

June 29, 2020

VIA ELECTRONIC FILING

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

Received
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06/29/20 15:58
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UTIL. AND TRANSP.
COMMISSION

Re: Docket UE-190837—PacifiCorp’s Comments on the Draft Rules considering changes to WAC 480-107, Purchase of Electricity in light of RCW 19.405, other legislative changes since 2006 and changes in the electric industry.

The Washington Utilities and Transportation Commission (Commission) issued a Notice of Opportunity to Submit Written Comments on its draft rules considering changes to the Purchase of Electricity as part of the Clean Energy Transformation Act (CETA) on June 1, 2020. In this notice, the Commission requested responses to specific questions about the draft rules. PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp) respectfully submits its responses to the Commission’s specific questions and comments on the draft rules.

PACIFICORP’S RESPONSES TO THE COMMISSION’S QUESTIONS

- 1. 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.**

No. While the PacifiCorp appreciates the Commission’s desire to expedite a decision regarding the approval of a new RFP after a utility files its IRP, by filing an RFP within 45 days of filing the IRP, it is highly likely that the RFP will not be consistent with the action plans or “resource need” that is in the acknowledged IRP, including any changes responsive to conditions that might be required by the Commission. Therefore, we do not support filing the RFP prior to acknowledgement of the IRP, unless the IRP acknowledgement and RFP approval processes can be implemented in parallel. Even then, PacifiCorp has concerns with the truncated schedule as set forth below.

Separate from the question of IRP acknowledgement, PacifiCorp suggests that this proposed schedule will not allow adequate time:

- for the selection of an independent evaluator through an RFP process, including comments and participation by staff and interested parties,

- to permit a reasonable review and comment period for staff and all interested parties regarding the derivation of a new RFP's rules and guidelines, and
- To ensure required approvals from other states that may be required by multi-state utilities.

The proposed timeline suggests that the Commission is comfortable with an expedited RFP process that begins before the underlying IRP is has been acknowledged by the Commission. If an RFP is issued to the market, and the Commission later determines the associated IRP was not developed in accordance with the Commission's IRP rules, it is unclear how this might affect the procurement process, which could be well underway. Such an outcome would be inefficient and potentially frustrate bidders participating in the RFP.

Therefore, PacifiCorp suggests the following generic schedule after the Commission receives notice that an RFP will be issued through an IRP filing. The following schedule is illustrative of the RFP timelines incurred in other states in which PacifiCorp has competitive bidding rules and requires an approval of solicitation process and RFP. Note, in suggesting this generic schedule, PacifiCorp assumes that the general timing of the RFP dovetails with PacifiCorp Transmission's required interconnection cluster study process schedule, which is regulated by Federal Energy Regulatory Commission:

- One hundred-twenty (120) days between when the IRP is filed and when the RFP process is initiated and notice of a RFP filed with the Commission. This allows for:
 - Sixty (60) days to solicit and contract with an independent evaluator for Oregon and Utah.
 - Fifteen (15) days for to hold a required Pre-Bidder issuance conference in Utah, previewing the RFP process with bidders and interested stakeholders.
 - Fifteen (15) days for a requirement in Oregon to seek pre-approval for the RFP scoring and evaluation process, including a utility-led workshop previewing the RFP and answering questions about the price- and non-price scoring methodologies and selection process.
 - Thirty (30) days additional time to incorporate feedback from the Independent Evaluator, interested parties, and the respective commission staffs on the RFP process and timeline following the Pre-Bidder issuance and the evaluation process review.
 - Therefore, PacifiCorp suggests that a minimum of 120 days should be considered from the IRP filing to the utility filing of a formal initial draft of the RFP with the Commission.
- Forty-five (45) days from the date of the draft RFP filing for interested parties to provide comments on the filed RFP documents. This is consistent with the rules in Utah and ongoing practice in Oregon.
- Sixty (60) days from the date of filing until Commission approval/disapproval. This is consistent with the requirements in Utah and meets the timeline in Oregon.
- From the date of a Commission approved RFP, additional time may be required to finalize the RFP for issuance for:
 - Incorporation of any conditions by Washington or other states.
 - Readjustment of schedule to align with other state's regulatory processes.

- In PacifiCorp's case, adjustment of schedule to be consistent its interconnection cluster study process as defined in its Open Access Transmission Tariff ()

While this schedule would likely accommodate most utilities' needs, PacifiCorp would also support rule language allowing for a more flexible process. Each utility procurement is different and a schedule appropriate in one case may not serve customers well in another – for instance, larger all-source procurements may require more process than a small, demand-response specific procurement.

Finally, PacifiCorp wishes to emphasize the importance that the Commission consider the adoption of rules and guidelines similar to those of other states served by PacifiCorp, such as Oregon and Utah. Such alignment will create a single, consistent RFP procurement process whereby all states served by PacifiCorp can benefit from its six state geographic diversity – a matter of significant relevance when considering the procurement of competitive renewable generation and underlying wind and solar resources. Attempting to administer multiple RFPs in accordance with varying RFP requirements (such as bidder eligibility, bid scoring criteria, and different RFP review and approval timelines) will frustrate bidders and may cause customers to miss potentially valuable resource opportunities. Issuing an RFP for resources to serve customers in all of PacifiCorp's six states provides unique economies that likely would be lost if Washington's process is materially inconsistent with other states' processes.

- 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”?**

PacifiCorp recommends the replacement of “must” with “may” to allow for more targeted and efficient resource solicitation efforts. The burden of combining multiple resource types (generating resources versus demand response or energy efficiency for example) is a difficult and time consuming process to compare resources of very different minimum eligibility requirements, production and dispatch profiles, pricing mechanisms, contractual structures, term lengths, capacity sizes, locations, technologies, credit requirements, required schedules etc. While the IRP action plan may recommend the procurement of various types of resources in the planning horizon, certain solicitation efforts are more efficiently and timely done via separate RFP processes that rely on the expertise of separate teams.

