

WSR 21-02-023
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket UE-190837, General Order R-602—Filed December 28, 2020, 1:02 p.m., effective December 31, 2020]

In the matter of amending, adopting, and repealing sections of chapter 480-107 WAC, relating to purchases of electricity.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 20-22-075, filed with the code reviser on November 2, 2020. The commission has authority to take this action pursuant to RCW 80.01.040, 80.04.160, and chapters 80.28, 19.280, and 19.405 RCW.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the Register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order, including appendices, as its concise explanatory statement. This order provides a complete but concise explanation of the agency's actions and its reasons for taking those actions.

6 REFERENCE TO AFFECTED RULES: This order amends, adopts, or repeals the following sections of the Washington Administrative Code: New WAC 480-107-009 Required all-source RFPs and conditions for targeted RFPs, 480-107-011 Applicability of rule sections, 480-107-017 RFP filing and approval, 480-107-021 Informational filing requirement, 480-107-023 Independent evaluator for repowering and from a utility or its subsidiary or affiliate and 480-107-024 Conditions for purchase of resources from a utility, utility subsidiary, or affiliate; amending chapter 480-107 WAC, Purchases of electricity, WAC 480-107-001 Purpose and scope, 480-107-002 Exemptions from rules, 480-107-007 Definitions, 480-107-015 Solicitation process for any RFP, 480-107-025 Contents of the RFP solicitations, 480-107-035 Bid ranking procedure, 480-107-045 Pricing and contracting procedures, 480-107-065 Acquisition of conservation and efficiency resources, 480-107-075 Contract finalization, 480-107-115 System emergencies and 480-107-145 Filings—Investigations; and repealing WAC 480-107-135 Conditions for purchase of electrical power or savings from a utility, a utility's subsidiary or affiliate.

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a Preproposal statement of inquiry (CR-101) on February 5, 2020, at WSR 20-05-009. The statement advised interested persons that the commission was considering initiating a rule making to review rules in chapter 480-107 WAC to incorporate statutory changes made since 2006, and to consider changes contemplated in an earlier rule making, as well as

to review requirements, policy improvements, and changes in the energy industry that may affect the rules governing purchases of electricity. The commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all registered utility companies and the commission's list of utility attorneys.

8 WRITTEN COMMENTS: Pursuant to the notices, the commission received comments on March 25, 2020, in Docket UE-190837 and on September 14 and December 3, 2020. Those rules were developed in the prior rule-making Docket, UE-161024, and provided for reference in this Docket UE-190837. The commission received comments from eleven stakeholders.

MEETINGS OR WORKSHOPS: The commission held workshops on February 5, February 25, May 22, and July 16, 2020.

9 SMALL BUSINESS ECONOMIC IMPACT: On August 31, 2020, the commission issued a small business economic impact statement questionnaire to all interested persons. The commission received one response to this questionnaire on October 1, 2020, from Puget Sound Energy (PSE), which asserted in its response that it is likely to incur increased costs from the proposed rules. PSE expressed general concerns with the administrative burden on utilities of bringing Washington's rules in line with those of other states, as well as the cost of complying with proposed rules regarding requests for proposals (RFPs) and independent evaluators (IEs). PSE, however, does not qualify as a small business under chapter 19.85 RCW.

10 The commission's internal analysis shows that the proposed rules cause a small increase in a utility's costs to conduct RFPs but have the potential to greatly lower the utility's overall costs of doing business through an RFP process that procures lower cost resources than under the existing rule. The proposed rules do not change the current rules related to bidder fees, thus retaining the utilities' potential to recover these RFP-related costs. The commission's rules and authority provide avenues to protect small businesses that may face potential bidder fees in a proposed RFP.

11 The proposed rules reduce the burden on small business participation in RFPs by increasing the transparency of the RFP process. The proposed rules require utilities to provide increased detail in RFPs regarding the utility's resource need, evaluation rubric, and ranking procedures, which will reduce the time and expense to both small and large businesses to participate as bidders. For example, the expanded level of required detail will help small businesses understand how their specialty can be successfully bid. The proposed rules require competitive procurement of energy efficiency resources, which affords greater opportunities for small businesses to provide those services.

12 After full review and analysis, the commission finds that the proposed rules will impose *de minimis* costs on electric utility companies and their small business customers through changes in rates. Because the proposed rules will potentially save far greater amounts through lower costs, we conclude that the proposed rules will not have a disproportionate impact on small businesses.

13 NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of Proposed rule making (CR-102) on November 2, 2020, at WSR 20-22-075. The commission scheduled this matter for virtual oral comment and adoption under Notice No. WSR 20-22-075 at 9:30 a.m., Monday, December 14, 2020. The CR-102 provided interested persons the opportunity to submit written comments to the commission.

14 **WRITTEN COMMENTS:** The commission received written comments from PacifiCorp, d/b/a Pacific Power & Light Co. (PacifiCorp), Avista Corporation, d/b/a Avista Utilities (Avista), Puget Sound Energy (PSE), the public counsel unit of the Washington attorney general's office (public counsel), Climate Solutions, Northwest & Intermountain Power Producers Coalition (NIPPC), NW Energy Coalition (NWECC), Renewable Northwest (RNW), Sierra Club, and Michael Laurie. Commission staff's (staff) summary of, and responses to, those comments are contained in Appendix A, which is attached to, and made part of, this order. The commission adopts staff's responses as its own subject to the modifications we make to the proposed rules and the rationale for those modifications explained in this order.¹ Additionally, we summarize and respond in greater detail to certain comments received during this rule-making proceeding in Paragraphs 18-40, below.

¹ In the event of any discrepancy between the discussion in the body of this order and the responses contained in Appendix A, the body of this order will control.

15 **RULE-MAKING HEARING:** The commission considered the proposed rules for adoption at a virtual rule-making hearing on Monday, December 14, 2020, before Chair David W. Danner, Commissioner Ann E. Rendahl, and Commissioner Jay M. Balasbas. The commission heard oral comments from Steven Johnson, representing commission staff, and PacifiCorp, PSE, public counsel, NIPPC, Avista, and NWECC. Those comments emphasized or supplemented those commenters' written comments.

16 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED/ACCEPTED:** Written and oral comments suggested changes to the proposed rules. The suggested changes and the commission's reason for rejecting or accepting the suggested changes are included in Appendix A and addressed in the body of this order.

17 **DISCUSSION:** The commission provides the following guidance and clarity in addition to staff's responses to proposed changes in appendix A.

18 *Proposed amendment to chapter 480-107 WAC.* Climate Solutions recommended the commission change the chapter title from "Purchases of Electricity" to "Resource Procurement." This suggestion reflects stakeholder comments made at the February 25, 2020, workshop. We agree with stakeholders that the directives in the Clean Energy Transformation Act (CETA) will require the provision of electric service with a diversity of resources, some of which are not electricity, including energy efficiency and conservation, demand response, storage, and other distributed energy resources to obtain the statutory goals and benefits to customers. The commission finds that is appropriate and reasonable to rename chapter 480-107 WAC "Purchases of Resources," which more accurately describes the rules set forth in chapter 480-107 WAC without modifying their scope or applicability.² The rules continue to govern electric companies' procurement of resources for the provision of electric service under the requirements of CETA, as stated above.

² See RCW 34.05.900 ("Section captions and subchapter headings used in this chapter do not constitute any part of the law."); WAC 480-07-010 Scope of this chapter. ("These rules are authorized by and supplement the Administrative Procedure Act, chapter 34.05 RCW, and the statutes that define the commission's authority and responsibilities found principally [principally] in Titles 80 and 81 RCW. The commission's procedural rules should be interpreted in conjunction with these statutes.")

19 *Proposed amendments to WAC 480-107-001.* The commission amends WAC 480-107-001 to set the requirements for "utility solicitations and procurements, including provisions governing competitive solicitations, all-source RFPs, targeted RFPs, independent evaluators and system emergencies." While PacifiCorp and PSE raised concerned [concerns] about the rule limiting their ability to acquire resources, these rules do not set the sole procedures for electric utility procurement.³ Consistent with the existing rule language, the proposed rule

provides that utilities may still seek alternative routes to obtain resources while meeting the increasing goals of CETA.

³ PacifiCorp comments at 3 & 4 (December 3, 2020); PSE comments at 3 (September 14, 2020).

20 *Proposed amendments to WAC 480-107-007.* In this order, we modify the proposed definition of "repowering," eliminating "federal or state regulatory requirements" to address concerns raised by commenters.⁴ The definition of "repowering" expressly exempts routine major maintenance and work related to existing hydropower licensing obligations, among other things. If a utility conducts an RFP,⁵ it is required to include in the RFP the repowering of an existing utility-owned generation facility if that generation facility is being considered to fill the resource need identified in the RFP. The utility is additionally required by WAC 480-107-023 and 480-107-024 to use an IE in this situation. This requirement ensures there is no bias in favor of selecting resources that create rate base for the utility.

