

SANTA FE COUNTY
BOARD OF COUNTY COMMISSIONERS
REGULAR MEETING

March 14, 2017

Henry Roybal, Chair - District 1
Anna Hansen, Vice Chair - District 2
Robert A. Anaya - District 3 [telephonically]
Anna Hamilton - District 4
Ed Moreno - District 5

SANTA FE COUNTY

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I. A. This regular meeting of the Santa Fe Board of County Commissioners was called to order at approximately 2:11 p.m. by Chair Henry Roybal in the Santa Fe County Commission Chambers, Santa Fe, New Mexico.

B. Roll Call

Roll was called by County Clerk Geraldine Salazar and indicated the presence of a quorum as follows:

Members Present:

Commissioner Henry Roybal, Chair
Commissioner Anna Hansen, Vice Chair
Commissioner Robert A. Anaya [telephonically]
Commissioner Anna Hamilton
Commissioner Ed Moreno

Members Excused:

None

C. Pledge of Allegiance

D. State Pledge

E. Moment of Reflection

The Pledge of Allegiance was led by Alex Cintron, the State Pledge by Adamina Pino and the Moment of Reflection by Abril Gonzales of the Finance Department.

I. F. Approval of Agenda

- 1. Amendments**
- 2. Tabled or Withdrawn Items**

CHAIR ROYBAL: Do we have any amendments?

TONY FLORES (Deputy County Manager): Mr. Chair, good afternoon, Commissioners. The agenda was posted on March 7th and as amended was posted on the

10th of March. I draw your attention to page 2 of the amended agenda, item III. C. 3, the resolution authorizing the County Manager to negotiated and execute all agreements as it relates to the agricultural extension office. That item has been tabled and moved to the March 28th agenda.

On page 3, Matters from the County Attorney, item VI. A. The caption has been retooled to make sure that we had any unnecessary authority removed and also we added items 1, 2 and 3. And then Mr. Chair, I had a request that we move item VII. Discussion and Information Items and Presentations to immediately following the Consent Agenda, thus allowing us to have the executive session as the last matter of our doing business.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, Mr. Flores, [inaudible] excited and eager users of the new extension facility [inaudible] about it progress and I see we're tabling this item. Could you just provide some additional feedback? Is it a logistical reason for tabling, or still [inaudible] to move forward, or could you just provide a brief snapshot as to where we're at with the project? There's a lot of people excited about the opportunity to use it once it's constructed.

MR. FLORES: Mr. Chair, Commissioner Anaya, thank you for that question. The resolution that was on the agenda today was authorizing the County Manager to be able to sign all construction agreements or any other agreements that were necessary for the bid that is currently on the street before the actual bid opening. The impetus of that resolution was to ensure that timing issues, we didn't have any constraints once the bids are opened and an awarded that it did not have to be brought back to the Commission to execute that contract. From my perspective, the project is under bid currently. We have some time constraints relative to the severance tax bonding that the state of New Mexico has provided to us in the past, so this resolution is merely to avoid any contractual delays in getting the contract moving once the bids are open, which has not been done.

So [inaudible] report to the Commission to you Commissioner Anaya, your question, the project is still moving forward and still anticipated to be underway by the time the summer schedule happens so this is a way [inaudible] further contractual obligations.

COMMISSIONER ANAYA: So, Mr. Chair, Mr. Flores, let's leave it on. Can we leave it on?

MR. FLORES: Mr. Chair, the packet material was not received. The resolution was not ready. It was not ready as of the time of the meeting today.

COMMISSIONER ANAYA: Okay. I got you. So it was a logistical matter and we can move forward at the next meeting so once the bids are in the project can move to construction. Is that accurate?

MR. FLORES: Mr. Chair, Commissioner Anaya, yes, that's accurate.

COMMISSIONER ANAYA: And just for clarification for those that are maybe listening in on the radio or watching via streaming, this is in reference to the youth ag facility that was part of the Extension Service that was the number one recommended project that we fixed building, based on our building assessment to replace a building that was built in the fifties and it's in Commission District 5 and it's at our Santa Fe County

Fairground facility. So is that accurate, Mr. Flores, what I just said?

MR. FLORES: Mr. Chair, Commissioner Anaya, that's 100 percent accurate.

COMMISSIONER ANAYA: Okay. Thank you so much, Mr. Chair. The other question I had was the last thing you said, Mr. Flores, was that we're going to move presentations, which would be – was it VII. B? Because I was going to make a recommendation but if that's already covered in your recommendation I won't. Did it cover the presentations under VII. B?

MR. FLORES: Mr. Chair, Commissioner Anaya, yes. The entire item VII. would be moved up which includes presentations, immediately following the Consent Agenda.

COMMISSIONER ANAYA: So I would request that, Mr. Chair, is if we could do VII. B. 1 after the approval of the Consent I would greatly appreciate it. Thank you so much for your time, Mr. Flores and Mr. Chair and the Commissioners.

CHAIR ROYBAL: Thank you, Commissioner Anaya. And just to be clear, we are moving item number VII right after the Consent Agenda. Is there any other amendments or tabled or withdrawn items from the Board or Manager? Okay, so seeing none, what's the pleasure of the Board?

COMMISSIONER HAMILTON: Move to approve.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Okay, we have a motion. Commissioner Anaya, would you like to second or did you have something else to say, sir?

COMMISSIONER ANAYA: Yes, if I could, Mr. Chair. Just if we could do that VII. B. 1 right after the Consent I'd appreciate it.

CHAIR ROYBAL: Would this motion include that amendment, Commissioner Hamilton?

COMMISSIONER HAMILTON: Yes. That would be fine.

CHAIR ROYBAL: Okay, I have a motion. Do we have a second?

COMMISSIONER HANSEN: I'll second it.

CHAIR ROYBAL: We have a motion and a second.

The motion passed by unanimous [5-0] voice vote.

I. G. Approval of Minutes

1. Approval of February 14, 2017, Board of County Commissioners Meeting Minutes

CHAIR ROYBAL: Is there any changes or what is the pleasure of the Board?

COMMISSIONER HANSEN: I move to approve the minutes.

CHAIR ROYBAL: Okay, we have a motion.

COMMISSIONER HAMILTON: Second.

CHAIR ROYBAL: And we have a second.

The motion passed by unanimous [5-0] voice vote.

II. CONSENT AGENDA

A. Resolutions

1. Resolution No. 2017-22, A Resolution Requesting a Budget Increase to the Fire Operations Fund (244) Hazmat Grant to Carry Forward the FY2016 Available Cash for the County Fire Department / \$9,329 (Finance Division/Don Moya)
2. Resolution No. 2017-23, A Resolution Authorizing the County Manager to Terminate Water Service Agreements (Public Works Department/Jerry Schoepner)

B. Miscellaneous

1. Approval of Amendment No. 3 to Lease Agreement No. 2013-0254-PW/MS Between Santa Fe County and Southwest CARE Center, Inc. (Public Works Department/Terry Lease)

CHAIR ROYBAL: Is there any discussion on the Consent Agenda? Okay, seeing none, what's the pleasure of the Board?

COMMISSIONER HANSEN: I move to approve the Consent Agenda.

CHAIR ROYBAL: We have a motion from Commissioner Hansen to approve the Consent Agenda.

COMMISSIONER HAMILTON: Second.

CHAIR ROYBAL: We have a second from Commissioner Hamilton.

The motion passed by unanimous [5-0] voice vote.

[Clerk Salazar provided the resolution numbers for these and all subsequent resolutions.]

VII. DISCUSSION/INFORMATION ITEMS/PRESENTATIONS

B. Presentation

1. Presentation and Approval of a Proclamation Proclaiming the Month of March 2017 "Certified Government Financial Managers Month"

COMMISSIONER ANAYA: Thank you so much, Mr. Chair for indulging this item. Ms. Tercero is there at the meeting I understand and if you could help and read it into the record I would greatly appreciate it and I defer to Ms. Tercero for some comments, that would be appreciated.

CHAIR ROYBAL: Okay, Commissioner Anaya. I'm going to ask that we – do all the Commissioners have a copy of this proclamation? I'm going to ask that we all take turns. I'll go ahead and start and I'll go to my right. Santa Fe County proclamation proclaiming the month of March 2017 Certified Government Financial Managers Month.

Whereas, the Association of Government Accountants – AGA – is a professional organization which has a network of over 14,000 members in 101 chapters in the United States and around the world; and

COMMISSIONER HANSEN: Whereas, there are approximately 311

active members in the New Mexico and Albuquerque chapters of the AGA representing state, federal, municipal and private sector accountants, auditors and financial managers in New Mexico; and

COMMISSIONER MORENO: Whereas, AGA New Mexico and Albuquerque chapters members have responded to AGA's mission of advancing governmental accountability and broad educational efforts with emphasis on the high standards of conduct, honor and character in the AGA code of ethics; and

COMMISSIONER HAMILTON: Whereas AGA New Mexico and Albuquerque chapter members are making significant advances in professional ability and in service to the citizens of New Mexico by mastering increasingly technical and complex requirements; and

CHAIR ROYBAL: Whereas the AGA's Certified Government Financial Manager program provides a means of demonstrating professionalism and competency by requiring CGFM candidates to have appropriate educational and employment histories to abide by AGA's code of ethics, pass three examinations requiring expertise in governmental environment, governmental financial management and control, governmental financial management and budgeting, and to maintain certification by completing at least 80 hours of continuing professional education in governmental financial management topics or related technical subjects every two years.

Now, therefore, be it resolved that we the Board of County Commissioners of Santa Fe County do hereby proclaim the Month of March 2017 as Certified Government Financial Managers Month. Approved and adopted and passed on this 14th day of March 2017. It is signed by all the County Commissioners, the County Manager, the County Attorney and the County Clerk.

COMMISSIONER ANAYA: Thank you, Mr. Chair and if I could I'd like to go ahead and move the resolution.

CHAIR ROYBAL: Okay, so we have a motion to approve.

COMMISSIONER HANSEN: I second it.

CHAIR ROYBAL: And we have a second. So we have a motion by Commissioner Anaya and a second by Commissioner Hansen.

The motion passed by unanimous [5-0] voice vote.

CHAIR ROYBAL: Motion carries unanimously. And we also have Elena Tercero here to talk and do you have somebody with you?

ELENA TERCERO: Yes, I do. Thank you, Chairman. Thank you, Commissioner Anaya. I also brought along with me our current president for the New Mexico AGA Chapter Vince Lithgow. So, Vince, do you want to –

VINCE LITHGOW: Mr. Chair, Commissioners, I'd like to thank you on behalf of New Mexico chapter of AGA for recognizing March as the CGFM Month. It's a very hard designation to earn. It's very valuable and it supports what the taxpayers deserve. Thank you very much.

CHAIR ROYBAL: Thank you. And did you have anything else that you wanted to add, Elena?

MS. TERCERO: Chair, Commissioners, I also do thank you very much

for this proclamation for declaring CGFM Month, the month of March for 2017 and just really encourage County employees to look at the certification to look at AGA, Association of Government Accountants. It's a really great group of employees, both state, city, county. We really do provide a lot of education for them, not only for the CGFM but also continuing education and it really does help move our community forward. And so both Vince and I are CGFMs so we do greatly appreciate what you've done for us. Thank you.

CHAIR ROYBAL: Thank you.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Yes, Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, Ms. Tercero, we've had employees that have gone through the process with CGFM in the past. Correct?

MS. TERCERO: Chair and Commissioner Anaya, yes, that's correct. I do believe you actually have some employees that are CGFM's but I didn't look at specifically who they were before we came in but we do have a membership roster that we can take a look at that.

COMMISSIONER ANAYA: I appreciate that, because this is just one of many tools that the County has had at its disposal for training, including New Mexico EDGE classes and classes with other institutions of higher education. So just another tool to utilize to make sure we're on the cutting edge of training and professional development and it goes without saying that our Finance Department, aside from winning every possible award there is to win they do an excellent job day in and day out and these types of trainings just help facilitate their efforts. So thank you so much for reading it in, Mr. Chair and Commissioners and Ms. Tercero, I appreciate that you're there as well.

CHAIR ROYBAL: Thank you, Commissioner Anaya. I was going to mention the same thing that I did think that we utilize those tools as well. So I really appreciate you guys being here today and thank you for everything that you do. Do we have any other comments from the Board? Thank you very much.

VII. A. Matters from County Commissioners and Other Elected Officials
1. Elected Officials Issues and Comments

CHAIR ROYBAL: Okay, we're going to go ahead and go back to VII. A. 1, Elected Officials Issues and Comments. These are non-action items by the elected officials such as constituent concerns. Do we have any elected officials that would like to speak today? Madam Clerk.

GERALDINE SALAZAR (County Clerk): Chair Roybal, I would like to just announce that I as the Santa Fe County Clerk have received from the City Clerk, the City of Santa Fe, a letter and a resolution stating that they will conduct an election. They voted on this resolution March 8, 2017 and their election will be held on I believe May 2nd. Yes. On May 2, 2017. So they have a special election that will be held on May 2, 2017 with regards to the sugar tax. Thank you.

CHAIR ROYBAL: Thank you for that update, Madam Clerk. And we have Deputy Treasurer, Eric Lujan.

ERIC LUJAN (Deputy County Treasurer): Mr. Chair, I just want to

remind the Commissioners and your liaisons about the outreach program that we're gearing up for. The Treasurer's outreach program. We appreciate the Commissioners' help in supporting with your constituents. As I said in my email, the Treasurer looks to plan the outreach program on your districts and specific senior centers or community centers with the city and county that are conducive to your districts so that we're able to assist your constituents with their tax issues and to pay their tax bills, property tax bills so they don't have to come here to the courthouse and wait in long lines and try to find parking. But we just want to remind you and we appreciate your support and help. Thank you, Mr. Chair, Commissioners.

CHAIR ROYBAL: Thank you for that update. I believe Commissioner Hansen had a question for you.

COMMISSIONER HAMILTON: What will you be doing in District 2, since Nancy Rodriguez Community Center is closed? Will you be meeting at the fire station or do you just plan – what's the plan?

MR. LUJAN: Mr. Chair, Commissioner Hansen, I believe – one of our staff, Theresa Romero got with Anna Bransford to see how we're going to work that out, either at the fire station that's across the street or if we're going to be able to use the half of the Nancy Rodriguez that's not under construction. So things are going on there, and I apologize, Mr. Chair and Commissioner Hansen, we always thought that the Mary Esther Gonzales Community Center was in your district but it's actually in Commissioner Roybal's district. But most of those people that go there are your constituents, Commissioner, so we'd appreciate your outreach to those because they come from your district, I think that most of the people that go there. That's one of the most popular. Well, the three most popular centers that we get the most constituents going to, Commissioner Moreno's Eldorado, Edgewood, Commissioner Anaya, and Mary Esther are the three most. And that's where we schedule most of our appearances at those three centers because that's where the taxpayers really show up. They take advantage of those centers. One of course is in the city and two in the county.

But Mr. Chair, Commissioner Hansen, I'll look into the issue and I'll report back to you to let you know where we're going to utilize in your district.

COMMISSIONER HANSEN: Okay. I would be grateful, thank you.

CHAIR ROYBAL: Thank you for that Deputy Treasurer.

VII. B. 2. Presentation of "3% Valuation Cap" Video

GUS MARTINEZ (County Assessor): Mr. Chair, members of the Commission, the month of April is coming up pretty quick and we sent our notice of values, our official notice of values out so people should be receiving those. There's about 85,000 parcels and so – and also in the month of April we do a lot of outreach around the community and so we do our outreaches from Monday through Thursday for the whole month of April, from 4:00 to 6:30 pm we do these outreaches. So a couple of areas we're going to be in – we're going to be in Rancho Viejo, the Sheriff's Office, Aldea, the homeowners association, the fairgrounds, Santa Fe Fairgrounds, La Cienega Community Center, Edgewood Senior Center, Pojoaque satellite office, Adedon Lopez, Eldorado, the Ken and Patti Adam Center and Las Campanas Association.

So those are some of those areas that we're going to be covering for the month of April. So just, if you guys have any questions or have any constituents that have any questions regarding their notice of values and they call you guys, be free to give me a call or send them down to our office. We have all these dates on our website so if you go to our website there we have all those dates and times that we're going to be there.

And also we just want to let you know about this video here. It's a three percent video of the capped value and how it relates to property owners. This past year our office put a lot of work into it to get it out to the constituents so that the constituent would know how the three percent cap protects them. So this is a short little video and after that, Gary, the Chief Deputy Assessor is going to talk about how the non-residential property, the cap doesn't apply to that. So if you guys want to take a look at that video.

[A video was shown.]

GARY PEREZ (Deputy County Assessor): Mr. Chair, just want to let all you know as Gus said, that video is now available on line. We just had it recently produced, and the intent was just to educate taxpayers, property owners, about how the three percent cap works. But we also wanted to emphasize, because that's not in the video, the emphasis is it does not apply to non-residential properties, the three percent cap. So non-residential properties, meaning vacant land or any commercial properties can go up to market value in any given year. For each given year we're always at the prior year's market value when we send out our notices of value as we are going to do now in April. So we wanted to emphasize that.

We are currently working on reappraisal of properties on a door-to-door basis for reinspection. The last time we did a complete non-residential or commercial reappraisal was in 2015 and 14 when we completed it. So I just wanted to ensure that people know about that because whenever we do reappraisals especially for commercial type properties like that that hadn't been done in quite a while, those values tended to go up and there's no cap on those type of properties.

Also we just intended to bring this video to you today as part of something that Gus wants to do on a regular basis. Just coming up here on a very short time just to give you information and give the public information, let you ask any questions but not intending to take up too much time here with you since we want to do this at least once a month.

Also Gus wanted me to inform you and the public that people can file protests after they receive their notice of value if they disagree with their value. It's available on line so they can file on line instead of having to come to the courthouse and have difficulty with parking. And I will stand for any questions.

COMMISSIONER ANAYA: Mr. Chair.

CHAIR ROYBAL: Go ahead, Commissioner Anaya.

