

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

In the matter of

Puget Sound Energy's Draft 2021
Request for Proposals for All Sources

DOCKET NO. UE-210220

NORTHWEST & INTERMOUNTAIN
POWER PRODUCERS COALITION
COMMENTS ON REVISED RFP

I. INTRODUCTION

The Northwest & Intermountain Power Producers Coalition (“NIPPC”) provides these additional comments in response to Puget Sound Energy’s (“PSE’s”) revised Proposed All-Source Request for Proposals (“Revised Proposed RFP”). Overall, NIPPC appreciates that PSE has resolved some stakeholder concerns, including a portion of NIPPC’s concerns. However, NIPPC still has concerns with the Revised Proposed RFP’s structural bias in favor of a utility ownership option, particularly PSE’s proposed bid adder that PSE intends to use to penalize non-utility ownership bids. NIPPC provides these comments to clarify which concerns in its prior comments have been resolved and which concerns continue to require correction. NIPPC maintains its recommendation that the Commission to conditionally approve the Revised Proposed RFP, and order PSE to make revisions prior to releasing it to bidders.

II. COMMENTS

NIPPC has retained the original organization and headings of its prior comments filed May 17, 2021. NIPPC provides additional detail on the bid adder in Section A below, and provides a brief status update on all other items below. In summary, NIPPC believes the following items remain unresolved: 1) PSE’s proposed bid adder on PPAs;

2) the lack of adequate information for bidders to choose a cost-effective point of delivery; 3) the prohibition on economic sub-hourly scheduling; 4) the inadequate information and time regarding assessing term sheet edits for risk; 5) PSE's plans to apply generic ELCC values that need further evaluation; 6) the lack of transparency regarding PSE's proprietary model and plans for term normalization; 7) the jury trial waiver in the term sheets; 8) the use of overly subjective and non-transparent non-price factors, especially regarding transmission and ancillary services and imputed debt; 9) the need for clarity on a potential new QF interconnection process; and 10) other items requiring further specificity and clarification. As detailed below, the outstanding issues almost entirely are in areas in which this Revised Proposed RFP is biased in favor of utility ownership options.

A. The Proposed RFP's Bid Adder on PPAs is Contrary to the Legislature's Intent and Exacerbates the Biases Towards Utility Ownership Options

Not Resolved – NIPPC maintains its prior comments and provides additional explanation below. NIPPC recommends that the Commission order PSE to remove the bid adder from the Revised Proposed RFP.

1. The Proposed Bid Adder is a Penalty on PPA Bids

PSE proposes to penalize PPA bids based on a speculative cost to ratepayers. NIPPC explains in the next section why the cost is speculative. As an initial matter, NIPPC explains the mechanics of cost factors in the RFP and why the bid adder will act as a penalty.

In an RFP, bidders provide various information about their projects, and utilities sum these costs for comparative purposes. PSE's Revised Proposal RFP seeks to add a

new cost to the sum for PPA bids only.¹ In past RFPs, the comparison would be a utility ownership bid *X* against PPA bid *Y*. Now, PSE's Revised Proposed RFP seeks to consider utility-ownership bid *X* against PPA bid *Y-plus*. As a matter of simple mathematics, PSE's proposal to change PPA bids from *Y* to *Y-plus* will add more costs to the PPA bids and necessarily make the PPA bids rank as if they are less competitive than in prior RFPs.

This is a penalty, and it makes utility ownership bids more likely to win the RFP. Consider, as a hypothetical, a utility-ownership bid *X* of \$10.5 million versus a PPA bid *Y* of only \$10 million. In an RFP without the PPA adder, the appropriate bid-ranking would recognize that the PPA bid of \$10 million is a lower cost option for ratepayers versus the \$10.5 million utility ownership bid. However, PSE proposes to assume that the PPA bid will cost *Y-plus*, with a minimum return of at least 5.50 percent.² Therefore, in PSE's Revised Proposed RFP, the bid-ranking will show that the utility ownership bid is lower cost, because PSE will assume that the PPA bid is \$10.55 million. Nothing has changed in terms of the costs of resources or the costs to ratepayers, but the bid-ranking will change based on PSE's assumption.