⁴ Invenergy comments (September 14, 2020).

⁵ See proposed WAC 480-107-009.

21 Several stakeholders raised concerns that ongoing work to maintain the operation of a generation facility, specifically a hydroelectric generation facility, over its expected life might fall under the definition of repowering.⁶ That is not our intent. The exemption clause is intended to prevent a utility from conflicts between obligations the utility has already incurred to receive a hydroelectric license (such as aquatic, terrestrial, recreation, and streamflow requirements), and a commission requirement to forego those obligations as a prerequisite to considering replacement resources. The commission recognizes the binding nature of hydroelectric license obligations and will consider them as it evaluates the utility's resource choice to enter into such a licensing agreement in light of what was known or knowable at the time the utility entered into the license.

⁶ PSE comments at 1-4 (December 3, 2020). Avista comments at 1-2 (December 3, 2020). PacifiCorp comments at 2-3 (September 14, 2020).

22 PSE additionally seeks clarity regarding the "expected physical or economic life" of a hydroelectric facility.⁷ PSE proposes clarifying language that allows major maintenance to be performed "within the terms of an existing federal hydropower license."⁸ The commission considers the "expected physical or economic life" as that phrase is used in the rule to reference the terms of the existing hydroelectric license.⁹ If a repair or replacement of the plant is required by "terms of an existing federal hydropower license," "existing hydroelectric licensing obligations," or another equivalent phrase, the commission will consider the work to be part of the expected good utility practice of maintaining a plant for its licensed life, or as a pre-existing requirement that the utility must meet to operate the plant for its licensed life.¹⁰

⁷ PSE comments at 1-4 (December 3, 2020).

⁸ *Id.* page 3.

⁹ WAC 480-107-007.

¹⁰ *Id.*

23 Second, we amend the definition of "indicator" to "customer benefit indicator" to be consistent with and to reflect the use of the term "customer benefit indicator" in the rules governing clean energy implementation plans, or CEIPs, that we adopt by separate order in Docket UE-191023.

24 *Proposed WAC 480-107-009.* NIPPC recommends that voluntary RFPs undergo the same robust process as required for targeted RFPs, and suggests looking to other states for guidance on more robust public involvement. We decline to make these suggested changes. The proposed rules require an all-source RFP, which may be accompanied by supplemental targeted RFPs, only after a utility files its IRP. All other RFPs are voluntary. This process appropriately balances the costs and benefits of issuing an RFP. Without the expectation of additional resource needs being routinely identified in the IRP progress report and the potential existence of an ongoing RFP issued due to the IRP, the costs and burdens of requiring an RFP may not outweigh the benefits. The utility will be responsible for the consequences if it decides not to issue an RFP when an RFP is warranted. The commission nevertheless recognizes that the application of this process will be iterative, and that we may revisit it in the future based on the collective experience with the amended rules of the commission, utilities, and stakeholders.

25 NIPPC expressed further concern with the different public participation protocols resulting from required and voluntary RFPs, suggesting that utilities will sidestep using the required RFP following an IRP and instead use the voluntary RFP to acquire a large portion of its resources. We do not believe utilities can or will sidestep acquisitions that must be pursued through a required RFP. The information from bidders in a required RFP will demonstrate the cost of available resources the utility did not select and will be available to consider in a prudence review of resources acquired by the utility in its voluntary RFP. In the event that this process results in unintended consequences, the commission will revisit this portion of the rules.

26 *Proposed amendments to WAC 480-107-015.* NWECC requests that the commission revise the amendments in proposed WAC 480-107-015(3) to require utilities to post any RFP and information about how to respond to an RFP in "appropriate languages."¹¹ NWECC argues that the equity requirements of CETA "suggest" the propriety of this recommended rule language.¹²

¹¹ NWECC comments at 4 (September 14, 2020).

¹² *Id.*

27 Although providing RFPs and information about how to respond in multiple languages would be useful, particularly depending on individual supplier and developer needs, the commission lacks a sufficient record to include such a requirement in the proposed rules at this time. Additional stakeholder discussion is needed to address issues of RFP language needs; CETA's implied authority to require RFP material translation versus general commission authority; how or where utilities are lacking in language considerations now, and any related effects on bidders' responses; how many languages a utility should use for materials concerning RFPs; or the methods to determine which languages are used. The commission supports utilities' efforts to boost or otherwise strengthen their own supplier diversity targets, and language considerations such as these may be means to achieve such targets. Utilities, staff, and stakeholders should work collaboratively to explore opportunities to increase supplier diversity as CETA's rules are implemented generally.

28 In addition, amendments in proposed WAC 480-107-015 (2) and (3) direct utilities to ensure information needed for responding to RFPs is available to diverse suppliers. These subsections require a

utility to conduct RFP outreach and notification to diverse suppliers, specifically naming outreach for women-, minority-, disabled-, and veteran-owned businesses. The commission recognizes that information access is one of potentially many barriers that prevent diverse businesses from responding to RFPs. But we also recognize that information access is not a panacea for the lack of diversity in utility contracting, and that utilities cannot ensure or otherwise guarantee that any advertisement or outreach effort will reach every intended potential supplier. However, the commission expects that, as utilities strengthen their efforts in supplier diversity, they also will make best efforts in the areas of outreach and advertising to diverse businesses.

29 Avista provided suggested clarifying language to proposed WAC 480-107-015(5) that would allow bid contents to be available to utility employees and the independent evaluator, subject to WAC 480-107-024(3), at the end of the solicitation period specified in the RFP.¹³ We decline to accept this change. In our view, the terms in the proposed rule and Avista's suggestion are synonymous, and Avista's proposed language fails to provide additional clarity.

¹³ Avista comments at 5 (December 3, 2020).

30 *Proposed WAC 480-107-017*. Consistent with its suggested revisions to proposed WAC 480-107-015(3), NWECC suggests revisions to proposed WAC 480-107-017(2), which requires utilities to publish information about how the commission approves an RFP, to require utilities to publish the information in "appropriate languages."¹⁴ We decline to make this suggested revision for the same reasons we reject similar revisions to proposed WAC 480-107-015(3).

¹⁴ NWECC comments at 4 (September 14, 2020).

31 *Proposed WAC 480-107-023*. NWECC also requests that, if an IE is required, the utility be required to publish the process of IE selection and evaluation in "appropriate languages" in WAC 480-107-023(3).¹⁵ We decline to make this suggested revision for the same reasons we do not accept NWECC's suggested changes to proposed WAC 480-107-015(3) and 480-107-017(2).

¹⁵ *Id.*

32 PacifiCorp raised concerns that proposed WAC 480-107-023(6) requires a utility to allow a bidder to use utility resources in its bid without compensation.¹⁶ The proposed rules, however, clarify that the bidder is not using the utility resources; rather, the utility is identifying its assets so that a bidder can design a resource bid that optimizes the combined value of its bid and the utility assets. Optimizing the combined value of the utility's existing portfolio and new resources is an essential step in creating a lowest reasonable costs portfolio. For example, designing the use of batteries to support the needs of a utility's distribution system requires information about the distribution infrastructure and the operational demand on the distribution system. The proposed rules promote the development of a lowest reasonable cost portfolio through RFP information that enables bidders to design bids to work with the existing utility infrastructure.

¹⁶ PacifiCorp comments at 13-14 (June 29, 2020).

33 Commentors expressed a variety of concerns regarding when an IE is required. Proposed WAC 480-107-023(1) requires an IE in three circumstances: (a) If the utility, its subsidiary, or its affiliate participate in the RFP process; (b) if the utility wishes to procure

resources that will result in the utility owning or having a purchase option for the resource; and (c) if the utility is considering repowering its existing resources to meet its resource need. We observe that the resource need referred to here, as defined in proposed WAC 480-107-007, is the resource need identified in the utility's IRP under WAC 480-100-605, which we adopt by separate order in Docket UE-191023.

34 Proposed WAC 480-107-023(2) requires the commission to approve the IE a utility selects. The commission expects that a utility will file a petition seeking such approval, and that the commission will consider the petition at an open meeting. The commission expects that its review and approval will take at least thirty days.

35 Under proposed WAC 480-107-023(4), the utility must provide the IE with all data and information necessary to perform a thorough examination of the bidding process and responsive bids. Additionally, proposed WAC 480-107-035(4) requires the IE to score and rank the qualifying bids. Accordingly, we expect that the evaluator will have access to the models that the utility uses to compare responsive bids, be able to adjust inputs and assumptions in those models and run the models if necessary, or have the utility adjust and run the model. This expectation is further supported by the requirements in proposed WAC 480-107-023 (5)(c) and (e) for the IE to evaluate individual bids and verify the utility's inputs and assumptions.

36 Public counsel requested clarity on whether any stakeholder could request an IE for procurements not otherwise required under proposed WAC 480-107-023.¹⁷ While the proposed rules only require IEs under certain circumstances, the commission has the authority to condition its acceptance of an RFP on the use of an IE. Further, the rules do not prohibit parties from requesting the commission condition approval on use of an IE.¹⁸

¹⁷ Public counsel comments at 4 (December 3, 2020).