COMMISSIONER ANAYA: Mr. Chair, I just want to acknowledge our County Treasurer that spoke previously, our deputy Treasurer, Mr. Lujan and now acknowledge our Assessor Mr. Martinez and Deputy Assessor Mr. Perez to say thank you very much to coming to bring forward the items that you've brought forward. A couple years back we started having this open item on the agenda so that our elected officials

could come to the meetings. It's their meetings as well in my estimation, in my opinion, and so I appreciate you, Mr. Chair, making sure that that continues to happen. And nothing makes me happier than to hear that video that you have put out that deals with the cap, Mr. Martinez and your team. I think it's important for the public to understand what their tax bill looks like, how it functions and how it goes up or down based on assessments.

I guess one final comment would be that it wouldn't hurt my feelings any if there was a law passed that capped commercial for existing businesses in a similar way that the three percent cap caps residential for long-standing residents. Businesses aren't exempt from challenges with the market and the economy and especially long-standing small businesses face challenges just to make ends meet. So maybe that's something our legislators will look at in the future. In the past there was a lot of efforts on a statewide basis to remove the cap from New Mexico which I think would have been a terrible mistake. I think it protects those long-standing residents and it's a credit to the former speaker of the house, Mr. Ben Lujan that we're in a position that we have this cap that helps to protect those interests of long-standing residents of New Mexico. So a credit goes to him and the state legislature in their wisdom for implementing the three percent cap, and I really, really appreciate, Mr. Martinez what you've done in working to convey the information as clearly and as concisely as possible to the taxpayer.

So thank you so much, Mr. Chair, for allowing me to make those comments.

CHAIR ROYBAL: Thank you, Commissioner Anaya. I too would like to ditto those remarks and also say that I've already called Gus Martinez, our Assessor, numerous times and asked him to help with my constituents and he's always been a great help and always willing to go that extra mile. So I really appreciate that. You guys have done a great job and keep it up. Thank you, sir. I appreciate it. Do we have any other comments? Commissioner Hansen.

COMMISSIONER HANSEN: Thank you, Mr. Martinez. You are doing a great job. It is an honor to have an assessor who has received so many awards and is recognized for the work that you have done. So thank you.

COMMISSIONER MORENO: Thank you guys.

CHAIR ROYBAL: Any other comments from the Board?

MR. MARTINEZ: I just want to thank the Commissioners for all your support in what we do and we couldn't do it without you guys and the whole County. It's a team effort from everybody that we all do outreaches and go out, whether it be the Treasurer or the Clerk or the Sheriff or the Commissioners and so it's all a team effort. I think that's what kind of elevates Santa Fe County above all other counties is the teamwork that we put together. So thank you guys.

CHAIR ROYBAL: Thank you.

CHAIR ROYBAL: Do we have any other elected officials that would like to speak today. Seeing none, we'll go ahead and close VII. A. 1.

CLERK SALAZAR: Excuse me, Chair and Commissioners, I just wanted to make a point of clarification. I announced the City election because the County Clerk and her staff are involved in that process, just to make sure that there is disclosure that there is going to be a City election and we are also involved. Thank you so much.

CHAIR ROYBAL: Thank you, Madam Clerk. So I'm going to go ahead

and close VII. A. Elected Officials issues and we're going to move on to VII. A. 2.

VII. A. 2. Commissioner Issues and Comments

CHAIR ROYBAL: Do we have any Commissioners that would like to speak today? Commissioner Hansen.

COMMISSIONER HANSEN: I just wanted to let the citizens of the city and the county know that I had the honor to attend the ribbon cutting for the recycling center on Siler Road on this last week and the City now has – it is delivering its bins to all of the city residents. Our recycling program in the county is also moving forward. Some places have carts; some places have bins. We are now getting new carts in the city. So I want to hope and see that our recycling will increase and so I'm encouraging everyone to participate in that activity.

Also, I had the honor to go this morning to see our landfill and the BuRRT station and I know that our two other newly elected Commissioners have been out there also and it is an amazing facility that we have as a landfill, but we want it to last for as long as possible and so recycling is one of the ways that we'll continue to make that landfill last.

The other thing, it was literacy week last week in our schools and my constituent liaison, Maria and I, went to Salazar and read a book called *Energy Island*. Being that I am Danish of descent, *Energy Island* is about Samsø, a completely zero energy island in Denmark and the kids were in fourth grade and they actually asked some interesting questions and it was a great experience. So I encourage all elected officials to go and read to a class in our public schools. It is really a great opportunity. And I think that is all I have at the moment.

CHAIR ROYBAL: Okay. Do we have any other Commissioners that have any issues they'd like to bring forth? Seeing none I'm going to go ahead and close VII. A. 2.

VII. B. 3. Presentation on the Santa Fe County Lodger's Tax Advertising and Marketing Program

MR. FLORES: Thank you, Mr. Chair. Thank you for indulging the move on the agenda. Today we have our annual presentation of our lodgers tax activities and marketing program. Before I get started on my brief introduction I want to introduce Dave Hayduk who is actually with HK Advertising, Vera Hayduk, she's back in the corner. On the front row up here, Meredith MacFarlane – she's our Lodgers Tax Advisory Board vice chair, newly appointed or elected or reappointed this morning, and I also have Katherine Fox Eller from the Community College who is also a member of our Lodgers Tax Advisory Board.

To set the stage, the Lodgers Tax Advisory Board is a recommending body to the Board of County Commission, all things related to the lodgers tax. They look at marketing plans, they look at media plans. They look at the presentations you're going to see today. They also provide recommendations on budgetary matters, and they also provide and review budget and contractual matters as it is related to our marketing program.

In September of 2015 I believe it was, we entered into an agreement with HK Advertising when the duties of the lodgers tax fell back up the County Manager's Office purview. That contract with HK was the first time that both Ms. Katonak, who is to my right, had the ability to actually look at the day-to-day operations, if you will, of our lodgers tax program. HK Advertising was the highest rated respondent in response to an RFP for these services. We've gone through now two years and approximately four or five months under this program.

I can say from the information that was provided this morning to the Lodgers Tax Advisory Board, even with the limited amount of facilities that we have in Santa Fe County that generate lodgers tax, we're on pace to have a record year. And I say a record year in the sense that we are still down one of our largest facilities but with the marketing and advertising efforts that HK has done in coordination with Ms. Katonak from my office, we now have a greater visual presentation of Santa Fe County than ever before.

You're going to see some of that work today, but I can tell you we have gone so far, I've got a stack of literature of publications in my office from Southwest Airlines to *D* magazine to *Outside* magazine to large tension fabrics probably the size of this wall at Albuquerque Sunport. We're beginning marketing efforts in DFW. So the program has gone leaps and bounds from what I recall it being when I was here with my first tour of duty to where we are today.

The presentation today is just that. It's an informational presentation that Mr. Hayduk is required to make to the Board of County Commission. There is not an action item related to this matter. It is purely to give you a sense of where we've come and where we're going and to take a look at the visual assets that we have in and around Santa Fe County. So, Mr. Chair, I'd like to turn it over to Mr. Hayduk.

DAVID HAYDUK: Thank you, Mr. Flores. Mr. Chair, honorable Commissioners, good afternoon. HK has been in Santa Fe County for 35 years. We're just celebrating this year and Vera and I live in Santa Fe County so we're proud to be able to work on this aspect of business that I dedicated my life to, and I'm excited to take you through, as Tony said, where we're at today and some things that are going on.

We'll be talking about, well, what is this concept and how does this concept make sense for Santa Fe County? I'm going to show you today also how we leverage some money from NMTD, the Tourism Department, in the True campaign to make our money stronger, even though we have a limited reserve. But we now can double the efforts with the use of our True campaign. We'll show you the Santa Fe County assets that we've identified that are important to the traveler. Some new opportunities coming up for us and our plans for the future. I'll finish this afternoon with a video that we did for staff on the newest video and photo shoot we did highlighting the winter assets of Santa Fe County.

All right. On the left of you if you look up you'll always see some of the ads that we produced already for Santa Fe County and the various publications. On the right, and we'll talk a little bit about why New Mexico True. Well, True is built on research. Cabinet Secretary Jacobsen when she was in as a marketing director and she really knew how to put a brand together. Worked for PepsiCo for ten years. So she really identified what's unique to New Mexico that speaks to the traveler about what we have in New Mexico. And it's about the authentic experience.

The other thing is people always understood New Mexico is a very beautiful state

but everybody said, What do I do there? So everything you see is about site-doing. Because a traveler, just as yourselves travel, would like to know, what do I do if I'm going to Disneyland or what am I going to do if I go to New Mexico? So everything's about site-doing. And of course, the brand is all about our rich culture, our activities and our outdoor adventures, and Santa Fe County owns those three things. And I'm also happy to say that that \$9.3 million the department spends, we now are leveraging our ads to make our ads in the traveler's mind, once he goes, I'm going to New Mexico, we're coming right behind those ads saying if you're coming to New Mexico come to Santa Fe County.

The New Mexico True program has this kind of success so far: our spend is up, visitors' spend is generating more taxes than it ever has. It offsets the tax burden for all of us as citizens by \$826. And it also increased the jobs in New Mexico by 7.5 percent. And we're on our fourth consecutive year of record-breaking growth in tourism. And the greatest piece is that last bullet there, every dollar that we spend in New Mexico on True, we're getting \$7 back. And that's just at the tax base level. That's not when you add in lodging and restaurants and all that, but True is really working for New Mexico.

What's it doing for Santa Fe County? Well, our receipts are up over 2015. Our visitor spend is increasing. Our tourism employment, it's providing jobs for Santa Fe County. Lodging report for 2016 over 2015 shows that our occupancy is up and as Mr. Flores stated earlier, we're short one lodge and that's Bishop's Lodge. So our performance is happening and that's all a test, I believe, to what we're doing with the advertising program.

Again, on the left, you can see how we highlight our various assets. This of course is Madrid, the quirky little Madrid – great shopping, great outdoor rec, so when we sat down and identified the assets for Santa Fe County, how do they line up with the brand for New Mexico True? Because we know that's why people are coming to New Mexico. So you can see there, those are the key critical things that when we identify what we're going to shoot and what we're going to advertise and how those assets will line up with Dallas. What do they like when they come to New Mexico? As opposed to the Phoenixians in Phoenix who like something completely different.

So these are important pieces that drive everything we do. What's our brand position? Well, that's about the adventurous traveler who craves authentic experiences. Santa Fe County is the destination that will feed the soul and energize the spirit. And I think you all are aware that National Geographic just voted Santa Fe the very number one in the world for place of sense. And the thing, if you look below that, it's about authenticity, we own that in Santa Fe County when it comes to our culture, it comes to our outdoor adventure, so that's going to be huge for us moving into the new year.

What are our objectives? Well, we do want to drive attendance to our events, because we know events is one of the top four reasons of why people travel. We're always when we're out traveling, what can we go see? What can we do? What events are happening? We also want to appeal to the historic and the cultural reputation that we have in Santa Fe County. So these are things again that drive us when we take a look at our creative and our plans.

Strategy, that lines up with it, let's build awareness in Santa Fe County as the ultimate destination for outdoor enthusiasts. It's not sightseeing but it's site-doing. It's

going to the Santuario de Chimayo and experiencing the church and it's going to Ortega's weaving and seeing the weavers and it's going to Edgewood and seeing the quirky little zoo that Roger has down there. So it's all those great things that we have in the county.

So our media strategy lines up with that. We are in geographically focused print, that we know the Department of Tourism is in because they're the ones driving that \$9.3 million. So we want people to consider Santa Fe County. We're also using digital advertising. That's the piece today where we can push advertising to people that have a very like mind about what we own and have here in Santa Fe County. So if they're looking for biking and hiking, we can push messages to those folks. And if they're just messages to people in Dallas or Oklahoma or Denver, we can push a spa message. So that's working real well for us. We also have built a social platform, because we all know people are chatting on social today. So everything we do has that hash tag santafenmtrue.com, so when people are posting things people are sharing it.

As Mr. Flores said, we're in the Albuquerque Sunport and next time you get your bags take a look at the monitors. There are some great visuals of what we have here in Santa Fe County. Good displays. And due to this cooperative program for New Mexico Tourism Department we're now in DFW Airport. 21 million people travel through that airport. They're going to be seeing all about Santa Fe County and what they can do here.

We also align with santafetourism.org and we do blogs that we host on santafe.org, so we complement each other and work in a capacity to use what they have and push our stories out through santafe.org.

The other thing that's important, I'd like to just point out is that the people that we use in our ads are all Santa Fean, are all New Mexicans. They're local. They're not New York talent or anything but they're truly New Mexico and that's important as we build imagery that people identify with New Mexico. Drive markets – nothing new there. We know Texas loves us. We know Colorado now loves us. Oklahoma and now with the direct flight, Phoenix to Santa Fe, we know Phoenix and Arizona love us. Fly markets, yes, Phoenix, Dallas, El Paso.

Here are some new opportunities that we were able to achieve just this year. We received a \$49,685 grant from the Tourism Department. That gives us the ability to be in some key publications as you can see on the screen there. One of them I think is really great is *New Mexico* magazine, and Dave Herndon, the publisher spoke to us at the Hospitality Association about people that read *New Mexico* magazine. We already know they love us and why wouldn't it be a great place to show them about Santa Fe County? So *New Mexico* magazine doing a great job. We're also in that magazine as well as *Texas Monthly*, *D* magazine, *Outside* magazine.

It's important to develop new tools for the toolbox and that's what we've been doing in the first two years with Santa Fe County. We've been putting those new tools in the toolbox. We're also working on new developments and new asset because every traveler is looking for something new to see and do, so we want to stay up with them as we develop those assets. And then the Department of Tourism has a co-op program coming up that they have money for us to help develop the infrastructure. It's not for advertising but it's to develop infrastructure that the traveler is looking for.

Our county assets are showcased. I can't tell you enough how much I've heard from your constituents in the county that have said, Thanks, Dave. We really love what

the County's doing for us, when you see Rancho Chimayo Restaurant. We have them and the folks down in the Madrid Association really love what we're doing because we're showcasing the gems and the things culturally as well as outdoor that we have in Santa Fe County and nothing but great comments from those folks.

The other thing is we talk about cultural things we have, which spas, events, and we also talk about our great lodging and opportunities there.

What's happening in the future? Well, I'm going to show you in a minute the new photography and video we just shot for Santa Fe County. It's kind of got a winter taste, but it's also got some assets that will live on outside of winter. We'll use that video because digital today can be very video minded. It doesn't have to be stagnant, so we're going to start using video to push those out to people. And we have a new fulfillment visitor guide coming that will showcase a lot of the new photography. And this is just a little sampling of all the various social media that we have out there that people are talking about what's happening in Santa Fe County from winter to summer events and that becomes a very big part of our whole overall marketing program.

This is the one fabric that you'll see about as big as this wall down at the baggage claim at the Sunport. That highlighting our Native American asset. And I'll stand back and I'll ask the video man to go ahead and play for you. This is a video that we did for staff. This isn't necessarily for external use but it's a way we present what we've just done in this latest video shoot and photography. I will say that the first thing says Bandelier. That's actually Tsankawi. Tsankawi is in Santa Fe County. It's part of the Bandelier National Monument but it's a big asset that we have. So let's roll it and sit back and enjoy.

[A video was shown.]

MR. FLORES: Thank you, Mr. Chair, for indulging us. This is part of the annual update, to actually show you what the new media plan is laying out. HK has done what I consider a tremendous job. The question was asked a couple of meetings back when we talked about lodgers about is there an impact with lodgers tax dollars in marketing or should we not use – unfortunately, the statutes in our own ordinance require the use of certain programs under the lodgers tax, so it's not like we could put some of these funds in abeyance and use them for another purpose. They are intended for marketing and promotion and advertising of our facilities and also facility sites. So thank you for that indulgence of that time. I'd like to turn it over briefly to Ms. Meredith MacFarlane who is our vice chair. She wanted to address the Commission, and then we'll close. Thank you, Mr. Chair.

MEREDITH MACFARLANE: Thank you very much. I'm Meredith MacFarlane. I'm the general manager at Four Seasons Rancho Encantado. I can't tell you how much this time I appreciate. We believe strongly that the lodgers tax has improved the position of Four Seasons here in Santa Fe, and I just thank you for your ongoing support and commitment. Advertising the county is important; we have beautiful assets and everybody needs to know about it. Thank you for your time. I appreciate it.

CHAIR ROYBAL: Do we have any comments from the Board?
Commissioner Hansen.

COMMISSIONER HANSEN: Thank you. I just want to encourage you to

stay for the next presentation about our film initiative that we are doing with the City so you can see what they are doing also. So I want to invite you to stay for that please. Otherwise, thank you. It's very informative about what you're doing and I'm glad that we are promoting Santa Fe County because it's incredibly important to bring as many tourists here as possible so they can enjoy our beautiful state.

CHAIR ROYBAL: Thank you, Commissioner Hansen. We have Commissioner Moreno and then we're going to go to Commissioner Anaya.

COMMISSIONER MORENO: I like the vibe of it and seen Ray LaMontagne a time or two and I think that it works pretty well. I do have one kind of question. All of the graphics have the True brand in them. Is that a statewide identifier or are you customizing for other markets?

MR. FLORES: Mr. Chair, Commissioner Moreno, New Mexico True is a statewide brand. Santa Fe County has become a True partner. So the branding and the marketing that we do is in accordance with the New Mexico True brand, and that was done purposely. We leveraged the dollar. I think Mr. Hayduk indicated it was a seven to one leverage on the state dollars versus our dollars. So we get the same look and feel of that little box with the tag in the corner, but we get to market it in our own way, accentuating our own assets. So it's based upon the New Mexico True brand that has become Santa Fe County True. I hope that answers your question.

COMMISSIONER MORENO: Yes. Thanks.

CHAIR ROYBAL: Thank you, Commissioner Moreno. Commissioner Anaya.

COMMISSIONER ANAYA: Thank you, Mr. Chair and Commissioners. I very much appreciate the presentation. I've always asked a lot of questions about getting additional reports and feedback as to the results and the progress and it sounds like we're making progress and that things are improving and that there can be a direct correlation to the monies that we're investing and the results that we're getting and visitors to the county. So I appreciate the presentation and the efforts of all parties involved in helping us get there.

