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SENATE BILL 360

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Joseph Cervantes and Bill Tallman

AN ACT

RELATING TO ELECTRIC UTILITIES; REQUIRING A COMPETITIVE
RESOURCE PROCUREMENT PROCESS FOR INVESTOR-OWNED ELECTRIC PUBLIC
UTILITIES; REQUIRING INDEPENDENT EVALUATION OF PROPOSED
PURCHASES OF POWER OR SOURCES OF POWER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Public Utility Act is
enacted to read:

"~~[NEW MATERIAL]~~ INVESTOR-OWNED ELECTRIC PUBLIC UTILITIES--
COMPETITIVE RESOURCES PROCUREMENT PROCESS--INDEPENDENT
EVALUATION.--

A. As used in this section:

(1) "resource" means a supply-side electric
energy or capacity resource for a duration greater than one
year; and

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1 (2) "utility" means an investor-owned electric
2 public utility.

3 B. Except as otherwise expressly provided in this
4 section, any application by a utility for commission approval
5 of the utility's proposed procurement of a new resource,
6 including an application for commission issuance of a
7 certificate of public convenience and necessity or for
8 commission approval of a power purchase agreement for such a
9 resource or for inclusion of such a resource in the utility's
10 rate base, shall be accompanied by testimony providing and
11 describing the results of a request for competitive proposals
12 for the resource that affords all resources an opportunity to
13 bid and complies with all applicable commission regulations.

14 C. At the time a utility files an integrated
15 resource plan with the commission or at least sixty days prior
16 to filing an application with the commission to procure a
17 resource, whichever is earlier, the utility shall file for
18 commission approval the name of a qualified independent
19 evaluator whom the utility, the commission's utility division
20 staff and the attorney general jointly propose to monitor the
21 utility's competitive resource procurement processes required
22 by this section. If the utility, the commission's utility
23 division staff and the attorney general fail to reach agreement
24 on an independent evaluator, the commission shall refer the
25 matter to a hearing examiner for resolution.

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1 D. The commission shall approve the independent
2 evaluator and the contract between the independent evaluator
3 and the utility, including the terms and conditions of
4 compensation, by written decision within thirty days of the
5 date on which the name of the independent evaluator is filed
6 jointly or named by a hearing examiner. After its initial
7 approval of an independent evaluator for a utility, upon its
8 own motion or a motion by an interested party for good cause or
9 upon a joint request by a utility, the commission's utility
10 division staff and the attorney general, the commission may
11 approve a different independent evaluator for the utility or a
12 modification of the contract between the independent evaluator
13 and the utility consistent with the requirements of this
14 section.

15 E. The terms of the contract shall prohibit the
16 independent evaluator from assisting any entity making
17 proposals to the utility for a period of three years from the
18 effective date of the contract approved by the commission.

19 F. The utility shall provide the independent
20 evaluator with prompt and continuing access to all documents,
21 data, assumptions, models, bidding and weighting criteria used,
22 reviewed, produced or relied on by the utility in the
23 preparation of its resource procurement plan and its bid
24 solicitation, evaluation and selection processes. The utility
25 shall provide the independent evaluator, in a timely manner so

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1 as to facilitate the independent evaluator's obligations
2 pursuant to this section and applicable commission rules, bid
3 evaluation results and modeling runs so that the independent
4 evaluator can verify the results and investigate resource
5 options that the utility did not consider. In the event the
6 independent evaluator finds a problem or deficiency in the
7 utility's bid solicitation or evaluation process, the
8 independent evaluator shall promptly notify the utility of that
9 problem or deficiency and shall promptly notify the commission
10 in writing of the utility's response to and resolution of that
11 problem or deficiency, which notice shall be made part of the
12 commission's record in the appropriate resource procurement
13 proceeding.

14 G. The independent evaluator shall generally serve
15 as an advisor to the commission as to whether the competitive
16 procurement and bid evaluation procedures and methods used by
17 the utility, including assumptions, criteria and models, are
18 reasonable and sufficient to solicit and evaluate bids in a
19 fair and reasonable manner consistent with the public interest,
20 and shall not be a party to any utility resource procurement
21 proceedings and, except as expressly provided in this
22 subsection, shall not be subject to discovery or cross-
23 examination at a commission hearing on a utility's application
24 for approval of its procurement of a resource. The commission
25 shall convene at least one procedural conference in every

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1 utility resource procurement case in which an independent
2 evaluator serves as an advisor to the commission to establish
3 the procedure for the commission or its presiding officer, the
4 utility and parties to ask questions of the independent
5 evaluator regarding the independent evaluator's filings in the
6 proceeding. Opinions, determinations and statements by the
7 independent evaluator in filings with the commission shall not
8 constitute evidence in a proceeding unless the commission
9 provides the utility and all parties with a reasonable and
10 timely opportunity to conduct discovery and cross-examine the
11 independent evaluator regarding such matters prior to closure
12 of the record.

13 H. The independent evaluator shall report to the
14 commission, prior to the commission's evidentiary hearings in a
15 resource procurement case, whether the competitive procurement
16 and bid evaluation procedures and methods used by the utility,
17 including assumptions, criteria and models, are reasonable and
18 sufficient to solicit and evaluate bids in a fair and
19 reasonable manner consistent with the public interest.

20 I. The commission may grant a request by a utility
21 for a waiver of the application of the requirements in this
22 section or from the requirements of the commission's rules
23 implementing this section upon a showing by the utility that
24 extraordinary circumstances exist, that such waiver and the
25 alternative method of resource acquisition proposed by the

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1 utility are necessary to protect the public interest and that
2 such request otherwise satisfies the requirements of all
3 applicable commission rules addressing waivers or variances of
4 commission rules.

5 J. This section shall not apply to a procurement of
6 a resource by a utility for a customer that executes a special
7 service contract that requires the customer to pay the utility
8 for all costs associated with the utility's procurement of that
9 resource and is approved by the commission.

10 K. Within six months of the effective date of this
11 section, the commission shall establish rules for the
12 implementation of the requirements of this section."

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