¹⁸ Proposed WAC 480-107-009(2) states that required RFPs are subject to commission approval. However, under subsection [subsection] 480-107-009(3), voluntary RFPs do not require commission approval and cannot be conditioned.

37 *Proposed amendments to WAC 480-107-025.* The amendments to WAC 480-107-025(2) that we adopt in this order clarify that utilities should solicit indicator-related information and clearly describe all indicators, including customer benefit indicators, contained within the utility's most recent clean energy implementation plan (CEIP). The changes are necessary to reflect the use of the term "customer benefit indicator" included in amendments to WAC 480-107-007, and due to the use of the term in the rules we adopt by separate order in Docket UE-191023. In that adoption order, we also adopt WAC 480-100-640 (4)(c), which outlines the minimum customer benefit indicators that utilities must include in their CEIPs. These minimum requirements do not limit the authority of the commission to order (or the ability of stakeholders to request) the use of additional indicators or metrics. If the commission orders additional indicators or metrics as part of its CEIP approval process, utilities should describe and solicit information related to these additional indicators and metrics in addition to the required customer benefit indicators. The changes in proposed WAC 480-107-025(2) are consistent with the CEIP rules.

38 *Proposed amendments to WAC 480-107-035.* Proposed amendments to WAC 480-107-035(3) require, when ranking bids, that utilities not discriminate based solely on bidder ownership structure. This requirement applies whether the utility will own, or have the option to own, the resource as part of the bid, as well as all other aspects of ownership

structures, including structures associated with private businesses, utility customers, cooperatives, nonprofit organizations, and other individuals or organizations.

39 Commenters raised concerns regarding stakeholder access to confidential information in the bidding process, suggesting the use of non-disclosure agreements (NDAs) to ensure confidentiality, or to follow processes used in Oregon and Utah.¹⁹ The commission declines to adopt these suggested changes. While the commission does not compel utilities to sign NDAs, we recognize that this is an option for utilities to consider. WAC 480-107-035(5) allows utilities to use a generic but complete description in a public notice when specifics in a bid are confidential. We do not consider the filing of bidder information necessary until the time at which a bid is awarded a contract (and then, only the information related to the awarded bid), or at the time the resource costs are requested in rates. The commission finds the requirements for a summary of bid information and the protection of confidential bid information sufficient in the proposed rules.

¹⁹ Sierra Club comments at 1 (December 3, 2020), and NIPPC's comments in the December 14, 2020, Adoption Hearing audio recording at approximately 19:38.

40 *Proposed amendments to WAC 480-107-075(3)*. Public counsel and other commenters have advocated for more supplier diversity by requesting the rules require utility goals or targets for contracting with women-, minority-, disabled-, and veteran-owned businesses.²⁰ Understanding that the schedule in this rule making does not provide ample opportunity for public engagement on this topic, public counsel requested that the commission promptly hold workshops to address this issue.²¹ The commission agrees and acknowledges that diversity and inclusivity is beneficial to contracting. We appreciate public counsel's and other stakeholders' comments regarding supplier diversity and intend to hold stakeholder workshops in 2021 to address these and other issues.²²

²⁰ Public counsel third comments ¶ 7 (September 14, 2020).

²¹ Public counsel comments at 5 (December 3, 2020); Front and Centered comments at 3-4 (September 14, 2020); Climate Solutions comments at 3 (September 14, 2020); Washington state labor council and Washington building trades comments at 1-2 (September 14, 2020); NWECC comments at 4 (June 29, 2020).

²² State commissions across the country have established supplier diversity targets differently. Models range from states and state commissions requiring targets through rules to those creating voluntary programs via MOUs signed by utilities. For example, Maryland PUC has a voluntary MOU signed by companies. Similarly, the types of contracting considered by these targets, the level of target setting, and considerations for diversity certification are different across states. While California and Illinois PUCs have rules resulting from legislative requirements to track and report on diverse suppliers. These are key questions for workshops to consider when setting any supplier diversity targets, and particularly targets required by rule.

41 The commission supports utilities' efforts to bolster their supplier diversity efforts and may consider future policy guidance as CETA implementation continues.

42 Two elements of the rules we adopt in this order will be useful components informing these conversations: Proposed WAC 480-107-075(3) states that final contracts resulting from an RFP process and signed by a utility to acquire resources must require the firm awarded the contract to report to the utility its use of diverse businesses. Additionally, proposed WAC 480-107-145(2) requires utilities to submit to the commission a summary of its RFP process including participation of women-, minority-, disabled-, and veteran-owned businesses. The information we gather from these reports will assist the commission, stakeholders, and utilities in better understanding the current state of supplier diversity in utility contracting.

43 **CHANGES FROM PROPOSAL:** The commission adopts the proposal with the following changes from the text noticed at WSR 20-22-075:

Chapter 480-107 WAC, Purchases of electricity, replace "Purchases of Electricity" with "Purchases of Resources."

WAC 480-107-007, "Indicator" definition, before "indicator" add "Customer benefit" and move the definition due to alphabetical order.

WAC 480-107-007, "Repowering" definition, replace "routing" with "routine"; add "the maintenance of or" after "hydroelectric licensing obligations, or" and before "replacement of equipment"; add "expected" after "materially affect the" and before "physical or economical"; substitute "longevity" with "life."

WAC 480-107-025(2), replace "include" with "contain"; add "including customer benefit indicators," after "most recent CEIP,"; replace "including" with "as well as"; and replace "the" with "all."

44 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should amend, repeal, and adopt the rules as proposed in the CR-102 at WSR 20-22-075 with the nonsubstantive revisions listed above. We accept staff's explanations for changes as stated in Appendix A of this order. The following explains the remaining revisions.

45 The commission modifies the title of the proposed amendment to chapter 480-107 WAC, Purchases of electricity, to clarify the substance of the rules within the chapter.

46 The commission modifies the definition of "indicator" in proposed amendment to WAC 480-107-007 to reflect changes to WAC 480-100-605, adopted by separate order in Docket UE-191023.

47 The commission modifies the proposed amendment to WAC 480-107-025(2) to clarify the requirements and incorporate changes to "indicators" for consistency with the rules adopted by separate order in Docket UE-191023.

48 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that WAC 480-107-001, 480-107-002, 480-107-007, 480-107-009, 480-107-011, 480-107-015, 480-107-017, 480-107-021, 480-107-023, 480-107-024, 480-107-025, 480-107-035, 480-107-045, 480-107-065, 480-107-075, 480-107-115, 480-107-135, and 480-107-145 should be amended, repealed, and adopted to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to [take] effect on December 31, 2020, as required in RCW 19.405.100(9).

ORDER

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 12, Repealed 1.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 12, Repealed 1.

49 THE COMMISSION ORDERS:

50 The commission repeals, amends and adopts WAC 480-107-001, 480-107-002, 480-107-007, 480-107-009, 480-107-011, 480-107-015, 480-107-017, 480-107-021, 480-107-023, 480-107-024, 480-107-025, 480-107-035, 480-107-045, 480-107-065, 480-107-075, 480-107-115,

480-107-135, and 480-107-145 to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect on December 31, 2020.

51 This order and the rule set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, December 28, 2020.

Washington utilities and transportation commission.

David W. Danner, Chair
 Ann E. Rendahl, Commissioner
 Jay M. Balasbas, Commissioner

**Appendix A
 Comment Summary Matrix**

**WAC 480-100-107 POE Rule Making UE-190837
 Written Comments on CR-102 Draft Rules
 Filed by December 3, 2020
 Summary of Comments**

Party	Summary of Comment	Staff Response
Pacific Power	Pacific Power expresses continuing concern with the practicality of the rules and potential harm the rules may do to customers. Pacific Power asks for clarification or modification of the rules to ensure a fair and efficient acquisition process.	Staff disagrees that the changes proposed are feasible in this phase of the rule making.
	Generally, Pacific Power is concerned that the acquisition process in the rules is overly burdensome and complicated, and likely to result in regulatory fatigue for all involved. The rules will likely hamper the rapid acquisition that is inherently needed under the CETA, resulting in additional cost increases to customers.	
	Pacific Power views its proposed changes as limited and feasible to make in the CR-102 phase of this rule making. The areas of suggested modifications in the draft rules are areas that Pacific Power believes it is likely to seek exemptions in the future if not modified.	