CHAIR ROYBAL: Thank you, Commissioner Anaya. I just want to also express my gratitude and thank you guys for your hard work. It was a great presentation, so thank you.

MR. FLORES: Mr. Chair, I would like to introduce Ms. Laura Hudman who also just joined us. She's also on our Lodgers Tax Advisory Board. I think that's the commitment the new board has to you as elected officials for Santa Fe County that they're here and demonstrating their support that they are actually part of the recommending solution for.

At this time, Mr. Chair, I'd like to close by one more small shout-out. I want Ms. Katonak to stand up if she could. When Ms. Katonak was tasked with retooling the lodgers tax, the new board, the new marketing plan, the new media plan, she was a little apprehension. Sometimes I'm not the most easiest individual to find or track down to make decisions on things, only because I have a boss and that has bosses. But over the past two years Ms. Katonak has stepped up to the plate and from my perspective has taken our advertising program with the assistance of HK in an entirely different direction. As Commissioner Moreno indicated it's a good vibe and I like the vibe. The only

complaint I've ever had is that there's not enough red chile in any of the advertising. So that's a personal observation.

But I do want to thank Ms. Katonak and also Ms. Mihelcic from the County Manager's Office for really pushing the program, pushing Dave and really guiding lodgers tax in moving in this fashion. So with that, Mr. Chair, I want to thank you for this time.

CHAIR ROYBAL: Can we have a round of applause please? Thank you, Ms. Katonak. Commissioner Hansen.

COMMISSIONER HANSEN: I just want to say to the Board that I am really grateful for you to come here so that we can see who you are personally. It means a lot to me that you took the time to show up and I'm really grateful for your service to the County. So thank you.

CHAIR ROYBAL: Commissioner Hamilton.

COMMISSIONER HAMILTON: I just feel the need to pipe up and to thank all of you and to say that it is really exciting to see that you guys are doing work that really promotes what the County does and does in such an effective manner and that really lays some groundwork for us to being able to do things from the Commissioners' side that can be supportive of that and interact positively with that and that's something I hope we can think about and maybe you can help us think about. So thank you very much.

CHAIR ROYBAL: Thank you guys again for your presentation.

**VII. B. 4. Presentation on the City of Santa Fe Film Commission by
Santa Fe County Representative, Lee David Zlotoff
[Exhibit 1: Draft Proposal]**

LEE DAVID ZLOTOFF: Thank you. About a month and a half, two months ago, I discovered, no doubt to our mutual astonishment that I am the County representative on the Santa Fe Film Commission so it seemed only fitting that I came here and gave you some sort of an updated report as to what we've been done. Behind me is Deborah Potter, who is the chairman of the Santa Fe Film and Digital Media Commission, and Jim Gollin, who is another film commissioner.

I'm going to start by telling you a little bit about who I am since you probably have no idea who I am other than I'm your representative on this film commission. I have been a writer/producer/director in film and television for better than 40 years now. I recently moved to Santa Fe about 2 ½ years ago and shortly thereafter was inveigled to participate in this film commission. I have written, produced and directed literally hundreds of prime time television shows, most notably I am the creator of the TV series called MacGyver, which as you may know has become a global phenomenon. That is to say it has run non-stop for 30 years in 75 countries around the world.

I also discovered many years ago to my astonishment that the studio had made a mistake and I owned all the rights to MacGyver. These things rarely happen but there it is.

And so for reasons that have more to do with the world I live to my grandchildren than with making money I decided some time ago, about five or six years ago that I

wanted to bring MacGyver back on a number of platforms, what we call the transmedia play. So we did a comic book series and that became a graphic novel and that turned into a mobile app game. I founded a MacGyver Foundation and as part of that we work with a number of organizations around the world, mostly offering a MacGyver brand to them, and as a result of one of our projects a few years ago, which a global script competition, we got three million media hits worldwide. This reawakened Hollywood, as I suspected it would. We now have a new MacGyver television series on CBS which has pretty much won its night every time it's aired so I imagine that will be renewed for next season if not for two more seasons at least. Lions Gate Studios is now in the throes of making a big budget MacGyver feature and I recently published a book. My marketing guys tell me always bring the book with me, called *MacGyver's Secret*, which is a best seller on Amazon.

I tell you this less to impress you with my abilities than to impress you with the fact that I have some understanding of how to manage a brand, particularly a global brand that can be motivated and moved on lots of different levels.

So now to the Film Commission. As part of the Film Commission we were really tasked with looking at how do we make film and basically new media production a sustainable economic engine for the City and the County? We are at the moment a very successful destination location for productions that are developed outside of the state, but that ultimately leaves us at the kindness of strangers, because should the incentive program ever change or another state come up with a better incentive program they go where the dollars suit them best for the most part and they could be gone in a heartbeat.

So in order to really make this a sustainable economic engine you have to develop what we call above the line talent in Santa Fe which is writers, producers, directors, actors – the people who create the content such as myself, as opposed to simply developing the resources, what we call the below the line resources – the crews and the support staff to sustain productions when those productions come from other places.

Okay. The two things any content creator wants are funds to make their production, whether that's film, TV, documentary, games, whatever, and then you need a place to put it. Okay. How is this going to be distributed? How are people going to see it? To that end, through our conversations, the Film Commission has developed basically three programs, two of which are combined in the draft proposal you will have before you if it hasn't already been distributed to you, which you may read at your leisure. The first is how do we start to coalesce the existing resources and talent that are already in Santa Fe? Again, producers, writers, directors, actors – so called above the line talent.

So tomorrow night we will have our first Santa Fe above the line event at the Hotel Santa Fe which will start to bring these people together, mostly to let them know what we the Film Commission are doing and to begin to focus the energies of those people to think I could start developing content here in Santa Fe, New Mexico, rather than always having to go to Hollywood to do it.

The other two aspects which are covered in that draft proposal are a Santa Fe Channel, which we are in the process of putting together. Now there's a demo page up on the internet right now that you can see that's what's on the screen behind you. We are in the process of incorporating. It's a not for profit corporation. Eventually we will move ourselves into full tax-exempt status to launch this channel and to simultaneously

undertake a Santa Fe new media incubator. The purpose of the incubator is to start encouraging and inspiring young people and film makers to develop material here. So it's a mentoring program in part. It's a funding program in part, the goal of which is to start again getting people to think about making things here.

I'll talk for just a minute about the channel. I'll talk for then just a second about the incubator and then you're free to ask me any questions you might have. There are three goals to the channel, which by the way, will be a web-based, a website essentially that primarily the best way to think of it is as a portal. That is to say we will put lots of material on here and you can go and then take it wherever that material wants to lead you. We have, as you know, practically at capacity for outside productions now here in Santa Fe City and County. Unfortunately, most of the world doesn't know that we do that kind of production here, much less most of the tourists who come here don't know that we have all this production going on here. So one of the first goals of the channel are to establish that connection, which is to say we have another whole reason for you to consider coming to visit Santa Fe City and County which is we have all this amazing production going on here and by the way, have had for decades.

Some of your favorite movies have been shot here; you just never knew it before. And to develop that relationship so that people begin to understand that is not just a great place to come and buy turquoise jewelry and eat tacos, but there is a thriving film business here. So we can capitalize on that high level of development that's going on now.

The second goal of the channel is we have more than our share of considerably successful and well established content creators here, such as George R. R. Martin, Steve Lipscomb, who created the world poker tour, myself who created MacGyver. The list goes on and on and on. But most of those people are not associated with being in Santa Fe City and County. So the second goal of the channel is to reinforce that notion that there are an enormous collection of extremely well established people in the entertainment business already here living and working in Santa Fe.

Again, can't hurt. It will only help those individuals and those individuals use their celebrity to help Santa Fe. And the third thing is to provide, as I said, a platform for new material that is generated and created here, so that it has a place to go and a place to live. The fact is Santa Fe is a global brand, even more so, with all due respect, than New Mexico is. A lot of people still think New Mexico is part of Mexico. I know because I've been on the board of St. John's College for many years and I get calls from parents who are coming to visit the school saying do we need a visa. And you say, no, actually, we're a state in the United States. Oh, it said New Mexico. I thought maybe – no.

So Santa Fe though is a global brand and we can use that global brand to start creating the perception as well as the reality that this is a thriving hub for film and digital media content creation. And eventually, we will be the masters of our own fate, rather than being reliant on the kindness of strangers. Please let me know if you have any other questions.

CHAIR ROYBAL: Okay. I'd like to say thank you for your presentation and information. Great job. Do we have any other questions from the Board?

COMMISSIONER MORENO: Yes.

CHAIR ROYBAL: Commissioner Moreno.

COMMISSIONER MORENO: I've had a burning question in my mind for quite a while.

MR. ZLOTOFF: Where did the Swiss army knife come from? That's usually one I get.

COMMISSIONER MORENO: That's good. There are a lot of people here in Santa Fe that are the worker bees and mostly unionized, a lot of production people that never get the attention that they deserve. My theory is that it's good to have a studio but if you don't have people who are trained and enough of them you're never going to be a player. So is that right?

MR. ZLOTOFF: That is correct. If you have great studio space and you don't have enough crews to service the productions that want to come here, they're not going to come here. It's that simple. And so part of this – first of all, we have a fairly well developed below the line community here. IATSE and Doug Acton who is the president of the IATSE 480 is on the Film Commission so the whole idea is to try to start integrating these things together. But yes, part of our goal is to increase the number of our union crew members by offering opportunities for the kids who are coming out of various film programs in the city and the state to want to stay here and work here as opposed to getting their training here and going, well, there aren't enough jobs here so I either have to go to New York or I have to go to Hollywood.

So the goal is very much to offer those kinds of opportunities, but those kind of opportunities are really only going to get increased if we start creating locally inspired, locally created content. Because then we have the opportunity to decide, okay, we want so many neophytes on our crews. Personally, I'm in the process of developing a new television series to be set and totally produced here in Santa Fe. And one of the goals of that will be to use as many local people as we possibly can to fulfill those jobs and offer entry opportunities. So yes. The answer is you can only have as many productions as you have available crews. And once that crew limit is hit then even if someone wants to come here they go, if I can't get a good crew there then I'm going to have to go shoot it shoot is someplace else.

COMMISSIONER MORENO: Thank you.

CHAIR ROYBAL: Commissioner Hamilton.

COMMISSIONER HAMILTON: Two short comments and a brief question. First of all this is really exciting. And I want to say that part of the reason it's really exciting is because I thought the goals of the various things you've done, sort of highlighted by what you set out as the goals established on the one side seem really well considered. And I think that just makes it seem very feasible and it can really move forward. I really thank you for that.

Second of all, I've got to thank you for MacGyver because being married to my own MacGyver I really appreciate that you sort of glamorized the idea of a techno problem solver, as opposed to other kinds of superheroes. And third, the question was a little bit about the incubator and how that fits into this, that kind of development.

MR. ZLOTOFF: Sure. First of all, with regard to creating MacGyver, you're welcome, and it has been a remarkable joy and pleasure to get that kind of feedback from literally tens of thousands of people over the last 30+ years of my life and it never grows old. As far as the incubator is concerned, the goal is to start sending out

the message both to people within the community and frankly to people who don't yet live here, that this is a place where you can come and potentially find seed funding as well as support from top-flight professional mentors to start nurturing your projects into reality, and we have a place to put your project when it's done.

It doesn't have to be exclusive. If you want to take to film festivals, or you can sell it to somebody else but you know right from get-go, I have a place where these can be platformed. Okay? And that is critically important to film makers and content creators because that's the hardest thing to do is where do I find my audience? How do I reach my audience? Well, we've got a platform here now based on the global brand of Santa Fe and you should know, obviously, I've had conversations already with the New Mexico Tourism people who are very excited about this possibility, with the Santa Fe Tourism people who are very excited about this possibility, the New Mexico Film Office that is very excited about this possibility, the union, which is very excited about this possibility.

So across the board, we're going to have funding conversations with all of these people to see if we can really sort of get this thing off the ground. Because once that word goes out – you should also know, by the way, that *Moviemaker* magazine has listed us as the number two best place to live and work as a filmmaker in the United States, beat only out by Savannah, Georgia. We were number three apparently last year. We're hopeful that next year we'll be number one. But the goal is essentially to start focusing on resources, be they human resources, financial resources, but mostly brand resources in a way that really serves it.

So once this channel starts to develop a following much of the content on it will be free but the goal is also to start selling ads when we have enough traffic, to do transactional. So for instance, you find out your favorite movie, *Silverado*, was made here. Okay? You want to watch it – it costs three dollars. You click through our site, they get two dollars, we get a dollar. Okay. So there are ways to do what we call transactional purchases as well as eventually subscription. If we can get a TV series that's up on this site then we can start charging people subscription to watch that TV series on a regular basis. So the goal is for this to be economically not only self-sustaining but to throw off enough money that we can then continue to fund the incubation program. Did I answer your question?

COMMISSIONER HAMILTON: Absolutely. That's fabulous. Thank you very, very much.

CHAIR ROYBAL: Commissioner Hansen.

COMMISSIONER HANSEN: I want to thank you, Lee, so much for coming and presenting. It means a lot that you are our representative and I'm very proud to have you as our representative. I want to thank Deborah and James Gollin also for coming. That means a lot that you show that the County is a partner in doing this. We host the Santa Fe Film Office and Eric Witt is a star here at the County and we're grateful to all the work that he does. Also, we're at capacity at the studios. We need to build more space, and so we need to start thinking about how we're going to find funders, investors, etc. to build the space so that the new people coming on board, so your new TV show will have a home and a place, and so I want you to hopefully think about that in your process on the Film Commission. And with that I'm really grateful and thank you for being here.

MR. ZLOTOFF: Well, that has been in our conversations and clearly, doing something like this, if we can start really securing this brand in people's minds and there's lots of really smart, effective ways to do that, that only makes it easier to find the kind of investment that we're looking for because it becomes more obvious to people the level of work that's going on in Santa Fe.

COMMISSIONER HANSEN: Thank you.

MR. ZLOTOFF: Thank you. Thank you very much for your time.

CHAIR ROYBAL: Thank you.

III. ACTION ITEMS

B. Miscellaneous

1. **Approval of Amendment No. 2 to Professional Service Agreement No. 2015-0188-CSD/MM Between Santa Fe County and Presbyterian Medical Services, Extending the Term of the Agreement an Additional Year and Increasing the Compensation an Additional \$450,000, Inclusive of New Mexico GRT, for a Total Agreement Amount of \$1,150,000 for the Operation of the Mobile Crisis Response Team and Authorization for the County Manager to Sign the Purchase Order [Exhibit 2: Additional Material]**

BILL TAYLOR (Purchasing Director): Thank you, Mr. Chair. We're here before you requesting approval of amendment #2 to the agreement. We entered into an agreement with Presbyterian Medical Services in April of 2015. We are asking for an extension for one year is what this amendment does. It adds an additional \$450,000 to the contract. The services – it amends the scope of work to increase deliverables in the agreement for social determinants of health including housing, transportation, food security, to develop policies and navigate people to the appropriate services and to increase the percentage of clients engaging in the services during a six-month period following the crisis intervention. Again, the total amendment compensation is \$450,000 for a total contract amount of \$1,150,000. This amendment, there'll be actually if approved there'll be an additional year that we could also extend. With that, Mr. Chair, I do have Patricia Boies here to present or answer any questions that the Commission may have.

CHAIR ROYBAL: Do we have any questions from the Commission?
Commissioner Hamilton.

COMMISSIONER HAMILTON: It's an indirect question about the service, not about the amendment, per se, which seems fine. But I just can't help but ask just briefly as a first or second or whatever responder with Santa Fe County Fire Department. What kinds of outreach, because that is one of the services and I know we've been very briefly made aware that they exist, but can you say a little about the process that's been implemented and how well that's known by everybody that's responding that there's access to this?

PATRICIA BOIES (Community Services): Certainly, Mr. Chair, Commissioners, Commissioner Hamilton. Yes, this project, this Mobile Crisis Response

Team was undertaken by the Community Services Department to support our Health Action Plan priority to reduce suicides and also the priorities of reducing alcohol and drug abuse. And it's dedicated to assisting first responders with people in behavioral crises and also providing follow-up case management. When we started in 2015 with PMS there was a lot of outreach done to Santa Fe, the City, City Police, City Fire, Santa Fe County Fire, and I can have Larry Martinez of the PMS team talk a little bit more about exactly how that was done, but we – this one pager that I handed out gives an overview of the kinds of volume that there has been.

And I just want to call your attention to the fact that one of the huge, significant components of this is it's not just responding to the actual crisis at the scene but also providing follow-up so that people are connected to the needed services and you can see that on this table there have been no suicides with any of the people who have been involved and used this team. As I said, we are very glad to continue and expand this program into the next year and Larry Martinez here as well as two of the people who are pictured who are the primary people who are on this team, Mark Boschelli and Ann Baker and for any particular questions, and in fact Larry probably would like to say a few words.

LARRY MARTINEZ: Thank you, Patricia, Mr. Chair, members of the Commission. I'm Larry Martinez with Presbyterian Medical Services. I oversee the operation here in Santa Fe in the north central part of the state. Santa Fe County too a very bold step in 2015 when it issued the request for proposals, designed primarily to assure that Santa Fe does not experience the same problems a lot of the rest of our country is experiencing when there's violence that occurs, when first responders who are not familiar with some of the manifestations of behavioral problems are called into a situation. And we responded to the request for proposals and we have enjoyed a very long working relationship between Presbyterian Medical Services and Santa Fe County.

I'm going to turn it over to Ann Baker, who is the administrator of the Santa Fe Community Guidance Center. She's the person that oversees all of the behavior health programs that we've got here in Santa Fe County and one of her staff members who is Mark Boschelli who is the clinical services administrator who oversees the Mobile Crisis Response Team, and they will explain to you precisely what services are provided, what our strategy is when we are faced with a situation where we are contacted by a first responder that needs some type of behavioral health expertise in order to respond to the situation.

