



Puget Sound Energy
P.O. Box 97034
Bellevue, WA 98009-9734
PSE.com

June 29, 2020

Filed Via Web Portal

Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation
Commission 621 Woodland Square Loop SE
Lacey, WA 98503

Re: **Docket UE-190837: Comments of Puget Sound Energy Relation to Purchases of Electricity.**

Dear Mr. Johnson:

Puget Sound Energy (“PSE” or the “Company”) appreciates the opportunity to respond to the questions posed in this docket and submits the following comments in response to the request in the Washington Utilities and Transportation Commission’s (“Commission”) Notice of Opportunity to File Written Comments issued in Docket UE-190837 (“Notice”) on June 1, 2020.

Responses to Commission Questions

- The draft rule at WAC 480-107-015(4), Solicitation Process, shortens the RFP filing period requirement from 135 days to 45 days after a utility files its IRP, reduces the 60- day comment period to 30 days, and requires a Commission decision 60 days after the RFP is filed. The intended outcome is to reduce the time between identifying the resource need and pursuing resources through an RFP. Does the draft rule contain adequate time for public involvement to assure that, in most circumstances, stakeholder concerns are resolved? If not, please recommend an alternative timeline for these filing requirements.**

PSE Response

PSE generally supports shortening the RFP filing period. However, the requirement to file a draft RFP within 45 days after filing an IRP does not provide sufficient time for PSE to prepare an RFP. PSE recommends a minimum 90-day filing period for the RFP after an IRP is filed, contingent upon the independent evaluator (“IE”) selection process finalized in the rule, explained further below.

A minimum 90-day filing period is necessary to accommodate PSE’s process for preparing a resource solicitation and to allow the Commission time to review and acknowledge the IRP. The existing process includes review and revision of the RFP each cycle to ensure that its contents

Received
Records Management
06/29/20 13:52
State Of WASH.
UTIL. AND TRANSP.
COMMISSION

sufficiently address the needs of the request, and that information provided in the RFP reflects accurate and current information available at the time the draft RFP is filed. The process requires engagement with numerous subject matter expert teams to provide input and review, and approval by management.

Because the current rules require that the IE participate in the RFP development process, PSE notes that its recommendation for a minimum 90-day filing period is contingent upon the ability to have an IE in place at the commencement of the RFP process, and the Commission should consider if it is appropriate for an RFP to be issued prior to the Commission's acknowledgement of the IRP. If the IE is not selected and approved by that time, it is likely that more than 90 days will be required to develop the RFP.

PSE supports the other proposed changes to the RFP review and approval timeline, and believes that the changes allow adequate time for public involvement to ensure that most stakeholder concerns are resolved.

- 2. The draft rule at WAC 480-107-015(4), Solicitation Process, includes the requirement that the utility “must accept bids for a variety of energy resources that may have the potential to fill the identified resource needs including, but not limited to...” What burden does this requirement impose? What are the benefits or drawbacks of the rule providing that the utility “may accept bids”?**

PSE Response

As stated in prior comments, PSE believes that the requirement in WAC 480-107-015(7)¹ imposes a significant burden on utilities and bidders, without adding value for utility customers or bidders, in the current procurement paradigm due to the analytical challenge of comparing projects with widely varying attributes that do not lend themselves to reasonable comparisons, and the difficulty of quickly procuring targeted resources in a lengthy and complex process. The structure of the proposed rules, however, suggests the possibility of a new role for the RFP beyond that of procurement, which is to inform the development of a utility's Clean Energy Implementation Plan (“CEIP”).