Party	Summary of Comment	Staff Response
	<p><i>Require RFP filing one hundred twenty days after IRP acknowledgement rather than the date of the IRP filing (WAC 480-107-017).</i> In its practice of filing RFPs one hundred twenty days after the IRP is acknowledged, Pacific Power has not found that the IRP data is too stale a concern staff raises. Without changes to the draft CR-102 rules, Pacific Power expects waivers will be necessary.</p>	<p>Staff disagrees with the conclusion that requiring an RFP filing one hundred twenty days after the filing of the IRP will create significant inefficiencies or lead to requests for exemptions. With the adoption of the CEIP/IRP rules, staff intends to expedite its review of the IRP and the commission intends to speed the issuance of its acknowledgment letter.</p>
	<p><i>Qualifying Facilities (QF) with existing contracts should not be allowed to bid into an RFP (WAC 480-107-009).</i> Pacific Power states that it does not enter contracts voluntarily with QFs but under terms that are commission approved and that it must use. Using as an example its Oregon standard QF contract terms, Pacific Power states that compensation for a QF breaking its contract is limited and that a QF under Washington's Schedule QF could bid into an RFP to get a higher price and then breach its existing contract. Pacific Power recognizes that this type of event is unlikely, but recommends the commission change the rules rather than rely on assumptions of future events.</p>	<p>Staff disagrees with the need and the propriety of changing the rules to limit QFs with contracts from bidding into RFPs. There are also questions as to whether the commission has the authority to make this change. However, staff is willing to work with the company to examine the tariffs and contracts the company has filed in Washington to prevent such possible gaming by QFs.</p>
	<p><i>Do not require utilities to issue an RFP for purchases with terms of five years or less (WAC 480-107-009(2)).</i> Pacific Power reiterates its previous request to exempt all purchases with terms less than five years from RFPs. Pacific Power expands its description of its previously provided example of purchasing five-year hydro slices that are commonly available in the NW bi-lateral market, asserting that the present rule would "prevent utilities from easily contracting for these carbon-free, low-cost resources." Pacific Power states that applying for waivers to participate in the bidding process for five-year hydro contracts could put it and its customers at a competitive disadvantage by signaling its participation in the bidding process. Pacific Power recognizes staff's intent to exempt hedging practices that contract three years in advance of need but notes that such an exemption is not in rule.</p>	<p>Staff continues to support issuing an all-source RFP for needs that are within four years. WAC 480-107-001 provides flexibility, i.e., providing that a utility may pursue resources in a manner necessary to serve its load. The RFP requirements do not change the responsibility or limit utility actions under WAC 480-107-001 to pursue resource acquisitions from providers who do not have a practice of bidding into utility RFPs.</p>
		<p>Staff reiterates its conclusion that a utility's decision between resources with long durations such as twenty-year durations and resources with five-year durations to manage its long-term needs is a long-term resource choice—either to have long-term resources or to take a short position in the market. Staff believes that such decisions must be made in light of the best available resource options that come with the issuance of an RFP.</p> <p>Staff also clarifies that hedging practices are not so much exempt from the PoE rules as they are part of the underlying practices of the utility that are considered in the long-term planning in its IRP as the utility examines its portfolio performance and determines its long-term resource needs.</p>
	<p><i>Adopt a MW threshold for when an RFP is required (WAC 480-107-009(2)).</i> It is inefficient to require an RFP to be issued for a small resource need. Pacific Power recommends an 80 MW threshold.</p>	<p>Staff disagrees that a minimum threshold should be set for the need in an IRP that triggers the requirement for an all-source RFP. With the proposed change to a four-year IRP cycle, staff considers it very unlikely that some type of resource need under CETA, whether conservation, demand response, or renewable energy, will not be found in the next three IRPs due between now and 2029.</p>
	<p><i>Utilities should not be required to accept identical bids in parallel RFPs (WAC 480-107-009).</i> The rules require an all-source RFP when <i>any</i> need is shown in the IRP but also provides for a parallel targeted RFP, which, to a very limited degree mitigates Pacific Power's concern with the rules' requirement to issue an all-source RFP regardless of the size of the need found in the IRP. Pacific Power seeks clarification on whether the rules require Pacific Power to accept identical bids in both the all-source and the targeted RFPs as they run in parallel. Pacific Power asserts that evaluating the same bid in both RFPs undermines the efficiency of having two RFP processes and requests clarification that it is not required to accept identical bids in parallel RFPs.</p>	<p>Staff disagrees that the rule should limit a qualified bidder's participation in the RFP. Staff encourages the company to communicate with potential bidders and direct them to the most appropriate RFP. Staff believes that the occasional bidder that bids into both RFPs will not unduly burden the utility, especially considering that the two parallel RFPs must pick the lowest reasonable cost resources from either RFP.</p>
<p>Avista</p>	<p>WAC 480-107-007(2), Avista proposes clarifying language. (2) <u>When the commission evaluates the prudence of the utility's acquisition of new resources in rate and other proceedings, it the commission will consider the information the utility obtained through its acquisition solicitation and procurement efforts. when the commission evaluates the performance of the utility in through rate and other proceedings.</u></p>	<p>Staff appreciates the proposed language. However, staff views it as changing the meaning of the rule. Avista's proposed language limits the commission action to evaluations of prudence of a utility "acquisition" of "new resource." The language in rule is intentionally much broader, covering any aspect of utility performance for which such information may be relevant.</p>

Party	Summary of Comment	Staff Response
	<p>WAC 480-107-007, definition of repowering. Avista proposes clarifying language.</p> <p>"Repowering" means a rebuild or refurbishment, including fuel source changes, of a utility-owned generator or generation facility that is <u>required in order to extend the useful life or economic life of the generator or facility, due to the generator or facility reaching the end of its useful life or the useful reasonable economic life.</u> The rebuild or refurbishment does not constitute repowering if it is part of <u>routing routine major maintenance or operations,</u> existing hydroelectric licensing obligations, or replacement of equipment that does not materially affect the physical or economical longevity of the generator or generation facility.</p> <p>WAC 480-107-015(4), Avista proposes language to clarify when the evaluation process begins.</p> <p>Prior to the expiration of the solicitation period specified in the RFP, the utility may allow the bid contents to be available to its employees and the independent evaluator, within the limitations established in WAC 480-107-024(3). Such availability must be solely for the purpose of tracking the receipt of bids. <u>The evaluation phase will not occur until such time as all bids have been received and the bidding timeframe has officially closed, and to prepare for, but not to begin, the evaluation phase of the RFP process</u></p> <p>WAC 480-107-023(4), Avista proposes clarifying language. Avista considers the language to be overly broad.</p> <p>The utility must provide the independent evaluator with all data and information <u>reasonably necessary</u> to perform a thorough examination of the bidding process and responsive bids.</p>	<p>Staff does not agree with the change in the first sentence. The rule is based on the end of useful life or economic life of the generation facility because a utility must establish such a date to evaluate plant acquisition and continued investment to maintain the plant. Investments beyond this purpose trigger the bidding of the repowering project into the utility RFP.</p> <p>Unlike routine major maintenance, staff does not believe routine "operations" could be misconstrued by a stakeholder to be included in the term repower or refurbish.</p> <p>Staff agrees with and has corrected the typo in the second sentence.</p> <p>Staff agrees that this language is essentially the same as that in rule. However, staff is concerned that Avista's version does not provide explicit permission to "prepare for" the evaluation phase. Staff prefers to maintain an explicit differentiation between the evaluation phase and preparing for the evaluation phase to protect against misinterpretations that might misconstrue preparation activities to be part of the evaluation phase.</p> <p>Staff could support:</p> <p>Prior to the <u>official closure of the bidding timeframe expiration of the solicitation period</u> specified in the RFP, the utility may allow the bid contents to be available to its employees and the independent evaluator, within the limitations established in WAC 480-107-024(3). Such availability must be solely for the purpose of tracking the receipt of bids and to prepare for, but not to begin, the evaluation phase of the RFP process.</p> <p>Staff disagrees. The current proposal requires the utility to provide only data and information that is necessary for the IE to examine the bidding process. The commission can weigh the reasonableness of the IE data requests if they arise.</p>
PSE	<p>PSE supports the elimination of the requirement to pursue an all-source RFP in response to a two-year IRP update, as well as the clarifications made around the use of a targeted RFP.</p> <p><i>PSE remains concerned with the scope of the term "major maintenance" used in the draft rule, WAC 480-107-007. The breadth and application of repowering and major maintenance should be narrowed in rule or, in the alternative, clarification of the reach of their application is needed in the adoption order. Specifically, the commission should allow the utility to perform certain types of predictive and corrective maintenance of power generation equipment without such action constituting a "repowering" under the rules.</i></p> <p>PSE strongly recommends that major maintenance activities within the term of a federal hydropower license be specifically exempted from the definition of repowering, even if the activity materially affects the physical and economic longevity of the facility within the license period. PSE observes that long-lived hydroelectric projects do not have a defined routine maintenance manual which may lead to future misinterpretation of the rule. PSE states that in its November 3, 2020, comment matrix staff states that repairs necessary for reliability that are discovered during routine major maintenance are not part of routine major maintenance. PSE also asks that staff clarify that work to correct problems detected during routine major maintenance be included in the definition of routine major maintenance.</p>	<p>No response needed.</p> <p>Staff's general use of the term "routine major maintenance" in the rule was intended to include predictive and corrective maintenance. Staff will recommend clarifying in the adoption order that the term major routine maintenance includes predictive and corrective maintenance.</p> <p>Staff views the expected life of a generation facility at the time of its in-service date to include predictive and corrective maintenance, both those known at the time of the generator in-service date and those developed as best practices after the in-service date. Though those types of maintenance activities may increase the life of the generation facility compared to what was known to be possible at the time of its in-service date, staff views a generation facility's life as a combination of the physical plant at the time of in-service and good utility practice during the life of the plant.</p> <p>Staff recognizes that the expected end of life and actual failure date of the components of a generation facility will not all be the same.</p>