Further, PacifiCorp disagrees that it must accept bids during *each* solicitation cycle from all of the following: 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. For example, qualifying facilities and shorter term market purchases have their own procurement mechanisms with different requirements and fall outside of long term new resource procurement. Accepting them into the solicitation would create more burden and bid confusion than value. Conservation and efficiency programs are often developed separately over different time horizons by service providers and often enable ratepayer ownership of efficiency upgrades through rebates, incentives and

unique time based opportunities such as pilot programs. As such, conservation programs should be excluded from RFP solicitation cycles and pursued through separate calendars and initiatives.

In the case of PacifiCorp's upcoming RFP, the company plans to issue an "all-resource" request for generation resources while concurrently issuing a demand RFP, bringing the best bids from each together in the final shortlist evaluation and selection. Separate teams will evaluate and select resources to meet their respective action plan targets. The IRP model will then be updated at the end of the respective RFP processes with real market bids. These models will be re-run to finalize an optimal mix between generating resources and demand response resources. This approach allows PacifiCorp to gain the benefit of considering multiple technologies to meet a resource need, while recognizing that it may be practically difficult or infeasible to review different resource types in a single RFP.

With respect to demand response, conservation and energy efficiency, these resources have different market participants, different capacities, different contracting mechanisms, and different economies of scale that may or may not prudently support the cost of an independent evaluator or additional solicitation rules. The bid requirements (documentation, security, contract review) and evaluation of a 100 MW wind farm, for example, should be very different than that of an industrial load shedding or grocery refrigeration upgrade program or a residential window upgrade or duct sealing incentive program. The benefit of allowing the utility to separate these processes and optimize their internal resources, teams and solicitation requirements for the specific resource type is that resource evaluation and acquisition can occur much faster with more tailored resources.

Finally, PacifiCorp supports rule language that would allow a utility to require satisfaction of transparent, minimum eligibility requirements. This would allow a utility to limit bids to those that are factually able to meet the utility's identified resource need. For instance, a utility might reasonably require evidence that a bidder has submitted a request for interconnection to its transmission system. Otherwise, the utility will waste resources assessing infeasible bids. PacifiCorp has proposed language in its redline of WAC 480-107-025 consistent with what Oregon has adopted in OAR Division 860-089.

- 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.**

It is unclear whether WAC 480-107-025(5) applies to evaluation and scoring of price or non-price bid criteria. PacifiCorp supports the requirement to provide either a sample non-price scoring rubric or a detailed explanation of the criteria. While these rules are first steps in creating a transparent RFP, PacifiCorp recommends certain additional measures based on the rules in Oregon and Utah.

First, PacifiCorp recommends that all non-price criteria be converted into a bid characteristic that can be objectively scored, or make the attribute a minimum threshold. In this way, PacifiCorp can more efficiently score bids, and the criteria is stated in a way that the independent evaluator can review and validate the scoring. Further, bidders who do not meet certain minimum criteria will not be eligible to bid unless they cure their proposals within required RFP evaluation timeframes. PacifiCorp has provided a rubric of non-price scoring criteria that allow bidders to self-score in prior comments in U-161024, and would support a requirement to do so in future proceedings.

PacifiCorp's generating resource solicitations have historically included an explanation of the evaluation criteria and scoring process in the RFP documents. There are two distinct components of PacifiCorp's RFP bid evaluation scoring processes: price and non-price considerations. PacifiCorp strives for transparency in explaining how price scoring is calculated and discloses in the RFP documents the objectively measured non-price scoring matrices designed to allow bidders to simulate a "self-score" before their bid submission.

Oregon's rules provide a good model. In accordance with OAR division 860-89, an electric company must, prior to preparing a draft RFP, develop and file for approval a proposal for scoring and any associated modeling. As such, PacifiCorp is required to get approval of its evaluation methodology and provides its scoring models to the independent evaluators in both Oregon and Utah for review, validation, and comment.

Further, PacifiCorp would support a requirement that utilities provide a narrative or tabular explanation of price scoring, in the interests of transparency for bidders. However, PacifiCorp does not share its proprietary price scoring excel files with bidders nor is it able to share – due to intellectual property restrictions and licensing agreements – its IRP portfolio optimization models with either the independent evaluators or bidders; however the independent evaluator are provided with all of the inputs to and outputs from the IRP models.

Specific to price, the evaluation should consider the delivered revenue requirement costs netted against tax incentives (*e.g.*, PTCs) and other possible customer benefits, such as terminal value (if applicable) and location-specific energy and operating reserve benefits calculated via PacifiCorp's modeling tools. This usually represents 70-80% of the overall bid score. In PacifiCorp's current 2020AS RFP, a matrix or rubric has been provided showing the scoring components in the bid evaluation section of the solicitation.

The non-price items in Utah and Oregon have been consistently comprised of the following items over the last few years and represented between 20-30% of the overall bid score. These have evolved based on the type of resources being solicited and are now developed in a manner so bidders can self-score.

- compliance with RFP rules and instructions;
- contract review and comment by the bidder of the relevant, RFP-provided, power purchase agreements and/or build and transfer agreement which are included in the RFP document;
- project development and construction experience;
- demonstration of site control;
- demonstration of interconnection status;

- demonstration of environmental compliance, permits; and
- demonstration of major equipment procurement.

Finally, PacifiCorp suggests modifying the draft rule to specify that a resource need is identified in a utility's IRP, not its RFP.

