

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

HOUSE BILL NO.

Public utilities-energy resource procurement.

Sponsored by: Joint Corporations, Elections & Political  
Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to public utilities; establishing a  
2 solicitation process for specified electrical utilities  
3 acquiring or constructing significant energy resources;  
4 providing a waiver process; providing for the use of  
5 independent evaluators; providing rulemaking authority; and  
6 providing for an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 37-2-135 is created to read:

11

12 **37-2-135. Energy resource procurement.**

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2 (a) An affected electrical utility shall comply with  
3 this section to acquire or construct a significant energy  
4 resource after July 1, 2024, provided that this section  
5 shall not apply to a significant energy resource for which  
6 the affected electrical utility has issued a solicitation  
7 before July 1, 2024.

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9 (b) Except as provided in subsection (c) of this  
10 section, to acquire or construct a significant energy  
11 resource, an affected electrical utility shall conduct a  
12 solicitation process that is approved by the commission. To  
13 obtain the approval of the commission of a solicitation  
14 process, the affected electrical utility shall file with  
15 the commission a request for approval that includes a  
16 description of the solicitation process that the affected  
17 electrical utility will use, a complete proposed  
18 solicitation and any other information that the commission  
19 requires by rule. In ruling on the request for approval of  
20 a solicitation process, the commission:

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22 (i) May hold a public hearing and shall provide  
23 an opportunity for public comment;

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2           (ii) Shall determine whether the solicitation  
3 process:

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5           (A) Complies with this section and any  
6 rules adopted by the commission;

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8           (B) Is in the public interest taking into  
9 consideration:

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11           (I) Whether the solicitation process  
12 will most likely result in the acquisition, production and  
13 delivery of electricity at the lowest reasonable cost to  
14 the retail customers of the affected electrical utility  
15 located in this state;

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17           (II) The long term and short term  
18 impacts;

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20           (III) Risk;

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22           (IV) Reliability;

23

1 (V) Financial impacts on the affected  
2 electrical utility; and

3  
4 (VI) Any other factors determined by  
5 the commission to be relevant.

6  
7 (iii) May provide the affected electrical  
8 utility guidance on any additions or changes to its  
9 proposed solicitation process;

10  
11 (iv) Within sixty (60) days of the day on which  
12 the request for approval was filed, unless the commission  
13 determines that additional time is necessary and is in the  
14 public interest, the commission shall:

15  
16 (A) Approve the proposed solicitation  
17 process;

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19 (B) Suggest modifications to the proposed  
20 solicitation process; or

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22 (C) Reject the proposed solicitation  
23 process.

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2 (c) An affected electrical utility may obtain a  
3 waiver of the requirements of subsection (b) of this  
4 section if the commission determines that waiving the  
5 requirement is in the public interest because of a clear  
6 emergency, a time limited commercial or technical  
7 opportunity that provides value to the customers of the  
8 affected electrical utility or any other factor determined  
9 by the commission that makes waiving the requirement in the  
10 public interest. The commission shall adopt rules regarding  
11 the waiver process. The rules shall include:

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13 (i) Requirements for a technical conference that  
14 shall be held not less than three (3) business days and not  
15 more than seven (7) calendar days following the filing of  
16 an application for a waiver under this subsection. The  
17 rules shall require public notice of the technical  
18 conference on the next business day following the filing of  
19 an application for a waiver under this subsection. At a  
20 technical conference the affected public utility shall  
21 provide adequate support for the waiver and shall respond  
22 to questions from the commission, any independent evaluator  
23 and any interested person;

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2 (ii) A mechanism for any interested person and  
3 any independent evaluator to file comments not less than  
4 three (3) business days and not more than seven (7)  
5 calendar days following the technical conference;

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7 (iii) Requirements for the commission to issue a  
8 written decision either granting, granting with conditions  
9 or denying the waiver within seven (7) calendar days of the  
10 deadline to submit public comments under paragraph (ii) of  
11 this subsection;

12

13 (iv) A statement that any waiver granted under  
14 this subsection is subject to future review by the  
15 commission and that the waiver does not create any  
16 presumption that the action in acquiring or constructing a  
17 significant energy resource was prudent;

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19 (v) Requirements for the participation of an  
20 independent evaluator. The rules shall specify that the  
21 commission may decline to use an independent evaluator if  
22 the commission determines the use of an independent  
23 evaluator is not appropriate or not available within the

1 time period or under reasonable terms or conditions. The  
2 validity of a waiver under this subsection is not affected  
3 if an independent evaluator is not used or if an  
4 independent evaluator fails to participate or complete a  
5 recommendation within the time period specified under this  
6 subsection.