MARK BOSCHELLI: Thank you, Chairman. My name is Mark Boschelli. I'm the clinical director of this program. To give you an oversight, I'm just going to dovetail right here with MacGyver. Think about this. I know. I'm so excited. I apologize. But what it is is a cobbled together response system, where you have EMTs, a police department, sheriff's department, out on the scene with a mentally ill person, a great deal of the time, or a co-occurring intoxicated individual. All those responders will say the same thing: We don't know whether to arrest them or do something else with them. They basically call our team. Our team is experienced, licensed professionals that we've all been trained. I do all the training for this team. We have 26 individuals who will basically rotate through this team, 24 hours a day, seven days a week, we arrive at the scene within 20 minutes, assist the law enforcement officer or the sheriff or the EMT in helping to

determine what we're going to do with this individual.

As a result, no deaths have occurred. Now, it might seem like a small fact but it's actually a huge impact to our community that these are individuals that have in no way been harmed by our community. As a result we can actually link them to services that previously they would basically go into the detention center or just be let off at the county line sometimes. But this team goes throughout the whole county, including Edgewood, assisting. I was part of all the training with all the law enforcement officers and if you know what that means that means going to every single shift of every police department, sheriff's department, EMTs department. So it constituted 39 showings to these departments. In addition the Santa Fe Police Department instituted a one-day symposium on how to deal with mentally ill, chronically suicidal intoxicants and they sponsored this workshop. And so basically, as a result, they learned how to work with these individuals. When we're out on the scene we'll do an immediate psychiatric assessment, see if they're endanger of harming themselves or others. If they're responding to possibly auditory hallucinations due to their mental illness.

In addition we do what's called a teachable moment. We teach them graduate school class material right there on the spot. We will tell them you are seeing this type of mental illness as manifested by these types of behaviors. This is what you're seeing. Thank you for calling us. Now together, let's figure out what we can do. A lot of times we're trying to link them to inpatient services, but the majority of times we're trying to link them to outpatient services. As a result, we're diverting them from basically places that we don't really want them to go, that fall on us taxpayers, such as the detention center.

So as a result we have the beginning of a whole emergency room and detention center diversion system. They've been basically going to what Ann Baker oversees, the Santa Fe Community Guidance Center. We do have results. You're looking at basically 223 diversions right into outpatient services. They did not clog up our emergency rooms for some of us who have medical conditions. You don't have intoxicants just waiting around, eating up that bed space, but they go right into outpatient services, Monday through Friday. Somehow we're fitting them into our psychiatric services as well as our mental care on an outpatient basis. Much cheaper for all of us involved, and they're not going to the detention center.

In addition there has been no suicides as a result of having contact with our Mobile Crisis Response Team, and we're talking about all different types of social, economic classes throughout the county of Santa Fe, whether someone's destitute, living underneath the bridge on Alameda Street, living in Eldorado, or my favorite place, going up to Hyde Park and trying to get through the gates. It makes no difference. Mental illness as well as substance abuse hits all individuals the same. Socioeconomic class is not a determinant of whether you get more of it or less of it. So we've experienced that already.

Clients referred to treatment over this period of time, between July 2015 and February of this year, we've had 671 clients referred to treatment. Previously, I'm going to tell you the majority of these individuals would have been arrested, sitting in our detention center, we'd be paying that bill on a daily basis. Call-outs – 523 call-outs, as well as follow-up contacts, which is our bigger number, which is 798. Why that is bigger

is – I'd like to say that the Mobile Crisis Response Team is this kind of really sexy, MacGyver type of experience, but in reality, it's kind of boring. And we show up and we tone everybody down. The law enforcement, and say, you know we really need to link them up. And we can call off law enforcement, call off the EMTs, call off the big fire trucks, and we're trying to link them to services. And it takes numerous contacts to get them actually involved in those services. And that's why the follow-ups actually eat up the majority of our time and effort, but it decreases multiplications of these crises. Therefore our community is safer, we have great outcomes.

On a national level, I've presented at one conference already. They're wanting to know how we're doing this. Bernalillo County has asked for consultation on how to work with mentally ill, chronically intoxicated, so that the law enforcement professionals can do it in a more humane fashion. It doesn't get bad press. Everybody gets helped. So we're starting to consult with Bernalillo County as a result of this. In addition, we've had one publication and we have another conference presentation coming up.

CHAIR ROYBAL: Good job. Commissioner Hamilton has a question.

COMMISSIONER HAMILTON: That is just fabulous, and having been out there on the front end of some of these it's incredible to have a resource to go to. Incredibly valuable. I would think one of the linkages back to us, by the feedback, would come from all of the follow-ups you do in linking them to outside services is information on where the quantity of those services, their location or the nature of them is lacking – not enough things to do. You would, I assume be gathering that information. That might be a good thing for us to get a little report on at some point for us to start thinking about, so we can put it in our planning.

MR. BOSCHELLI: Ma'am, the Community Service Department already has tasked us to make sure from day-one we are gathering such demographic information, as well as a gap analysis of service delivery – where these individuals need their services. We're already – we've been gathering that under the auspices from day-on.

CHAIR ROYBAL: Okay. Do we have any other questions from the Board? Commissioner Moreno.

COMMISSIONER MORENO: Thank you for your presentation, very illuminating. We've been struggling with a fragmented system for quite a long time and I would like to hear your thoughts about what we the County, the people that are in this room can do to put more glue in the machinery so that things can be more effective, have more people in the field. What are the next steps that we should do to help you.

MR. BOSCHELLI: Well, partnering with the County of Santa Fe has been an exciting endeavor. I'm part of a medical practice for behavioral health as well as physical care under Presbyterian Medical Services. I've been doing this for 30 years. The fragmentation of service delivery has been really one of my biggest nemeses. We have clients, patients, consumers – whatever term we want to use – they fall through the cracks immediately after a higher level of care, and that definition is a psychiatric hospitalization.

What we've been able to do in broadening out the idea of the Mobile Crisis Response Team is start building those blocks into those bridges into service delivery. We've turned that as team of care service delivery system. As a result of the Mobile Crisis Response Team we already see the Fire Department having less calls for these

same clients over and over again. Going to the emergency room, I get to know them by their name. I get to know their blood pressure. What their BAL is, how much blood alcohol they have; that doesn't do anything. What they need is their next step of into counseling services, into psychiatric care.

The Santa Fe Community Guidance Center is one of the largest behavioral health, non-profit agencies here in the County of Santa Fe, taking all comers, no matter what. They're a federally qualified healthcare center, joint commission accredited, all those types of titles. But what they do is a wrap-around service delivery system.

In addition, at the pinnacle of that we have what's called the Assertive Community Treatment Team. This is a team, unfortunately, that I get to run in addition as the clinical director. I say that because it's 24 hours a day, seven days a week, for the highest utilizers in our community. These are the people that literally cost a million dollars in medical care if left untreated. So we have this special team. Psychiatry, case managers, counselors, therapists, nurses – we go visit them daily. If they're underneath the bridge: guess what. We roll up our sleeves and we go underneath the bridge. We bring them back into services; we don't let them go.

As a result of the Mobile Crisis Response Team we've expanded our Assertive Community Treatment Team by ten slots. In the future, we're hoping to expand it by another ten slots. Currently we have 65 enrolled individuals in this program. Now they're on nobody's radar. In other words they're on my shoulders on a daily basis, but we've been able to decrease their emergency room contacts, hospitalizations, detention center stays, as well as you can ask any municipal judge, magistrate court judge or district court judge if they know about the Assertive Community Treatment Team and they'll say we want our case load on that team. So we have been building that continuum of care service delivery system and we're going to continue to do that with this continued funding.

COMMISSIONER MORENO: Thank you.

CHAIR ROYBAL: Do we have any other questions? Commissioner Hansen.

COMMISSIONER HANSEN: I just want to thank you so much for all the work that you're doing. I think the Mobile Crisis Response Team program is incredibly important, and with that I want to move to approve the amendment #2 to the professional services agreement between Santa Fe County and Presbyterian Medical Services.

COMMISSIONER HAMILTON: Second.

CHAIR ROYBAL: Okay, we have a motion from Commissioner Hansen and a second from Commissioner Hamilton and Commissioner Moreno.

The motion passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

III. B. 2. Approval of Agreement No. 2017-0192-UT/BT Between Santa Fe County and Grand Prix de Santa Fe, LLC for the Right to Irrigate Within the Place of Use Located Within the Polo Grounds Using a Portion of Santa Fe County's Water Rights Associated with the Hagerman Well

JERRY SCHOEPPNER (Public Works Department): Thank you, Mr. Chair, members of the Commission. I'm here today to request approval of an agreement to allow Grand Prix de Santa Fe, formerly the Santa Fe Horse Park, to lease the County's water right associated with the Hagerman Well.

In order to provide a little bit of history and context for the lease, a brief background is in order. Santa Fe County and Grand Prix jointly purchased the water right associated with the well from the Public Service Company of New Mexico in 2010. Santa Fe County purchased the water right as part of an effort to develop supplemental long-term water supply sources prior to the BDD coming on line. The purchase provided a 75 percent interest to the County and 25 percent interest to the Grand Prix which includes both the water right and the infrastructure including the well, the pump, the real property where the well is located.

Following the purchase, change of ownership applications were submitted to the Office of the State Engineer which were approved, and they in turn issued permits to both parties. The permits authorize the County to divert 178.46 acre-feet per year and Grand Prix to divert 60.7 acre-feet per year for the purpose of irrigating the place of use identified in the permit. And the place of use identified in the permit is 59.49 acres located within the polo grounds, located at 100 South Polo Drive, right inside the park itself.

The County previously leased the water rights to Grand Prix's predecessor and desires to allow Grand Prix to lease a portion of the County's water right to the Hagerman well by diverting up to 95 acre-feet per year, and in return Grand Prix will pay the County \$1.95 per 1,000 gallons, which will amount to about \$60,000 per year for a four-year contract. With that I'll stand for questions and I also want to mention that I do have Ryan Gonzales with Grand Prix if you have any questions of either one of us. Thank you.

CHAIR ROYBAL: Thank you. Do we have any questions of the Board? Okay. Seeing none, what's the pleasure of the Board?

COMMISSIONER HANSEN: I went to the map to make sure this was in my district and it is in District 2 and I trust that you will be a good steward of these water rights for the year that you have them and that we'll see you again next year. And so with that I move to approve.

CHAIR ROYBAL: We have a motion for approval. Do I hear a second?

COMMISSIONER HAMILTON: Second.

CHAIR ROYBAL: We have a motion from Commissioner Hansen and a second from Commissioner Hamilton.

The motion passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

RYAN GONZALES: Mr. Chair, if I could.

CHAIR ROYBAL: Sure.

MR. GONZALES: What an educational afternoon. Absolutely wonderful. Just to give you an idea as to what we're doing out on this property, is our goal is to make it an event center. We're going to be on your asset list in a very short period of time. Last

year we brought more than \$12 million of commerce to Santa Fe in just three weeks doing Olympic-style grand prix show jumping. These people are coming from Mexico, from Canada, east coast, west coast. It's all new money to Santa Fe. So I'm very excited about improving this event center. Also, inviting the film industry. That was a lot of fun. I actually enjoyed and I made notes of who I need to contact as I leave this room. So thank you for your support. It's a great partnership.

CHAIR ROYBAL: Thank you, sir.

III. C. Resolutions

1. **Resolution No. 2017-24, a Resolution Supporting Legislation Requiring Competitive Resource Procurement for Electric Utilities in the State of New Mexico** *[Exhibit 3: Senate Bill 360]*

COMMISSIONER HANSEN: This resolution is in support of Senate Bill 360, which is opening up the procurement for electric utilities for transparency and for fair bidding. And as we all believe in transparency I want to be in support of this act that Senator Cervantes has brought forward, which is Senate Bill 360.

CHAIR ROYBAL: Okay, do we have any questions from the Board?
Commissioner Hamilton.

COMMISSIONER HAMILTON: Thank you. First of all, this is something that's obviously going through very quickly, so I wanted to commend Commissioner Hansen for following this closely enough to recognize it as something of interest. And I generally really support this. And I just wanted to make a comment for the record, that normally, we have County staff who goes through and does a detailed analysis of things like this, that are of interest to the County, generally, so that as Commissioners we can look at things in some detail, in addition to just considering supporting things because of their general concepts.

That wasn't necessarily possible at this point but it's something that's very valuable to us and I wanted to also commend the County staff for what they do provide us in the analyses that they do. Given the timeframe that this is and the importance of this kind of concept I am very much in favor of it.

CHAIR ROYBAL: Okay, do we have any other questions? Commissioner Moreno.

COMMISSIONER MORENO: I read the bill and various documents related to it and I have a couple questions. Maybe staff can help me with that. But first, this is an attempt to make sure what we in Santa Fe want in our electric service and if you in Santa Fe anytime, you know we're pretty sensitive about that. And so it's a good way to approach it and it's market based and I like that also. And I'm going to support your resolution. But I do have a question. What if there were a process where Santa Fe County alone would go out to bid to provide all of the electric service to Santa Fe County facilities and other related activities? Could we do that under the state procurement code? So that Santa Fe County would have a dedicated stream of clean energy for all of these buildings that we have?

COMMISSIONER HAMILTON: While they're thinking, can I ask for a

clarification on the question? Are you asking whether this bill would preclude our ability to do that?

COMMISSIONER MORENO: Yes. The bill – maybe you can describe it better than I. The way I understand it the cities and counties can put out a procurement document to provide electricity to a particular area or a particular hospital, say. Could an institution do that, and if so, would that be an option for Santa Fe County so that we could get the cleanest, cheapest electricity for County facilities?

CHAIR ROYBAL: I also have a question or a comment maybe I can get some clarification on. In reading this document, I was a little concerned with this legislation because it requires investor-owned utilities to hire an independent evaluator to determine where to purchase the electricity when the utilities are already trying to purchase the lowest cost of electricity to keep rates as low as possible. I'm kind of afraid that this could lead to higher electrical bills. I'm just wondering about it overstepping its authority, getting involved with private business procurement. If we can get some clarification to that.

COMMISSIONER HANSEN: Commissioner Roybal.

CHAIR ROYBAL: Commissioner Hansen.

COMMISSIONER HANSEN: What I understand from this bill is that getting an independent evaluator is going to provide us with the lowest service in the entire state instead of raising the rates. I could also ask Mariel Nanasi from New Energy Economy if she would like to comment on that, if you will allow it.

CHAIR ROYBAL: Yes, please come forward.

MARIEL NANASI: Mr. Chair and Commissioners, two questions that you've raised. The independent evaluator would serve to make sure that the process of the RFP, the request for proposal would be fair. Often that could cost between maybe \$50,000 to \$100,000. The purpose of that is to make sure, and to apprise the Public Regulation Commission of how the process would be procured. That's how you do your business. The independent evaluator and the RFP process is standard industry practice. Every single state around us has this exact same procurement process. Arizona, Colorado, Utah, Texas, California – every single state around us does, and this is the industry standard.

Basically, what's happened is, and to sort of talk to your question, Commissioner Moreno, is what happens right now is let's say PNM in most of the territory that you all are Commissioners for, they propose their own coal and nuclear. That's what's happened. Right now, 80 percent of all of our energy comes from coal and nuclear. Only about ten percent comes from gas and two percent comes from solar despite the fact that the sun zia is on our flag. And what happens is they put in their coal and nuclear and then it's up to interveners, like myself, to challenge that and to say, we don't want that. We don't want that expensive coal which the coal plant, just so you know, is 40 years old. One of their coal plants. The other coal plant, Four Corners Plant, is 50 years old and the nuclear plant in Arizona does not create one job here and that is 28 years old.

So we said what about instead, having solar and wind? For instance, Southwest Public Service, another electric utility – there's only three in the state: EP – El Paso Electric, Southwest Public Service, and PNM. Southwest Public Service regularly puts out RFPs with an independent evaluator. The last RFP that they put out for Southwest

Public Service, for wind alone, they bought 700 megawatts of wind at a savings of \$590 million dollars, half a billion dollars, for their customers.

For solar, they put out an RFP, got 140 megawatts of solar, and they saved their customers \$85 million. SPS today has hit a high of 53 percent renewables. Compare that to PNM which does not do the RFP process. So actually having the RFP process, even with a cost of an independent evaluator would ultimately save somewhere between tens of millions and hundreds of millions of dollars for all of our residents, and would usher in the clean energy transition.

I'll say one other thing which is that Colorado economy is, yes, doing well because of marijuana, but the second reason is that they have 10,000 people working in the renewable energy industry. And you all know, some of you weren't here before, but when New Energy Economy and the County partnered and put solar on the fire stations, actually bills went down and is saving the County money.

If I could just get one more question to answer, Commissioner Moreno's question before that. Mr. Chair and Commissioner Moreno, the County could put solar on all the County buildings and I would love to see that. And I believe that ultimately you will save money, as especially you know that PNM rates have continued to rise and right now there's a rate case pending again. So the County has the ability to do that today. We would have to get a change in the Public Utility Act for a city and county municipalization effort and the reason why it would have to be together, a joint endeavor, is because too many lines criss-cross the boundaries.

But I'd be happy to talk to you about that further because I would love to see that happen. Thank you so much.

CHAIR ROYBAL: Thank you very much. Commissioner Hamilton.

COMMISSIONER HAMILTON: Just as a very minor addition for the record, to the information Commissioner Hansen presented, provided to all of us, that recommendation for the independent monitor is actually in this independent report that's by the analysis group from 2008 that was done for the National Association of Regulatory Utility Commissioners. So there's quite a bit of information.

CHAIR ROYBAL: Okay. Commissioner Hansen.

COMMISSIONER HANSEN: With that I wanted to say that the County is moving towards solarizing all of our buildings, now with a new Commission and that we have a Sustainability Office at the County led by Claudia Borchert and we are really excited about that new office and she and us all working together to move that forward. And with that, I would like to move to pass this resolution supporting legislation requiring competitive resource procurement for the electric utility in the state of New Mexico.

COMMISSIONER HAMILTON: Just a comment.