Party	Summary of Comment	Staff Response
	<p>WAC 480-107-007, proposed amendments to definition of repowering.</p> <p>PSE recommends two ways to modify the definition.</p> <p>(1) Limit the definition of "repower" to the first sentence and eliminate the second sentence.</p> <p>(2) Expand the definition of "major maintenance" to include activities within the terms of the hydroelectric facilities license.</p> <p>"Repowering" means a rebuild or refurbishment, including fuel source changes, of a utility owned generator or generation facility that is required due to the generator or facility reaching the end of its useful life or useful reasonable economic life. The rebuild or refurbishment does not constitute repowering if it is part of routing routine major maintenance, <u>major maintenance within the terms of an existing federal hydropower license, existing hydroelectric licensing obligations, or the maintenance of or replacement of equipment that does not materially affect increase the expected physical or economical longevity of the generator or generation facility.</u></p>	<p>Staff agrees in part with the suggested changes.</p> <p>In the final sentence, staff will change "routing" to "routine," add "the maintenance of or" before "replacement," and add "expected" before "physical."</p> <p>Staff disagrees with changing "affect" to "increase" and to changing "existing hydroelectric licensing obligations." Staff recognizes, as does the rule, that if repair or replacement of the plant is required by "terms of an existing federal hydropower license" or "existing hydroelectric licensing obligations" or other equivalent phrase, the work is considered part of the expected good utility practice of maintaining a plant for its licensed life or is a pre-existing requirement that must be met to operate the plant for its licensed life.</p>
Public Counsel	<p>Public counsel (PC) supports restoring the requirement for an independent evaluator when an IRP shows a need above an 80 megawatt (MW) threshold, i.e., when a utility is required to issue an all-source RFP. Though an all-source RFP may contain utility self-bids or considerations of repowering, thus triggering the IE requirement, public counsel believes the use of an IE should be required every time an all-source RFP is issued.</p> <p>In the alternative, PC recommends adding language to the rule that explicitly provides that interested persons may ask the commission to require an IE by order when a utility files its RFP. This explicit statement is necessary for stakeholders who are not familiar with the commission's process.</p> <p>PC requests the commission workshops outside of the rule making to consider how to develop contracting goals with a diversity of suppliers with the goal of issuing a policy statement or other guidance on how to best include bids from minority-, women-, disabled-, and veteran-owned businesses.</p>	<p>Staff disagrees that an IE is necessary in the case of every all-source RFP. However, staff will consider recommending the use of an IE on a case-by-case basis considering the circumstances at the time of the resource need.</p> <p>Staff agrees that interested persons may ask the commission to require an IE where the rule does not require it due to changed circumstances not considered or accounted for in rule. Staff supports stating in the adoption order that interested parties have the option to request that the commission require a utility to use an IE.</p> <p>Staff supports scheduling conversations on supplier diversity via workshop or other forums outside of this rule making as CETA is implemented and as utilities and the commission have collected additional data supporting such conversations, including but not limited to data collected under proposed WAC 480-107-075(3) and 480-107-145(2).</p>
NIPPC	<p>NIPPC recommends that voluntary RFPs undergo the same robust process as required and targeted RFPs. A comment period for voluntary RFPs should be provided similar to the comment period for required and targeted RFPs. For circumstances in which the utility must retain an IE for its voluntary RFP, there is no substantive review by the commission or stakeholders and no approval process of the voluntary RFP. In the case of a voluntary RFP that does not trigger the need for an IE, the only requirement in rule is that the voluntary RFP be filed with the commission. There is no requirement to notify stakeholders. NIPPC believes that the abbreviated process will likely lead to uncompetitive procurements.</p> <p>NIPPC expresses concern that utilities will sidestep using the RFP required after the IRP and instead use the voluntary RFP to acquire a large portion of its resources.</p>	<p>Staff disagrees that the voluntary RFPs must be reviewed in detail. Staff believes that in the review and approval by the commission of required RFPs, the commission will set standards for an RFP that a utility should consider in any voluntary RFP.</p> <p>Staff does not believe utilities will or can sidestep acquisitions in the required RFP. The required RFP will provide ample information from bidders to show the cost of resources the utility passed over and is available to use in a prudence review of resources acquired by the utility in its voluntary RFP.</p>

Party	Summary of Comment	Staff Response
Northwest Energy Coalition (coalition)	<p>The coalition supports the rules' requirement to have the IE rank bids and explain in the final report to the commission, after reconciling rankings with the utility, why the IE and the utility were or were not able to reconcile any differences. As an objective and independent third party, an IE will provide a non-self-interested evaluation on behalf of ratepayers. The use of an IE is a major improvement to the current RFP process.</p> <p>The coalition supports the expanded application of equity indicators beyond generators and wires to such items as energy efficiency or incentive programs that result from the newly added definition of resource.</p>	No response required.
	<p>The coalition supports the use of an IE for any RFP resulting from an IRP with a resource need within four years or for any RFP seeking to fill a large resource need. Short of including that requirement in rule, the coalition seeks guidance in the adoption order on what conditions might warrant, outside of 480-107-023(1), the commission to require the utility to use an IE.</p>	<p>Staff disagrees that an IE is necessary in the case of every all-source RFP. However, staff will consider recommending the use of an IE on a case-by-case basis considering the circumstances at the time of the resource need.</p> <p>Staff does not believe, absent a particular circumstance, it is possible or useful for the commission to speculate on a fact pattern that would result in a future commission determining the need for an IE.</p>
	<p>The coalition asks for clarification of when a voluntary RFP could be used, after an IRP progress report? After a utility rejects bids from a required all-source RFP?</p>	<p>Staff believes there could be numerous possible circumstances but cannot speculate on their probability. Changing market conditions either driven by pressures of supply and demand or technology advancements may create opportunities for additional RFPs.</p> <p>Staff does not foresee a condition in which a utility will refuse fulfilling its need in a required all-source RFP for the purpose of using a voluntary RFP to fill the same resource need.</p>
RNW	<p>RNW supports the trigger for requiring an all-source RFP, the timelines for issuing a required RFP, the forty-five day comment period on the required RFP.</p> <p>RNW also "appreciates the draft rules' attention to stakeholder outreach in Draft WAC 480-107-015, the establishment of a 45-day comment period as noted above, the informational filing requirements of Draft WAC 480-107-020, the stakeholder consultation required before independent evaluator ("IE") selection in Draft WAC 480-107-023(2), and the opportunity for stakeholder comment on the required IE report in Draft WAC 480-107-023(7)."</p>	No response required.
	<p>While RNW supports the rules' existing application of an IE and the role of the IE, it recommends applying the IE requirement for any RFP seeking to meet resource needs greater than 50 MW.</p>	<p>Staff disagrees that an IE is necessary in the case of every all-source RFP. However, staff will consider recommending the use of an IE on a case-by-case basis considering the circumstances at the time of the resource need.</p>
	<p>RNW encourages the commission to consider requiring rather than only encouraging the utility to consult with staff and interested stakeholders during the development of an RFP and the associated evaluation rubric (WAC 480-107-015).</p>	<p>Staff believes the rules appropriately encourage utilities to engage stakeholders during the development of an RFP and the associated evaluation rubric.</p>
	<p>The clean version of draft WAC 480-107-XXX contains a typographical error mistakenly designating it as a section of the rule as WAC 480-107-001. The redline version labels that section WAC 480-107-011. Also, the internal cross-reference to WAC 480-107-035(5) appears to be an error in both the clean and redline version of the draft rules and WAC 480-107-035(6) appears to be the correct internal cross-reference.</p>	Staff agrees and has made these changes.
Sierra Club	<p>Sierra Club strongly requests that the rules require a utility to provide more bidder price information. Understanding the need for confidentiality, Sierra Club suggest[s] that stakeholders could enter into nondisclosure agreements (NDA) to ensure confidentiality and a utility could aggregate data to provide price averages or means.</p>	<p>Staff disagrees with requiring utilities to enter into NDAs. However, staff believes the rules do not prevent a utility from voluntarily entering into such agreements.</p>
		<p>Staff does not consider the filing of bidder information necessary until the time at which a bid is awarded a contract (and only the information related to the awarded bid) or at the time the resource costs are requested in rates.</p>

Party	Summary of Comment	Staff Response
	An IE should be required when a utility has under-performed in its acquisition of non-generation resources, especially for demand response. Due to chronic under-funding of demand response, Sierra Club proposed six criteria for evaluating demand response.	Staff supports the rules' requirements for a summary of bid information and the protection of confidential bid information. Staff considers the Sierra Club's suggested criteria for evaluating demand response to be part of the IRP modeling and analysis and, as such, would also be applied in the resource evaluation process of the RFP. With the evaluation criteria included in the IRP methodology, it is not necessary to restate them in the PoE rules.
	To achieve fair evaluation of non-generation resources, Sierra Club proposes eight criteria setting out roles and responsibilities for the utility, the IE, the staff, and the commission in the RFP development, review and bid evaluation process.	Staff appreciates Sierra Club's suggested list of IE functions and believes these items are either part of the rule or that the rule provides for their enforcement.
Michael Laurie, Sustainability Consultant	Supports the comments of the Sierra Club.	No response required.