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8 (d) The commission shall adopt rules outlining the  
9 requirements for the solicitation approval process under  
10 this section. Rules adopted under this subsection may  
11 account for circumstances where an affected electrical  
12 utility is subject to regulation in more than one (1) state  
13 regarding the acquisition, construction or cost recovery of  
14 a significant energy resource, in which event the rules may  
15 allow the commission to consider the impact of the  
16 multistate regulation on the solicitation process, cost  
17 recovery of resources and methods by which the affected  
18 electrical utility may be able to mitigate the potential  
19 for cost disallowances. The rules adopted under this  
20 subsection shall include:

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22 (i) The type of screening criteria the affected  
23 electrical utility may use in a solicitation process

1 including the risks an affected electrical utility may  
2 consider;

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4 (ii) The required disclosures by an affected  
5 electrical utility; and

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7 (iii) Participation of an independent evaluator  
8 consistent with subsection (e) of this section.

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10 (e) The commission shall appoint an independent  
11 evaluator to monitor any solicitation submitted for  
12 approval under this section. The independent evaluator  
13 shall not make the determination as to which bid shall be  
14 awarded under the solicitation. The independent evaluator  
15 shall actively monitor the solicitation approval process  
16 for fairness and compliance with this section and rules of  
17 the commission. The independent evaluator shall report to  
18 the commission and others as directed by the commission and  
19 shall develop one (1) or more reports addressing the  
20 solicitation approval process, any concerns related to the  
21 solicitation and the ultimate results of the solicitation  
22 approval process including the opinions and conclusions of  
23 the independent evaluator. The report shall include an



1 opinion as to whether the solicitation approval process is  
2 fair, done in compliance with this section and whether any  
3 modeling used by the affected electrical utility regarding  
4 the solicitation is sufficient. The independent evaluator  
5 shall perform other functions and provide other input and  
6 reports as directed by the commission. The commission shall  
7 adopt rules regarding independent evaluators under this  
8 subsection. The rules shall include:

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10 (i) The qualifications for an independent  
11 evaluator;

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13 (ii) The method to pay for the independent  
14 evaluator which may include the payment of a bid fee by  
15 bidders to a solicitation or requiring the affected  
16 electrical utility to pay the fees and permitting the  
17 affected electrical utility to recover the amounts paid.

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19 (f) As used in this section:

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21 (i) "Affected electrical utility" means a public  
22 utility with at least X (X) electric retail customers in  
23 the state;

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3 \*\*\*\*\*

4 STAFF COMMENT

5 This bill is based on Utah Code 54-17-301 which applies to  
6 an "affected electric utility" defined as an electrical  
7 corporation with at least 200,000 retail customers in the  
8 state.

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10 The Committee may wish to determine an alternative number  
11 of customers or use a different definition of what  
12 constitutes an affected electric utility.

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14 \*\*\*\*\*

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16 (ii) "Significant energy resource" means a  
17 resource that consists of:

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19 (A) A total of one hundred (100) megawatts  
20 or more of new generating capacity that has a dependable  
21 life of ten (10) or more years;

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23 (B) The purchase of electricity, electric  
24 generating capacity or both if the contract is for a term  
25 of ten (10) or more years and a total of not less than one  
26 hundred (100) megawatts;

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28 (C) The purchase or lease by an affected  
29 electrical utility from an affiliated company of a

1 generating facility, electricity, electrical generating  
2 capacity or both electricity and electrical generating  
3 capacity;

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5 (D) A contract with an option for the  
6 affected electrical utility or an affiliate to purchase a  
7 resource that consists of not less than one hundred (100)  
8 megawatts of new generating capacity that has a remaining  
9 dependable life of ten (10) or more years; or

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11 (E) A type of resource designated by rule  
12 of the commission as a significant energy resource after  
13 considering the affected electrical utility's integrated  
14 resource plan and action plan.

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16 (iii) "Solicitation" means a request for  
17 proposals or other invitation for persons to submit a bid  
18 or proposal through an open bid process for construction or  
19 acquisition of a significant energy resource.

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21 **Section 2.** This act is effective July 1, 2024.

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23

(END)