NIPPC understands that PSE's position is that the Revised Proposed RFP is fair, as long as the PPA includes a bid adder to balance the utility return on rate base. NIPPC believes this misses the entire point of allowing a return on a PPA, which is to address the inherent bias toward utility ownership rather than add yet another thumb on the scale for utility ownership.

¹ PSE 2021 All-Source RFP at 26 (June 8, 2021 Revised).

² PSE 2021 All-Source RFP at 26 (June 8, 2021 Revised).

PSE also claims that including the bid adder does will not result in the PPA bid receiving a lower score and being less likely to be selected.³ PSE’s position is concerning because it fails to reflect basic arithmetic. Including the bid adder will directly harm PPA bids and make it more likely that a utility ownership bid will win, which is contrary to the intent of legislature and entire purpose of this provision of CETA.

NIPPC agrees with the comments of the NW Energy Coalition regarding the legislative intent to “neutralize the self-build incentive, allowing projects owned and operated by third parties to compete on an even playing field with utility-owned resources.”⁴ In practical effect, the legislature sought to make it more likely for a PPA bid to win an RFP. By contrast, PSE’s penalty will have the opposite effect. The Commission should order PSE to correct its RFP and bring it into accordance with the legislative intent.

2. Ratepayers Will Not Necessarily Pay More for a PPA Bid, Because PSE Ignores That the Bid Adder on PPAs Could be Zero

In response to the concerns raised by Renewable Northwest, NW Energy Coalition, and NIPPC, PSE states in part that “PSE plans to use the range of possible returns on a power purchase agreement authorized in the Washington Clean Energy Transformation Act (between the cost of debt and the authorized rate of return) as book

³ Attachment A at 2 (“PSE denies that a power purchase agreement bid would receive a lower score and be less likely to be selected if PSE includes a return on the power purchase agreement in the request for proposals, than if PSE does not include a return on the power purchase agreement in the request for proposals.”).

⁴ See NW Energy Coalition Comments at 2.

ends for its quantitative analysis.”⁵ PSE also refers to these two numbers as reflecting “the choice” of return.⁶ In other words, PSE assumes that the lowest possible return that PSE shareholders might earn on a PPA pursuant to RCW 80.28.410 is the cost of debt. This is incorrect as a matter of law, and it is inappropriate as a matter of policy and upholding legislative intent.

The Commission has discretion to deny any return on a PPA under RCW 80.28.410. The statute authorizes utilities to defer costs for “later consideration by the commission.”⁷ The statute explicitly recognizes that “[c]reation of such a deferral account does not by itself determine the actual costs of the resource or power purchase agreement, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding.”⁸ Yet the Revised Proposed RFP assumes the Commission’s decision is already made and there will be a return on PPAs at least equal to the cost of debt. The Revised Proposed RFP should recognize that the bid adder on a PPA could be *zero*.

NIPPC emphasizes that the likelihood of the Commission disallowing a return on PPA is materially different from the (much greater) likelihood of the Commission allowing a return on an ownership resource. The Commission has never considered a return on a PPA under the Clean Energy Transformation Act, thus there is no precedent

⁵ PSE 2021 All-Source RFP: Summary of Public and WUTC Staff Comments at 15, 24, 27 [hereinafter PSE 2021 Summary of Comments]. This document was attached to PSE’s June 1, 2021 filing as Attachment A. NIPPC understands PSE made further revisions for the June 8, 2021 filing, but PSE’s June 8, 2021 revisions did not resolve NIPPC’s remaining concerns.

⁶ PSE 2021 Summary of Comments at 15.

⁷ RCW 80.28.410(1), (2).

⁸ RCW 80.28.410(1).

for assuming without support that the Commission will approve a return on a PPA.⁹ NIPPC understands that there is ordinarily a reasonable presumption that the Commission will allow a utility to earn some return on its investments, consistent with the utility's constitutional rights.¹⁰ However, this is not a guarantee that the Commission will allow a return on a PPA under RCW 80.28.410. On the contrary, the Commission has disallowed PPA-related costs in recent times.¹¹ NIPPC anticipates that the Commission will apply a *heightened* standard in examining whether it is appropriate for a utility to recover not only its costs under a PPA, but to earn a return as well.

