

1 SENATE BILL 456

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO ELECTRIC UTILITIES; REQUIRING A TRANSPARENT  
12 COMPETITIVE RESOURCE PROCUREMENT PROCESS FOR INVESTOR-OWNED  
13 ELECTRIC PUBLIC UTILITIES; REQUIRING INDEPENDENT EVALUATION OF  
14 THE COMPETITIVE RESOURCE PROCUREMENT PROCESS FOR PROPOSED  
15 PURCHASES OF POWER OR SOURCES OF POWER.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

20 "[NEW MATERIAL] INVESTOR-OWNED ELECTRIC PUBLIC  
21 UTILITIES--COMPETITIVE RESOURCE PROCUREMENT PROCESS--  
22 INDEPENDENT EVALUATION.--

23 A. As used in this section:

24 (1) "competitive resource procurement process"  
25 means a utility's:

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1 (a) instructions to bidders for a new  
2 energy resource;

3 (b) conditions, forms or requirements  
4 included in a request for proposals for a new energy resource;  
5 and

6 (c) inputs, assumptions, criteria and  
7 models used to evaluate responses to proposals for a new energy  
8 resource or to negotiate with bidders;

9 (2) "energy storage" means technology that  
10 allows the capture of energy produced at one time for use at a  
11 later time;

12 (3) "integrated resource plan" means a  
13 utility's plan to meet jurisdictional retail customers'  
14 existing and future energy demand;

15 (4) "purchase power agreement" means an  
16 agreement for the purchase of energy or capacity by a utility  
17 with a term of any length for which a utility seeks or intends  
18 to seek rate recovery from its retail customers;

19 (5) "resource" means a supply-side electric  
20 energy, capacity, transmission or energy storage resource for a  
21 duration greater than one year;

22 (6) "resource procurement case" means a  
23 docketed case before the commission in which a utility has  
24 filed an application for the issuance of a certificate of  
25 public convenience and necessity or seeks approval of a

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1 purchase power agreement; and

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

4 B. Whenever a utility intends to apply for  
5 commission approval of the utility's proposed procurement of a  
6 new energy resource, including an application for issuance by  
7 the commission of a certificate of public convenience and  
8 necessity for inclusion of such a resource in the utility's  
9 rate base, or for commission approval of a purchase power  
10 agreement for such a new resource, the utility shall issue a  
11 request for competitive proposals for the new energy resource  
12 or purchase power agreement that:

13 (1) affords interested bidders a reasonable  
14 opportunity to submit a bid that may feasibly satisfy the  
15 utility's energy resource need;

16 (2) provides inputs, assumptions, criteria and  
17 models used to evaluate responses to proposals for a new energy  
18 resource or to negotiate with bidders;

19 (3) does not unreasonably discriminate between  
20 proposals for a utility-owned resource and proposals for a  
21 resource owned by an independent power producer through a  
22 purchase power agreement; and

23 (4) complies with all applicable commission  
24 regulations.

25 C. Except as otherwise expressly provided in this

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1 section or by law, an application by a utility for commission  
2 approval of the utility's proposed procurement of a new energy  
3 resource, including an application for issuance by the  
4 commission of a certificate of public convenience and necessity  
5 for inclusion of such a resource in the utility's rate base, or  
6 for commission approval of a purchase power agreement for such  
7 a new resource, shall be accompanied by evidence providing and  
8 describing the responses to the request for competitive  
9 proposals required pursuant to Subsection B of this section.

10 D. Bidders in a utility's competitive resource  
11 procurement process shall be permitted access to modeling  
12 inputs and assumptions that were used by the utility to  
13 evaluate the facility and that reasonably relate to that  
14 facility or to the transmission of electricity from that  
15 facility to the utility, as the modeling inputs and assumptions  
16 apply to the bidder's particular facility, in time to ensure  
17 that errors and omissions may be corrected before the  
18 competitive resource procurement process is completed. If it  
19 is determined that an error or omission, as defined by  
20 commission rulemaking, exists in the utility's modeling and  
21 assumptions, the commission shall require the utility to  
22 perform additional modeling to confirm that electric generation  
23 and energy storage facilities are fairly and accurately  
24 represented in the results of modeling performed by the  
25 utility.

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1           E. A utility's competitive resource procurement  
2 process shall not prevent bidders from proposing, or the  
3 utility from considering, a resource owned by an independent  
4 power producer through a purchase power agreement at a site  
5 owned or controlled by the utility unless the utility can show  
6 the commission that it would not be feasible for it to lease or  
7 transfer that site to an independent power producer for  
8 reasonable compensation.

9           F. At least one hundred twenty days before a  
10 utility files an integrated resource plan with the commission,  
11 or files an application with the commission to procure a new  
12 energy resource, the utility shall file for commission  
13 appointment the name and qualifications of an independent  
14 evaluator whom the utility, the commission's utility division  
15 staff and the attorney general jointly propose to monitor the  
16 utility's competitive resource procurement process as required  
17 by this section and a proposed contract between the commission  
18 and the independent evaluator. If the utility is not seeking  
19 to procure any new resource in its integrated resource plan,  
20 the utility need not file an application for the appointment of  
21 an independent evaluator or engage in a competitive resource  
22 procurement process.

