

June 29, 2020

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

**RE: Comments of Renewable Northwest, Docket UE-190837**

Utilities and Transportation Commission’s June 1, 2020, Notice of Opportunity to File Written Comments in the Matter of Amending, Adopting, and Repealing WAC 480-107, Relating to Purchases of Electricity.

**I. INTRODUCTION**

Renewable Northwest thanks the Washington Utilities and Transportation Commission (“the UTC” or “the Commission”) for this opportunity to comment in response to the Commission’s June 1, 2020, Notice of Opportunity to File Written Comments (“Notice”) in the Matter of Amending, Adopting, and Repealing WAC 480-107, Relating to Purchases of Electricity. The Notice explains that this proceeding follows on work the Commission began in prior Docket UE-161024, which was closed following passage of the Clean Energy Transformation Act (“CETA”).<sup>1</sup> Renewable Northwest has been engaged in proposed changes to WAC 480-107 throughout both dockets, and offered comments on the matter on September 21, 2018, October 26, 2018, January 31, 2019, and March 13, 2020.

In our March 13, 2020 comments to the Commission, we highlighted some potentially inadvertent language changes between the draft rules filed in Docket U-161024 on December 31, 2018 and the draft rules filed in Docket UE-190837 on February 6, 2020. We appreciate the effort by Commission staff in the draft rules filed in UE-190837 on June 1, 2020 to address many of these language modifications and omissions.

In these comments, we first address the general language of the draft rules filed in Docket UE-190837 on June 1, 2020, primarily discussing language changes and omissions from the previous version of the rules.

---

<sup>1</sup> RCW ch. 19.405.

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

## II. COMMENTS

### A. Overall Rule Language

In anticipation of the transitions the Washington energy space will undergo in the near- and mid-term, including the maturation and expansion of the regional electricity market and the improved understanding of the interplay between markets and Washington’s energy policy goals, we suggest the Commission consider additional language to these draft rules to set a timeline for revisiting and perhaps revising the rules to better align with new knowledge.

#### WAC 480-107-AAA -- Independent evaluator for large resource need or utility or affiliate bid

WAC 480-107-AAA(5)(d) makes a seemingly inadvertent reference to “the Company” where in the previous set of draft rules the language referenced “the commission.” For clarity and consistency, we recommend the following language revision to this section of the rule:

Provide to the 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; [...]

#### WAC 480-107-035 -- Project ranking procedure

WAC 480-107-035(2) of the June 1, 2020 Draft Rules appears to have omitted the consideration of the environmental effects of emitting resources, and Renewable Northwest suggests the Commission reinstate that language:

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 and environmental effects including those associated with resources that emit carbon dioxide.

This acknowledgement of the negative externalities of emitting resource procurements brings these rules into agreement with CETA requirements for resource planning, ensuring the goals of the statute are prioritized through resource procurement.

B. Responses to the Notice

**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.**

While Renewable Northwest appreciates the Commission’s effort to reduce the time between identifying a resource need and initiating resource procurement, halving the comment period from 60 to 30 days post RFP filing may disadvantage stakeholders with important input but less resources for such a quick turnaround.<sup>2</sup> We recommend a compromise of a 45-day comment period post RFP filing to safeguard valuable public input in the resource solicitation process.

Additionally, we recommend that the Commission consider its proposed timeline side-by-side with the requirements of other states that regulate its multi-jurisdiction utilities. For example, following the October 18, 2019 submission of its 2019 IRP in Oregon, PacifiCorp filed a draft 2020 All-Source RFP with the Oregon Public Utility Commission on February 24, 2020 -- approximately four months later, and more in line with the previous 135-day timeline than the new 45-day timeline. Stakeholder comments were due roughly 60 days later, on April 22, 2020, and the Oregon Commission is set to consider approval of the RFP on July 2, 2020.<sup>3</sup> The UTC may not want to put itself in the position of having to approve or reject an RFP while other state

---

<sup>2</sup> We raised the same concern about the proposal to reduce the comment period to 30 days in our Oct. 26, 2018 comments in docket U-161024 at page 3.