B. The Proposed RFP Will Provide Insufficient Data to the Independent Evaluator and Is Inconsistent with WAC 480-107-023(4) and -035(4)

Resolved – NIPPC appreciates PSE's responsive edits.¹²

⁹ NIPPC discusses some of the many questions that the Commission would likely need to consider and address in its prior comments on PSE's now-withdrawn 2020 RFP. *See generally In Re PSE's Proposed All-Generation Sources RFP*, Docket No. UE-200414, NIPPC Comments (July 6, 2020). NIPPC expects that there would likely be additional questions and considerations beyond those identified only by NIPPC.

¹⁰ The Washington Supreme Court has recognized that:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs [sic] for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

People's Org. for Wash. Energy Res. v. Comm'n, 711 P.2d 319, 328 (Wash. 1985) (emphasis omitted) (citations omitted) (internal quotations omitted).

¹¹ *PacifiCorp v. Comm'n*, 376 P.3d 389, 396, 398-401 (Wash. Ct. App. 2016).

¹² *See* PSE 2021 Summary of Comments at 30.

C. The Proposed RFP’s Restriction on Updating Bids to Phase 2 Bidders Is Unfair and Inconsistent with WAC 480-107-075(4)

Resolved – NIPPC withdraws its objection after discussions with WUTC Staff.

D. The Proposed RFP’s Preference for Network Integration Transmission System Does Is Confusing and There Is Not Adequate Information for Bidders to Choose a Cost-Effective Point of Delivery

Resolved in Part – NIPPC appreciates PSE’s responsive edits regarding network integration transmission service.¹³

However, PSE has still not provided adequate information for bidders to choose a cost-effective point of delivery. For example, Exhibit H identified a list of points of delivery, but is unclear whether delivery at any of these specific locations will receive a higher score or if PSE prefers any specific location. Similarly, it is unclear if PSE will accept power deliveries at other locations, or if they will simply provide a lower score at different locations. These are simple changes that PSE can make. This provision will otherwise primarily harm PPA bids.

E. The Requirement for Hourly Scheduling May Prevent Economic Sub-Hourly Scheduling

Not Resolved – NIPPC maintains that: 1) sub-hourly scheduling could be the least-cost option; and 2) the Revised Proposed RFP should be revised to ensure that any least-cost bid with sub-hourly scheduling is not excluded from the analysis. This will primarily harm PPA bids.

¹³ See PSE 2021 Summary of Comments at 31.

F. PSE Should Explain How It Will Assess Term Sheet Edits for Risk, Particularly Because Three (3) Business Days Is Insufficient to Cure Many Issues

Not Resolved – NIPPC maintains its prior comments without repeating them here.

This will primarily harm PPA bids.

G. PSE’s Plan to Calculate ELCC Values Is Incomplete and Likely Inaccurate, Particularly in the Treatment of Biomass, Solar, and Solar Plus Storage

Resolved in Part – NIPPC appreciates PSE’s responsive edits and commitment to “take ... into consideration in its analysis” information for any bid that demonstrates that the “proposal ... significantly differs from the associated generic assumption.”¹⁴ NIPPC also appreciates PSE’s commitment to host a workshop about PSE’s generic ELCC assumptions.¹⁵ NIPPC recommends that stakeholders should be allowed to submit comments on any changes (or lack thereof), and the Commission should review those changes prior to the completion of the RFP.

H. PSE Should Explain Its Proprietary Model and How It Will Conduct Term Normalization

Resolved in Part – NIPPC appreciates PSE’s responsive edits and explanation.¹⁶

NIPPC cannot determine from PSE’s explanation whether PSE’s approach is reasonable, but NIPPC does not recommend any further action on this point. This will primarily harm PPA bids.

¹⁴ See PSE 2021 Summary of Comments at 33-34.

¹⁵ See PSE 2021 Summary of Comments at 34.

¹⁶ See PSE 2021 Summary of Comments at 34.

I. The Proposed RFP’s PPA Term Sheet Imposes an Inappropriate Jury Trial Waiver

Resolved in Part - NIPPC appreciates PSE’s responsive edits to delete the discrepancy in treatment of bid types.¹⁷ However, NIPPC maintains that a jury waiver requirement is inappropriate and should be deleted. NIPPC understands that the PPA Term Sheets are the starting point for negotiations with the bidders; however, it can be difficult for a bidder to remove a provision like this once the utility has expressed their interest. NIPPC notes that if the Term Sheets do not include the jury trial waiver, then a bidder can request it be included. There will be some bidders that want a jury trial waiver, and it will be easy for them to express their interest and obtain the provision if it is excluded from the pro format Term Sheet. This default requirement will otherwise primarily harm PPA bids.

