

EXHIBIT 1

DATE 02/20/13

HB 58164

Final Report

For the Montana Public Service Commission

Recommendations and a Draft Rule for Electric Utility
Resource Planning and Procurement in Montana

Pamela Morgan and B. Martin Howard
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National Association of Regulatory
Utility Commissioners (NARUC)

including the Commission, who are interested in the utility's work, but currently have no way to participate until the planning process has concluded with a final plan.

Reaffirm the statutory and regulatory preference for using competitive solicitations for resource procurement – particularly long-lived high profile resources – and improve how the rules support successful resource planning and procurement processes in the special setting of competitive solicitation. In current practice, a significant amount of resource procurement is occurring through competitive solicitation. Utilities understand that the framework of competitive solicitation provides a solid base for subsequent regulatory findings, providing a record that the utility adequately identified and analyzed the most relevant options and made its selection using a well-developed and applied methodology; in short, it shows that the utility followed the behavior of a prudent business organization. Procurement processes need the same robust stakeholder involvement as planning processes to raise important questions; this is most critical for decisions that involve long-lived resources, for which uncertainty causes a significant rise in the likelihood that things will not go as planned sooner or later in the life of the resource. Providing for this stakeholder involvement is challenging in the competitive solicitation setting. To address this challenge we recommend:

- Tightening the linkage between resource planning and procurement, so that the work of planning is as useful as possible for procurement, reducing and eliminating any redundant work;
- Making more explicit the qualities of a competitive solicitation that the Commission believes are most necessary to a finding that the ensuing resource decision(s) is prudent; and
- For procurements involving long-lived resources:
 - Providing a process by which stakeholders, including potential bidders and the Commission, can comment on a draft request for proposals and obtain answers to questions critical to their preparation of responsive bids; and
 - Providing for the involvement of a neutral expert to observe and report on the processes of a competitive solicitation that by their very nature cannot be subject to stakeholder involvement, assuring stakeholders and the Commission that those processes support a finding of prudence.²

Propose adjustments to Montana's treatment of Qualifying Facilities in recognition of the improvements to the competitive landscape that the proposed changes to the resource procurement rules would support. Among the state resource planning and procurement practices we reviewed, those with robust competitive solicitation rules rarely offer standard contracts at administratively set avoided cost rates to Qualifying Facilities larger than a minimum threshold (e.g., 100 kW). QFs over this minimum size must to participate in the competitive solicitation processes. Considering our proposed changes, we recommend that the

² It is anticipated that the Commission's contracts with independent observers would include provisions under which the person or persons involved would be available as witnesses in subsequent preapproval or ratemaking proceedings.

commission consider lowering the threshold for the availability of administratively set avoided cost rates to QFs from 10 MW to 1 MW and smaller in capacity.

Suggest some minor housekeeping changes to tighten language and eliminate redundancies.
The passage of time always raises questions of different ways in which to say or organize things. This project is no exception. During our work with the current rules, we found sentences we thought were less clear or more awkward than they could be. The content of some sections seemed to repeat other sections. We offer suggestions that seemed, to us, to be improvements.

Report Organization

What follows is language for each of the following new or revised rules within ARM 38.5.8201 et seq.:

- 38.5.8201 Introduction and Applicability (revised)
- 38.5.8202 Definitions (revised)
- 38.5.8203 Goals (revised)
- 38.5.8204 Objectives (revised)
- 38.5.8205 Assessment of Assumptions, Forecasting, and Resource Plan Comments (new)
- 38.5.8206 Services and Needs Assessment (new, incorporating language from current rules, current practice and adding new ideas)
- 38.5.8207 Resource Alternatives Assessment (new, incorporating language from current rules, current practice and adding new ideas)
- 38.5.8208 Services and Resources Integration and Modeling (new, incorporating language of current rules, reflecting current practice, and adding new ideas)
- 38.5.8209 Transmission and Distribution Assessment (new, expanding on current language in ARM 38.5.8226)
- 38.5.8210 Action Plans (new, expanding on current language in ARM 38.5.8226)
- 38.5.8211 Planning Process (new, incorporating and adding to language in current rules)
- 38.5.8212 Resource Procurement (revised)
- 38.5.8219 Risk Management and Mitigation (revised)
- 38.5.8220 Transparency and Documentation (revised)
- 38.5.8221 Affiliate Transactions (revised)
- 38.5.8226 Electricity Supply Resource Tracking Filings (revised)
- 38.5.8227 Reward for Superior Performance (revised)
- 38.5.8228 Minimum Filing Requirements for Utility Applications for Approval of Resources (revised)

The language and/or concepts of current ARM 38.5.8213, 38.5.8218 and 38.5.8225 were incorporated in other proposed rules and, thus, are not included in the above list. We propose no revisions for ARM 38.5.8229 and so it does not appear either.

