

Part 2 Solicitation Process

54-17-201 Solicitation process required -- Exception.

- (1)
 - (a) An affected electrical utility shall comply with this chapter to acquire or construct a significant energy resource after February 25, 2005.
 - (b) Notwithstanding Subsection (1)(a), this chapter does not apply to a significant energy resource for which the affected electrical utility has issued a solicitation before February 25, 2005.
- (2)
 - (a) Except as provided in Subsection (3), to acquire or construct a significant energy resource, an affected electrical utility shall conduct a solicitation process that is approved by the commission.
 - (b) To obtain the approval of the commission of a solicitation process, the affected electrical utility shall file with the commission a request for approval that includes:
 - (i) a description of the solicitation process the affected electrical utility will use;
 - (ii) a complete proposed solicitation; and
 - (iii) any other information the commission requires by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (c) In ruling on the request for approval of a solicitation process, the commission shall determine whether the solicitation process:
 - (i) complies with this chapter and rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (ii) is in the public interest taking into consideration:
 - (A) whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of an affected electrical utility located in this state;
 - (B) long-term and short-term impacts;
 - (C) risk;
 - (D) reliability;
 - (E) financial impacts on the affected electrical utility; and
 - (F) other factors determined by the commission to be relevant.
 - (d) Before approving a solicitation process under this section the commission:
 - (i) may hold a public hearing; and
 - (ii) shall provide an opportunity for public comment.
 - (e) As part of its review of a solicitation process, the commission may provide the affected electrical utility guidance on any additions or changes to its proposed solicitation process.
 - (f) Unless the commission determines that additional time to analyze a solicitation process is warranted and is in the public interest, within 60 days of the day on which the affected electrical utility files a request for approval of the solicitation process, the commission shall:
 - (i) approve a proposed solicitation process;
 - (ii) suggest modifications to a proposed solicitation process; or
 - (iii) reject a proposed solicitation process.
- (3) Notwithstanding Subsection (2), an affected electrical utility may acquire or construct a significant energy resource without conducting a solicitation process if it obtains a waiver of the solicitation requirement in accordance with Section 54-17-501.

- (4) In accordance with the commission's authority under Subsection 54-12-2(2), the commission shall determine:
- (a) whether this chapter or another competitive bidding procedure shall apply to a purchase of a significant energy resource by an affected electrical utility from a small power producer or cogenerator; and
 - (b) if this chapter applies as provided in Subsection (4)(a), the manner in which this chapter applies to a purchase of a significant energy resource by an affected electrical utility from a small power producer or cogenerator.

Amended by Chapter 374, 2008 General Session

Amended by Chapter 382, 2008 General Session

54-17-202 Requirements for solicitation.

- (1) The commission shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, outlining the requirements for a solicitation process. The rules required by this Subsection (1) shall include:
- (a) the type of screening criteria an affected electrical utility may use in a solicitation process including the risks an affected electrical utility may consider;
 - (b) the required disclosures by an affected electrical utility if a solicitation includes a benchmark option;
 - (c) the required disclosures by an affected electrical utility related to the methodology the affected electrical utility uses to evaluate bids; and
 - (d) the participation of an independent evaluator in a manner consistent with Section 54-17-203.
- (2) If an affected electrical utility is subject to regulation in more than one state regarding the acquisition, construction, or cost recovery of a significant energy resource, in making the rules required by Subsection (1), the commission may consider the impact of the multistate regulation including requirements imposed by other states as to:
- (a) the solicitation process;
 - (b) cost recovery of resources; and
 - (c) methods by which the affected electrical utility may be able to mitigate the potential for cost disallowances.

Amended by Chapter 382, 2008 General Session

54-17-203 Independent evaluator.

- (1)
- (a) The commission shall:
 - (i) appoint an independent evaluator to monitor any solicitation conducted by an affected electrical utility under this chapter; and
 - (ii) oversee or direct the division to oversee the independent evaluator in monitoring any solicitation conducted by an affected electrical utility under this chapter.
 - (b) The commission, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall make rules setting the qualifications of an independent evaluator.
- (2) The commission shall determine the method used to pay the fees and expenses for the independent evaluator which may include:
- (a) the payment of a bid fee by bidders to a solicitation; or
 - (b)
 - (i) requiring the affected electrical utility to pay the fees and expenses; and

- (ii) permitting an affected electrical utility to recover the amounts paid under this Subsection (2) (b).
- (3)
- (a) The independent evaluator may not make the decision as to which bid should be awarded under the solicitation.
 - (b) The independent evaluator shall:
 - (i) actively monitor the solicitation process for fairness and compliance with commission rules;
 - (ii) report regularly to:
 - (A) the commission; and
 - (B) others as directed by the commission;
 - (iii) develop one or more reports addressing:
 - (A) the solicitation process;
 - (B) any concerns of the independent evaluator related to the solicitation process; and
 - (C) the ultimate results of the solicitation process, including the opinions and conclusions of the independent evaluator;
 - (iv) provide ongoing input regarding issues, concerns, and improvements in the solicitation process with the objective of correcting ongoing deficiencies in the solicitation process to the following:
 - (A) the commission;
 - (B) the affected electrical utility; and
 - (C) others as directed by the commission;
 - (v) render an opinion as to whether:
 - (A) the solicitation process is:
 - (I) fair; and
 - (II) in compliance with this part; and
 - (B) any modeling used by the affected electrical utility to evaluate bids is sufficient;
 - (vi) testify in any proceeding under Section 54-17-302; and
 - (vii) perform other functions and provide other input and reports as the commission may direct, including periodic presentations to interested parties regarding the solicitation process.

Amended by Chapter 382, 2008 General Session