Specifically, the rules seem to envision that the pricing data that would be obtained through an all-source RFP would be available as an input into establishing the procurement targets (and their associated costs) for specified resources that must be established in the CEIP process. While PSE understands the concept set forth above, there are risks associated with this approach that give PSE pause. Specifically, there are several practical considerations that the Commission should address before it adopts this novel use of an RFP:

The certainty of the pricing in an RFP utilized for this purpose

In order to achieve a level of pricing certainty that would be the most beneficial in developing CEIP targets, the RFP would have to include stringent requirements (e.g., fully permitted, fully financed, transmission secured, etc.), which will limit the pool of

¹ Question 2 references 480-107-015(4), which specifies when a utility must submit an RFP following an IRP. PSE's understands this question to reference 480-107-107-015(7), which is where the language quoted in the question appears.

respondents considerably. Without structuring the RFP in this fashion, there is a significant chance the bids submitted would be unrealistic and could not provide an accurate reflection of prices of truly viable opportunities. As such, PSE believes that it should have the discretion to appropriately weigh the results of the RFP in the CEIP development process rather than be expected to utilize them in a dispositive manner.

The timing of the RFP as currently proposed

As explained in the response to Question 1 above, 45 days is simply not enough time to develop a quality RFP. A hastily conducted RFP may result in bids that are not meaningful or informative in the CEIP development process, nor for procurement.

Maintaining the confidentiality of bids

Presuming that the RFP is intended to inform the CEIP, stakeholders in the CEIP process will likely be interested in the results of the bids, which contain commercially sensitive information that if revealed could provide an unfair advantage to some bidders or discourage bidders from participating in the RFP. If the RFP results must be weighed in the development of the CEIP, perhaps an appropriate role for the IE would be to confirm the veracity of generalized statements that the utility could make about the bids -- without compromising the confidentiality of the bids.

Use of this process for the first CEIP cycle

The first CEIP cycle will be a learning experience for utilities, stakeholders, and the Commission. Given the compressed timelines and ongoing work to implement CETA, PSE suggests implementing this portion of the rule after the first CEIP cycle.

The role of targeted solicitations

As currently drafted, the rule removes an explicit provision in the existing rules that permits a utility to perform targeted resource solicitations on an as-needed basis. Even if the utility is required to accept resources from all bidders as envisioned in the rule, targeted solicitations will give utilities the ability to act quickly to acquire specific types of resources rather than soliciting bids that it will have no intention of considering. Targeted solicitations could be especially important in the context of CETA, where utilities may need to procure specific types of resources (even after filing a CEIP) in order to achieve a procurement target. PSE suggests clarifying that targeted solicitations are permissible.

The requirement for utilities to accept bids from all types of resources as proposed in WAC 480-107-015(7) also seems inconsistent with proposed WAC 480-107-025(1). In pertinent part, WAC 480-107-025(1) permits an RFP to specify:

specific attributes or characteristics the utility is soliciting, such as the amount and duration of power, time and locational attributes, operational attributes, the type of technology or fuel source necessary to meet a compliance requirement, and any additional information necessary for potential bidders to make a complete bid...

PSE requests that the Commission clarify how it envisions that these two sections will interact with each other in the RFP process.

- 3. The “Contents of a solicitation” section of draft rule WAC 480-107-025(5) requires a sample evaluation rubric or, in the alternative, an explanation of the evaluation criterion. This requirement is intended to better enable bidders to design projects and bids that satisfy the resource needs as identified in the RFP. Does the draft language improve the transparency of the evaluation process? If not, please recommend an alternative approach or alternative components of the evaluation criterion that will provide the necessary transparency.**

PSE Response

PSE supports the proposed language, and believes it strikes an appropriate balance between transparency of the evaluation process, and flexibility for the utility to account for the complexity of bids. The prior version of the proposed rule provided transparency by requiring that utilities include a sample evaluation rubric that quantifies the weight each criterion will be given. It did not, however, provide flexibility for utilities to take into account aspects of a project that may have met the rigid scoring requirement, but might not have been the right choice for the customer or the utility for other qualitative reasons. The draft rule appropriately addresses this issue by allowing utilities to provide an explanation of the criterion that would result in a bid receiving higher priority.