CHAIR ROYBAL: Go ahead, Commissioner.

COMMISSIONER HAMILTON: I don't know if this is the appropriate – part of your question was directed at County staff and I don't know if there was anything they wanted to say.

CHAIR ROYBAL: I think it was answered unless there was something that you'd like to add.

MR. FLORES: Mr. Chair, the only thing that Ms. Nanasi touched upon is

that we can set up a procurement however the County wants to set it up within the guise of the procurement code. So we have that ability. The point though that was brought up and then brought up again, was we may not have the ability right now to do that as a municipality and county in the sense of the legislation that's proposed. And we may also not see the economies of scale on a smaller level that we're hoping to see at the state level with Senator Cervantes' bill. So I hope that adds to that point.

CHAIR ROYBAL: Okay. Thank you, Mr. Flores. Commissioner Hansen, did you have something else?

COMMISSIONER HANSEN: I need a second.

COMMISSIONER HAMILTON: Second.

CHAIR ROYBAL: Okay, we have a motion from Commissioner Hansen and a second from Commissioner Hamilton.

The motion passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

[See page 39 for corrected resolution language.]

COMMISSIONER HANSEN: I'd also like to recognize Bianca of Earth Cares and Jennifer Montoya of One Billion Rising, and thank you for being here and supporting this. We are grateful and of course, thank you, Mariel Nanasi for all the work you do for us.

III. B. 2. Resolution No. 2017-25, a Resolution Establishing the Animal Control Ordinance Advisory Committee

RACHEL BROWN (Deputy County Attorney): Good afternoon, Mr. Chair, Commissioners. You have in your packet a draft resolution that was created as a result of the discussion that occurred in the February 14, 2017 BCC meeting, at which you discussed the need for a committee to provide some guidance on further revisions to the animal control ordinance, specifically defining the term "tethering" and addressing the need for further regulation of barking.

The resolution before you proposes a committee based on the comments you made, which would be a seven-person committee. There would be a representative of each Commission district as well as two individuals selected based on their familiarity with the regulation of barking and regulation of tethering. The problem with the resolution and your objectives, which was to have an amendment brought forward prior to implementation of the current amendment on tethering is the timeline for that. And so to the extent you decide to create this committee I would encourage you to consider also extending the deadline for implementing the tethering provision that is currently in your amendment, because that amendment will go into effect before this committee could effectively bring you recommendations for further revision.

And so to sum up, there would be two things I would suggest if you are going to adopt a resolution such as this you might also instruct staff to extend the deadline for implementation of the tethering provisions by a couple of months, perhaps having that go

into effect in November, late November, rather than the beginning of August.

I also want to point out that there was one word omitted from the resolution in paragraph 2. That paragraph was supposed to end Animal Control Ordinance and I believe the word "ordinance" was dropped off of your draft but will be in the document that is signed, if you elect to adopt this resolution. And I would stand for questions.

CHAIR ROYBAL: Commissioner Hansen.

COMMISSIONER HANSEN: Where is this? Page 1?

MS. BROWN: I believe it ends with Animal Control, rather than Animal Control Ordinance.

COMMISSIONER HANSEN: Okay. Thank you.

CHAIR ROYBAL: Okay, do we have any other questions from the Board? What's the pleasure of the Board?

COMMISSIONER HANSEN: I move to accept this resolution with the extension of the deadline for tethering to be moved out three to six months. Do you want to give me the language?

MS. BROWN: Mr. Chair, Commissioner Hansen, if you wanted to move out the deadline for the implementation for the current tethering provision, that would have to be by ordinance amendment which I could bring forward at either – perhaps the next meeting but most likely two meetings out from now. I could bring forward an amendment of that nature. And I had suggested that you move it out until the second meeting in November for implementation.

COMMISSIONER HANSEN: Okay. So moved.

COMMISSIONER HAMILTON: So seconded.

CHAIR ROYBAL: We have a motion and a second.

The motion passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

- III. B. 3. Resolution No. 2017-__, a Resolution Authorizing the County Manager to Negotiate and Execute All Agreements Up To and Including the Contract for Construction of Planned Additions and Renovations Relating to Improvements of the Agricultural Extension Office Located at the Santa Fe County Fairgrounds

TABLED

IV. MATTERS OF PUBLIC CONCERN

CHAIR ROYBAL: Do we have anybody here from the public that would like to address the Board? Seeing none, I would close Matters of Public Concern.

V. MATTERS FROM THE COUNTY MANAGER

A. Miscellaneous Updates

MR. FLORES: Mr. Chair, I wanted to update and remind the Board that our Youth Development Facility Tour is scheduled for March 28th of this month starting

at 8:30 am. So the schedule on that date will be similar to when the Board toured the adult detention facility. The Board will convene a special meeting, head out to the facility, come back to the County in time, hopefully, for the Housing Authority Board meeting at 1:00 and then the Commission meeting at 2:00.

Also, Mr. Chair, Commissioners, we have the first formal budget study session for fiscal year 18 scheduled for April 11th. That's a BCC date as well, I believe, and we will start that special budget study session at noon. We'll start at noon, we'll have lunch and then we'll go into the regular meeting at 2:00.

Mr. Chair, Commissioners, I'd also like to briefly point out that yesterday we kicked off our Thornton Ranch tribal – I'm not going to call them consultation, but our tribal meetings with the partners that have expressed concerns that we need to go out and have our elected officials meet with their elected officials from the different pueblos that surround or are within Santa Fe County and our Thornton Ranch project. I want to thank Commissioner Hamilton for attending that and being the stalwart for Santa Fe County with San Felipe Pueblo yesterday. It was a long, 2 ½ hour meeting but I think it was very productive in setting the stage for future dialogue.

Staff is currently working on other schedules and rotating Commissioners two at a time to go to each of those meetings. We have not heard back from all of our partners but we've already identified that those pueblos that sit in, for instance, Commissioner Hansen's district, she would go along with Commissioner Roybal. And I'm just using that as an example so that those two Commissioners that have some contiguous tie to a pueblo would be at those meetings. So staff will be working through your offices to ensure that we have the next round scheduled.

Also, on the Nancy Rodriguez construction project I did confirm, Commissioner Hansen, that staff is going to be meeting with the contractor and developing a construction schedule that would do exactly what we have requested, an outside and inside type plan to allow us some use of that facility while they migrate around the back side for landscaping. The Project and Development staff will be working with the architect and the contractor in developing that schedule and then confirming that timeline with the trustee for the Nancy Rodriguez Center.

And lastly, I didn't get the opportunity to say this when we were doing the proclamation. We do have Lynette Kennard with our Finance Division that is actually a CGFM accredited and appointed individual, so we are very proud to have Lynette with that designation. I know Elena had indicated we had a few and Lynette's the first one.

This next item, Mr. Chair, if I don't have any questions on this items –

CHAIR ROYBAL: Maybe not a question but Commissioner Hamilton had a comment.

COMMISSIONER HAMILTON: I do. It's regarding the Thornton Ranch meeting, and I really want to enthusiastically say for the record that I thought that meeting was incredibly useful and I think the reason for it was the incredible level of preparedness that the staff who attended came with and the tone that was set by Assistant County Manager Mr. Flores and just the way he set the groundwork for all the interactions. I was very, very impressed and very pleased to be part of it.

MR. FLORES: Thank you.

CHAIR ROYBAL: I also would like to add the comment in regards to the

Thornton Ranch project is I did get an update from County staff last week and they put in an incredible amount of work and you guys have done a great job. So thank you. Do we have any other questions or comments from the Board?

V. A. 1. Update on US Census Bureau Changes to the County Boundary [Exhibit 4: Additional Information]

MR. FLORES: So, Mr. Chair, I'd like to have Erle give a brief update. On the dais we left you a packet that has a letter from Mr. Wright along with some maps. He's going to give you the thumbnail, two-minute version of the necessity of the work that's in progress and then he'll stand for questions.

ERLE WRIGHT (GIS): Good afternoon, Commissioners. So before you you'll see, hopefully you have two figures and a table. It kind of shows a red and green table on there. These are – annually, the Census Bureau asks all counties and municipalities to participate in what's called the boundary and annexation survey. We do this typically every year and just respond that there's been no changes. In the review of the data this year it was discovered there had been some changes made, actually initiated by the Bureau. Most of these changes are actually absolutely acceptable and again, it's just a representation of the county boundary that the Census Bureau uses basically for statistic purposes in the decennial censuses and also in the American Community Survey for those of you familiar with that.

I guess I'll go to figure one. And again, that kind of highlights areas where there's been losses and gains. The one that caught our attention is in the northeastern portion of the county, up in the Sangre de Cristos in Forest Service land. It was discovered there that the boundary actually shifted west into the county, based on a corner of a public lands survey system township. And basically we did research into that and discovered that the survey that was used to make that adjustment is actually rather questionable. So the GIS Division has submitted a request to hold the boundary back where it was, and we've also notified the BLM and the Forest Service that we would like them to review this boundary and hopefully agree to move it back.

So with that I'll stand for any questions the Commission may have.

CHAIR ROYBAL: Do we have any questions from the Board?

COMMISSIONER HANSEN: We don't have to accept anything at the moment? You are just reporting on what you have discovered and where we're at. And that you are protesting. Is that the correct word, or questioning the findings?

MR. WRIGHT: Yes, Mr. Chair, Commissioner Hansen, yes. We're asking them to move the boundary back at this point, and at this point, yes, we've raised a concern with the change that was made, that we disagree with. Most of the changes, like I say, some of them are really infinitesimal and they're actually correcting and straightening the boundary to the public land survey system which is fine, but it's this one in particular, even though it really had no bearing on any taxpayers or residents of the county that we know of living up on the top of the mountains. We've just essentially questioned that move and are asking them to readjust it. So again, just really an informational item for you.

COMMISSIONER HANSEN: Okay.

CHAIR ROYBAL: Do we have any other questions from the Board?

Thank you for the update, Mr. Wright. Appreciate it.

MR. WRIGHT: My pleasure, Mr. Chair.

V. A. 2. Update on Smart 911 Program

MR. FLORES: I'll call my next witness, Mr. Chair. He's also promised to be extremely brief. The presentation will be less than the time it took for him to walk up to the podium, and I now give you Director Ken Martinez of our Regional Emergency Communications Center.

KEN MARTINEZ (RECC Director): And I stand for questions. Thank you, Mr. Chair. members of the Board. I wanted to come before you today and thank you for allowing me the time but I wanted to tell you about and explain a little bit more about the Smart 911 application that we've now adopted. It's a national database that allows our members of the public to create a profile so that when we send – the 911 center sends responders, first responders – whether it's fire, police, EMS – to their homes we'll have a better idea of what we're dealing with as we go in.

So it allows the public again to create a profile. They can identify all the members of their family, the phone numbers that are associated with them, any illnesses, chronic situations, problems – whatever they feel they want to put into their profile so that we know about it before we go to their home. I have a couple of videos that I would like to play for you just to give you an idea of what it is and then I'll stand for questions.

[A video was shown.]

COMMISSIONER MORENO: And I have a couple of others, but just a couple of things to bring up as far as Smart 911 is concerned. You think about the technology that we have right now and when somebody calls 911 from a land line, from your home phone, we have the name of the people that are calling, the address, and so we have at least that information going into the call. On a mobile phone all we have is the tower that sent the call and the cell phone number. So in Smart 911, again, we'll have your profile pop up, we'll have the name of you, of everyone in your home.

You can put pictures of them, as they mentioned, pictures of your pets – some people do that as well. If there are chronic illnesses, you can put locations of the medication, locations of the children's rooms, where they'll be in case of a fire, like we saw in that case. So this really improves the amount of information that we can have going into the call. The information is private, confidential and secure. The only time that we get that information is if a phone number associated with that profile calls 911. Other than that we don't have that information.

It stays up for about 40 seconds after the call is terminated so we can update information and change it if we need to, and then it goes away and doesn't come back until and if you call 911 from one of those phones. The other thing that it can do and this is in moving forward with technology and 911 is our operators with this application can generate a text message with a caller. So if there's an individual that's unable to speak for fear or whatever the case may be, we can initiate a text with them and ask if everything's

okay. So they can't, the caller can't generate a text but we can and we can start getting information that way.

So this is already in place in the 911 center. You go to www.smart911.com, create a profile. They put a link, Kristine put a link up on the County website as well so you'll just follow the instructions creating the profile that includes the information that you want, as much or as little as you would like, and I think this is really going to help our first responders and our 911 operators in gathering information and having it on hand when we're sending a response to help people.

There are a couple more videos but I think that one pretty much summed it up. It's just to get information out, more information than we have now and help us be more informed when we go to respond to people's homes. I'll stand for any questions.

CHAIR ROYBAL: Commissioner Hamilton.

COMMISSIONER HAMILTON: So as an emergency responder, not the one with the most experience even in the county by a long shot, I have lots of stories where this kind of information would have been so helpful and so valuable and so I think it's a wonderful thing. They characterize it as a secure database and I understand there's probably not a lot of concern about the direct users but when it comes on the system, if somebody's calling 911 and that information pops up, that's not where the concern is, but in this age of hacking I just know constituents are going to ask about general security of the data. Can you speak to that just a little?

MR. MARTINEZ: Mr. Chair, Commissioner Hamilton, yes. The database is kept by Rave Mobile Safety, so it's a national company and it's in one location. I believe their headquarters are in Boston. So the database, they take security extremely seriously. As you know, everything is susceptible to hacking at some point but they do their best and they give their promises that they're going to maintain the security and safety of this system. I don't believe anything is 100 percent foolproof but because they know how sensitive this information could be, they do place a high priority on maintaining the security of this system.

COMMISSIONER HAMILTON: I appreciate the really accurate response. That's great. Thank you.

CHAIR ROYBAL: Okay, do we have any other questions from the Board? Commissioner Hansen.

COMMISSIONER HANSEN: So how are you encouraging people to sign up for this? Are you sending something out in their bills? How are we – I mean I think it's an incredibly important tool for emergency responders to be able to use, but besides sending somebody to the website, what are doing to encourage?

MR. MARTINEZ: Mr. Chair, Commissioner Hansen, I have done – we did a television show here for the Santa Fe on closed circuit network, Issues and Answers. We did that. I did the KSWV radio show as well to put this out. Santa Fe County issued a press release. I see that it's on Google. Thank you, Madam Clerk. It's on Google Alerts. Santa Fe County again, has put it on the website with a link to click to go to it. So we're doing as much as we can to get the word out. I ask for word of mouth from all of you to your constituents when you talk about it. Please let them know that this is out there and this is able to help.

I spoke to the National Alliance on Mental Illness group last week, so we're

putting it out to a lot of the target groups that find this very helpful. The deaf and hard of hearing community, because of the text feature is one community that we're targeting as well. Mental illness, as I mentioned, behavioral health. I'm going to speak to the Behavioral Health Alliance in a couple of weeks and I'm getting with the Health Department here for the County so I can go to some of their meetings and speak to them.

I'd be more than happy to go to any of your neighborhood or constituent meetings and talk about it if you like. There is also resource information on the Smart 911 website itself. So there are flyers, there are videos, there's a lot of information there and it's www.smart911.com. and you can go to that link. And I'm telling everybody that I'm available to answer questions and provide any more information as well. So they can contact me. My information is on the website, Santa Fe County, under RECC.

CHAIR ROYBAL: I did have one request or question also. In the senior centers, would we be able to provide staff that could go out there and maybe help some of these seniors fill out the – fill this out so that they could be on the website?

RACHEL O'CONNOR (Community Services Director): Mr. Chair, I was just thinking that as it came into your mind. Certainly it's something that I think would be a benefit to the seniors in our community. So I will talk to our new director, Theresa Casados about doing that.

CHAIR ROYBAL: Okay. Great. Thank you.

MS. O'CONNOR: Thank you, sir.

CHAIR ROYBAL: And as time goes on, I'm sure if anybody else comes up with ideas to get this out to the public we'll be in contact. We appreciate everything you do, Ken. This was a great presentation and something that's really going to be a benefit to the county, so thank you, sir.

MR. MARTINEZ: I believe so. Thank you.

MR. FLORES: Mr. Chair, before he leaves, I want to make his head get a little bit larger.

CHAIR ROYBAL: Okay.

MR. FLORES: So Director Martinez has been very successful in testifying on one of the Association of Counties' priorities, which is the – I hate to call it a surcharge, but it's the 911 surcharge that basically provides the equipment and all the backend information to all of our devices. Although the bill in the past has been very controversial I want to thank the director. He ran over here from the Roundhouse. He just received a 62-0 pass in the House for that piece of legislation. Now if we were both betting men, which we aren't, the next presentation by Mr. Miller will tell us why I don't think his bill is going to go much further, but I do want to thank him for that tenacity over there trying to get this done. He's very caring about that center and also the residents of the county.

COMMISSIONER HAMILTON: Thank you.

CHAIR ROYBAL: Thank you for all your hard work, Mr. Martinez.

V. B. Legislative Update [Exhibit 5: Information Packet]

1. Discussion of, Direction on, and Possible Vote of Support for or Opposition to Bills Introduced or Proposed for Introduction in the First Session of the 53rd Legislature of the State of New Mexico

HVTCE MILLER (Intergovernmental Coordinator): Good afternoon, Mr. Chair, Commissioners. Provided to you today is the copy of the report. It looks like this. I can go over this rather quickly, actually because from the last time actually there hasn't been a lot of movement at the Capitol with a lot of pieces of legislation. I will direct you to page 2 of the report and you can take a look right there and that summarizes what's been going on, which is out of the 1,416 pieces of legislation 64 have passed both houses and from that only 19 have been sent to the governor and eight have been signed. So things are going pretty slow still at the legislature, even though this is the last week and there's still no consensus on a budget yet.

The budget has passed through House Bill 2 and the accompanying tax package which is House Bill 2. That has passed through Senate Finance and the Senate but it needs to go back over to the House side for concurrence and there's a lot of elements yet remaining within that. It probably won't make it, won't pass muster once it gets to the governor's office and that's because there are a lot of issues related to taxation which she has stated clearly at the beginning of the session that she was not in favor of any new taxation.