<sup>3</sup> The Oregon Commission’s competitive bidding rules do not establish a firm timeline but provide at OAR 860-089-0250(6):

The Commission will generally issue a decision approving or disapproving the draft RFP within 80 days after the draft RFP is filed. An electric company may request an alternative review period when it files the draft RFP for approval including a request for expedited review upon a showing of good cause. Any person may request an extension of the review period of up to 30 days upon a showing of good cause.

processes are still underway. In particular, a 45-day filing requirement followed by a 30-day comment period could put the UTC in the position of considering whether to approve a PacifiCorp RFP before the Oregon Public Utility Commission has considered whether to acknowledge the underlying IRP. It may be impossible or inadvisable to completely align different states' regulatory timelines, but we recommend the Commission take a closer look at the timing issue overall.

**2. The draft rule at WAC 480-107-015~~(4)~~(7), 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”?**

Renewable Northwest appreciates the Commission's efforts to 1) encompass a range of potential resources in the June 2020 Draft Rules and 2) add “not limited to” language to acknowledge future technological developments. We do not feel the requirement for a utility to solicit and consider a diverse set of resources burdens the utility, given that the resource *selection* ultimately falls to the utility. To the contrary, this objective approach to procurement will improve competition in the bidding process, as utilities not only may find themselves considering novel high-value, low-cost resources or resource combinations but also can use bid information to inform future resource planning efforts. Ultimately requiring that utilities accept diverse bids may lead to procurement of the most economic and least climate-affecting resources available.

To the extent an RFP can be all-source, a utility should solicit bids from the full range of available resources that may meet the utility's need. Thus, the drawback of revising the language in WAC 480-107-015(7) from “must request bids” to “may request bids” is that this flexible language creates the potential for real or perceived bias in the procurement process, while in the “must” scenario, the market would ideally provide the most unbiased and economic outcomes for both the utility and its customers.

**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.**

Renewable Northwest supports the level of evaluation transparency required of utilities in WAC 480-107-025(5), but we suggest the Commission consider a further level of standardization for the evaluation process, modifying the language to read

*The RFP must include a sample evaluation rubric that both quantifies the weight each criterion will be given during the project ranking procedure and provides a detailed explanation of the aspects of each criterion specifically identified that would result in the bid receiving higher priority.*

As we noted in our October 2018 comments in UE-161024:

[T]he requirement either to quantify the weight the utility will afford to its scoring criteria or to provide a detailed narrative explanation regarding the relative priority of the scoring criteria should give bidders important information that allows them to tailor their bids to the utility's needs. Ultimately, the result of this additional transparency will likely be the submission of more competitive bids.<sup>4</sup>

In those same comments, however, we also “recommend[ed] that the Commission consider changing the ‘either ... or’ construction to a ‘[both] ... and’ construction under which utilities are required to quantify all criteria” for the straightforward reason that “[q]uantifying the value of each criterion is likely the best way to ensure scoring transparency.”<sup>5</sup>

The extent to which additional transparency results in more competitive bids relies on minimizing the ambiguity in the utility's standard for bid evaluation, so a robust quantitative evaluation rubric with explanations accompanying each criterion will best support a non-discriminatory, efficient, and competitive procurement process.

**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?***

Third-party oversight by an independent evaluator (IE) is important to ensure competitive procurement and improve market confidence. Some industry observers have observed that there

---

<sup>4</sup> U-161024 Reply Comments of Renewable Northwest at 6 (Oct. 26, 2018).

<sup>5</sup> *Id.*

may be a correlation between use of an IE and robust participation in the bidding process, so the benefit of inciting IE review does not begin at any definitive threshold.<sup>6</sup> That said, we recommended in our March 13, 2020 comments to the Commission setting a capacity threshold of 50 MW to trigger the IE requirement for RFPs in which utility ownership is not an option.<sup>7</sup> In our Sept. 21, 2018 comments in Docket No. U-161024, we observed that “[a]lthough having an IE has value regardless of whether an RFP allows for utility ownership, ... the costs of involving an IE may not be justified when utility ownership is not an issue”<sup>8</sup>; we have supported a 50-MW threshold as an appropriate cutoff for avoiding those cases where the cost of an IE may not outweigh the value the IE brings to the process. An 80-MW threshold, on the other hand, runs the risk of decreasing bidder confidence and the overall level of competition in RFPs for mid-sized resource needs. Renewable Northwest therefore recommends that the Commission reinstate the February 2020 Draft Rules’ capacity threshold of 50 MW.

***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?***

A capacity metric would be an objective 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.***

No.

**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?**

Before addressing the question, we would like to better understand the Commission’s definition of “repowering,” as it applies to a utility-owned resource. An example of this scenario would provide helpful context. Assuming “repowering of [a utility’s] owned resources at the end of the resource’s life to fulfill the resource need identified in the RFP” means, for example, the utility

---

<sup>6</sup> See <https://energyinnovation.org/wp-content/uploads/2020/04/All-Source-Utility-Electricity-Generation-Procurement-Best-Practices.pdf> at 19.