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?**

While appropriate for utility-scale generating resource solicitations, independent evaluators impose considerable cost and administrative burden as part of the RFP process. Therefore, a capacity threshold should be used in determining whether an independent evaluator is necessary for any solicitation process. Oregon has an applicability threshold for procuring resources greater than 80 MW and having terms greater than 5 years in length, for which utilities are required to follow the competitive bidding rules in OAR Division 860-89. Utah's rule C54-17 requires an independent evaluator and an RFP to procure any resource that is 100 MW or more of new generating capacity and a dependable life of 10 or more years.

PacifiCorp recommends adoption of a "Significant Energy Resource" definition in Washington, which should be defined as 80MW or more of capacity, and more than five years in term length. PacifiCorp suggests a comprehensive definition in Attachment A, as well as to the "Other Comment" section of these comments.

- 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?**

Please see PacifiCorp's response to Part A.

- 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?**

Yes. PacifiCorp also supports the use of an independent evaluator when the utility submits a self-build option or any utility subsidiary or affiliate may participate in a Significant Energy Resource RFP.

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?

PacifiCorp has suggested the use of an independent evaluator associated with any RFP for new generation resources in excess of the Significant Energy Resource size recommended in PacifiCorp's response to question 4, whether or not the utility is considering a benchmark self-build and owned bid.

However, PacifiCorp would not support this requirement for repowering existing resources. A utility may have other reasons to repower its owned assets such as safety and reliability reasons. Repowering may not be used to meet a near-term need identified in the IRP, but may present a way to save money without materially changing the load and resource balance. Investing in an existing facility to extend its life should not be subject to an RFP process, and should instead be eligible for WAC 480-107-001(1) Purpose and scope: "The rules in this chapter do not establish the sole procedures utilities may use to acquire new resources. Utilities may ... take other action to satisfy their public service obligations." If the Commission decides to apply the RFP requirement to repowering of existing assets, then PacifiCorp recommends the requirement only be applied to Significant Energy Resources.

Finally, PacifiCorp suggests modifying the draft rule to specify that a resource need is identified in a utility's IRP, not its RFP.

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?

PacifiCorp would incorporate into a proposed RFP solicitation for potential Independent Evaluators the following:

- Acknowledgement of their review and understanding of Washington's specific rules and guidelines regarding CETA's equity provisions;
- A request for listing of prior experience with other national utilities as an independent evaluator in evaluating similar equity provisions as defined in CETA, including but not limited to in-depth bidder reviews related to compliance with minority-, women-, disabled- or veteran-owned businesses, based on bidder supporting documentation and responses.

While the industry does not yet have experience in reviewing and vetting CETA's proposed equity provisions, there are likely other jurisdictions that have included equity provisions related to contractor and subcontractor diversity, location of job creation, location of emissions, etc. As an example, Oregon has included a low-income requirement as part of their community solar development rules.

With respect to the use of independent evaluators, PacifiCorp has provided a list of recommended duties that should be provided by the independent evaluator, consistent with

requirements set by the Oregon Commission at OAR 860-089-0450. Rather than the WAC 480-107-AAA(4)(b) draft “Participate in the design of the solicitation,” PacifiCorp instead recommends “Consult with the utility on preparation of the draft RFP and submit its assessment of the final draft RFP to the Commission when the utility files the final draft for approval.” PacifiCorp does not agree that the independent evaluator should “assist” in the evaluation and ranking of bids as suggested by the draft rule. Procurements are ultimately a utility’s responsibility, for which the utility bears the risk, and accordingly it should be the utility that determines what bid best meets its resource need. The independent evaluator’s responsibility is to monitor, consult, evaluate, verify, and comment upon the work prepared by the utility. It is the role of the utility to draft the RFP, and the evaluator should remain independent.

With respect to the use of independent evaluators, PacifiCorp recommends the Commission provide the final approval authority for the contracting of the independent evaluator and in support of this end, PacifiCorp has provided a list of criteria upon which the Commission should rely when approving an independent evaluator in the attached redline of WAC 480-107-AAA (Attachment A), consistent with OAR 860-089-0200.

- 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.**

In addition to Oregon’s community solar requirements mentioned above, PacifiCorp also recommends review of California’s Supplier Diversity Requirements, which are outlined in General Order 156 (GO 156). GO 156 directs utilities with gross annual revenues exceeding \$25 million to submit annual detailed and verifiable plans for increasing women-owned, minority-owned, disabled veteran-owned, and LGBT-owned business enterprises procurement.

Other Comments

PacifiCorp provides comments on several other aspects of the draft rules, and has prepared a comprehensive redline of its proposals (see Attachment A).

Definitions – “Resource Need”

The draft rules provide a definition for “Resource Need” that references WAC 480-100-600, which has not yet been finalized or adopted. This is a key term in these draft rules, and PacifiCorp will be filing comments regarding it in docket UE-190698. Because the definition has not yet been finalized and because the solicitation rules hinge heavily upon the definition, PacifiCorp requests that these draft rules not be finalized until after the definition has been established in docket UE-190698. It is PacifiCorp’s view that the final definition of “Resource Need” should reflect the current IRP action plan.

480-107-001 Purpose and Scope

The rules continue to define “Conservation and efficiency resources” in the same manner as “Conservation”, which is set forth in WAC 480-100-238(2), and therefore PacifiCorp suggests that the Commission use the definition that is currently provided in the rules. The addition of “efficiency resources” could lead to inconsistency and confusion.