**Appendix B
WAC 480-107 - RULES**

OTS-2706.2

AMENDATORY SECTION (Amending WSR 19-13-031, filed 6/12/19, effective 7/13/19)

WAC 480-107-001 Purpose and scope. (1) The rules in this chapter (~~require utilities to solicit bids, rank project proposals, and identify any bidders that meet the minimum selection criteria~~) establish the requirements for various utility solicitations and procurements, including provisions governing competitive solicitations, all-source RFPs, targeted RFPs, independent evaluators and system emergencies. The rules in this chapter do not establish the sole procedures (~~utilities must~~) a utility may use to acquire new resources. (~~Utilities~~) A utility may construct (electric) new resources, operate conservation and efficiency resource programs, purchase power through negotiated contracts, or take other action to satisfy (their) the utility's public service obligations.

(2) The commission will consider the information the utility obtained through (~~these bidding procedures~~) its acquisition efforts when (~~it~~) the commission evaluates the performance of the utility in rate and other proceedings.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 34.05.220. WSR 19-13-031 (Docket U-161024, General Order R-597), § 480-107-001, filed 6/12/19, effective 7/13/19. Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-08-025 (Docket No. UE-030423, General Order No. R-530), § 480-107-001, filed 3/28/06, effective 4/28/06. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.353. WSR 03-22-046 (Docket No. A-030832, General Order No. R-509), § 480-107-001, filed 10/29/03, effective 11/29/03. Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 89-15-043 (Order R-304, Docket No. U-89-2814-R), § 480-107-001, filed 7/18/89.]

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

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

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

~~(3) No exception from the provisions of any rule in this chapter is permitted without prior written authorization by the commission. Such exceptions may be granted only if consistent with the public interest, the purposes underlying regulation, and applicable statutes. Any deviation from the provisions of any rule in this chapter without prior commission authorization will be subject to penalties as provided by law.)~~ Consistent with WAC 480-07-110, the commission may grant an exemption from the provisions of any rule in this chapter.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-08-025 (Docket No. UE-030423, General Order No. R-530), § 480-107-002, filed 3/28/06, effective 4/28/06.]

AMENDATORY SECTION (Amending WSR 19-13-031, filed 6/12/19, effective 7/13/19)

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

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

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

~~(b) Current projected market prices for power with comparable terms and conditions.)~~ **"All-source RFP"** means an RFP that solicits and accepts bids from any resource capable of meeting all or part of the resource need outlined in the utility's solicitation documents.

"Bid" means bidder's document containing a description of a project and other information responsive to the requirements set forth in an RFP. If a bid contains multiple projects, each individual project will be considered as a separate bid.

"Bidder" means an individual, association, corporation, or other legal entity that can enter into a power or conservation contract with the utility to fill a resource need or portion thereof.

"Commission" means the Washington utilities and transportation commission.

"Conservation and efficiency resources" (~~(means any reduction in electric power consumption that results from increases in the efficiency of energy use, production or distribution, or from demand response, load management or efficiency measures that reduce peak capacity demand)~~) has the same meaning as defined in WAC 480-100-605.

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

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

"Customer benefit indicator" has the same meaning as defined in WAC 480-100-605.

"Demand response" has the same meaning as defined in WAC 480-100-605.

"Equitable distribution" has the same meaning as defined in WAC 480-100-605.

"Highly impacted community" has the same meaning as defined in WAC 480-100-605.

"Independent evaluator" means a third party, not affiliated with the utility, that provides, at a minimum, evaluations as required in these rules.

"Independent power producers" means an entity other than a utility or its subsidiary or affiliate that develops or owns generating facilities or portions thereof that are not ((included in a utility's rate base and that are not)) qualifying facilities as defined in ((this section)) WAC 480-106-007.

"Integrated resource plan" or "IRP" means the filing made ((every two years)) by a utility in accordance with WAC ((480-100-238 Integrated resource planning)) 480-100-625.

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

"Project proposal" means a project developer's document containing a description of a project and other information responsive to the requirements set forth in a request for proposal, also known as a bid.) "Lowest reasonable cost" has the same meaning as defined in WAC 480-100-605.

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

"Renewable resource" has the same meaning as defined in WAC 480-100-605.

"Repowering" means a rebuild or refurbishment, including fuel source changes, of a utility-owned generator or generation facility that is required due to the generator or facility reaching the end of its useful life or useful reasonable economic life. The rebuild or refurbishment does not constitute repowering if it is part of routine major maintenance, existing hydroelectric licensing obligations, or the maintenance of or replacement of equipment that does not materially affect the expected physical or economical life of the generator or generation facility.

"Request for proposals" or "RFP((s))" means the documents describing a utility's solicitation of bids for delivering ((electric

capacity, energy, or capacity and energy, or conservation)) a resource need.

"Resource" has the same meaning as defined in WAC 480-100-605.

"Resource ((block)) need" ((means the deficit of capacity and associated energy that the IRP shows for the near term)) has the same meaning as defined in WAC 480-100-605.

"Resource supplier" means a third-party supplier, utility or affiliate that provides electric power, equipment or services that serve a resource need.

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

"Targeted RFP" means an RFP that solicits and accepts bids for certain types or locations of resources (including, for example, demand response, conservation and efficiency resources) capable of meeting all or part of the utility's specific resource need.

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

"Vulnerable populations" has the same meaning as defined in WAC 480-100-605.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 34.05.220. WSR 19-13-031 (Docket U-161024, General Order R-597), § 480-107-007, filed 6/12/19, effective 7/13/19. Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-08-025 (Docket No. UE-030423, General Order No. R-530), § 480-107-007, filed 3/28/06, effective 4/28/06.]

NEW SECTION

WAC 480-107-009 Required all-source RFPs and conditions for targeted RFPs. (1) All-source RFP requirements. All-source RFPs must allow bids from different types of resources that may fill all or part of the characteristics or attributes of the resource need. Such resource types include, but are not limited to, unbundled renewable energy credits, conservation and efficiency resources, demand response or other distributed energy resources, energy storage, electricity from qualifying facilities, electricity from independent power producers, or other resources identified to contribute to an equitable distribution of energy and nonenergy benefits to vulnerable populations and highly impacted communities.

(2) Required RFP. A utility must issue an all-source RFP if the IRP demonstrates that the utility has a resource need within four years. A utility may supplement its all-source RFP with one or more targeted RFPs issued at the same time. The required RFP and any supplemental RFPs are subject to commission approval.

(3) Voluntary RFP. Whenever a utility chooses to issue an RFP to meet resource needs outside of the timing of its required RFP, it may issue an all-source RFP or a targeted RFP. Voluntary RFPs are not subject to commission approval.

(4) Targeted RFP requirements. If the utility issues a targeted RFP in conjunction with an all-source RFP, it must fairly compare all resource options in its combined analysis.

[]

NEW SECTION

WAC 480-107-011 Applicability of rule sections. (1) The required RFP issued pursuant to WAC 480-107-009(2) must comply with all sections of this chapter except WAC 480-107-021 requiring an informational filing.

(2) A targeted RFP filed with a required RFP under WAC 480-107-009(2) must comply with all sections of this chapter except WAC 480-107-021 requiring an informational filing.

(3) A voluntary RFP issued pursuant to WAC 480-107-009(3) must comply with all sections of this chapter except WAC 480-107-017 requiring commission approval.

(4) For all other actions by the utility to acquire resources not included in WAC 480-107-009, the utility must comply with WAC 480-107-115.

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AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-015 ((The)) Solicitation process for any RFP. (1) ((Any owner of a generating facility, developer of a potential generating facility, marketing entity, or provider of energy savings may participate in the RFP process. Bidders may propose a variety of energy resources including: Electrical savings associated with conservation; electricity from qualifying facilities; electricity from independent power producers; and, at the utility's election, electricity from utility subsidiaries, and other electric utilities, whether or not such electricity includes ownership of property. Qualifying facility producers with a generation capacity of one megawatt or less may choose to participate in the utilities' standard tariffs without filing a bid)) The provisions of this section apply to any RFP issued to fill a resource need. The commission strongly encourages a utility to consult with commission staff and other interested stakeholders during the development of an RFP and the associated evaluation rubric.