23           G. If the utility, the commission's utility  
24 division staff and the attorney general fail to reach agreement  
25 on an independent evaluator, the utility shall so notify the

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1 commission. The commission shall then name an individual it  
2 proposes to appoint as an independent evaluator to evaluate the  
3 utility's competitive resource procurement process as required  
4 by this section and propose a contract between the commission  
5 and the independent evaluator.

6 H. The commission shall, at least one hundred  
7 twenty days before the utility begins its consideration of an  
8 application for the issuance of a certificate of public  
9 convenience and necessity or a purchase power agreement,  
10 provide public notice of the name and qualifications of the  
11 proposed independent evaluator. The public notice shall state  
12 that within seven days of its publication, an interested  
13 person, organization or entity may file a verified protest of  
14 the commission's proposed appointment of the independent  
15 evaluator for good cause shown.

16 I. Following the expiration of the seven-day notice  
17 period provided for in Subsection H of this section, the  
18 commission may by written decision appoint as the independent  
19 evaluator the person proposed in that notice. If the  
20 commission does not appoint that person as the independent  
21 evaluator, the name of another individual proposed to be  
22 appointed shall be subject to the notice requirement set forth  
23 in Subsection H of this section. At any time, the commission  
24 may terminate its appointment of an independent evaluator  
25 according to the terms of the contract between the commission

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1 and the evaluator.

2 J. Following the commission's decision to appoint  
3 an independent evaluator, the commission shall by written  
4 decision approve a contract between the independent evaluator  
5 and the commission, including the terms and conditions of  
6 compensation. The utility shall reimburse the commission for  
7 compensation and costs incurred for the independent evaluator;  
8 the utility may recover this expense through rate recovery  
9 charges. The terms of the contract between the commission and  
10 the independent evaluator shall prohibit the independent  
11 evaluator from assisting any entity in making proposals to the  
12 commission for a period of three years from the date the  
13 contract terminates or expires. At any time, the commission  
14 may terminate its appointment of an independent evaluator  
15 according to the terms of the contract between the commission  
16 and the evaluator.

17 K. The utility shall provide the independent  
18 evaluator with prompt and continuing access to all documents,  
19 data, assumptions, models, bids and weighting criteria used,  
20 reviewed, produced or relied upon by the utility in the  
21 preparation and conduct of its competitive resource procurement  
22 process. The utility shall provide the independent evaluator,  
23 in a timely manner so as to facilitate the independent  
24 evaluator's obligations pursuant to this section and applicable  
25 commission rules, with bid evaluation results and modeling runs

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1 so the independent evaluator can verify the results of the  
2 utility's competitive resource procurement process and  
3 investigate whether that process reasonably invited and  
4 considered all feasible resource options to satisfy the  
5 utility's service needs.

6 L. An independent evaluator shall advise the  
7 commission whether the competitive resource procurement  
8 processes of the utility, including the utility's inputs,  
9 assumptions, criteria and models, are reasonable and sufficient  
10 to solicit and evaluate bids in a fair and reasonable manner  
11 consistent with the public interest.

12 M. In the event an independent evaluator finds a  
13 problem or deficiency in the utility's competitive resource  
14 procurement process, the evaluator shall promptly notify the  
15 utility of the problem or deficiency. After the utility  
16 responds to that notice, the independent evaluator shall  
17 promptly notify the commission in writing of the problem or  
18 deficiency and the utility's response to and resolution of that  
19 problem or deficiency. The notification by the independent  
20 evaluator and the utility's response and resolution shall be  
21 made part of the commission's record in the utility's relevant  
22 resource procurement case.

23 N. An independent evaluator shall report to the  
24 commission, prior to the commission's evidentiary hearings in a  
25 resource procurement case, whether the competitive resource

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1 procurement process of the utility, including assumptions,  
2 criteria and models, are reasonable, competitively fair and  
3 sufficient to reasonably identify the most cost-effective  
4 option among feasible resource alternatives available to  
5 satisfy the utility's service needs.

6 O. The commission shall schedule at least one  
7 procedural conference in every utility resource procurement  
8 case. During a procedural conference, the utility, the  
9 commission and other parties to the proceeding will have an  
10 opportunity to ask questions of the independent evaluator  
11 regarding the evaluator's filings in the case. Opinions,  
12 determinations and statements by the evaluator in filings with  
13 the commission shall constitute evidence in a resource  
14 procurement case. All parties shall have a reasonable  
15 opportunity prior to closure of the record in a resource  
16 procurement case to examine the independent evaluator regarding  
17 the evaluator's filings in the case.

18 P. An independent evaluator shall not be a party to  
19 a utility resource procurement case but shall testify if a  
20 party calls the evaluator as a witness.

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

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1 alternative method of resource acquisition proposed by the  
2 utility are necessary to protect the public interest and that  
3 such request otherwise satisfies the requirements of all  
4 applicable commission rules addressing waivers of or variances  
5 from commission rules.

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

11 S. The independent evaluator's work for the  
12 commission shall be public record, except where competitively  
13 confidential information needs to be protected. Those  
14 confidentiality restrictions shall be lifted two years after  
15 the commission issues its decision on a utility's resource  
16 procurement case to allow retrospective analysis, unless there  
17 is good cause shown to the commission.

18 T. Within six months of the effective date of this  
19 section, the commission shall establish rules necessary for the  
20 implementation of the requirements of this section."