SENATE BILL 360

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

INTRODUCED BY

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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

.205057.3
(2) "utility" means an investor-owned electric public utility.

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

C. At the time a utility files an integrated resource plan with the commission or at least sixty days prior to filing an application with the commission to procure a resource, whichever is earlier, the utility shall file for commission approval the name of a qualified independent evaluator whom the utility, the commission's utility division staff and the attorney general jointly propose to monitor the utility's competitive resource procurement processes required by this section. If the utility, the commission's utility division staff and the attorney general fail to reach agreement on an independent evaluator, the commission shall refer the matter to a hearing examiner for resolution.
D. The commission shall approve the independent evaluator and the contract between the independent evaluator and the utility, including the terms and conditions of compensation, by written decision within thirty days of the date on which the name of the independent evaluator is filed jointly or named by a hearing examiner. After its initial approval of an independent evaluator for a utility, upon its own motion or a motion by an interested party for good cause or upon a joint request by a utility, the commission's utility division staff and the attorney general, the commission may approve a different independent evaluator for the utility or a modification of the contract between the independent evaluator and the utility consistent with the requirements of this section.

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

F. The utility shall provide the independent evaluator with prompt and continuing access to all documents, data, assumptions, models, bidding and weighting criteria used, reviewed, produced or relied on by the utility in the preparation of its resource procurement plan and its bid solicitation, evaluation and selection processes. The utility shall provide the independent evaluator, in a timely manner so
as to facilitate the independent evaluator's obligations pursuant to this section and applicable commission rules, bid evaluation results and modeling runs so that the independent evaluator can verify the results and investigate resource options that the utility did not consider. In the event the independent evaluator finds a problem or deficiency in the utility's bid solicitation or evaluation process, the independent evaluator shall promptly notify the utility of that problem or deficiency and shall promptly notify the commission in writing of the utility's response to and resolution of that problem or deficiency, which notice shall be made part of the commission's record in the appropriate resource procurement proceeding.

G. The independent evaluator shall generally serve as an advisor to the commission as to whether the competitive procurement and bid evaluation procedures and methods used by the utility, including assumptions, criteria and models, are reasonable and sufficient to solicit and evaluate bids in a fair and reasonable manner consistent with the public interest, and shall not be a party to any utility resource procurement proceedings and, except as expressly provided in this subsection, shall not be subject to discovery or cross-examination at a commission hearing on a utility's application for approval of its procurement of a resource. The commission shall convene at least one procedural conference in every
utility resource procurement case in which an independent evaluator serves as an advisor to the commission to establish the procedure for the commission or its presiding officer, the utility and parties to ask questions of the independent evaluator regarding the independent evaluator's filings in the proceeding. Opinions, determinations and statements by the independent evaluator in filings with the commission shall not constitute evidence in a proceeding unless the commission provides the utility and all parties with a reasonable and timely opportunity to conduct discovery and cross-examine the independent evaluator regarding such matters prior to closure of the record.

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

I. The commission may grant a request by a utility for a waiver of the application of the requirements in this section or from the requirements of the commission's rules implementing this section upon a showing by the utility that extraordinary circumstances exist, that such waiver and the alternative method of resource acquisition proposed by the
utility are necessary to protect the public interest and that such request otherwise satisfies the requirements of all applicable commission rules addressing waivers or variances of commission rules.

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

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