- 4. Comments received from stakeholders in this docket on March 13, 2020, presented a variety of options for determining when a utility should be required to use an independent evaluator. Several commenters recommend including a capacity threshold ranging from 20 MW to 100 MW.**
 - a. Are there unintended consequences of using a capacity threshold in WAC 480-107-AAA to decide whether an independent evaluator will add value to the Commission’s review?**
 - b. If a capacity metric (*i.e.*, MW) is used in WAC 480-107-AAA(1)(a), what is the justification for requiring a capacity metric as a threshold for retaining an independent evaluator?**
 - c. Should a metric(s) other than capacity be used in WAC 480-107-AAA(1)(a), in addition to financial interest, to decide whether or not the utility must use an independent evaluator? If so, what considerations should be used to determine the value of that metric.**

PSE Response

As set forth in prior comments in this rulemaking, PSE is concerned that the utilization of an IE in the RFP process could impact PSE’s ability to be agile and to quickly and efficiently act to implement the requirements of CETA. As currently drafted, PSE believes that the requirement could add complexity, uncertainty, and administrative burden that could delay the acquisition process. In the comments section below, PSE sets forth redlines to the proposed rules and

explains how the proposed revisions could help to mitigate these concerns by streamlining the IE process, and clearly defining the role of the IE as more of a facilitator throughout the RFP process rather than an umpire.

With respect to the specific questions above regarding the use of a capacity threshold as a trigger for the requirement to use an IE, PSE notes that it will need to procure significant amounts of resources for the foreseeable future. This need will be driven by CETA, expiring power purchase agreements, retiring resources, and anticipated load growth. Utilizing a capacity threshold to trigger a requirement to use an IE in the RFP process will all but assure that an IE would be required for every all-source RFP. PSE believes that whether this is a desirable outcome depends on the role of the IE – as more of a facilitator, the IE could help the utility to conduct an efficient and effective RFP; as more of an umpire, the IE could be unnecessarily duplicative of the analysis performed by the utility and existing mechanisms to ensure transparency and oversight of the RFP process thereby adding time and complexity to an already lengthy and complicated process.

PSE also recommends revising the draft rule to clarify that short-term resource acquisitions less than five years are exempt from the IE requirement. This is consistent with the approach taken in other states that use an IE for resource acquisition. Utilities must be permitted to continue to pursue short-term resources either inside or outside of a short-term resource RFP without a long process of IE engagement, training, and review in order to meet ongoing, short-term resource needs.

Short-term resource opportunities are generally shorter-lived than long-term resource opportunities, and often require utilities to act nimbly. Furthermore, short-term resources are often used to bridge the need between one RFP and the next, particularly when resources are retired more quickly than expected, in the event of a counterparty default in the context of an existing contract, or other unforeseen events. PSE must act quickly under these circumstances to fill the deficit and may look for a short-term solution to bridge the gap until long-term resources can be brought online. Proposed language for this exemption appears in the comments section below.

- 5. The draft rule at WAC 480-107-135(1)(a) provides for the use of an independent evaluator when a utility has a financial interest in the resource choice, including when a utility is considering repowering one of its owned resources at the end of the resource's life to fulfill the resource need identified in the RFP. The draft rule requires that the repowering of the utility-owned resource be evaluated with the other responsive bids to the RFP. What are the benefits and drawbacks of this requirement?**

PSE Response

With respect to repowering an asset, proposed WAC 480-107-135 seems to essentially require utilities to bid a proposal to repower an existing asset into an RFP in the event that the utility proposes to use the re-powered asset to fill a need in the RFP, and utilize an IE for that

RFP process. While this framework seems sound conceptually, as explained below, a significant drawback is that the length of the RFP process could preclude utilities from acting quickly to take advantage of time-sensitive opportunities such as tax credits on equipment.

Repowering or refurbishing of existing resources often presents a different risk profile and timeline than proposals for new or existing projects through an RFP. A decision to repower or refurbish typically occurs when the value of efficiency improvements for PSE's customers exceeds the cost of the upgrades. The timing of this decision might not align with the RFP process.