So that's the big thing that's really holding up a lot of everything else as well. You're not really sure what kind of services and funds are available to do much else if you can't get the main package squared away and everybody in line with that. So that is the main reason for the holdup for all pieces of legislation at the Capitol currently.

Just want to briefly go through the different subsections of the report and I'm not going to go through much of them. Like I said, there's not a whole lot pending right now that's on the governor's desk for her authorization but in the first section I have legislation through both houses, so that's – and then I have that further divided into House and Senate items. I think I have 13 on the House and 22 from the Senate. Those are pages 3 through 9. The next section would be the signed and chaptered. These are the few items that have gone through the whole process and are actually in law currently already, and that's pages 10 and 11.

The next section is vetoed legislation and that is page 12. I'll stop briefly on here and just give you a little update on a new matter that hasn't come to this particular governor right now and that's a veto override. House Bill 241, which relates to school teacher attendance and their teacher evaluations. That actually was brought back forth again today in the Senate and Senator Brandt brought this forward and the Senate did override her veto. So that's going to go back to the House now for their override vote as well. So that's a little piece of information that I guess is also in the mix of what's going to pass and what's not, because that's every interesting that they're going against what has been vetoed already by the governor.

Going on is on page 13 –

MR. FLORES: Mr. Chair, before Hvtce goes on, there's also another piece of legislation that did not make this report that was vetoed today, which from my perspective is an important bill, a piece of legislation but in the big picture or scheme it didn't have an appropriation tied to it. It didn't have any type of increments tied to it. It was merely adding the treasurer to an existing piece of legislation that required notifications for development districts. Right now the clerks and the assessors are to be notified and the language change was merely to add the word treasurer – comma, treasurer in the piece of legislation for notification of the tax increment development district.

So from the perspective of legislation it was rather small in the big picture. It was basically cleaning up and making sure that the three offices of any county were notified. It sailed through both sides, sent on to the governor, and that bill as of today, which is Senator Rodriguez' bill and the companion bill were vetoed.

So the point that I raise and Mr. Miller is dancing around is even the most innocuous little piece of legislation that adds on a little bit more transparency and notification requirements, non-appropriation language in it, was vetoed today. So with four days left in this session and no concurrence, if you will, on any of the pieces of legislation yet, and they haven't gone to her desk, we as staff are in extreme limbo of what actually will take place and when.

So I wanted to point that out on the veto page that he was just going over with you. Thank you, Mr. Chair.

MR. MILLER: Going back to the subsections, on page 13 is a listing of the progress of the different NMAC issues which they are taking up right now that goes all the way from page 13 to page 21 and I just want to add, you can just take a glimpse at these and see which ones have moved and which ones haven't. It's safe to say right now if it hasn't gone to the second house it's got a pretty slim chance of making it all the way to the governor's desk, so there's quite a few pieces within there that are still remaining on its originating site, either that be the House or the Senate.

And the last subsection is page 22, and this covers the three main budget pieces of legislation, which are, I would say, still in debate right now. That's the budget itself, House Bill 2, a Democratic-backed tax package which is House Bill 202, and a Republican-backed tax package which is House Bill 412. And I would like to reiterate what Mr. Flores said and that's basically all in any of the items contained with these budget related pieces of legislation I would say are still in play right now and we're really not sure where things are going right now. I haven't heard much budget talk going on yesterday, last night or today. It's been – a lot of the talk has been over the veto override today. So I'm not real sure as to when the budget items will hit back on the House floor.

But with that, if you any questions about any other legislative pieces of information related to the session I'd be happy to answer your questions now.

CHAIR ROYBAL: Do we have any questions from the Board?
Commissioner Hamilton.

COMMISSIONER HAMILTON: Does the Republican tax bill 412 have any taxation increases implied in it?

MR. MILLER: Mr. Chair, Commissioner Hamilton, the difference between the House and Republican tax package is that the House tax package, House Bill

412, is more so that it's a cleanup of tax law that's in place right now but that's not being really implemented. So they're trying – the term they use is loopholes. So they're trying to close up those and then make sure that we're collecting the taxes already within the state which we're allowed to collect and go from there. So they're trying not to put anything new. The main item, which is going to bring in a lot of the expected revenue, which is in House Bill 202 right now is fuel taxes, and that received quite a bit of support from both sides of the aisle but it's still not a favorable piece of legislation as seen through the eyes of the governor, apparently.

COMMISSIONER HAMILTON: Thank you.

CHAIR ROYBAL: Commissioner Hansen.

COMMISSIONER HANSEN: I'm sorry. You might have said before about the internet sales tax bill?

Hmm: The internet, that was originally House Bill 202 and that was just limited to internet sales. An item on that actually is that Amazon was – it was in the news you may have seen and that is that Amazon was going to start collecting taxes and I think it might be this week actually that they were going to start doing that for sales within New Mexico. That was one of the biggest retailers which was included in that bill, but yes, that's part of actually House Bill 202 and House Bill 412. So both the Democratic and Republican tax packages address internet sales.

COMMISSIONER HANSEN: Okay. I think it's incredibly unfortunate, what's happening at the Roundhouse and the lack of business being done by our representatives and the governor for the people of New Mexico.

CHAIR ROYBAL: Okay, do we have any other questions or comments from the Commissioners? Okay, I would like to just thank you, Deputy County Manager Flores and Hvtce Miller for the update. I appreciate it.

MR. FLORES: You're welcome.

CHAIR ROYBAL: Okay, we're moving on to our last item and that would be Executive Session, so what's the pleasure of the Board?

III. C. Resolutions (Continued from page 30)

1. **Resolution No. 2017-24, a Resolution Supporting Legislation Requiring Competitive Resource Procurement for Electric Utilities in the State of New Mexico** *[Exhibit 3: Senate Bill 360]*

MR. SHAFFER: Mr. Chair, before we move to that item of business, I wanted to respectfully suggest that we reconsider item III. C. 1, which was a resolution supporting legislation requiring competitive resource procurement for electric utilities in the State of New Mexico. There was a typo that was printed out in the resolution, namely in the final Whereas clause. "That" was misspelled thet, instead of that. And so again, we just respectfully request to go back to that item to correct that inadvertent error. And that would be done by a motion to reconsider that item, and if that motion passes, a motion to approve the item with that typo corrected. And I'd stand for any questions. But that would be the staff recommendation.

COMMISSIONER HANSEN: So moved.

COMMISSIONER HAMILTON: Second.

CHAIR ROYBAL: So we have a motion and a second to reconsider and make these corrections. County Attorney.

MR. SHAFFER: Technically, it would be the motion to reconsider as a separate item and then the motion to approve it with that correction, but I'm fine if we roll it all into one.

CHAIR ROYBAL: So we have a motion to reconsider, and a second.

The motion passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

CHAIR ROYBAL: Okay, so we're going to reconsider item III. C. 1. Commissioner Hansen.

COMMISSIONER HANSEN: I would like to accept the correct that Attorney Shaffer has addressed in the resolution and that we move to amend it and approve it.

COMMISSIONER HAMILTON: Question: Was that actually the only typo that was found?

MR. SHAFFER: Yes, it was. We've otherwise confirmed the verbiage and feel that it is accurate and I think I may have misspoke. It was actually, it should have been "the bill" and it was "thet bill." So the correction is to change "thet" to "the." So I apologize for the confusion on that score. But otherwise we think it's proper.

CHAIR ROYBAL: Okay, and your motion still stands with that correct?

COMMISSIONER HANSEN: Yes.

COMMISSIONER HAMILTON: I'd second.

CHAIR ROYBAL: We have a motion and a second with that correction.

The motion passed by unanimous [4-0] voice vote. [Commissioner Anaya was not present for this action.]

VI. MATTERS FROM THE COUNTY ATTORNEY

- A. Executive Session: Threatened or Pending Litigation in Which Santa Fe County is or May Become a Participant, as Allowed by Section 10-15-1 (H)(7) NMSA 1978 (Unnecessary Authority Removed and Items Added)**
- 1. Potential Contract Breach by a Santa Fe County Contractor**
 - 2. Action to Abate Violations of the Santa Fe County Sustainable Land Development Code and Ordinance No. 2009-11**
 - 3. *IAFF Local 4266, Santa Fe County Firefighters Association v. Santa Fe County, Public Employees Labor Relations Board, No. 309-16***

MR. SHAFFER: Mr. Chair, the legal authority for the executive session and the items to be discussed are as follows: threatened or pending litigation in which Santa Fe County is or may become a participant, as allowed by Section 10-15-1 (H)(7) NMSA 1978, including the following items: potential contract breach by a Santa Fe

County contractor, action to abate violations of the Santa Fe County Sustainable Land Development Code and Ordinance No. 2009-11, and *IAFF Local 4266, Santa Fe County Firefighters Association v. Santa Fe County*, Public Employees Labor Relations Board, No. 309-16.

CHAIR ROYBAL: Okay, I'll entertain a motion.

COMMISSIONER HANSEN: I would move to go into executive session to consider the items just read by County Attorney Shaffer.

COMMISSIONER MORENO: Second.

COMMISSIONER HANSEN: Second.

CHAIR ROYBAL: Okay we have a motion by Commissioner Hamilton and a second by Commissioner Moreno and Commissioner Hansen. We need a roll call.

The motion to go into executive session pursuant to NMSA Section 10-15-1-H (7) to discuss the matters delineated above passed by unanimous roll call vote as follows:

Commissioner Roybal	Aye
Commissioner Anaya	Not Present
Commissioner Hamilton	Aye
Commissioner Hansen	Aye
Commissioner Moreno	Aye

[The Commission met in closed session from 4:54 to 6:03.]


Upon motion and second the Commission reconvened in open session having discussed only those items listed in the agenda.



VIII. CONCLUDING BUSINESS

- A. Announcements
- B. Adjournment

Having completed the agenda and with no further business to come before this body, Chair Roybal declared this meeting adjourned at 6:04 p.m.

Approved by:


Board of County Commissioners
Henry Roybal, Chair


TEST TO:

GERALDINE SALAZAR
SANTA FE COUNTY CLERK

Karen Farrell
Karen Farrell, Wordswork
453 Cerrillos Road
Santa Fe, NM 87501

Witness My Hand And Seal Of Office
Geraldine Salazar
Deputy Laura Hernandez County Clerk, Santa Fe, NM





THE SANTA FE MEDIA NETWORK (Draft Proposal)

The Santa Fe Film & Digital Media Commission was proposed by Mayor Gonzales and others to explore the opportunities for using film and digital media as a sustainable economic engine for the city and county. The Commission reviewed existing production activity, local resources, gaps in production infrastructure, and several other aspects related to production and content creation.

As a result of those explorations, it became apparent that there were robust and well developed resources to sustain productions here, such as top quality crews and associated support elements for those productions developed *outside of the state*. There remained, however, an opportunity to help generate and support the development of *locally created content*, whether in film, television, games and other forms of new media. Particularly since Santa Fe county and city enjoy more than their share of highly successful and industry established content creators.

To address that opportunity by taking full advantage of the record levels of current production activity here, the enthusiasm and commitment of established local talent, and the global reach of the Santa Fe 'brand', the following proposal for The Santa Fe Media Network has been developed.

The Network consists of two inter-related and crucial parts: A web-based platform called THE SANTA FE CHANNEL, (a demo page of which can be found at www.santafechannel.tv Password: santafe (all lower case), and THE SANTA FE MEDIA INCUBATOR, which seeks to encourage, support and successfully generate original content by both established and aspiring local content creators, i.e. producers, writers, directors, game designers, etc.

In brief, it is not sufficient to generate locally created content without also establishing a reliable and sustainable platform or showcase for that content. Which in turn could generate sufficient revenue to underwrite future productions.

Each of those two integral parts of the Channel and the Incubator will be outlined in detail in the following pages including an overview, structural approach, action plan, and budget requirements.

As will be obvious from the document, considerable thought and planning have gone into both these aspects of the Network. As will also be obvious, a considerable amount of development, discovery and refinement remains to be done, as is the nature of any such new enterprise.

It is worth noting that, in the extensive collective experience and wisdom of the members of the Santa Fe Film & Digital Media Commission, this proposal is both feasible, achievable, and a meaningful effort to accomplish the goal of generating sustainable economic development for the county and the city, if not for the state of New Mexico.

THE SANTA FE CHANNEL

OVERVIEW

The Santa Fe Channel will be a world-wide, web-based entertainment and information platform designed to fulfill three principal missions:

- To capitalize on both the global brand of Santa Fe and its past and current successes as a destination location for film and TV production
- To create a nexus of established brands and local producers, writers, directors, etc. whose brands and reputations may not yet be associated with Santa Fe and New Mexico
- To provide a viable distribution platform for TV, film and digital productions developed and produced in Santa Fe and New Mexico

While Santa Fe is already a global brand, it is presently not identified by the general public-- or even by the vast majority of tourists and visitors who come here annually-- as a prime location for film and TV production. Hence, one mission of the channel would be to clearly establish that connection to enhance opportunities both for tourism and future productions in Santa Fe and the state.

There are also other brands, and well established writers, directors, producers, actors and film technicians, many of whom are not currently identified by the public as being a vital part of the Santa Fe film, TV or digital content community. For example, the creators of Game of Thrones, The World Poker Tour and MacGyver—just to name a few—are all actively involved in promoting the economic development of Santa Fe and New Mexico. But, to date, none of them—or their brands-- are widely known to be associated with the Santa Fe film and digital community. So, another mission of the channel would be to establish a nexus for such brands and celebrities to align themselves with Santa Fe and the state, either through the creation of new projects here or by links to their existing projects and productions.

Finally, while there have been a record number of film and TV productions in Santa Fe and the state of late, virtually all of those have been developed, financed and distributed elsewhere. Thus, the other mission of the channel would be to provide a legitimate distribution option for locally developed film, TV and digital productions, to further support and attract aspiring content creators to Santa Fe and the state.

Summary

By effectively combining and aligning existing brands and other local resources, the ultimate mission of The Santa Fe Channel is to create both the perception—and the reality—of Santa Fe

and the state as a thriving center of film, TV and digital production, to maintain and grow those areas as engines of economic development.

Structure

To allow for the most flexibility in content and operations, as well as private and public partnerships or licensing agreements, the Santa Fe Channel would be part of an independent, non-profit corporation known as The Santa Fe Media Network Inc. It is anticipated that eventually, this would become a tax exempt non-profit entity with independent 501c3 status.

Some, if not much, of the content on the channel would be free though, to ensure its sustainability, provide revenue for content creators and to, ideally, provide an ongoing source of funds for future productions, the channel would also offer pay-per-view, subscription options, and potentially ad based revenues.

The Network and Channel would be established and operated by a combination of at least part-time, if not full-time, employees and volunteers, thus offering new employment opportunities for residents of Santa Fe and the state.

It is also presumed that the Network and Channel would collaborate and coordinate with other existing Santa Fe institutions to secure content such as Santa Fe film festivals, content programs at the local colleges and universities, institutions like The Santa Fe Opera, The Santa Fe Institute, The School for Advanced Research, and other local production and distribution outlets.

The URL www.SantaFeChannel.tv has already been acquired and a temporary 'demo' page created with the Password: santafe (all lower case). Once the channel is officially launched, efforts would be made to acquire similar URLs to preclude confusing or imitative sites.

Futures

Once the Santa Fe Channel has been successfully launched and established, several growth opportunities could be considered. Among them, migrating its content onto an existing cable channel, and exploring the possibility of obtaining exclusive and non-exclusive licensing agreements for Hollywood content produced in Santa Fe and New Mexico as part of the existing incentive program or in exchange for other state or local fiscal or in-kind benefits.

THE SANTA FE CHANNEL

Action Plan

1. Channel Set Up & Launch
 - a. Create non-profit corporation for The Santa Fe Media Network
 - b. Decide best platform/company to use, Xerb, VHX, or build from scratch
 - c. Design "pillars" separating free, subscription, pay-per-view, historic film/TV, film school content, etc.
2. Create company structure
 - a. Full time positions (if any)
 - b. Part time positions
 - c. Volunteer positions
 - d. Assign roles/responsibilities: acquisitions, design, marketing, partner relations, etc.
3. Create revenue structure
 - a. Content creators/partners share of income from subscriptions and pay-per-view, ad rates when applicable, etc.
 - b. Establish channel share of income for salaries, acquisitions, future funding of productions
4. Assess the types and numbers of acquirable content
 - a. Content that can be acquired immediately for no cost
 - b. Wish list of larger NM productions that might be acquired for a fee
5. Develop Partnerships with companies/brands in NM that create or support content creation
 - a. IATSE sponsored content
 - b. Meow Wolf
 - c. George R.R. Martin
 - d. MacGyver
 - e. Tourism (i.e. New Mexico True)
 - f. Existing Santa Fe & NM production companies
 - g. Film Schools
 - h. Santa Fe & NM Institutions: Santa Fe Institute, School of Advanced Research, Santa Fe Opera, etc.

THE SANTA FE MEDIA INCUBATOR

OVERVIEW

The Santa Fe Media Incubator (SFMI) is being created as a major component of the Santa Fe Media Network, with the goal of supporting the development and success of 'above the line' film and digital media makers who reside within Santa Fe County. The Incubator will focus primarily on mentorship in its flagship year, matching storytellers with top-level industry professionals from the community to encourage greater cohesiveness, connectivity and focus within our local industry. Five projects and storytellers will be selected for quality, feasibility and diversity in an Open Call process in the first year of SFMI.

The principal missions of the Incubator are:

- Create PR boost for City of Santa Fe - sending the message to the NM Film community and beyond that the City of Santa Fe is a good home for independent film and digital media makers.
- Support promising media makers with a small cash grant and top industry mentoring, helping them to get their projects to the next level with excellence.
- Strengthen existing film community in Santa Fe by involving top industry level residents with emerging and mid-level local makers.
- Create jobs on home-grown local productions. The more traction and support that local 'above the line' media makers have, the more media work we will create on a sustainable basis.