480-107-002 Application of rules – Generic exemptions to the RFP requirement

PacifiCorp suggests that the Commission consider restoring a revised version of former WAC 480-107-105(4), or alternately adopting similar exemptions, as proposed in PacifiCorp’s redline. Such generic exemptions are common in other states’ IRP and RFP rules. For instance, OAR 860-089-0100(3) allows utilities to avoid an RFP, but also requires utilities to provide a report to the Oregon Commission within 30 days of relying on such an exemption. PacifiCorp believes that these exemptions would allow utilities to more cost-efficiently meet an identified resource need, without the requirement to issue an RFP for small acquisitions, or when an acquisition can be avoided by market purchases.

Of note, the previous version of WAC 480-107-105(4) allowed for exemptions to competitive bidding in four cases:

- The identified resource need is less than 50MW;¹
- The utility intends to rely on short-term market purchases to meet its resource need, and sufficient regional adequacy supports these forecasted purchases;²
- The resource need is for conservation or efficiency resources, and the utility has already developed an RFP in consultation with its conservation advisory group;
- The resource need is for transmission or distribution.³

Further, PacifiCorp would support further additions to this section modeled on OAR 860-089-0100(3), which provides for other exceptions to competitive bidding requirements, including in emergency situations, when an IRP contains an alternate procurement method, or when there is a time-limited opportunity to acquire a resource of unique value to customers. For example, an opportunity to expand one of the 2017R RFP’s final short listed assets was offered by the developer at very competitive PPA price, terms, and conditions. This expansion opportunity was able to capture the construction economies of scale by being constructed simultaneously with a previously short listed asset and capitalize on then-current production tax credit benefits that were to expire.

Therefore, PacifiCorp suggests adding to WAC 480-107-002 (Application of rules) the exemptions adopted in OAR 860-089-0100(3), as they contain all exemptions previously included in draft WAC 480-107-105(4), as well as additional exemptions that could provide greater flexibility and value to customers.

¹ This exception may not be necessary if the Commission adopts PacifiCorp’s recommendation of “Significant Energy Resource,” and only applies the RFP requirements for acquisitions above that size, as described below.

² As discussed in PacifiCorp’s October 26, 2018 comments in Docket U-161024, a utility should be able to rely on its own forecast of regional adequacy, instead of relying on a forecast developed by the Northwest Power and Conservation Council. While valuable, the Council’s forecast is not subject to regular updates and is not appropriate to make individual procurement decisions. Further, in PacifiCorp’s case, its geographic service area exceeds the Council’s purview, so its value is limited for PacifiCorp’s planning.

³ Originally, this rule capped this exemption at transmission or distribution upgrades costing no more than \$10 million. However, consistent with OAR 860-089-0100(3)(d), PacifiCorp supports a blanket waiver of competitive bidding for transmission and distribution.

Proposed edits:

(4) A utility is not required to comply with these rules when:

(a) There is an emergency; meaning a human-caused or natural catastrophe resulting from an unusual and unexpected event, including but not limited to earthquake, flood, war, or a catastrophic energy plant failure, that requires a utility to take immediate action;

(b) There is a time-limited opportunity to acquire a resource of unique value to the utility's customers;

(c) An alternative acquisition method was proposed by the utility in the IRP and explicitly acknowledged by the Commission; or

(d) Seeking to exclusively acquire transmission assets or rights.

480-107-004 (3) Additional requirements – Multi-state Utilities and Regulations

In the event a utility is subject to regulation in more than one state regarding the acquisition, construction, or cost recovery of an energy resource, in making the rules, we recommend the Commission consider the impact of the multistate regulation including requirements imposed by other states. We have proposed language in WAC 480-107-004 (3) (Additional requirements) consistent with what Utah has adopted in rule C54-17.

Proposed edits:

(3) If an affected utility is subject to regulation in more than one state regarding the acquisition, construction, or cost recovery of an energy resource, in making the rules, the Commission may consider the impact of the multistate regulation including requirements imposed by other states as to:

- The overall solicitation process considering different timelines, eligibility requirements and bidder qualification and rules;
- Cost recovery of resources; and
- Methods by which the affected utility may be able to mitigate the potential for cost disallowances

480-107-007 Definitions – “Generating Resource”

We recommend the inclusion of a generating resource definition to distinguish from other non-generating market transactions, and demand-side initiatives.

Proposed edits:

“Generating Resources” means energy, capacity, or storage resources.

480-107-007 Definitions – “Project Developer”, “Independent Power Producer”, “Resource Supplier”

The three definitions appeared to overlap. We recommend making the following change to “Project Developer” and then substituting its use in place of the other two definitions, Independent Power Producer and Resource Supplier.

Proposed edits:

"Project developer" means an individual, association, corporation, or other legal entity that develops or owns generating facilities or portions thereof and can enter into a contract with the utility to supply a resource need.

480-107-007 Definitions – “Significant Energy Resource”

We recommend the adoption of the “Significant Energy Resource” definition to limit the burden of RFP requirements to utility-scale resources that are greater than 80 MW and longer than five years in term.

Proposed edits:

“Significant Energy Resource” is defined as:

(a) The acquisition is of a resource or a contract for more than an aggregate of 80 megawatts and five years in length;

(b) The acquisition is of a resource or contract in which the electric company does not specify the size or duration of the resource or contract sought but may result in an acquisition described in subsection part (a) or (c) of this rule;

(c) The acquisition is of multiple resources more than five years in length that in aggregate provide the electric company with more than an aggregate of 80 megawatts, and these resources:

(A) Are located on the same parcel of land, even if such parcel contains intervening railroad or public rights of way, or on two or more such parcels of land that are adjacent; and

(B) The generation equipment of any one of these resources is within five miles of the generation equipment of any other of these resources and construction of these resources is performed under the same contract or within two years of each other; or

(d) As directed by the Commission.

