

**Amendment - 1st Reading/2nd House-blue - Requested by: (S) Energy, Technology & Federal Relations**

- 2025

69th Legislature 2025

Drafter: Jason Mohr,

HB0055.002.003

HOUSE BILL NO. 55

INTRODUCED BY G. PARRY,

BY REQUEST OF THE SELECT COMMITTEE ON ENERGY RESOURCE PLANNING AND ACQUISITION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PUBLIC UTILITY RESOURCE PLANNING LAWS; PROVIDING TIMELINES; PROVIDING FOR AN INDEPENDENT EVALUATOR AND DUTIES; PROVIDING A DEFINITION; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR A SPECIAL REVENUE ACCOUNT; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 69-1-114, 69-3-1204, 69-3-1205, 69-3-1207, 69-3-1208, AND 69-8-421, MCA; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. Section 1. Independent evaluator contracting special revenue account. (1)~~

~~There is an independent evaluator contracting special revenue account within the state special revenue fund established in 17-2-102 to the credit of the department of environmental quality.~~

~~(2) — There must be deposited into the account:~~

~~(a) — fees collected pursuant to 69-3-1207(5)(a);~~

~~(b) — any legislative appropriations made for the purposes of the account; and~~

~~(c) — any interest or income earned on the account.~~

~~(3) — The department of environmental quality shall use account funds to execute department duties in accordance with energy planning activities pursuant to 69-3-1205 and independent evaluator selection and representation pursuant to 69-3-1207.~~

**Section 1.** Section 69-1-114, MCA, is amended to read:

**"69-1-114. Fees.** (1) Each fee charged by the commission must be reasonable.

(2) Except for a fee assessed pursuant to 69-3-204(2), 69-3-1204(6)(b), ~~69-3-1207(4)(b)~~ 69-3-

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to pay for the costs of consultants or advisory services. These costs are recoverable in rates."

**Section 3.** Section 69-3-1205, MCA, is amended to read:

**"69-3-1205. Public comment -- public meetings.** (1) When developing a plan in accordance with this part and prior to submitting a plan to the commission, a public utility shall hold at least ~~two~~ four public meetings in the utility's Montana service territory to ensure a plan best meets the diverse goals of shareholders, ratepayers, and society.

~~(2) A utility may petition the public service commission to forego up to two public meetings based on public participation in previous public meetings held in compliance with subsection (1). The public utility shall consider written and oral comments respecting the proposed plan received during public meetings or meetings of the resource planning advisory committee held pursuant to 69-3-1208. The public utility shall summarize and respond to substantive comments received and file those as part of the plan.~~

~~(2)(3)~~ After a plan is submitted, the commission ~~shall~~ may ~~SHALL~~ conduct ~~two~~ TWO public meetings for the purpose of receiving comment on a plan. The commission or the department of public service regulation may comment on the plan. A comment by the commission or the department may not be construed as preapproval by the commission of rate treatment for any proposed resource.

~~(3)(4)~~ The department of environmental quality:

(a) shall review a plan submitted to the commission and comment on the need for new resources, the alternatives evaluated to meet the need, the environmental implications of the resource choices, and other related issues that it considers important. The department shall coordinate and deliver all comments from other executive branch agencies.

(b) may use a plan in the development of studies for a specific energy facility for which an application for a certificate of compliance is submitted under Title 75, chapter 20.

~~(4)(5)~~ The consumer counsel shall review and may comment on a submitted plan."

**Section 4.** Section 69-3-1207, MCA, is amended to read:

**"69-3-1207. Competitive solicitation process -- ~~Montana consumer counsel independent~~**

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1 ~~evaluator -- department of environmental quality public service commission~~ role. (1) (a) Except as  
2 provided in subsection (5) (6), a public utility that intends to ~~seek approval by the commission pursuant to 69-8-~~  
3 ~~424 establish in rates~~ for the acquisition, construction, or purchase of an electricity supply resource shall  
4 conduct a competitive solicitation process.

5 (b) A public utility may not prohibit a qualifying small power production facility as defined in 69-3-  
6 601 or another utility or supplier that owns an electricity supply resource or intends to construct an electricity  
7 supply resource from participating in a competitive solicitation process.