- 6. Under certain circumstances, the draft rules at WAC 480-107-AAA require utilities to use independent evaluators, approved by the Commission, to assist in the evaluation and ranking of bids. What qualifications demonstrate that independent evaluators have the training or experience to appropriately weigh and consider CETA's equity provisions in their ranking of project bids?**

PSE Response

The Commission and stakeholders are currently in the process of developing a common understanding of how to implement the equity provisions of CETA, and how to measure compliance. With equity indicators still under development, it is difficult to opine on what may qualify an IE to provide advice on whether CETA's equity provisions have been appropriately weighed and considered in a ranking of project bids.² This could be an appropriate discussion topic for the equity advisory group, to give more thought to how the equity provisions could be considered in the RFP process, as well as what qualifications or experience might be appropriate for an IE. PSE is committed to continuing its active participation in the discussion of this important topic.

- 7. In previous comments, stakeholders have requested various provisions for the consideration of minority-, women-, disabled- and veteran-owned businesses as bidders or subcontractors in utility RFPs. Please provide citations to existing federal, state, or local laws applicable to the requirements of utility RFPs related to minority-, women-, disabled- or veteran-owned businesses and how these affect the language in the draft rule.**

PSE Response

PSE is not aware of any specific federal, state, or local laws directly applicable to the requirements of utility RFPs related to minority-, women-, disabled- and veteran-owned businesses. However, the tax exemption policies contained in CETA for minority-, women-, disabled- and veteran-owned businesses may signal an intent by the Legislature that these types

² As stated in the response to Question 4 above, PSE believes that the IE should have more of a facilitator role rather than an umpire role in the RFP process. While PSE believes that assistance in the evaluation and ranking of bids is an appropriate duty for an IE that is consistent with a facilitator role, PSE is concerned that independently scoring and ranking bids is a role more consistent with that of an umpire.

of bidders or subcontractors should be given some preference in utility RFPs. It is PSE's position that the draft rule language does not need to be modified in order for utilities to create such a preference as part of their RFP evaluation criteria. However, if the Commission expects that utilities give preference to minority-, women-, disabled- and veteran-owned businesses in an RFP issued under these rules, PSE would prefer that the Commission address this through a specific requirement in rule to be clear from the outset.

Comments, Suggested Revisions or Clarifications to the February 6 Draft Rules

1. WAC 480-107-015(4) requires utilities to submit a proposed RFP to the Commission no later than 45 days after the utility's IRP is due to be filed with the Commission. As discussed in the response to Question 1 above, PSE believes that a 90-day filing period is necessary to accommodate PSE's process for preparing a resource solicitation.

*“(4) A utility must submit to the commission a proposed RFP and accompanying documentation no later than ~~forty-five~~ **ninety** days...”*

2. WAC 480-107-015(5)(b) requires utilities to publish information about how stakeholders can follow and participate in the RFP process, as opposed to the RFP itself. PSE suggests the following revision to clarify that bidders may participate in the RFP itself, and other stakeholders may participate and follow the RFP process.

*“(b) On a public webpage, the utility must publish information about how interested persons can participate in the RFP **process**, or follow the utility's RFP work...”*

3. WAC 480-107-015(9) retains an element of the existing rule that permits a utility to issue RFPs more frequently than required by this rule, but eliminates a provision that enables utilities to issue RFPs that limits project proposals to resources with specific characteristics that meet the utility's current needs. As discussed in the response to Question 2 above, PSE believes that the rule should clarify that the utility may conduct targeted solicitations. PSE suggests the following language to address this concern:

*“(9) **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, ...**”*

4. WAC 480-107-AAA requires the use of an IE under specified circumstances. As stated in the response to Question 4 above, PSE believes that an IE that plays a facilitator role would be helpful in conducting an efficient and effective RFP. As currently proposed, however, the IE is akin to an umpire because the rules seem to envision that the IE will conduct a separate analysis in parallel with the utility. It is difficult to envision how an IE could provide a meaningful parallel evaluation without duplicating PSE's work, and the significant resources required to perform it.

Moreover, professional judgment is involved in resource selection, which means that there could be more than one reasonable result based on quantitative modeling results and

commercial qualitative evaluations. Consequently, it is possible, indeed likely, that the IE and the utility could each select reasonable yet different resource solutions. It is not important that PSE select the same resource solution as the IE; rather, it is important that PSE's resource decisions meet the needs of PSE's customers, and that they are reasonable, fair and consistent with Washington state laws and policies.