480-107-007 Definitions – “Solicitation”

We recommend the inclusion of a solicitation definition consistent with what is used in Utah’s rules.

Proposed edits:

“Solicitation” means a request for proposals or other invitation for persons to submit a bid or proposal through an open bid process for construction or acquisition of a Significant Energy Resource.

480-107-015 (1) and (7) The Solicitation Process

PacifiCorp suggests a revision to subsection (1) that clarifies that the solicitation process does not need to be an all-source RFP. If the process required by these rules is an all-source RFP, then utilities may need to consistently petition the Commission for a waiver and exemption to these rules over time. PacifiCorp has a robust and comprehensive integrated resource planning (IRP) process that would identify the nature of the resources that are required to best meet the obligations of the PacifiCorp to serve its customers.

Proposed Edits:

(1) The utility ~~must~~ may solicit bids for its Significant Energy Resource needs whenever its most recently filed integrated resource plan demonstrates that the utility has a Significant Energy Resource need within four years.

(7) The utility's RFP submittal must declare which type of bids the RFP will accept. The utility ~~must~~ may solicit bids for a variety of energy or capacity resources, consistent with the utility's most recent integrated resource plan that may have the potential to fill the identified resource needs including, 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 new generating resources, at the utility's election, electricity from the utility, utility subsidiaries, and other electric utilities, whether or not such ~~electricity~~ bids includes utility ownership of property options or are submitted by the utility or affiliates of the utility.

480-107-015 (6) The solicitation process – Sealed bids

PacifiCorp recommends the elimination of the requirement for sealed bids, as they substantially increase administrative burden, and their benefits may be limited when an independent evaluator has been engaged, which PacifiCorp encourages. Additionally, for large resource acquisitions, it is often administratively infeasible to keep the identity of bidders unknown.

Key aspects required to properly evaluate bids include location, point of interconnection, size, technology, which can be sufficient to identify a bidder. For Significant Energy Resources, PacifiCorp actively engages generation resource project developers as a business practice at least once or twice annually. Therefore, PacifiCorp already has a very clear view of what technologies and site locations are under development. Additionally, permitting documents and interconnection studies include bidders identifying information. For this reason, engaging an independent evaluator as part of the RFP process is more effective way to better ensure fair and consistent treatment of rules and guidelines that protect both RFP issuer, its participants, and stakeholders.

480-107-025(1) Contents of the Solicitation

PacifiCorp recommends the elimination of language that requires “avoided cost information identified in the integrated resource plan” in subsection (1). It is unclear how avoided cost information would be helpful to the bidder, when they should be offering their best bids possible based on the financial and operational requirements. Bids should not be influenced by an avoided cost calculation.

Proposed edits:

(1) The utility's draft RFP must reference and adhere to the IRP's action plan. The RFP must identify the resource need based on the IRP action plan, including 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 or combination of technologies, and any additional information necessary for potential bidders to make a complete bid including a copy or link to the complete assessment of avoided costs identified in WAC 480-100-610(13) (Content of an Integrated Resource Plan) [Draft].

480-107-025 (2) – Contents of the solicitation

PacifiCorp recommends replacing the high-level equity language with objective, measurable criteria that can be included as bid requirements, submitted by bidders, and measured and scored objectively. This will prevent loose and inconsistent interpretation of the rules over time, and provide more clarity for bidders and utilities.

Proposed edits:

The RFP must request information identifying energy and non-energy benefits or burdens to highly impacted communities and vulnerable populations, ~~short term and long term public health impacts, environmental impacts, resiliency and energy security impacts, or other information that may be relevant to identifying the costs and benefits of each bid.~~

Specifically, bidders shall be required to provide:

(a) The percentage of women-, minority-, veteran- and disabled-owned businesses that will be used in the construction and long-term operation of the resource.

(b) Whether the project will use labor standards identified in RCW 82.08.962 and RCW 82.12.962.

(c) Whether the proposed location is considered a highly impacted or vulnerable communities

(d) An estimate and description of hazardous waste and emissions that will result during the construction and ongoing operations.

(e) End of life decommissioning and remediation plans.

PacifiCorp would also support a discussion among stakeholders to define “highly impacted or vulnerable communities.”

480-107-025 (8) Contents of the solicitation – Minimum Bid Requirements

PacifiCorp recommends the adoption of additional minimum RFP content requirements, including minimum bid requirements, standard form contracts, credit requirements, bid evaluation scoring criteria, and the impact of any applicable multi-state regulation as part of overall RFP development. PacifiCorp proposes language in WAC 480-107-025 consistent with what Oregon has adopted in OAR Division 860-089.

Proposed edits:

(8) ~~The~~ At a minimum, the RFP must identify all include:

(a) Minimum bidder requirements, including financial security requirements and ~~the rationale for such requirements~~ proof of a bidder’s industry experience and capabilities;

(b) Standard form contracts to be used in acquisition of resources;

(c) Bid evaluation and scoring criteria that are consistent with the finalized WAC 480-107-035;

(d) The alignment of the utility’s resource need as identified in the current IRP action plan or a subsequently identified need or change due to circumstances with good cause shown;

(e) The impact of any applicable multi-state regulation on RFP development, including consideration of requirements imposed by other states for the RFP process; and

(f) Any minimum or maximum resource size requirements.

480-107-025 (9) – Provision of utility-owned assets on behalf of bidders

PacifiCorp understands the goal of staff to provide bidders access to certain utility resources; however, PacifiCorp assets are shared and owned across in multiple states. For this reason PacifiCorp proposes edits that allow the utility to offer assets at their discretion to ensure there is adequate compensation for any utility-owned assets that are provided to third-party bidders, which is consistent with Oregon's OAR Division 860-089.