8 (c) ~~A competitive solicitation process that is open to bids that would result in the ownership of an~~  
9 ~~electricity supply resource by the public utility issuing the solicitation must include the use of a third-party~~  
10 ~~administrator selected by the public utility to open, consider, and evaluate bids submitted. An independent~~  
11 ~~evaluator must be used to oversee a public utility's competitive solicitation. The department of environmental~~  
12 ~~quality commission shall select the independent evaluator pursuant to a solicitation subsection (4).~~

13 (d) An independent evaluator:

14 (i) shall monitor the evaluation of bids pursuant to a competitive solicitation;

15 (ii) shall provide oversight to ensure a fair and transparent competitive solicitation;

16 (iii) must be familiar with competitive bid and evaluation processes; and

17 (iv) shall evaluate and document the process used by the public utility to solicit and evaluate bids  
18 received during a competitive solicitation.

19 (e) A public utility may ~~may~~ ~~SHALL~~ may conduct a competitive solicitation in conjunction with the  
20 development of an integrated least-cost plan in accordance with 69-3-1204.

21 (2) A public utility that plans to conduct a competitive solicitation process shall submit the following  
22 information to the commission:

23 (a) a description of the competitive solicitation process that the public utility will use and proof of  
24 compliance with subsections (1)(b) and (1)(c), if applicable; and

25 (b) a complete draft of the proposal soliciting electricity supply resources, citing the ~~need for~~  
26 ~~resources~~ range in size and type of resource needs that may include requested resource parameters and  
27 inviting bids from all resource types.

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(3) The commission ~~may accept public comment on the information shall:~~  
~~(a) — provide notice and accept public comment regarding information received in accordance with subsection (2); and~~  
~~(b) — notify the department of environmental quality when the commission receives a proposal to solicit electricity supply resources and share information collected under subsection (2) and public comment collected under this subsection (3).~~

(4) (a) ~~The Montana consumer counsel may request, select, and retain a person or organization to act as an independent monitor for a competitive solicitation process. Subject to public comments received pursuant to subsection (4)(b), the~~ department of environmental quality commission shall:

(i) solicit, evaluate, and maintain a list of independent evaluators for the competitive solicitation process;

(ii) develop a process to disqualify and remove from the list those independent evaluators who do not comply with established qualifications OR WHO MAY HAVE A CONFLICT OF INTEREST;

(iii) update the list at least every 3 years; and

(iv) after information is submitted to the commission in accordance with subsection (2) and subject to rules adopted by the ~~department commission~~ pursuant to subsection (4)(c), select an independent evaluator from the list.

(b) The ~~department commission~~ shall accept public comment when developing and updating the list.

(c) On or before July 1, 2026, the ~~department commission~~ shall adopt rules for:

(i) evaluating independent evaluators for inclusion on the list;

(ii) selecting an independent evaluator in accordance with this section;

(iii) implementing this subsection (4); and

(iv) prescribing the scope of work for the independent evaluator pursuant to the duties in ~~section 6~~ 51.

~~(d) — Nothing in this section limits the department's ability to fulfill its duties in accordance with 69-3-1205.~~

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(b)(5) (a) The ~~commission shall~~ department of environmental quality commission may charge a fee to the public utility to pay for the costs of selecting and representing an independent ~~monitor~~ evaluator. This fee must be deposited in the independent evaluator contracting special revenue account pursuant to [section 11 state special revenue fund to the credit of the department for expenses incurred selecting the independent evaluator]. These costs are recoverable in rates. ~~The department shall provide documentation of the costs to the commission for costs incurred pursuant to its duties in 69-2-1205 69-3-1205 and this section.~~

(c) ~~The independent monitor may assist the Montana consumer counsel by:~~

(i) ~~providing comments on the consistency of the competitive solicitation process with industry standards;~~

(ii) ~~monitoring and observing the competitive solicitation process, paying particular attention to the public utility's evaluation of electricity supply resources that may result in utility ownership of the resource, to ensure that the utility conducts a fair and proper process in accordance with industry standards;~~

(iii) ~~notifying the utility and the consumer counsel on a timely basis prior to the utility's selection of the resources of any discrepancies observed in the process and resolving any differences of opinion; and~~

(iv) ~~preparing a closing report prior to the final selection of the resources regarding the consistency of the process, including selection and notification of electricity supply resources taking part in the solicitation process based on industry standards.~~

(b) ~~After the~~ department commission selects an independent evaluator in accordance with subsection (4), the public utility shall execute a contract for service with the independent evaluator. The contract must include the scope of work developed pursuant to subsection (4)(c)(iv) and the duties in ~~[section 6 5]~~.

(5)(6) This section does not apply to:

(a) a request for proposals or purchase by a public utility intended solely to meet the short-term operational needs of the utility for a period of less than 12 months; or

(b) an application made to the commission by a public utility to acquire, construct, or purchase an opportunity resource.