Structure

Prospective program participants will enter into an Open Call Submission process, with ten projects being selected as finalists for a Pitch Forum. From the ten finalists, five projects will be selected (see criteria and considerations). These five projects will be matched with mentors. The five project/mentor teams will meet on a regular basis to support the maker and the project towards success. Suggested time frame for the first iteration of the program would be one year - four months for planning and Open Call selection process; six months for mentorship; two months for final presentation, program wrap up and reporting.

In order to ensure the success of not only the participants, but the program itself, certain criteria will need to be met by prospective makers when applying, and well-defined milestones and goals will need to be fulfilled by the selected project teams.

In addition, to best support the local film and digital media community, as well as to maximize

publicity opportunities, two free, open to the public workshops will be held by the Santa Fe Media Network prior to the Open Call deadline. These would be designed to bring the level of the project proposals up to an industry standard professional level. Prospective applicants would be educated on how to create a professional proposal package and pitch, and best practices for submission. Participants from our local community will greatly benefit from these accessible, high-level workshops, regardless if they are ultimately selected for the program. These workshops are also a great opportunity to get favorable press about the program and to boost the profile of Santa Fe as a film and digital media friendly place.

Criteria and Considerations for Project Selection

- Choose projects for greatest impact by determining who will likely most benefit from the mentorship.
- Choose a range of projects –from a screenplay to a documentary to a transmedia digital project, etc.
- Choose a couple of projects that are close to finishing so that we have at least something “finished” to show at end. Others can make a presentation about what they have accomplished.
- With the above in mind, also choose projects at any stage of production, so long as the program helps them successfully get to the next level.
- Choose projects with most potential for success- no matter their goals. Who, based on experience, team, passion, etc., is most likely to meet their goals within our parameters?
- Choose under-represented voices, and those with strong passion and vision.
- Through the application process, have applicants articulate exactly how they will use the offered resources, and why they want to be a part of the program.
- Choose projects for whom we have a good mentorship match.
- Success will be defined differently for each project, but will be clearly articulated at outset and will be put in writing by each team.

Futures

After the first year of the Incubator program, assessments will be made and the program will either be renewed, or shifted to best meet the needs of the film community. It is possible to change the nature of the Incubator, for example, to focus solely on new media projects, or to

focus solely on television development. The theme of the Incubator could change each year to go more in-depth into one of these particular areas. The overall goals to develop local 'above the line' talent and to strengthen the Santa Fe film community will remain the same.

Action Plan

1. Hire Administrator, who will accomplish the following:
 - a. Research best practices and other film incubator/lab programs that might serve as a productive model.
 - b. Formulate application submission and pitch forum processes.
 - c. Meet with potential partners – NMFR, SFCC, etc. to maximize and leverage program offerings
 - d. Determine mentors willing to participate
2. Organizing and hold Open Call Workshops
 - a. Recruit jury for program selection
 - b. Organize and hold a Pitch Forum for project finalists
3. Selection of Projects, Matching with Mentors
 - a. Oversee selection of finalists
 - b. Determine/approve procedures, process and timeline for each project
 - c. Work with legal counsel to create necessary contracts between parties
4. Administration of the Program
 - a. Organize orientation and kick-off with media makers and mentors
 - b. Oversee Bi-weekly check-ins with media makers and mentors
 - c. Coordinate and Oversee program Partners (i.e. NMFR, NM Film office, etc)
 - d. Advocate for participating media makers to have access to further resources (local workshops, etc...)
 - e. Oversee publicity and marketing efforts throughout the program, within and beyond borders of Santa Fe
5. Assessment & Reporting
 - a. Assess media makers and mentors at end of program
 - b. Report to Film and Digital Media Commission each month and at conclusion
 - c. Oversee Accounting & Legal
 - d. Organize Screening / Presentation Night for mentored projects at CCA or Jean Cocteau
 - e. Create Final report, including accounting, to Commission

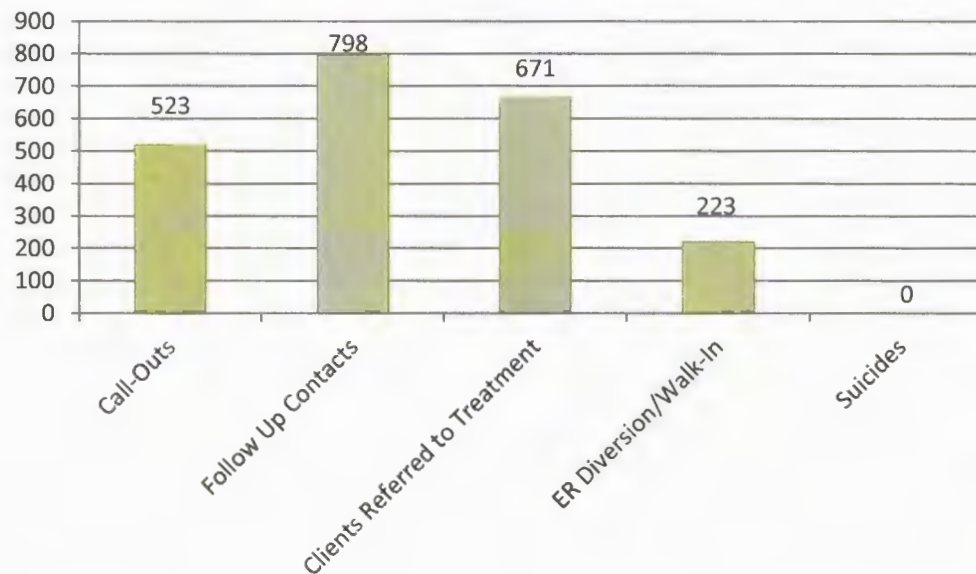
DESCRIPTION	AMOUNT	UNITS	X	UNITS	RATE	TOTAL
SANTA FE MEDIA NETWORK BUDGET						
Shared Overhead Costs - Santa Fe Media Network						
Legal Counsel	60	Hours	1		\$140.00	\$8,400.00
Office Rental & Utilities, including WiFi	24	Months	1		\$1,200.00	\$28,800.00
Office Expenses	24	Months	1		\$50.00	\$1,200.00
Company Administration / Accounting / Compliance Fees	24	Months	1		\$250.00	\$6,000.00
Contingency 5%	1	Flat	1		\$10,000.00	\$10,000.00
					SHARED TOTAL	\$54,400.00
SANTA FE CHANNEL BUDGET - Years 1 & 2						
Channel Maintenance Director	104	Weeks	4	Hours	\$25.00	\$10,400.00
Acquisitions and Development Director	24	Months	1		\$1,200.00	\$28,800.00
Licensing and Acquisition Fees	2	Allow	1		\$10,000.00	\$20,000.00
Logo Design	1	Flat	1		\$250.00	\$250.00
Website Design	1	Allow	1		\$5,000.00	\$5,000.00
Website Design Assets	1	Allow	1		\$300.00	\$300.00
Website Domain Registrations	2	Years	4	Domains	\$40.00	\$320.00
Server Costs	2	Years	1		\$500.00	\$1,000.00
Marketing & Publicity / Merchandising	1	Allow	1		\$5,000.00	\$5,000.00
					CHANNEL TOTAL	\$71,070.00
SANTA FE MEDIA INCUBATOR BUDGET - Year 1						
Program Administrator	12	Months	1		\$2,500.00	\$30,000.00
Awards for Filmmakers	5	Stipends	1		\$5,000.00	\$25,000.00
Stipends for Mentors	5	Stipends	1		\$2,500.00	\$12,500.00
Open Call & Workshop Marketing Costs - Social media, print, radio	1	Allow	1		\$3,500.00	\$3,500.00
Open Call, Workshops & Final Screening Venue costs	1	Allow	1		\$3,500.00	\$3,500.00
					INCUBATOR TOTAL	\$74,500.00
					GRAND TOTAL	\$199,970.00



Mobile Crisis Response Team

- Provide immediate aid to people in a behavioral health crisis
- Stabilize as quickly as possible
- Assess need and link to community-based services
- Act as resource for first responders, community agencies and schools
- Train law enforcement and EMS on how to work with people in crisis
- Reduce use of the hospital emergency room for these types of cases
- Reduce the number of suicides in Santa Fe County

July 2015 to February 2017



Presbyterian launches
response team to aid in
mental health crises





Board of County Commission Meeting

March 14, 2017

Agenda Item III.C.1

SENATE BILL 360

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO ELECTRIC UTILITIES; REQUIRING A COMPETITIVE
RESOURCE PROCUREMENT PROCESS FOR INVESTOR-OWNED ELECTRIC PUBLIC
UTILITIES; REQUIRING INDEPENDENT EVALUATION OF PROPOSED
PURCHASES OF POWER OR SOURCES OF POWER.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. A new section of the Public Utility Act is
enacted to read:

"NEW MATERIAL] INVESTOR-OWNED ELECTRIC PUBLIC UTILITIES--
COMPETITIVE RESOURCES PROCUREMENT PROCESS--INDEPENDENT
EVALUATION.--

A. As used in this section:

(1) "resource" means a supply-side electric
energy or capacity resource for a duration greater than one
year; and

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underscored material = new
[bracketed material] = delete

1 (2) "utility" means an investor-owned electric
2 public utility.

3 B. Except as otherwise expressly provided in this
4 section, any application by a utility for commission approval
5 of the utility's proposed procurement of a new resource,
6 including an application for commission issuance of a
7 certificate of public convenience and necessity or for
8 commission approval of a power purchase agreement for such a
9 resource or for inclusion of such a resource in the utility's
10 rate base, shall be accompanied by testimony providing and
11 describing the results of a request for competitive proposals
12 for the resource that affords all resources an opportunity to
13 bid and complies with all applicable commission regulations.

14 C. At the time a utility files an integrated
15 resource plan with the commission or at least sixty days prior
16 to filing an application with the commission to procure a
17 resource, whichever is earlier, the utility shall file for
18 commission approval the name of a qualified independent
19 evaluator whom the utility, the commission's utility division
20 staff and the attorney general jointly propose to monitor the
21 utility's competitive resource procurement processes required
22 by this section. If the utility, the commission's utility
23 division staff and the attorney general fail to reach agreement
24 on an independent evaluator, the commission shall refer the
25 matter to a hearing examiner for resolution.

1 D. The commission shall approve the independent
2 evaluator and the contract between the independent evaluator
3 and the utility, including the terms and conditions of
4 compensation, by written decision within thirty days of the
5 date on which the name of the independent evaluator is filed
6 jointly or named by a hearing examiner. After its initial
7 approval of an independent evaluator for a utility, upon its
8 own motion or a motion by an interested party for good cause or
9 upon a joint request by a utility, the commission's utility
10 division staff and the attorney general, the commission may
11 approve a different independent evaluator for the utility or a
12 modification of the contract between the independent evaluator
13 and the utility consistent with the requirements of this
14 section.

15 E. The terms of the contract shall prohibit the
16 independent evaluator from assisting any entity making
17 proposals to the utility for a period of three years from the
18 effective date of the contract approved by the commission.

19 F. The utility shall provide the independent
20 evaluator with prompt and continuing access to all documents,
21 data, assumptions, models, bidding and weighting criteria used,
22 reviewed, produced or relied on by the utility in the
23 preparation of its resource procurement plan and its bid
24 solicitation, evaluation and selection processes. The utility
25 shall provide the independent evaluator, in a timely manner so

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1 as to facilitate the independent evaluator's obligations
2 pursuant to this section and applicable commission rules, bid
3 evaluation results and modeling runs so that the independent
4 evaluator can verify the results and investigate resource
5 options that the utility did not consider. In the event the
6 independent evaluator finds a problem or deficiency in the
7 utility's bid solicitation or evaluation process, the
8 independent evaluator shall promptly notify the utility of that
9 problem or deficiency and shall promptly notify the commission
10 in writing of the utility's response to and resolution of that
11 problem or deficiency, which notice shall be made part of the
12 commission's record in the appropriate resource procurement
13 proceeding.

14 G. The independent evaluator shall generally serve
15 as an advisor to the commission as to whether the competitive
16 procurement and bid evaluation procedures and methods used by
17 the utility, including assumptions, criteria and models, are
18 reasonable and sufficient to solicit and evaluate bids in a
19 fair and reasonable manner consistent with the public interest,
20 and shall not be a party to any utility resource procurement
21 proceedings and, except as expressly provided in this
22 subsection, shall not be subject to discovery or cross-
23 examination at a commission hearing on a utility's application
24 for approval of its procurement of a resource. The commission
25 shall convene at least one procedural conference in every

.205057.3

1 utility resource procurement case in which an independent
2 evaluator serves as an advisor to the commission to establish
3 the procedure for the commission or its presiding officer, the
4 utility and parties to ask questions of the independent
5 evaluator regarding the independent evaluator's filings in the
6 proceeding. Opinions, determinations and statements by the
7 independent evaluator in filings with the commission shall not
8 constitute evidence in a proceeding unless the commission
9 provides the utility and all parties with a reasonable and
10 timely opportunity to conduct discovery and cross-examine the
11 independent evaluator regarding such matters prior to closure
12 of the record.

13 H. The independent evaluator shall report to the
14 commission, prior to the commission's evidentiary hearings in a
15 resource procurement case, whether the competitive procurement
16 and bid evaluation procedures and methods used by the utility,
17 including assumptions, criteria and models, are reasonable and
18 sufficient to solicit and evaluate bids in a fair and
19 reasonable manner consistent with the public interest.

20 I. The commission may grant a request by a utility
21 for a waiver of the application of the requirements in this
22 section or from the requirements of the commission's rules
23 implementing this section upon a showing by the utility that
24 extraordinary circumstances exist, that such waiver and the
25 alternative method of resource acquisition proposed by the

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1 utility are necessary to protect the public interest and that
2 such request otherwise satisfies the requirements of all
3 applicable commission rules addressing waivers or variances of
4 commission rules.

5 J. This section shall not apply to a procurement of
6 a resource by a utility for a customer that executes a special
7 service contract that requires the customer to pay the utility
8 for all costs associated with the utility's procurement of that
9 resource and is approved by the commission.

10 K. Within six months of the effective date of this
11 section, the commission shall establish rules for the
12 implementation of the requirements of this section."

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ANALYSIS GROUP

ECONOMIC, FINANCIAL and STRATEGY CONSULTANTS

Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices

**Susan F. Tierney, Ph.D.
Todd Schatzki, Ph.D.
Analysis Group**

**Boston, Massachusetts
July 2008**

This White Paper was commissioned by the National Association of Regulatory Utility Commissioners (NARUC), as part of its collaborative dialogue with the Federal Energy Regulatory Commission (FERC) on competitive power procurement policies and practices. This paper represents the views of the authors, and not necessarily the views of NARUC, its members, or the FERC.

COMPETITIVE PROCUREMENT OF RETAIL ELECTRICITY SUPPLY: RECENT TRENDS IN STATE POLICIES AND UTILITY PRACTICES

Over the past two decades, electric distribution utilities¹ have increasingly relied on competitive procurements as a means to obtain power supply for their retail customers. In many states, regulators now rely on such procurements as an important tool to help ensure that utilities provide cost-effective retail services. Today, more than 40 percent of U.S. states (or jurisdictions)² have formal regulations or guidance that requires or encourages utilities to use competitive processes. Although the use of competitive procurements to obtain supply for retail customers is not new, many of the requirements affecting when and how competitive procurements are to be used have either been newly enacted or substantively revised in recent years.

With this growing attention on the design and use of competitive procurements, the National Association of Regulatory Utility Commissioners ("NARUC"), in collaboration with the Federal Energy Regulatory Commission ("FERC"), asked Analysis Group to study state and utility policies and practices for competitive procurement of retail electric supply. Focusing on states that have formally adopted policies or guidelines for competitive procurements, we have collected information on current procurement approaches and practices. We have developed criteria for evaluating procurements, reviewed various procurement methods, and identified recent trends in state policies and utility practices. In this paper, we describe "lessons learned" and – where possible – best practices for designing and implementing competitive procurements in different regulatory contexts and industry settings.

Competitive procurements can provide utilities with a way of obtaining electricity supply that has the "best" fit to customers' needs at the "best" possible terms. In principle, competitive procurements accomplish this goal by requiring market participants to compete for the opportunity to provide these services. However, for competitive procurements to fulfill their promise, they must be designed and implemented in a manner that fosters competition among market participants, including potentially the regulated utility and its affiliated companies. To achieve robust competition, procurements should aim to meet certain criteria:

¹ In our report, we use the phrase "utilities" to describe the distribution utility in its role of assuring adequate supplies for retail electricity customers.

² States with formal rules or guidance include Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Illinois, Maine, Maryland, Massachusetts, Montana, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Utah, and Washington. Some other states, such as North Carolina, have less-formal policies and/or have case precedent directing utilities to have tested the market if they propose to build a new generating facility.

EXECUTIVE SUMMARY

- ***The procurement process should be fair and objective.*** A fair and objective process can avoid intended or unintended biases that may prevent selection of the “best” alternatives. The integrity of such a process encourages the participation of third-party suppliers by providing them with confidence that their offers will be fairly considered on their merits. To achieve this goal, procurements must include appropriate safeguards to prevent undue preferential treatment of any offers, to ensure that procurements are implemented as designed, and to ensure that unforeseen circumstances are addressed in manner that is fair and fundamentally consistent with the competitive intent of the process.
- ***The procurement should be designed to encourage robust competitive offerings and creative proposals from market participants.*** To encourage a competitive response, market participants need to have: (1) confidence that their offers will be considered fairly and objectively; (2) assurance that their confidential information will be reasonably protected; and (3) access to adequate information about bidder requirements, product specifications, model contract terms, evaluation procedures, and other factors that would affect the resources they choose to offer.
- ***The procurement should select winning offers based on appropriate evaluation of all relevant price and non-price factors.*** Selecting the “best” offer(s) requires first identifying appropriate evaluation criteria and then evaluating the offers objectively against them. Designing an effective evaluation process is inherently challenging when such evaluations require comparisons of an array of price and non-price factors. In particular, many of these non-price factors are quite complex to quantify and/or qualitative in nature. By contrast, procuring products that meet standardized specifications (such as full requirements service for standard-offer-service customers in states with retail choice) greatly simplifies the evaluation process by allowing for the selection of winning offers based on price terms alone.
- ***The procurement should be conducted in an efficient and timely manner.*** Procurements should avoid unnecessary administrative costs that may discourage market participants, create transaction costs that produce price premiums in supplier offers, and ultimately impose greater costs on ratepayers.
- ***When using a competitive procurement process, regulators should align their own procedures and actions to support the development of a competitive response.*** Regulators’ own actions can positively – and in some cases, negatively – affect the integrity of a competitive procurement process. Positive signals can arise, for example, by doing what is legally possible to protect the confidentiality of commercially sensitive information submitted through supply offers, by conducting regulatory reviews in a time frame that supports the “best” price terms in offers, and enforcing elements of the procurement design that enhance the overall fairness and objectivity of the process and the integrity of the procurement results.