Proposed Edits:

(9) The RFP must generally identify whether any utility-owned assets, including merchant side assets, ~~that will,~~ could be made available by the utility to be used by bidders to assist in meeting the resource need at the lowest reasonable cost, in conjunction with independent bids in a RFP. The utility must make reasonable efforts to provide necessary technical details ~~as requested related to those assets upon request from bidders and allow the.~~ Bidder will be responsible for providing the terms, conditions and pricing associated with the use of utility-owned resources that are offered and made available for use of such assets to be included in in as part of third-party bids. Utilities will receive appropriate compensation for such utility-owned resources used by third-party bidders for the benefit of utility ratepayers.

480-107-AAA (1) Independent evaluator for large resource need or utility or affiliate bid.

To avoid adding unnecessary burden to short-term market purchases required to serve load, and to distinguish their procurement process from long-term new resource acquisition resulting from the IRP, PacifiCorp recommends the adopting of the Significant Energy Resource definition and with it the additional criteria of a greater than five-year term length as a threshold characteristic that would trigger the need for an independent evaluator. Additional edits are suggested for clarity.

Proposed Edits:

(1) ~~When required to solicit bids under WAC 480-107-015(1), a~~ A utility must engage the services of an independent evaluator to assess and report on the solicitation process if:
(a) ~~The resource need is greater than 80 megawatts a Significant Energy Resource;~~ or
(b) ~~If the utility expects to bid or if it expects a utility affiliate to bid subject to any one of the circumstances in WAC 480-107-135(1) is present.~~

480-107-AAA (2) Independent evaluator for large resource need or utility or affiliate bid – independent evaluator Approval

PacifiCorp recommends the Commission must approve the independent evaluator's contract and recommend adoption of criteria defining the selection of an independent evaluator. The company proposes language in WAC 480-107-AAA (2) (Independent evaluator for large resource need) consistent with what Oregon has adopted in OAR Division 860-089. The process below ensures a fair and equitable review process for ratepayers, the bidders, and for the utility.

Proposed edits:

(2) ~~The utility, after consulting with Commission staff and interested persons, may will issue an RFP for an independent evaluator and must in order to recommend an independent evaluator for approval by the Commission.~~ The utility must file a request for Commission approval to execute the contract with the independent evaluator. The Commission staff will review the request and recommend an independent evaluator to the Commission based in part on the consideration of:

(a) Input received from the utility and interested, non-bidding parties;

(b) Review of the degree to which the independent evaluator is independent of the utility 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 independent evaluator; and

(e) The public interest.

480-107-AAA (3) Independent evaluator for large resource need or utility or affiliate bid – independent evaluator Cost Recovery

Utilities should be allowed to seek cost recovery for the cost of retaining a required independent evaluator. The company has proposed language in WAC 480-107-AAA (3) (Independent evaluator for large resource need) consistent with what Oregon has adopted in OAR Division 860-089.

Proposed edits:

(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. The utility may request recovery of fees and expenses associated with engaging an independent evaluator in customer rates if RFP bid fees are inadequate to cover such costs.

480-107-AAA (5) Independent evaluator for large resource need or utility or affiliate bid – independent evaluator Minimum Responsibilities

PacifiCorp recommends the addition of several additional independent evaluator's minimum responsibilities, including the upfront evaluation of the utility's price and non-price evaluation methodologies, a specific list of utility assumptions that should be verified, and a process for independently valuing and comparing utility bid scores. The company has proposed language in WAC 480-107-AAA (5) (Independent evaluator for large resource need) consistent with what Oregon has adopted in OAR Division 860-089.

Proposed edits:

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

(a) Ensure that the RFP process is conducted fairly, transparently, and properly and within Commission rules and guidelines;

~~(b) Participate in the design of the solicitation;~~

(b) Consult with the utility on preparation of the draft RFP and submit its assessment of the final draft RFP to the Commission when the utility files the final draft for approval;

(c) Evaluate the utility's overall evaluation process, including price and non-price scoring, and the ability of the evaluation process to assess the unique risks, burdens, and benefits of each bid;

(d) Provide to the ~~Company~~ Commission the independent evaluator's minutes of meetings and the full text of written communications between the independent evaluator and the utility and any third-party related to the independent evaluator's execution of its duties;

(e) Verify that the utility's inputs and assumptions ~~including capacity factors and capital costs are reasonable;~~ including but not limited to:

(1) Terminal value methods and assumptions;

(2) Environmental emissions costs;

(3) Reasonableness of capital costs;

- (4) Adequacy of capital additions costs;
- (5) Reasonableness of all operation and maintenance costs;
- (6) Reasonableness of performance assumptions for output, heat rate, and power curve (as applicable);
- (7) Risk assessment of construction schedules or an assessment of risk associated with construction schedule delays;
- (f) Assess whether the utility's process of scoring the bids and selection of the initial and final shortlists is reasonable;
- (g) Independently score utility and utility affiliate bids as well as bids with ownership characteristics or options, if any, and all or a sample of the remaining bids. Once the utility and the independent evaluator have both scored and evaluated the bids, the independent evaluator and utility must both file their scores with the Commission. The independent evaluator and utility must compare results and attempt to reconcile and resolve any scoring differences. If the utility and independent evaluator are unable to resolve scoring differences, the independent evaluator must explain the differences in its closing report to the Commission.

480-107-AAA (5)(f) Independent evaluator for large resource need or utility or affiliate bid – Shortlist and Final Award Processes

PacifiCorp notes there was one reference to initial and final shortlist requirements. The company recommends the deletion of those references in WAC 480-107-AAA (5) (f) unless the Commission intends to provide more guidance as to the shortlist rules.