PSE suggests the following revisions to: (1) shape a role for the IE that results in an opinion on the fairness and reasonableness of the utility's resource evaluation process (rather than conducting a parallel evaluation); and (2) streamline the overall IE process.

- a. WAC 480-107-AAA (1) requires utilities to use an IE under specified circumstances. As discussed in the response to Question 4 above, PSE believes that short-term acquisitions less than five years should be exempt from the IE requirement.

“(1) When required to solicit bids with a term of five years or longer...”

- b. WAC 480-107-AAA (5)(c) appears to require the IE to independently evaluate the unique risks, burdens, and benefits of each bid. As discussed in the response to Question 4 and the beginning of this comment, PSE does not believe this is an appropriate role for the IE. PSE suggests the following language to address this concern:

“(5)(c) ~~Evaluate~~ Verify that the utility's evaluation of the unique risks, burdens, and benefits of each bid is reasonable.”

- c. WAC 480-107-AAA(d) requires the IE to provide “to the Company” specified information. PSE recommends this provision be modified to refer to the “utility” rather than “the Company”, and to clarify the independent evaluator's obligations in the event that confidential data is included in written communications.

“(5)(d) Provide to the ~~Company~~ utility the independent evaluator's... Where confidential data constraints prohibit the independent evaluator from providing the full sufficient.”

- d. WAC 480-107-AAA(h) requires the independent evaluator to prepare a final report to the Commission that reconciles rankings with the utility and explain ranking differences with the utility. For the reasons set forth in the response to Question 4 and the opening of this comment, PSE does not believe that it is appropriate for the IE to independently score bids or perform substantial analysis in parallel with the utility.

PSE recognizes, however, the Commission's desire for an upfront assessment of whether a utility is acting reasonably in scoring bids. One way to provide such an assessment while appropriately protecting the utility's discretion to select the resources it deems appropriate to serve its customers may be for the IE to develop a shortlist of resources, but not independently score and rank these resources. This approach should

address the Commission's interest in having the IE review the reasonableness of the selected resources through the development of the IE's own shortlist, while protecting the utility's discretion to select resources without pitting the utility's professional judgment against that of the IE.

The IE could then explain any material discrepancies between the shortlist it developed and the rankings of qualifying bids that the utility produces pursuant to WAC 480-107-035(4). PSE also believes that it would be beneficial for the utility to have the opportunity to review the report before the IE submits it to the Commission. The purpose of this review would not be to influence the content of the report, but merely to ensure that it does not contain any clear and obvious errors. The following language could be used to implement the framework described above:

~~“(5)(h) Prepare a final report to the commission after reconciling rankings with the utility in accordance with WAC 480-107-035(4) that must:~~

- (i) 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 interested persons and bidders; and*
- (ii) Explain ranking differences and why the independent evaluator and the utility were, or were not, able to reconcile the differences. **Include an assessment of whether the RFP process was conducted fairly and reasonably.***
- (iii) Include a shortlist of resources that might reasonably meet the needs specified in the RFP, and an explanation of any material discrepancies between this list and the ranking of qualifying bids developed by the utility pursuant to WAC 480-107-035(4).*

(6) The independent evaluator shall provide the utility with an opportunity to review the report before it is submitted to the Commission.

- e. WAC 480-107-AAA(7) permits “interested persons” to file comments on the independent evaluator's final report. PSE suggests clarifying that “interested persons” includes the utility.

*“(7) Interested persons, ***including the utility,***...”*

5. WAC 480-107-035(2) requires that the RFP ranking criteria be consistent with a utility's avoided cost methodology, and also requires the utility to “consider the value of any additional net benefits that are not directly related to the specific need requested.” In prior comments, PSE requested revisions to this section to provide additional flexibility in recognition of the fact that IRP and RFP processes can utilize slightly different analytical tools to reach prudent outcomes. PSE requests that the Commission clarify whether the proposed language quoted above is intended to address that concern, and the precise definition of “the value of any additional net benefits” as that term is used in this rule.