<sup>7</sup> Mar. 13, 2020 Comments of Renewable Northwest, UE-190837 at 11. We recommended then that an IE always be required when utility ownership is an option and appreciate that the current draft rules include that requirement.

<sup>8</sup> Sept. 21, 2018 Comments of Renewable Northwest, U-161024 at 6.

invests in a replacement turbine as opposed to retiring the resource and soliciting bids for a new resource, we answer the question as follows.

The required use of an IE by WAC 480-107-135(1)(a) ensures that utility ownership is not at odds with competitive bidding, even in the case of repowering an end-of-life utility-owned resource. IEs contribute in ways including 1) providing independent analysis to regulators, 2) increasing bidder confidence in a fair and transparent procurement process, and 3) adding meaningful context on RFP best practices as stakeholders, the utility, Commission Staff, and the Commission work to ensure that an RFP results in procurement of lowest reasonable cost resources for customers. This value holds true both in procurements that allow for a self-build or repowering by a utility or utility subsidiary and in those that allow bids for build-transfer projects.

**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?**

In recent comments in this docket, Renewable Northwest recommended that the Commission look to Oregon’s competitive bidding rules as a framework for selection of an IE.<sup>9</sup> Among the five factors those rules set forth to inform selection of an IE are two that might help with equity considerations: “[t]he experience and competence of the IE” and “[t]he public interest.”<sup>10</sup> The Oregon Public Utility Commission’s most recent experience with IE selection, as reflected in Order No. 20-114, shows how these prongs are flexible enough to be tailored to the needs of individual RFPs.<sup>11</sup> In that order, the Oregon Commission’s concern was identifying an IE with the experience and competency to handle a particularly large and complex RFP (PacifiCorp’s 2020 All-Source RFP); in future Washington RFPs, the UTC could ensure that an IE has the experience and competency to meaningfully include equity considerations in the IE’s review and analysis and to ensure that the utility offering the RFP is doing the same.

The best route for ensuring that IEs have the training or experience to appropriately weigh and consider CETA’s equity provisions in their ranking of project bids, however, is likely to incorporate that requirement directly into the rule language. If the UTC does look to Oregon’s rules as a template for IE selection in Washington, this result could be accomplished in one of two ways: (1) incorporating equity into the “experience and competence of the IE” prong, for

---

<sup>9</sup> Mar. 13, 2020 Comments of Renewable Northwest, Docket UE-190837 at 10.

<sup>10</sup> OAR 860-089-0200(2).

<sup>11</sup> Oregon Public Utility Commission, Docket No. UM 2059, Order No. 20-114 (Apr. 8, 2020), *available at* <https://apps.puc.state.or.us/orders/2020ords/20-114.pdf>.

example by adding language such as “experience and competence of the IE including with respect to equity considerations”; or (2) adding a standalone equity-oriented prong such as “the ability of the IE to appropriately evaluate equity considerations in the ranking of project bids, as demonstrated by the IE’s experience or training.”

Additionally, to ensure that stakeholders are able to inform selection of an IE, we encourage the UTC to consider adding rule language expressly providing an opportunity for comment on IE selection before Commission approval of an IE. This opportunity would be especially important with regard to equity, given that some stakeholders will likely have more knowledge and experience than the utility, prospective IEs, or the Commission on equity-related considerations and will therefore be better positioned to evaluate prospective IEs’ explanation of their abilities, experience, and training.

**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.**

The draft rule includes language related to the equity provisions in CETA, and CETA includes direction to the Department of Labor and Industries to identify a range of criteria for achieving high labor standards, including contracting with firms owned by under-represented groups. Because the statute at RCW 82.08.962 and RCW 82.12.962 and the emergency rule and its eventual permanent successor in WAC 296-140 are explicitly targeted to development of renewable generation resources, we recommend considering these provisions in this rulemaking.



### III. CONCLUSION

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

Respectfully submitted this 29th day of June, 2020,

/s/ Katie Ware

Katie Ware

Washington Policy Manager

Renewable Northwest

[katie@renewablenw.org](mailto:katie@renewablenw.org)

/s/ Max Greene

Max Greene

Regulatory & Policy Director

Renewable Northwest

[max@renewablenw.org](mailto:max@renewablenw.org)