480-107-035 (1) Project ranking procedure – RFP Process Requirements

PacifiCorp has found certain additional RFP processes facilitate the review and approval processes across multi-state jurisdictions. PacifiCorp proposes language in WAC 480-107-035 (Project ranking procedure) consistent with what Oregon has adopted OAR Division 860-089.

Proposed edits:

- (1) For all resource needs identified in IRP action plan that are Significant Energy Resources, ~~t~~The Commission must approve the RFP procedures and criteria, and the utility will use in its RFP must:
 - (a) prior to preparing a draft RFP, develop and file for approval in the utility's independent evaluator selection docket, a proposal and process for the evaluation and scoring of all bids;
 - (b) consider the use of a qualified and independent third-party expert to review site-specific resource performance factors for wind and solar bids that have been selected to the initial shortlist;
 - (c) use a price evaluation criteria based upon the IRP modeling assumptions used to develop the IRP's action plan; and
 - (d) convert non-price factors to price factors where practicable. Non-price scoring criteria must be objective and reasonably subject to self-scoring analysis by bidders. Non-price score criteria that seek to identify minimum thresholds for a successful bid and that may readily be converted into minimum bidder requirements must be converted into minimum bidder requirements.

480-107-035 (2) Project ranking procedure Modeling Methodology – Avoided Cost

In Oregon and Utah, PacifiCorp works to align its price scoring based on the IRP modeling methodology used to determining resource need in the IRP action plan. Because avoided cost methodology is a separate process at PacifiCorp that uses a different model, PacifiCorp does not agree that the ranking criteria must also be consistent with avoided cost modeling. Avoided costs are a function of a utility's current overall system costs and should have no influence on bidder's pricing or RFP scoring. Bidders should develop bid pricing based on overall expected cash flows, installed costs, operating expenses and required return on investment criteria to better assure project sustainability over its contractual term. PacifiCorp is providing edits to proposed language in WAC 480-107-035 (2) (Project ranking procedure), which is consistent with both Oregon and Utah rules.

Proposed edits:

(2) At a 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, public policies regarding resource preference and requirements adopted by Washington state or the federal government . The ranking criteria must recognize differences in relative amounts of risk and benefit inherent among different technologies, fuel sources, financing arrangements and ownership structures., and contract provisions, including risks and benefits to vulnerable populations and highly impacted communities.

The ranking criteria must also be consistent with the ~~avoided cost modeling~~ methodology developed in the integrated resource plan the utility uses to support its determination of its resource need. The utility must consider the value of any additional net benefits that are not directly related to the specific resource need requested-identified in the IRP action plan.

480-107-035 (5) Project ranking procedure – Disclosure of bids on public website

PacifiCorp strongly opposes publishing this information publicly. Bidders demand bid confidentiality, particularly with respect to pricing and location/siting. Such a rule will reduce the competitiveness of the solicitation both in terms of prices bid and number of bids received. Note that PacifiCorp has agreed to disclosures proposed by Staff in WAC 480-107-145 (2), which PacifiCorp deems as sufficient; and therefore, PacifiCorp recommends the elimination of this provision in its entirety.

480-107-135 (4), (5), (6), (7) Conditions for purchase of resources from a utility, a utility's subsidiary, or and its affiliate – Utility and Utility Affiliate Bids

PacifiCorp has identified certain additional RFP processes that facilitate the review and approval related to utility and utility affiliate bids. For example, any utility employee who participates in the development of the RFP or conducts evaluation or scoring of bids on behalf of the utility may not participate in the preparation of a utility or affiliate bid and must be screened from that process. PacifiCorp therefore provides proposed language in WAC 480-107-135 (4-7) (Conditions for purchase of resources from a utility, a utility's subsidiary, or affiliate), which is consistent with Oregon's competitive bid guidelines in OAR Division 860-089.

Proposed edits:

(4) Any utility employee who participates in the development of the RFP or the evaluation or scoring of bids on behalf of the utility may not participate in the preparation of a utility or affiliate bid and must be screened from that process.

- (5) Prior to the opening and evaluating of third-party bids, the utility must file with the Commission and submit to the independent evaluator, for review and comment, a detailed score for any utility and/or utility affiliate bid with supporting cost information, all transmission arrangements, and all other information necessary to score the utility and/or utility affiliate bid.
- (6) If, during the course of the RFP process, the Commission or the independent evaluator determines that it is appropriate to update any bids, the utility must also make the equivalent update to the score of the utility and utility affiliate bids.
- (7) Before the independent evaluator provides the utility an opportunity to score other bids, the utility must file with the Commission and submit via a method that protects confidentiality the following information:
- (a) The final utility and utility affiliate resource score developed in consultation with the independent evaluator, and
- (b) Cost information and other related information shared under this rule.

480-107-035 (9) – No awards process

PacifiCorp respectfully requests clarification of the intent of this section. It appears that the section establishes a process in the event the utility does not award any contracts. As such, we recommend the following edits:

Proposed Edits:

(9) ~~The~~ If a utility RFP concludes no bids received adequately serves ratepayers' interests, consistent with the IRP action plan, the Commission will review, as appropriate, ~~the~~ utility's findings ~~that no proposal adequately serves ratepayers' interests~~, together with and supported by evidence filed by any independent evaluator or in support of any concurrent acquisitions, in the utility's relevant general rate case or other cost recovery proceeding.

480-107-BBB Protected Information

PacifiCorp proposes to add a section at the end of these rules to allow for the utility to request a protective order to protect the confidentiality of the information throughout the RFP process. Ensuring that information is kept confidential while allowing for appropriate Commission review is essential to ensuring that the process garners the best bids and is able to provide the best resources for customers. The ability of the Commission to issue a protective order outside the confines of an adjudicative proceeding will allow for the appropriate treatment of confidential information and additional transparency.