(6)(7) For the purposes of this section, "opportunity resource" means an electricity supply resource necessary to meet a need demonstrated in a plan in accordance with 69-3-1204(2)(a)(iv) that is either new or

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existing and that remains unknown as to its availability for purchase until an opportunity to purchase arises."

**NEW SECTION. Section 5. Independent evaluator role.** (1) The independent evaluator shall oversee the competitive solicitation conducted by the public utility to protect the public interest and advance the policies in 69-3-1202.

(2) The independent evaluator shall:

(a) provide comments to the public utility and the commission on the fairness, transparency, and consistency of a competitive solicitation process with industry standards;

(b) monitor, evaluate, and observe the competitive solicitation process, paying particular attention to the public utility's evaluation of electric supply resources that may result in utility ownership of the resource to ensure that the utility conducts a fair and proper process in accordance with industry standards;

(c) notify the utility and the commission on a timely basis prior to the utility selection of the resources of any discrepancies observed in the process and resolve any differences of opinion; and

(d) prepare a closing report prior to the final selection of the resources regarding the fairness, transparency, and consistency of the process, including selection and notification of electricity supply resources taking part in the solicitation process based on industry standards. Public utilities shall include the closing report in applications for future cost-recovery dockets. The closing report must be made available to the public.

(3) The commission shall grant the independent evaluator the right of intervention in future cost-recovery proceedings for the purpose of entering the closing report into the evidentiary record and representing the independent evaluator during discovery and hearings.

~~**NEW SECTION. Section 7. Integrated resource planning and acquisition program.** There is an integrated resource planning and acquisition program within the public service commission composed of:~~

~~(1) two regulatory analysts; and~~

~~(2) necessary additional staff to administer the program.~~

**Section 6.** Section 69-3-1208, MCA, is amended to read:

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(f) The commission order may include other findings that the commission determines are necessary.

(g) A commission order that denies approval must describe why the findings required in subsection (6)(c) could not be reached.

(h) The commission order must approve or deny an initial cost finding, in whole or in part. Any additional costs in excess of the commission approved amount must be approved or denied, in whole or in part, in a subsequent proceeding.

(7) Notwithstanding any provision of this chapter to the contrary, if the commission has issued an order containing the findings required under subsection (6)(c), the commission may not subsequently disallow the recovery of costs related to the approved electricity supply resource based on contrary findings.

(8) Until the state or federal government has adopted uniformly applicable statewide standards for the capture and sequestration of carbon dioxide, the commission may not approve an application for the acquisition of an equity interest or lease in a facility or equipment used to generate electricity that is primarily fueled by coal and that is constructed after January 1, 2007, unless the facility or equipment captures and sequesters a minimum of 50% of the carbon dioxide produced by the facility. Carbon dioxide captured by a facility or equipment may be sequestered offsite from the facility or equipment.

(9) Nothing limits the commission's ability to subsequently, in any future rate proceeding, inquire into the manner in which the public utility has managed, dispatched, operated, or maintained any resource or managed any power purchase agreement as part of its overall resource portfolio. The commission may subsequently disallow rate recovery for the costs that result from the failure of a public utility to reasonably manage, dispatch, operate, maintain, or administer electricity supply resources in a manner consistent with 69-3-201 and commission rules.

(10) The commission shall adopt rules prescribing minimum filing requirements for applications filed pursuant to this part."

**NEW SECTION. Section 8. Appropriation.** ~~(1) There is appropriated \$75,000 from the general fund to the department of environmental quality for the biennium beginning July 1, 2025, to meet the requirements of~~



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1 ~~[this act].~~

2 ~~(2)~~—There is appropriated \$200,000 from the general fund to the public service commission for the  
3 biennium beginning July 1, 2025, to the meet the requirements of [this act].

4  
5 NEW SECTION. Section 9. Codification instruction. ~~[Sections 1, AND 6, 7, and 8 Section 5]~~ are is  
6 intended to be codified as an integral part of Title 69, chapter 3, part 12, and the provisions of Title 69, chapter  
7 3, part 12, apply to ~~[sections 1, AND 6, 7, and 8 section 5]~~.

8  
9 NEW SECTION. Section 10. Contingent voidness. If [this act] does not include the appropriation  
10 pursuant to [section 40(2) ~~9(2)8~~], then [section ~~3(5)2(5)~~] and ~~[section 8]~~ are is void.

11  
12 NEW SECTION. Section 11. Effective date. [This act] is effective July 1, 2025.

13 - END -