For each proposed new or revised ARM section, we provide:

(4) A decision by a utility regarding the acquisition of an equity interest in an electricity generating plant or equipment or the construction of such a resource on its own should be thoroughly evaluated against available market-based alternatives.

(5) Use of competitive solicitations as the preferred method for procuring electricity supply resources may not adequately achieve the goals and objectives of these guidelines with respect to demand-side resources. A utility should design programs and associated marketing and verification measures, as necessary, to ensure that its procurement of demand-side resources is optimized in the context of the goals and objectives of these guidelines.

Proposed Rule

38.5.8212 RESOURCE PROCUREMENT

(1) A utility should apply industry standard procurement practices to acquire Resources. The commission cannot prescribe in advance the precise industry standards a utility must apply since industry standards vary depending on context and circumstances. Generally, an acceptable approach to Resource procurement should encompass the following basic steps:

(a) rely on the information and analyses in its most recent Resource Plan and associated Action Plan, as modified for any comments received during commission processing of the Resource Plan or any assumptions that have changed since the Resource Plan's preparation, including, without being limited to, the:

- (i) Services and Needs Assessment, prepared according to ARM 38.5.8206;
- (ii) Resource Alternatives Assessment, prepared according to ARM 38.5.8207; and
- (iii) Services and Resources Integration, prepared according to ARM 38.5.8208.

(b) obtain and consider input and recommendations from a technical advisory committee throughout planning and procurement processes, as described in ARM 38.5.8211(4)(b)0;

(c) enable the acquisition of information regarding the specific prices, terms and conditions of Resources considered in a utility most recent Resource Plan;;

(d) select the most appropriate Resource options and develop a shortlist for which to refine the analyses and identify the most appropriate selection; and

(e) anticipate changing circumstances and remain flexible.

(2) Although these basic steps could be achieved through a variety of methods, a utility should use competitive solicitations with short-list negotiations as a preferred procurement method for Power Resources and should consider the usefulness of such competitive solicitations for Demand-Side and Distribution-Side Resources. A utility should design requests for proposals based on its Resource Plan and associated Action Plan. Competitive solicitations should treat similarly situated bidders similarly and fairly, use understandable processes and result in decisions and outcomes that are understandable by all Stakeholders, and contribute to achieving the goals and objectives in ARM 38.5.8203 and 38.5.8204. To serve as a reasonable foundation for a commission determination of prudence with respect to the procurement of a particular Resource, a utility's competitive solicitation should:

(a) clearly define the Resources, products, and services the utility needs before issuing a competitive solicitation and clearly communicate these needs to potential bidders in the request(s) for proposals. Multiple solicitations and/or solicitations for multiple Resources,

products, and services may be necessary to obtain information sufficient for prudent analyses and decision-making;

(b) Establish bid evaluation and bidder qualification standards and criteria it will use to select from among offers before issuing a competitive solicitation and clearly communicate these standards and criteria to potential bidders in the request for proposals. Once bids are received, a utility should apply its bid evaluation and bidder qualification standards and criteria fairly and consistently and allow all bidders to respond should a utility revise these standards and criteria in any substantive respect;

(c) use a systematic rating methodology under which it objectively ranks bids with respect to price and nonprice attributes, relying on the information and analyses used in its most recent Resource Plan and, in particular, those sections prepared according to ARM 38.5.8206, 38.5.8207, and 38.5.8208, and allow all bidders to respond should a utility revise this methodology in any substantive respect such that it requires additional information from bidders to apply the revised methodology;

(d) establish a shortlist of offers from bidders with which the utility will pursue contract negotiations. A utility should complete due diligence regarding bid qualifications, bidder credit worthiness and experience and project feasibility before selecting an offer for the shortlist. A utility should not indicate to a bidder that its offer is being considered for the shortlist while performing initial due diligence. If a utility allows one or more bidders on the short list to refresh or supplement their bids in any way, it must allow all bidders on the short list to do so;

