HOUSE BILL NO.

Public utilities—energy resource procurement.

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

A BILL

for

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

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

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

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

(b) Except as provided in subsection (c) of this section, to acquire or construct a significant energy resource, an affected electrical utility shall conduct a solicitation process that is approved by the commission. 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 a description of the solicitation process that the affected electrical utility will use, a complete proposed solicitation and any other information that the commission requires by rule. In ruling on the request for approval of a solicitation process, the commission:

(i) May hold a public hearing and shall provide an opportunity for public comment;
(ii) Shall determine whether the solicitation process:

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

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

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

(II) The long term and short term impacts;

(III) Risk;

(IV) Reliability;
(V) Financial impacts on the affected electrical utility; and

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

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

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

(A) Approve the proposed solicitation process;

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

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

(i) Requirements for a technical conference that shall be held not less than three (3) business days and not more than seven (7) calendar days following the filing of an application for a waiver under this subsection. The rules shall require public notice of the technical conference on the next business day following the filing of an application for a waiver under this subsection. At a technical conference the affected public utility shall provide adequate support for the waiver and shall respond to questions from the commission, any independent evaluator and any interested person;
(ii) A mechanism for any interested person and any independent evaluator to file comments not less than three (3) business days and not more than seven (7) calendar days following the technical conference;

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

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

(v) Requirements for the participation of an independent evaluator. The rules shall specify that the commission may decline to use an independent evaluator if the commission determines the use of an independent evaluator is not appropriate or not available within the
time period or under reasonable terms or conditions. The validity of a waiver under this subsection is not affected if an independent evaluator is not used or if an independent evaluator fails to participate or complete a recommendation within the time period specified under this subsection.

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

(i) The type of screening criteria the affected electrical utility may use in a solicitation process
including the risks an affected electrical utility may consider;

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

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

(e) The commission shall appoint an independent evaluator to monitor any solicitation submitted for approval under this section. The independent evaluator shall not make the determination as to which bid shall be awarded under the solicitation. The independent evaluator shall actively monitor the solicitation approval process for fairness and compliance with this section and rules of the commission. The independent evaluator shall report to the commission and others as directed by the commission and shall develop one (1) or more reports addressing the solicitation approval process, any concerns related to the solicitation and the ultimate results of the solicitation approval process including the opinions and conclusions of the independent evaluator. The report shall include an
opinion as to whether the solicitation approval process is fair, done in compliance with this section and whether any modeling used by the affected electrical utility regarding the solicitation is sufficient. The independent evaluator shall perform other functions and provide other input and reports as directed by the commission. The commission shall adopt rules regarding independent evaluators under this subsection. The rules shall include:

(i) The qualifications for an independent evaluator;

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

(f) As used in this section:

(i) "Affected electrical utility" means a public utility with at least X (X) electric retail customers in the state;
(ii) "Significant energy resource" means a resource that consists of:

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

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

(C) The purchase or lease by an affected electrical utility from an affiliated company of a
generating facility, electricity, electrical generating capacity or both electricity and electrical generating capacity;

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

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

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

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