J. The Proposed RFP’s PPA Term Sheet Imposes an Assignment Provision that Could Be Onerous

Resolved – NIPPC appreciates PSE’s commitment to “not penalize a smaller bidder for proposing a smaller minimum” than the term sheet states.¹⁸

K. The RFP is Too Subjective, and the Non-Price Factors Should Be Limited and the Price Factors Clarified

Not Resolved – NIPPC maintains its prior comments without repeating them here. This will primarily harm PPA bids.

¹⁷ See PSE 2021 Summary of Comments at 35.

¹⁸ See PSE 2021 Summary of Comments at 36.

1. PSE Should Clarify Why And How Some Cost Factors Are Not Assumed To Be Included in PPA Bids

Resolved – NIPPC appreciates PSE’s commitment to “not double count costs” and explanation that it will review additional cost details to identify potential questions for a bidder.¹⁹

2. PSE Should Clarify the Fuel Cost Factor and Consider Allowing Fuel Tolling Bids

Resolved – NIPPC appreciates PSE’s explanation that bidders are welcome to submit information about tolling or other structural arrangements with their bids.²⁰

3. PSE Should Clarify Transmission and Ancillary Services Cost Factors

Resolved in Part – NIPPC appreciates PSE’s commitment to “not double count costs.”²¹ However, NIPPC maintains that additional transparency is needed. This will primarily harm PPA bids.

4. PSE’s Treatment of Imputed Debt Is Inappropriate

Not Resolved – NIPPC maintains its prior comments without repeating them here. This will harm PPA bids.

5. PSE’s Penalty for Recent Litigation Is Inappropriate

Resolved – NIPPC appreciates PSE’s responsive edits and explanation that “PSE would distinguish litigation that did not involve a breach by the bidder.”²²

¹⁹ See PSE 2021 Summary of Comments at 38.

²⁰ See PSE 2021 Summary of Comments at 38.

²¹ See PSE 2021 Summary of Comments at 38, 39.

²² See PSE 2021 Summary of Comments at 41.

L. PSE Should Provide an Opportunity to Comment on Any Developing QF Interconnection Documents and Procedures Prior to RFP Approval

Resolved in Part – NIPPC appreciates PSE’s explanation about proposed process but maintains that any change should be addressed prior to RFP approval.²³ This will harm PPA bids.

M. The Proposed RFP Needs Much More Specificity and Clarifications

Resolved in Part – NIPPC appreciates PSE’s explanation but maintains that additional clarity is warranted.²⁴ This will primarily harm PPA bids.

III. CONCLUSION

For the foregoing reasons, NIPPC respectfully requests that the Commission condition its approval of the Revised Proposed RFP on the proposed revisions and clarifications discussed herein and in NIPPC’s comments filed May 17, 2021.

Dated this 10th day of June 2021.

Respectfully submitted,



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²³ See PSE 2021 Summary of Comments at 41-42.

²⁴ See PSE 2021 Summary of Comments at 42.

Attachment A

PSE Responses to NIPPC RFP Questions

From: [All Source RFP mailbox -- mail -- <AllSourceRFPmailbox@pse.com>](mailto:AllSourceRFPmailbox--mail--<AllSourceRFPmailbox@pse.com>)
To: [Irion Sanger](#)
Cc: [Spencer Gray](#); [Joni Sliger](#)
Subject: RE: NIPPC RFP Questions
Date: Tuesday, June 8, 2021 2:35:26 PM

Mr. Sanger,

Thank you for your questions. Please find PSE's responses below:

- 1. If Puget Sound Energy ("PSE") seeks to recover a rate of return on a power purchase agreement ("PPA") entered into through the Proposed All-Source Request for Proposal ("RFP"), please confirm that the Washington Utilities and Transportation Commission (the "Commission") may decide not to authorize PSE any rate of return on the PPA?**

RCW 80.28.410(1) states, in pertinent part, as follows:

Creation of such a deferral account does not by itself determine the actual costs of the resource or power purchase agreement, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding.