(2) A utility ((may participate in the bidding process as a power supplier, or may allow a subsidiary or affiliate to participate in the bidding process as a power supplier, on conditions described in WAC 480-107-135 Conditions for purchase of electrical power or savings from a utility's subsidiary or affiliate. The utility's RFP submittal must declare the utility's or affiliate's participation and must demonstrate how the utility will satisfy the requirements of WAC 480-107-135)) must conduct outreach to potential bidders or resource suppliers, including nonprofit organizations and under-represented bidders such as minority-, women-, disabled-, and veteran-owned businesses, to encourage equitable participation in the bidding process. A utility must provide to all potential bidders equitable access to information relevant to responding to the utility's RFP including, but

not limited to, accommodation required by the Americans with Disabilities Act's communications guidance.

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

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

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

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

~~(d) All bids will remain sealed until expiration of the solicitation period specified in the RFP)) A utility must post a copy of the RFP on the utility's public website and make best efforts to ensure the RFP is known to industry participants and potential bidders, such as by placing notices in relevant industry publications, including publications aimed at women-, minority-, disabled-, and veteran-owned businesses.~~

~~(4) ((In addition to the solicitation process required by these rules, a utility may, at its own discretion, issue an RFP that limits project proposals to resources with specific characteristics. In addition, a utility, at its own discretion, may issue RFPs more frequently than required by this rule)) The utility must publish on its public website information about how interested persons can participate in or follow the utility's RFP process, including RFP approval, if required, and how to contact the commission's records center to be placed on relevant distribution lists for utility RFPs.~~

~~(5) ((Persons interested in receiving commission notice of a specific utility's RFP filings can request the commission to place their names on a mailing list for notification of future RFP filings by that utility.)) Prior to the expiration of the solicitation period specified in the RFP, the utility may allow the bid contents to be available to its employees and the independent evaluator, within the limitations established in WAC 480-107-024(3). Such availability must be solely for the purpose of tracking the receipt of bids and to prepare for, but not to begin, the evaluation phase of the RFP process.~~

~~(6) A utility or its subsidiary or affiliate may participate in the utility's own RFP process as a bidder consistent with the requirements in WAC 480-107-023 and 480-107-024.~~

~~(7) 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 develop a demand response bid that includes, but is not limited to, stacked values of benefits and costs.~~

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-08-025 (Docket No. UE-030423, General Order No. R-530), § 480-107-015, filed 3/28/06, effective 4/28/06.]

NEW SECTION

WAC 480-107-017 RFP filing and approval. (1) For required and targeted RFPs under WAC 480-107-009(2), a utility must file the RFPs and accompanying documentation with the commission no later than one hundred twenty days after the utility files its final IRP.

(2) The utility must provide information on its public website detailing the commission approval process required in subsection (1) of this section, including a link to the RFP filed with the commission, and a description of the subsequent public comment period and, if applicable, the independent evaluator selection and commission approval process.

(3) Within forty-five days after the utility files an RFP, interested persons may submit written comments to the commission on the RFP.

(4) The commission will approve, approve with conditions, or suspend the filed RFP, including the procedures and criteria the utility will use to evaluate and rank bids in accordance with WAC 480-107-035, within seventy-five days after the utility files its RFP.

(5) A utility must solicit bids for a resource need within thirty days of a commission order approving an RFP unless the commission establishes a different deadline.

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NEW SECTION

WAC 480-107-021 Informational filing requirement. (1) A utility must file any voluntary RFP allowed under WAC 480-107-009(3) and accompanying documentation thirty days prior to accepting bids.

(2) If the utility must retain an independent evaluator under WAC 480-107-023, the utility must publish, on its public website, information explaining its independent evaluator selection process and commission approval process, including how interested persons can participate in the approval process.

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NEW SECTION

WAC 480-107-023 Independent evaluator for repowering and bids from a utility or its subsidiary or affiliate. (1) A utility must engage the services of an independent evaluator to assess and report on the solicitation process if:

(a) The utility or its subsidiary or affiliate participates in the utility's RFP bidding process;

(b) The utility intends to retain the option to procure resources that will result in the utility owning or having a purchase option in the resource over its expected useful life; or

(c) The utility is considering repowering its existing resources to meet its resource need.

(2) After consulting with commission staff and stakeholders, the utility may issue a solicitation for an independent evaluator and must recommend an independent evaluator for approval by the commission.

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

(4) The utility must provide the independent evaluator with all data and information necessary to perform a thorough examination of the bidding process and responsive bids.

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

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

(b) Participate in the design of the RFP;

(c) Evaluate the unique risks, burdens, and benefits of each bid;

(d) Provide to the utility 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;

(f) Assess whether the utility's process of scoring the bids and selection of the initial and final shortlists is reasonable;

(g) Prepare a final report to the commission after reconciling rankings with the utility in accordance with WAC 480-107-035(3) that must:

(i) Include an evaluation of the competitive bidding process in selecting the lowest reasonable cost acquisition or action to satisfy the identified resource need, including the adequacy of communication with stakeholders and bidders; and

(ii) Explain ranking differences and why the independent evaluator and the utility were or were not able to reconcile the differences.

(6) The commission may request that additional analysis be included in the final report.

(7) Interested persons may file comments on the final report filed with the commission, including concerns about routine processes, such as administrative corrections or recommending removal of bids that do not comply with the minimum criteria identified in the RFP, but no stakeholder, including the utility or commission staff, shall have any editorial review or control over the independent evaluator's final report.

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NEW SECTION

WAC 480-107-024 Conditions for purchase of resources from a utility, utility subsidiary, or affiliate. (1) A utility or its subsidiary or affiliate may participate in the utility's RFP bidding process, and the utility may accept bids that will result in the utility owning or having a purchase option in the resource over its expected useful life. The utility may also consider repowering its existing resources to meet its resource need. If any one of these circumstances is expected to occur:

(a) The RFP solicitation and bidding process will be subject to the requirement for a utility to retain an independent evaluator to ensure that no unfair advantage occurs; and

(b) The utility must include statements regarding whether such circumstances exist:

(i) In its RFP;

(ii) In the transmittal letter accompanying the RFP filing; and

(iii) In the notice required by WAC 480-107-015(3).

(2) If the utility is considering repowering a resource to meet a resource need, the utility must submit its repowering project as a bid during the RFP process.

(3) A utility and its independent evaluator may not disclose the contents or results of an RFP or competing bids to personnel involved in developing the utility's bid, or to any subsidiary or affiliate prior to making such information public. The utility must include in the RFP the methods the utility used, and will use, to ensure that it or its independent evaluator did not, and will not, improperly disclose that information.

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AMENDATORY SECTION (Amending WSR 19-13-031, filed 6/12/19, effective 7/13/19)

WAC 480-107-025 Contents of ((the)) RFP solicitations. (1)

~~((The))~~ An RFP must ((identify)) define the resource ((block, consisting of the overall)) need, including specific attributes or characteristics the utility is soliciting, such as the amount and duration of power ((the utility is soliciting, the initial estimate of avoided cost schedule as calculated in WAC 480-106-040 Avoided cost schedule, and any additional information necessary for potential bidders to make a complete bid)), time and locational attributes, operational attributes, the type of technology or fuel source necessary to meet a compliance requirement, and any additional information necessary for potential bidders to make a complete bid, including a copy or link to the complete assessment of avoided costs identified in WAC 480-100-615(12).

(2) 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, such as a bidder's past performance utilizing diverse businesses and a bidder's intent to comply with the labor standards in RCW 82.08.962 and 82.12.962. After the commission has approved the utility's first clean energy implementation plan (CEIP), requested information must contain, at a minimum, information related to indicators approved in the utility's most recent CEIP, including customer benefit indicators, as well as descriptions of all indicators.

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

~~((3))~~ (4) The RFP must explain ((general evaluation and)) the specific ranking procedures and assumptions that the utility will use

in accordance with WAC 480-107-035 (~~(Project ranking procedure)~~). The RFP must (~~(also specify any minimum criteria that bidders must satisfy to be eligible for consideration in the ranking procedure)~~) include a sample evaluation rubric that quantifies, where possible, the weight the utility will give each criterion during the bid ranking procedure, and provides a detailed explanation of the aspects of each criterion that would result in the bid receiving higher priority.

~~((4))~~ (5) The RFP must specify (~~(the timing of)~~) a detailed timeline for each stage of the RFP process including ((the)) solicitation ((period, the)), ranking ((period)), and ((the expected)) selection ((period)), as well as the utility's schedule of planned informational activities and contact information for the RFP.

~~((5))~~ (6) The RFP must generally identify ((all security requirements and the rationale for them.

~~(6)~~ Utilities are encouraged to consult with commission staff during the development of the RFP. Utilities, at their own discretion, may submit draft RFPs for staff review prior to formally submitting an RFP to the commission.) any utility-owned assets, including merchant-side assets that the utility has available, for the purpose of receiving bids that assist the utility in meeting its resource need at the lowest reasonable cost. The utility must make reasonable efforts to provide bidders with necessary technical details they request and to allow bidders to design their bids for use in conjunction with utility-owned assets.