6. WAC 480-107-035(4) requires utilities, and the IE if applicable, to score and rank bids following the RFP ranking criteria. For the reasons set forth in Comment 4 above, PSE does not believe that the IE should independently rank and score bids but rather develop a shortlist of resources that might reasonably meet the specified RFP needs. The following revision addresses this concern:

“(4) ~~The utility, and if required under WAC 480-107-AAA, the independent evaluator,~~ will score...”

7. WAC 480-107-035(5) requires utilities to post a summary of project proposals within five days after the sealed project proposals have been opened for ranking. Due to the significant activity that occurs during this part of the RFP process, PSE recommends allowing for ten days to perform this task. PSE also suggests striking the “but complete” to clarify that a utility is not required to provide data that compromises the confidentiality of bids.

*“(5) Within ~~five~~ **ten** days after the sealed project... Where confidential data constraints prohibit a utility from identifying specifics of a project, a generic but complete description is sufficient.”*

8. WAC 480-107-075(4) requires utilities, and the IE if applicable, to re-rank project proposals if there are material changes to a proposal. As stated in Comment 4 above, PSE does not believe that the IE should independently rank and score bids. The proposed edits below address this concern:

“(4)...the utility must suspend contract finalization with that bidder and rerank, and have the independent evaluator rerank when applicable...”

9. WAC 480-107-065(3)(a) permits the utility to file the first competitive procurement framework for conservation and efficiency resources to be filed with the 2022-2024 biennial conservation plan. PSE notes that the time period that will be covered in that plan is 2022-2023, and suggests the following revision:

*“(3)(a)...may be filed with the 2022-~~2024~~**2023** biennial conservation plan.”*

10. WAC 480-107-135 requires utilities to bid a proposal to repower an existing asset into an RFP to fill a need identified in the RFP. It does not, however, appear to limit a utility’s ability to repower the asset as an opportunistic option outside of an RFP, or as a matter of maintenance or upgrades. This distinction is important because these other reasons to pursue the repowering of an asset provide the utility with the flexibility to act nimbly to take advantage of time-sensitive opportunities. As such, PSE requests that the Commission clarify that it does not intend for utilities to utilize an RFP under these circumstances.
11. WAC 480-107-145(2) requires utilities to file a summary report of responses received in an RFP within 30 days of the conclusion of the RFP. PSE has raised several concerns with this provision in prior comments, namely that it is not clear whether this report will be a public document, what the trigger is for the report, and that it may implicate confidentiality

concerns. While PSE appreciates the additional time (90 days) to file the report that the Commission has included in this version of the rule, PSE remains concerned that it may still be in negotiations with counterparties at this time, thereby implicating the privacy concerns discussed in previous comments. This concern is heightened by the rule's new requirement that the report include the number of bids received by location. If this is a public report, disclosing resource size, type, and location could essentially reveal who the bidders are and violate the utility's non-disclosure agreements with bidders. PSE suggests the following language to address these concerns:

“(2) The utility must file with the commission within 30 days of the execution of contracts for all of the selected RFP short list resources ~~90 days of the conclusion of any RFP process~~, a summary report of responses that the Commission may elect to make public. including, at a minimum: The utility shall not be required to disclose any confidential information that may violate the terms of the non-disclosure agreements utilities sign with RFP bidders. The utility may generalize information in the report to the extent necessary to protect the anonymity of bidders in the RFP process. The report must include, at a minimum...”

PSE appreciates the opportunity to provide responses to the questions identified in the Commission's Notice of Opportunity to File Written Comments. Please contact Nate Moore at 425-456-2622 or Kara Durbin at 425-456-2377 for additional information about these comments. If you have any other questions please contact me at (425) 456-2142.

Sincerely,

/s/ Jon Piliaris

Jon Piliaris
Director, Regulatory Affairs
Puget Sound Energy
PO Box 97034, EST07W
Bellevue, WA 98009-9734
425-456-2142
Jon.Piliaris@pse.com

cc: Lisa Gafken, Public Counsel
Sheree Strom Carson, Perkins Coie