⁷ Draft WAC 480-107-075(1).

⁸ See OAR 860-089-0500 “Final Short List Acknowledgement and Result Publication.”

b. What particular rule language would allow sufficient flexibility to the utility while ensuring conservation RFPs are performed on a cadence to ensure the utility pursues all cost-effective conservation at the lowest reasonable cost?

Renewable Northwest takes no position on this issue at this time.

4. Market Purchases Resource Adequacy Exemption

a. If this idea were to be incorporated into rule, what level of reliance on the market would be reasonable?

The proposed rule presently relies on on the Northwest Power and Conservation Council’s (“NWPPCC”) resource adequacy assessment to establish an RFP exemption. Renewable Northwest appreciates Commission Staff’s clarification that the proposed rule “is not intended to eliminate the need for a utility to perform its own resource adequacy assessment with an IRP.”⁹ While the NWPPCC 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. Failing to prevent that double counting could result in market shortfalls, high energy prices, and possibly even power outages. As a result, we recommend that the Commission amend proposed WAC 480-107-015(4)(b) to include the requirement of a separate utility resource adequacy assessment subject to Commission oversight and approval.

b. Should the degree of reliance be tied to a separate metric? If so, what metric should be used?

Renewable Northwest takes no position on this issue at this time.

c. Should an RFP be required for firm resources whenever there is significant market risk?

An RFP for new resources should be required when there is a resource need coupled with significant market risk, but Renewable Northwest recommends that any rule to this effect should omit the word “firm.” RFP processes around the country are yielding shortlists that include an ever-wider range of resources, including, for example, cost-competitive renewable-plus-storage projects. So too might Washington’s evolving grid be increasingly able to meet resource needs with a diverse set of resources that would not fit into a traditional, narrow definition of firm. Furthermore, variable generation is capable of providing firm capacity, albeit not at a resource’s full nameplate capacity (as measured through metrics such as effective load carrying capability or capacity credit/value). At best, the inclusion of the word firm adds unnecessary ambiguity; at worst, it could prevent potential lowest reasonable cost resources from participating in the RFP.

⁹ Notice at 3.

d. This section also uses the undefined term “short-term market purchases.” Please provide comments on the following proposed definition: “Purchases of energy or capacity on the spot or forward market contracted for a term less than four years.”

Renewable Northwest takes no position on this issue at this time.

5. RFP Transparency

a. Is this language sufficient to elicit the transparency stakeholder’s desire in an RFP? Is this language reasonably flexible?

Renewable Northwest appreciates both Public Counsel’s suggested language and Staff’s additional edit, and we agree that the final proposed language strikes an appropriate balance on transparency. Specifically, the 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 and, at the conclusion of the RFP process, a better chance that the utility procures lowest reasonable cost resources. Moreover, the inclusion of Public Counsel’s new “detailed explanation” language with Staff’s “specifically identified” addition offers flexibility to utilities in how they provide information to bidders while also potentially increasing the scope of the information provided to bidders—a win-win solution.

While we support the language in its current recommended form, we would also recommend that the Commission consider changing the “either ... or” construction to a “[both] ... and” construction under which utilities are required to quantify all criteria: “The RFP must include a sample evaluation rubric that quantifies the weight each criterion will be given during the project ranking procedure **and** provides a detailed explanation of the aspects of each criterion specifically identified that would result in the bid receiving higher priority.” Quantifying the value of each criterion is likely the best way to ensure scoring transparency.

b. Will this requirement result in the utility being tied to and limited to criterion established prior to review of the bids that does not fit or account for the complexity of the evaluation of actual bids?

The intent of the proposed language appears to be to provide clarity to the market about what the utility needs and the best way to meet that need; the language should result in more competitive bids and therefore in the procurement of lowest reasonable cost resources. As we stated above, the narrative element of the rule language affords the utility considerable flexibility while providing additional clarity to bidders. Utility resource needs are unlikely to change materially

over the 90-day RFP process, so the utility should be able to establish at the outset of the process a scoring process that accurately reflects its needs.

Ensuring that bidders have access to an evaluation rubric that accurately reflects a utility's needs at the beginning of the RFP process is particularly important where an RFP allows a utility ownership option, in order to help ensure that third-party bidders are on equal footing with projects on which the utility stands to earn a return. At the October 2, 2018 utilities expressed concern that clearly specifying scoring criteria could result in "bidder gaming." However, a well-designed scoring rubric should mitigate any "gaming" risk while ensuring that potential bidders have sufficient information to present competitive bids.

c. Should instead the utility be required to establish contemporaneous documentation of its criterion prior to receipt of bids and provide its contemporaneous reasoning for any changes to its criterion?

Renewable Northwest supports the language recommended by Public Counsel with the edit suggested by Commission Staff. To the extent the Commission considers alternative language that contemplates a utility's changing its bid-scoring criteria mid-process, however, we recommend that the Commission ensure bidders have the opportunity to amend their bids in response to any such change.

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 26th day of October, 2018.

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