Proposed Edits:

WAC 480-107-BBB Protected Information. The utility may request a protective order be issued prior to making available protected information required to be shared under the rules in this chapter. Protected information may include, but is not limited to, RFP-related and bidding information, such as a company's modeling, cost support for any resource and detailed bid scoring and evaluation results. Protected information may then be provided to the Commission, the independent evaluator, and non-bidding parties, as appropriate under the terms of the protective order. Information shared under the terms of a protective order issued under this rule may be used in any of the procedures outlined in this chapter including any RFP review or approval, investigation, or cost-recovery proceedings.

480-107-060 Acquisition of demand response

PacifiCorp recommends the Commission adopt the concepts included in WAC 480-107-065 (Acquisition of conservation and efficiency resources) and replicate those concepts for demand response acquisitions. Both industries have relatively smaller economies of scale and have similar outreach strategies to residential, commercial and industrial load who may become customers of the services and technologies offered to implement demand-side management. For the reasons stated and in light of the additional language added, we recommend striking the requirement that demand response participate in any all source generating resource RFP.

Proposed Edits:

~~A demand response bidder may participate in the bidding process. If demand response may meet some or all of the identified resource need, the utility must make a good faith effort to provide sufficiently detailed information that allows a bidder the opportunity to respond with a bid, including stacked values of benefits and costs.~~

(1) Reserved.

(2) All demand response measure project proposals must demonstrate customer benefits using the evaluation methodologies in WAC 480-107-035 (Project ranking procedure)

(3) A utility must acquire demand response resources through a competitive procurement process as described in this rule unless implementing a competitive procurement framework for demand response as approved by the Commission.

(a) As part of that process, a utility may develop a competitive procurement framework for demand response resources in consultation with the Commission.

(b) The competitive procurement framework for demand response resources must:

(i) Define the specific criteria that will be used to determine the frequency of competitively bidding demand response resources;

(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;

(c) The competitive procurement framework for demand response 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.

480-107-065 (3)(b)(iii) Acquisition of conservation and efficiency resources

PacifiCorp requests clarification on what is meant by adaptive management of programs in WAC 480-480-107-065 (3)(b)(iii): “(b) The competitive procurement framework for conservation and efficiency resources must: ... (iii) Enhance or, at minimum, not interfere with the adaptive management of programs”

480-107-060 (4) Acquisition of demand response and 480-480-107-065 (4) Acquisition of conservation and efficiency resources – utility participation

PacifiCorp recommends the Commission allow utilities to participate in any solicitations related to demand response, conservation, and energy efficiency.

Proposed Edits:

480-107-060 (4) A utility, a utility subsidiary, or affiliate may participate as a demand response bidder subject to the conditions described in WAC 480-107-135 (Conditions for purchase of resources from a utility, a utility's subsidiary, or affiliate).

480-107-065 (4) A utility, a utility subsidiary, or affiliate may participate as a conservation bidder subject to the conditions described in WAC 480-107-135 (Conditions for purchase of resources from a utility, a utility's subsidiary, or affiliate).

480-107-075 (3) Contract finalization – Contract Term

PacifiCorp recommends the Commission allow up to thirty (30) year contracts as this is a common contract term in the industry. Additionally, a 30 year power purchase agreement is more easily scored in comparison with resources that have a utility ownership option, which will result in greater scoring transparency.

Proposed Edits:

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

480-107-125 Interconnection costs

PacifiCorp recommends deletion of current WAC section 480-107-125, which requires a utility to prepay the interconnection costs for all resources procured as part of a utility RFP. While not currently the subject of proposed changes, it addresses an issue of exclusive federal jurisdiction and is accordingly outside the Commission's authority to regulate. Allocation of interconnection costs is outside state jurisdiction, except for interconnections made pursuant to the Public Utility Regulatory Policies Act.⁴ WAC 480-107-125 is not limited to PURPA interconnections, and in fact a separate WAC section, 480-106-080, adopted in docket U-161024, contains a nearly identical section specific to qualifying facilities.

Accordingly, it would be most appropriate to delete WAC 480-107-125, as it attempts to regulate a matter outside the Commission's jurisdiction.

CONCLUSION

PacifiCorp appreciates the opportunity to comment on these draft rules. As the Commission proceeds through the rulemaking process, PacifiCorp urges the Commission to ensure that the rules:

- Consider timelines that allow for sufficient process;

⁴ See *Western Massachusetts Electric Co.*, 61 FERC ¶ 61,182 at 61,661-62 (1992) (Western Massachusetts), *aff'd sub nom. Western Massachusetts Electric Co. v. FERC*, 165 F.3d 922, 926 (D.C. Cir. 1999), *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 at P 813-15 (2003); *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006-A, 113 FERC ¶ 61,195 at P 106 (2005) ("NARUC is correct that a QF selling at retail is not eligible to interconnect under either Order No. 2003 or Order No. 2006. Under the Public Utility Regulatory Policies Act of 1978, such interconnections are governed by state law.") (internal citation omitted).

- Consider capacity and time-based thresholds when requiring the use of an independent evaluator, as well as limit the use of sealed bids when an independent evaluator has been engaged; and
- Provide additional guidance regarding the use of non-price scoring criteria such as equitable distribution of benefits.

Sincerely,

_____/s/____

Michael Wilding

Director, Net Power Costs and Regulatory Policy

PacifiCorp

825 NE Multnomah Street, Suite 2000

Portland, OR 97232

(503) 813-5431

michael.wilding@pacificorp.com