(7) The RFP must identify any minimum bidder requirements, including for financial security requirements and the rationale for such requirements, such as proof of a bidder's industry experience and capabilities.

(8) The RFP must include standard form contracts to be used in acquisition of resources.

(9) All RFPs must discuss the impact of any applicable multistate regulation on RFP development including the requirements imposed by other states for the RFP process.

(10) All RFPs must clearly state the scope of the solicitation and the types of bids that the utility will accept consistent with WAC 480-107-024.

[Statutory Authority: RCW 80.01.040, 80.04.160, and 34.05.220. WSR 19-13-031 (Docket U-161024, General Order R-597), § 480-107-025, filed 6/12/19, effective 7/13/19. Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-08-025 (Docket No. UE-030423, General Order No. R-530), § 480-107-025, filed 3/28/06, effective 4/28/06.]

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

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

~~(2))~~ At a minimum, (~~(the))~~ a utility's RFP ranking criteria must recognize resource cost, market-volatility risks, demand-side resource uncertainties and benefits, resource dispatchability, resource effect on system operation, credit and financial risks to the utility, the risks imposed on ratepayers, public policies regarding resource preference ((adopted by)), and Washington state or ((the)) federal govern-

ment ~~((and environmental effects including those associated with re-sources that emit carbon dioxide))~~ requirements. The ranking criteria must recognize differences in relative amounts of risk and benefit inherent among different technologies, fuel sources, financing arrangements, and contract provisions, including risks and benefits to vulnerable populations and highly impacted communities. The ranking ~~((process must complement power acquisition goals identified))~~ criteria must also be consistent with the avoided cost methodology developed in the ((utility's integrated resource plan.

~~(3)~~ After the project proposals have been opened for ranking, the utility must make available for public inspection at the utility's designated place of business a summary of each project proposal and a final ranking of all proposed projects.

~~(4))~~ IRP 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 need requested.

(2) In choosing to remove a bid during any stage of its evaluation process, the utility may not base its decision solely on the project's ability to only meet a portion of the resource need.

(3) The utility may ((reject any project proposal that does not specify, as part of the price bid, the costs of complying with environmental laws, rules, and regulations in effect at the time of the bid)) not discriminate based on a bidder's ownership structure in the ranking process.

~~((5))~~ (4) The utility ((may reject all project proposals if it finds that no proposal adequately serves ratepayers' interests. The commission will review, as appropriate, such a finding together with evidence filed in support of any acquisition in the utility's next general rate case or other cost recovery proceeding.

(6) When the utility, the utility's subsidiary or an affiliate submits a bid in response to an RFP, one or more competing bidders may request the commission to appoint an independent third party to assist commission staff in its review of the bid. Should the commission grant such a request, the fees charged by the independent third party will be paid by the party or parties requesting the independent review)) and any independent evaluator selected by the utility will each score and rank the qualifying bids using the RFP's ranking criteria and methodology. If bids include unexpected content, the utility may modify the ranking criteria but must notify all bidders of the change, describe the change, and provide an opportunity for bidders to modify their bids.

(5) Within thirty days after the close of the bidding period, the utility must post on its public website a summary of each bid the utility has received. Where use of confidential data prohibits the utility from identifying specifics of a bid, a generic but complete description is sufficient.

(6) The utility may reject any bids that do not comply with the minimum requirements of the RFP or identify the costs of complying with environmental, public health, or other laws, rules, and regulations in effect at the time of the bid.

(7) Within thirty days after executing an agreement for acquisition of a resource, the utility must file the executed agreement and supporting documents with the commission.

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

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

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-08-025 (Docket No. UE-030423, General Order No. R-530), § 480-107-035, filed 3/28/06, effective 4/28/06.]

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

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

(2) The ~~((project proposal's))~~ bid's price, pricing structure, and terms are subject to negotiation.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-08-025 (Docket No. UE-030423, General Order No. R-530), § 480-107-045, filed 3/28/06, effective 4/28/06.]

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-065 ~~((Eligibility for long-run))~~ Acquisition of conservation ~~((purchase rates))~~ and efficiency resources. (1) ~~((Any))~~ A conservation and efficiency resource supplier may participate in the bidding process for any resource need. A utility ~~((may allow a utility))~~ or its subsidiary ~~((to))~~ or affiliate may participate as a conservation resource supplier ~~((, on))~~ subject to the conditions described in WAC ~~((480-107-135 Conditions for purchase of electrical power or savings from a utility's subsidiary or affiliate. A decision to allow a utility subsidiary to participate must be explained in the utility's RFP submittal))~~ 480-107-024.

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

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

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

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

(3) A utility must acquire conservation and efficiency resources through a competitive procurement process as described in this rule

unless the utility is implementing a competitive procurement framework for conservation and efficiency resources as approved by the commission.

(a) As part of that process, a utility may develop, and update each biennium, a competitive procurement framework for conservation and efficiency resources in consultation with its conservation advisory group, as described in WAC 480-109-110. The utility may file its first competitive procurement framework for conservation and efficiency resources with the utility's 2022-2023 biennial conservation plan.

(b) The competitive procurement framework for conservation and efficiency resources must:

(i) Define the specific criteria that the utility will use to determine the frequency of competitive bidding for conservation and efficiency resource programs, in whole or part;

(ii) Address appropriate public participation, outreach, and communication of evaluation and selection criteria;

(iii) Enhance or, at minimum, not interfere with the adaptive management of programs;

(iv) Include documentation of support by the advisory group; and

(v) Be filed as an appendix to the utility's biennial conservation plan, as described in WAC 480-109-120.

(c) The competitive procurement framework for conservation and efficiency resources may:

(i) Exempt particular programs from competitive procurement, such as low-income, market transformation, or self-directed programs; and

(ii) Consider if and when to use an independent evaluator.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-08-025 (Docket No. UE-030423, General Order No. R-530), § 480-107-065, filed 3/28/06, effective 4/28/06.]

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

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

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

(3) (~~(The utility may sign contracts for any appropriate time period specified in a selected project proposal for up to a twenty-year term. The utility may sign longer-term contracts if such provisions are specified in the utility's RFP.)~~) Any contract signed by the utility to fill a resource need as a result of an RFP process must require the firm awarded the contract to track and report to the utility its use of diverse businesses including, but not limited to, women-, minority-, disabled-, and veteran-owned businesses, and to track and report to the utility the firm's application of the labor standards in RCW 82.08.962 and 82.12.962.

(4) If a bidder makes material changes (~~(are made)~~) to (~~the project proposal~~) its bid after (~~project~~) bid ranking, including material price changes, the utility must suspend contract finalization with that (~~party~~) bidder, and the utility and any independent evaluator must rerank (~~projects~~) bids according to the revised (~~project proposal~~) bid. If the material changes cause the revised (~~project proposal~~) bid to rank lower than (~~projects~~) bids the utility has not originally selected, the utility must instead pursue contract finalization with the next highest ranked (~~project~~) bid.

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

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-08-025 (Docket No. UE-030423, General Order No. R-530), § 480-107-075, filed 3/28/06, effective 4/28/06.]

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-08-025 (Docket No. UE-030423, General Order No. R-530), § 480-107-115, filed 3/28/06, effective 4/28/06.]

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-145 Filings—Investigations. (1) The commission retains the right to examine (~~project proposals~~) bids as originally submitted to the utility by (~~potential developers~~) bidders. The utility must keep all documents supplied by (~~project~~) bidders or on

their behalf, and all documents created by the utility relating to each bid, including materials provided to the utility by an independent evaluator, for ((at least)) the later of seven years from the close of the bidding process, or the conclusion of the utility's ((next)) general rate case((, whichever is later)) in which the commission reviewed the fully-developed project for prudence, including any time period allowed for reconsideration or appeal.

(2) The utility must file with the commission ((and maintain on file for inspection at its place of business, the current rates, prices, and charges established in accordance with this chapter)) within ninety days of the conclusion of any RFP process, a summary report of responses including, at a minimum:

(a) Specific reasons for rejecting any bid under WAC 480-107-035(6);

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

(c) The size of the bids received, categorized by technology type;

(d) The median and average bid price, categorized by technology type and sufficiently general to limit the need for confidential designation whenever possible;

(e) The number of bids received by location, including locations designated as highly impacted communities;

(f) The number of bids received and accepted by bidder type, including women-, minority-, disabled-, or veteran-owned businesses;

(g) The number of bids received, categorized by ownership structures; and

(h) The number of bids complying with the labor standards identified in RCW 82.08.962 and 82.12.962.

[Statutory Authority: RCW 80.01.040 and 80.04.160. WSR 06-08-025 (Docket No. UE-030423, General Order No. R-530), § 480-107-145, filed 3/28/06, effective 4/28/06.]

REPEALER

The following section of the Washington Administrative Code is repealed:

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