RCW 80.28.410(1).

- 2. If PSE seeks to recover a rate of return on a PPA entered into through the RFP, please confirm whether PSE would reject the bid and/or cancel the PPA if the Commission decided not to authorize PSE any rate of return on the PPA? If PSE would reject the bid or cancel the PPA, please explain how PSE intends to obtain a Commission decision prior to PPA execution, or how PSE would cancel the PPA after execution.**

PSE has not formed an opinion as to whether it would reject a bid and/or cancel a power purchase agreement if the Commission decided not to authorize PSE any rate of return on the power purchase agreement. Furthermore, PSE does not have an opinion as to any Commission procedure that would, or would not, give rise to the hypothetical posed in the question.

- 3. If PSE seeks to recover a rate of return on a PPA entered into through the RFP, please identify the factors and considerations that PSE expects that the Commission will consider when deciding whether to authorize PSE a rate of return on the PPA.**

PSE declines to opine on what factors and considerations the Commission will consider when deciding whether to authorize PSE a rate of return on the PPA in a general rate case or other proceeding.

- 4. If the Commission authorizes PSE to earn a rate of return on the PPA, please identify the factors and considerations that PSE expects that the Commission will consider when deciding what rate of return to authorize.**

If the Commission were to authorize PSE to earn a rate of return on a power purchase agreement, PSE expects that the Commission will consider, at a minimum, whether such rate of return is consistent with RCW 80.28.410(2)(b), which provides as follows:

- (b) For the duration of a power purchase agreement, a rate of return of no less than the authorized cost of debt and no greater than the authorized rate of return of the electrical company, which would be multiplied by the operating expense incurred by the electrical company under the power purchase agreement.

RCW 80.28.410(2)(b).

5. Please confirm that a PPA bid will receive a lower score and be less likely to be selected if PSE includes a return on the PPA in the RFP, than if PSE does not include a return on the PPA in the RFP.

PSE denies that a power purchase agreement bid would receive a lower score and be less likely to be selected if PSE includes a return on the power purchase agreement in the request for proposals, than if PSE does not include a return on the power purchase agreement in the request for proposals. The scores and ranking of bids received in response to a request for proposals process are relative in nature and result from the quantitative and qualitative rankings of each proposal. Given the relative nature of the scoring and ranking process, there is no reason to believe that a power purchase agreement bid would receive a lower score and be less likely to be selected if PSE includes a return on the power purchase agreement in the request for proposals, than if PSE does not include a return on the power purchase agreement in the request for proposals.

From: Irion Sanger <irion@sanger-law.com>

Sent: Friday, June 4, 2021 3:21 PM

To: All Source RFP mailbox -- mail -- <AllSourceRFPmailbox@pse.com>

Cc: Spencer Gray <sgray@nippc.org>; Joni Sliger <joni@sanger-law.com>

Subject: NIPPC RFP Questions

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NIPPC is submitting the following questions regarding the RFP.

- If Puget Sound Energy (“PSE”) seeks to recover a rate of return on a power purchase agreement (“PPA”) entered into through the Proposed All-Source Request for Proposal (“RFP”), please confirm that the Washington Utilities and Transportation Commission (the “Commission”) may decide not to authorize PSE any rate of return on the PPA?
- If PSE seeks to recover a rate of return on a PPA entered into through the RFP, please

confirm whether PSE would reject the bid and/or cancel the PPA if the Commission decided not to authorize PSE any rate of return on the PPA? If PSE would reject the bid or cancel the PPA, please explain how PSE intends to obtain a Commission decision prior to PPA execution, or how PSE would cancel the PPA after execution.

- If PSE seeks to recover a rate of return on a PPA entered into through the RFP, please identify the factors and considerations that PSE expects that the Commission will consider when deciding whether to authorize PSE a rate of return on the PPA.
- If the Commission authorizes PSE to earn a rate of return on the PPA, please identify the factors and considerations that PSE expects that the Commission will consider when deciding what rate of return to authorize.
- Please confirm that a PPA bid will receive a lower score and be less likely to be selected if PSE includes a return on the PPA in the RFP, than if PSE does not include a return on the PPA in the RFP.

Do not hesitate to reach out if you have any questions.

Have a nice weekend.

Thanks

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