(e) A utility should not reassign or "flip" supply contracts to an additional third party(ies) after the original bid activity and during the evaluation of bids. A utility must notify the commission before reassigning any fully executed contract;

(f) During competitive solicitation and resource acquisition processes, a utility should not publicly disclose specific information related to particular bids, including price, before the utility completes its resource acquisition process and has signed contracts with the selected bidder(s); and

(g) A utility should not provide any information to an affiliate with respect to the utility's resource needs assessment, evaluation criteria, bidder qualification criteria, due diligence, or any other relevant resource procurement information unless such information is simultaneously provided to all other prospective bidders.

(3) Procurement of Major Power Resources by a utility subject to 69-8-421, MCA.

(a) It is the commission's expectation that a utility will use a competitive solicitation to procure Major Power Resources. The Commission will not hold this expectation if:

(i) The proposed acquisition relates to an existing Major Power Resource for which the seller has defined a disposition process that is incompatible with the resource's submission into a competitive solicitation conducted that the utility or the timing of the Major Supply Resource's availability will not permit a utility to use a competitive procurement process; or

(ii) A utility has proposed and justified an alternate procurement methodology for a given Major Power Resource or type of Major Power Resource in its most recent Action Plan.

(b) Notice of procurement process. A utility shall provide notice of its intent to issue a request for proposals to acquire a Major Power Resource at least ninety days in advance of the availability of a draft request for proposals.

(b) Commission docket. Upon receiving a utility's notice of its intent to issue a request for proposals for Major Power Resources, the Commission will open a docket within which it can:

- (i) Select and retain a person or organization to act as an Independent Monitor for the competitive solicitation process pursuant to 69-8-421(1), MCA;
- (ii) Post and receive posted comments of others on the utility's draft request for proposals;
- (iii) Process the utility's or bidders' motions for protective orders regarding information relating to the competitive solicitation, should Commission receipt of such information become necessary during the competitive solicitation process; and
- (iv) Accept pre-approval applications resulting from the competitive solicitation.

(c) Independent Monitor. The Independent Monitor will assist the Commission during the request for proposals process. The Independent Monitor will:

(i) Provide comments on the consistency of the draft request for proposals with industry standard practices and the Commission's criteria, during or before the Commission meeting on the draft request for proposals in ARM 38.2.2005(2)(e);

(ii) Monitor and observe the request for proposals process, paying particular attention to the utility's evaluation of bids that will result in utility ownership of the resource, to ensure that the utility conducts it fairly and properly in accordance with industry standard practices and the Commission's criteria;

(iii) Notify the utility on a timely basis of any discrepancies it observes in the course of its duties under ARM 38.2.2005(d)(ii) and attempt to resolve any differences of opinion; and

(iv) Prepare a closing report regarding the consistency of the process, up to and including selection and notification of short-listed bidders, with industry standard practices and the Commission's criteria.

(d) Comments and Commission Meeting regarding a Draft request for proposals. Within 30 days of the filing of a draft request for proposals with the Commission, the Commission will hold a meeting at which it and any other interested person may ask questions of the utility regarding the request for proposals. Any interested person may file comments on a draft request for proposals within 45 days of when a utility files such request for proposals with the Commission. The utility shall consider any such comments in finalizing its request for proposals and retain a record of how it handled each such comment. A utility may supplement this process with pre-bid conferences and other means to ensure its request for proposals meets industry standard practices and the Commission's criteria.

(e) A utility planning a competitive solicitation with regard to Resources that are not a Major Power Resource may file a request with the Commission to follow any or all of the process steps in ARM 38.5.8212(3). For good cause shown, the Commission may grant the request. If a utility is not requesting an Independent Monitor pursuant to ARM 38.5.8212(3)(d), it need provide only 30 days' notice of an intent to issue a request for proposals.

(4) To the extent a utility does not use competitive solicitations to acquire Power Resources it should thoroughly document the exercise of its judgment in evaluating Resource options and making a selection, including the decision not to use competitive solicitations.

Redline

38.5.8212 RESOURCE ACQUISITION/PROCUREMENT