EXECUTIVE SUMMARY

In practice, the challenges to designing procurements that meet these criteria depend greatly upon the nature of the products being procured. As described in Table 1 and explained more fully in this report, some states and utilities use competitive procurements to obtain new sources of supply to add to the utility's existing portfolio, while others use them to obtain all supply for retail customers. This basic difference has quite distinct implications for the design and implementation of competitive procurement processes.

Table 1 Frameworks for Procurement of Electricity Supply for Retail Customers				
Electric Industry Structure	Divestiture of Power Plants	Procurement Framework / Product Solicited	Supply Portfolio Management	State Examples
Traditional	None	Incremental Supply – typically for resources from a specific power plant obtained through requests for proposals ("RFPs")	Utility	CO, GA, LA, OK
Restructured, No Retail Choice	None or Partial	Incremental Supply (via RFP)	Utility	CA, MT
Restructured, with Retail Choice	Full (or near full)	Full Requirements Service ("FRS") (via auctions or RFPs) to provide retail supply for basic service customers	Market	MA, MD, ME, NJ
		Hybrid FRS Frameworks: <ul style="list-style-type: none"> • Long-term contracts (with FRS procurement) • Utility ownership of generation, with some degree of portfolio management by the utility • Public power authority • Specialized procurements (e.g., renewables or renewable energy credits) 	Variously Assigned to Market and to Utility	CT, DE, IL, OH, PA

In states with a more traditional industry structure in which the utility fulfills its service obligations for all retail electricity customers, the utility is responsible for adding new, or "incremental," resources as needed to the utility's existing portfolio of generating assets, purchased power and demand-side resources. Many states with this traditional structure have chosen to issue rules or other policy guidelines that specify when and how utilities should undertake competitive procurements for acquiring incremental resources. These states include Arizona, California, Colorado, Florida, Louisiana, Montana, Oklahoma, Oregon, Utah, and Washington.

Regulators in these traditionally regulated states face a complex array of important issues in the design of effective procurements. Table 2 (at the end of the Executive Summary) lists a series of important topics that regulators must consider when guiding utilities' use of procurements and their overall design ("architecture") and

EXECUTIVE SUMMARY

implementation. This list is long, and the choices often involve important tradeoffs, as described in greater detail in this report. Table 3 (also at the end of the Executive Summary) looks at these same issues through a somewhat different lens by identifying a series of key questions for regulators to bear in mind as they consider whether and how competitive procurements are to be used by utilities in identifying incremental supplies for retail customers.

The first key issue for incremental resource procurements is the design of safeguards to prevent potential improper self-dealing by the utility.³ Because the utility may financially benefit from the selection of its own self-build offer or a proposal from an affiliate, safeguards are necessary to ensure that the process is not improperly tilted toward the selection of such offers. As the report describes, a variety of means are available to provide such safeguards, including:

- Involvement on a third-party independent monitor ("IM") and/or independent evaluator;
- Measures to increase the transparency of the procurement process to market participants and the public;
- Providing potential bidders with detailed information needed to prepare competitive bids;
- Utility codes of conduct⁴ to prohibit improper sharing of information that is valuable to utility affiliates in their construction of procurement offers and/or their competitiveness in other electricity markets; and

³ By using the phrase, "improper self-dealing," we intend to recognize that many states that require or encourage competitive procurements for incremental supply also require – indirectly or directly – that the utility also participate in the process as one of the entities making a supply proposal. This inherently places a utility in the position of being a "competitor" as well as the entity that evaluates and selects the winning proposal. We are characterizing this situation as "proper self-dealing," in the sense that the utility has these two responsibilities, and may, through a fair and objective evaluation, select its own proposal as the winning proposal. By contrast, we use the phrase "improper self-dealing" to indicate situations where the utility acts so as to structure the procurement design, the product to be procured, and the actual evaluation and selection of the winning resource in ways that unduly favor its own proposal or any proposal offered by an affiliate.

⁴ In this report, when we use "codes of conduct," we are referring to state policies that guide the character of permissible and impermissible interactions among different staff and divisions of enterprises that include utility companies. We recognize that the FERC has adopted and is considering changes to its own Standards of Conduct for Transmission Providers (see, e.g., 122 FERC ¶ 61,263, Standards of Conduct for Transmission Providers Docket No. RM07-1-000, Notice of Proposed Rulemaking, March 21, 2008).

EXECUTIVE SUMMARY

- Careful disclosure and review of how “non-price” factors are considered and evaluated by the utility in weighing offers from third parties against self-build proposals or affiliate offers. (See further discussion, below.)

The second key issue is the appropriate evaluation of price and non-price criteria. Price criteria typically involve the proposed direct payments for any energy, capacity, environmental credits, or other attributes provided by a resource under contract to the utility. Non-price criteria include the many factors that may also affect how much energy, capacity and other attributes would eventually be supplied by different resources, and their impact on other aspects of the utility’s system. Non-price factors can include such things as transmission facility impacts, fuel preferences, location preferences, power plant performance requirements, project development milestones, re-dispatch implications on other resources, credit considerations, utility balance sheet impacts, and the distribution of financial and development risks between the utility and the power provider, and/or the utility and its ratepayers.

Even when a utility does not have an affiliate offer or a self-build proposal in the mix, these non-price factors create unique challenges for evaluating offers. They often introduce complex modeling requirements and the need to weigh factors that may not lend themselves to neat quantitative metrics. Because of these inherent difficulties, use of non-price criteria requires careful regulatory oversight, particularly where the utility has – or perceives it has – a financial interest that varies depending on the outcome of the evaluation process. This oversight is facilitated in such cases through the active involvement of an IM and through other regulatory policies that alter utility incentives (such as commitment to address debt equivalency in rate case proceedings or other mechanisms).

The third issue for procurement of incremental resources is how to structure regulatory policies and practices to promote desirable and competitive supply offers in ways that also fulfill and align with other important regulatory obligations. Commissions may have discretion to decide how and when to review different parts of competitive procurements. Among the things they may directly review and approve are: the type, amount, and timing of resources to be solicited; the RFP documents (including model contracts); and evaluation criteria (including evaluation methods, data and assumptions, credit requirements, and weights among price and non-price criteria). Commissions often have to decide when to examine such things – that is, before the RFP is issued, or after the bids have been received and evaluated by the utility. Providing and clearly demonstrating regulatory support for the approaches being used in the utility’s solicitations will help inspire a competitive response. So will early regulatory actions that signal that the Commission will endorse cost-recovery for the outcomes of competitive procurements designed and implemented fairly and objectively by the utility. These signals will reduce market and regulatory uncertainty faced by both utilities and third-party suppliers and will contribute positively to more competitive and less costly incremental supplies for rate payers.

EXECUTIVE SUMMARY

Procurements for all-requirements service introduce different issues and challenges from those described above. In many of the states with retail choice and where distribution utilities now own or control few generation assets (as a result of industry restructuring in the past decade), the utility must obtain needed generation supply for those basic service customers entitled to buy bundled supply from their local utility. In many of these states, the distribution utility uses a competitive procurement process to obtain supply for full-requirements service ("FRS") customers. FRS supply is typically a standardized product and generally includes energy, capacity, ancillary services, and other electricity services needed to meet a slice of the needs of basic service customers as their demand rises and falls over the seasons of the year and the time of day, and as the number of basic service customers changes over time.

States in which utilities have used competitive procurements to elicit offers for FRS supply at some point over the past few years include Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, Ohio, and Pennsylvania.

Competitive procurements of FRS supply typically call for offers for the same standardized electricity product (e.g., FRS supply for residential customers). Winners can be selected solely based on the price of their offers. While the technical details of the procurements may require careful design to elicit an efficient and objective result, the "price-only" design greatly reduces other evaluation and regulatory challenges. The elimination of non-price criteria in selecting offers also reduces opportunities for improper self-dealing, which in turn greatly reduces the need to carefully design some other safeguards to protect against such problems.

States using FRS procurements nonetheless face other important challenges. In recent years, for example, regulators in some states have focused efforts on structuring the sequence of procurements to smooth out the effect of potentially volatile prices on rates charged to basic service customers. Most recently, policy makers in some states (e.g., Connecticut, Illinois, and Ohio) are beginning to shift away from sole reliance on FRS procurements, and are developing and considering "hybrid" FRS frameworks that expand or alter the utility's (or other institution's) role in providing supply for retail customers (see Table 1).

Our research indicates that there is now considerable experience in *designing* competitive procurements, although actual experience with procurement *implementation* is somewhat more limited. This is still a "work in progress." Many states are finding competitive procurements to be an essential tool for obtaining electricity supply that nonetheless introduces significant implementation challenges. The ways in which regulators and utilities address the fundamental issues and important details are critical to their success. This report aims to assist regulators in learning from the practical experience of others in using markets to procure electricity supply to help assure just and reasonable rates for retail electricity consumers.

EXECUTIVE SUMMARY

Table 2	
Critical Issues in Designing Competitive Procurements for Incremental Supplies	
Commission Choices	Additional Considerations
Procurement Process Architecture	
Form of the commission's policy:	What form and in what level of detail will the Commission's policy take: e.g., Regulations? Informal guidelines? Decisions in response to utility proposals?
Role of an integrated resource plan ("IRP"):	What role will an IRP play in determining the timing, amount and type of resources to be procured through a competitive solicitation?
Product definition:	What is the product being procured? Will it be broadly or narrowly defined? Will demand-side offers be considered? How will any policy preferences for particular types of resources (e.g., renewables) be established and implemented?
Procurement procedures:	What requirements will be put in place: e.g., for requests for proposals ("RFPs"), auctions, negotiations, and other design details?
Involvement of an independent monitor:	Under what circumstances will an independent monitor or evaluator be required? Who chooses it? What actions and responsibilities does it undertake?
Commission staff's role:	Will the staff directly oversee the RFP process, on-site with the utility? Will the staff assist the oversight of an independent monitor?
Commission approvals:	At what stage(s) of the process does the Commission carry out a formal review and/or approval? E.g., approval of the IRP? The RFP design? The bidder short-list? Winning offers? Contract approval? Will the Commission's review of the process elements as implemented allow the Commission to endorse the contracts that result from it (assuming a finding that the process produced a competitive result)?
Public participation:	What parts of the process should include public participation? E.g., determination of the types of resources to be procured? Review of RFP instrument and/or model contract?
Scheduling process elements:	How will the timing of the process be designed to balance market and regulatory requirements?
RFP documents:	What materials will be issued with the RFP? E.g., evaluation criteria and weights? Model contracts? Credit and collateral requirements?
Pricing offers:	Will the initial bids involve final offer prices or preliminary indicative offers? Will bidders be permitted to "refresh" their offers over time during the RFP?
Evaluation of Offers	
Evaluation methods and criteria:	How will the array of price and non-price elements (e.g., location, resource operating characteristics, development status) of the offers be evaluated?
Comparison of offers with different risk profiles:	How will the evaluation compare offers with different assignments of various risks (e.g., fuel price risk, fuel supply deliverability, project development, construction cost, availability, credit risk, technology risk, changes in law)?
Transmission impacts and costs of any transmission upgrades:	How will the transmission-related cost implications of different offers be evaluated: Through the status of interconnection requirements? The costs of needed transmission system upgrades? Congestion impacts from dispatch of the proposed offer?
Evaluation of system interactions of offers:	How will the evaluation of offers assess interactions with the rest of the utility's portfolio (e.g., sensitivity analyses of key assumptions, such as fuel price changes)?
Debt equivalency:	Will the process consider the financial impact on the utility of contracts versus rate base investment? If so, how? E.g., using an adder assigned to offers from third parties in the RFP process? As part of the review of the utility's cost of capital in rate cases?

EXECUTIVE SUMMARY

SFC CLERK RECORDED 04/18/2017

Table 3 Key Procurement Policy Issues – A Checklist for Regulators		
Threshold Question	Second Order Question	Observation:
<p>☑ Should the utility test the market for alternatives to building its own power plants?</p>	<p>➔ If so, does the commission require (formally) the utility to carry out a competitive procurement, encourage such procurements by providing specific guidelines or recommendations, or give the utility full discretion to do so?</p>	<p>Clarifying commission policy toward competitive procurement and making such policy statements easy to find in PUC websites may lower barriers to entry for independent suppliers seeking to participate in the state's market; on balance, this may serve to support a deeper response to any solicitations.</p>
<p>☑ What is the "product" that the utility should procure through competitive solicitations?</p>	<p>➔ Is the procurement designed to solicit narrowly or broadly defined products? That is, should the procurement solicit offers for any type of resources to meet given power supply needs, or limit offers to:</p> <ul style="list-style-type: none"> ○ Supply-side resources? ○ Resources using a particular technology (e.g., renewables) or particular fuel (e.g., coal)? ○ Resources providing a particular function in a supply portfolio (e.g., baseload v. peaking)? ○ Capacity resources? ○ Resources in a particular zone? ○ Resources from new facilities? ○ Products satisfying particular regulatory requirements (e.g., renewable energy credits)? 	<p>Procurements with more narrowly defined products will allow greater reliance on price and less reliance on other evaluation criteria, although it may limit the depth of the market response and the creativity of offers from market participants.</p> <p>The greater control the commission wishes to exert over the choice of attributes of the product being solicited (e.g., type of resource, location, fuel or technology type, function in the portfolio), the more the commission will likely need to encourage review of formal (or informal) utility long-range resource plans in advance of the resource procurement.</p>
<p>☑ Does the commission want to allow – or require – the utility to participate in the solicitation, either directly as a supplier proposing a resource relying upon regulated investment, or indirectly through a competitive affiliate?</p>	<p>➔ If so, what safeguards will the commission establish and enforce in order to prevent improper self-dealing to assure a fair and competitive solicitation, increase the opportunity for the best resource to be selected, and assure the market that there will be no improper preferential treatment of utility or affiliate offers (thus instilling confidence in the overall design of the competitive procurement)?</p> <p>➔ Whether or not the utility is allowed to or does participate in the solicitation, how will the commission ensure that the utility's evaluation is focused on decisions supporting lowest-cost, reliable service to customers, even where different resource choices may have different impacts on the utility's own real or perceived financial interests? For example,</p> <ul style="list-style-type: none"> ○ Implications for the utility's risk profile, capital costs, balance sheet, and so forth, associated with of a third-party contract versus investment in a utility owned plant? ○ Implications for the performance of the utility's own plants (e.g., implications for stranded investment) from transmission congestion due to new resource additions? <p>➔ What guidance will the commission provide to the utility and to market participants about how various risks should be assigned in contracts between:</p> <ul style="list-style-type: none"> ○ The utility (as buyer) and a third party supplier, and in turn between the utility and its retail customers; ○ The utility as a power plant owner and its customers. 	<p>Putting in place appropriate safeguards to ensure that the utility's decisions are made with the interests of customer benefits and costs in mind involves great care in the overall design, implementation and supervision of the procurement. Key safeguards to guard against improper self-dealing include:</p> <ul style="list-style-type: none"> ▪ Use of an independent monitor throughout all phases of the process; ▪ Commission review of product definition, evaluation assumptions and techniques, contract terms and conditions, debt-equivalency issues in rate cases (not RFPs) and other elements to support fairness for market participants; ▪ Requiring comparable forms of risk mitigation in utility and non-utility offers, such as comparable treatment of offer "refreshing" and various types of risk, including development and construction risk, power plant performance risk, fuel price risk, and risks tied to changes in law or regulation, such as costs of mitigating carbon emissions.

EXECUTIVE SUMMARY

Table 3 (Continued)		
Threshold Question	Second Order Question	Observation:
<p>☑ To what extent will winning resources be selected on price terms and non-price characteristics, some of which may be difficult to quantify and compare?</p>	<p>➔ How will the commission's policies shape how and what types of non-price characteristics should be considered by the utility in evaluating offers, in light of such criteria as:</p> <ul style="list-style-type: none"> ○ The potential differences in the importance of various non-price characteristics in alternative offers; ○ The potential for evaluation of non-price characteristics to impose high administrative costs or slow evaluation procedures; ○ The potential introduction of subjectivity (with the opportunity for self-dealing) that non-price characteristics may create? 	<p>The more transparent the evaluation procedures and criteria are to market participants, the more likely they will be assured that the evaluation process will be fair and objective. At the same time, the more the choice of "best resource" depends upon each offer's interaction with the rest of the utility's portfolio, the more the selection will depend upon complex modeling of the utility's portfolio; reliance on these models raises traditional transparency issues associated with "black box" modeling. As a result, regulators will need to pay attention to the modeling assumptions and inputs used by the utility in evaluating resource options (including sensitivity analyses) to help ensure a competitive result. Such review is particularly important where the utility (directly or indirectly) has a financial interest in the outcome of the results (e.g., either directly, if proposing a competing project, or more indirectly, if it owns another existing plant that may become less valuable depending on facility selection).</p>
	<p>➔ If non-price factors are necessary to the selection of "best" resources, how will the commission encourage a process that provides sufficient information to the market (e.g., what factors matter, what weight will be assigned to them, and how they will be measured) without also limiting the utility's flexibility to use qualitative judgment in evaluating offers? For example,</p> <ul style="list-style-type: none"> ○ Where the winning offers will become part of the utility's resource mix and have network service, how will the need for transmission additions be evaluated, particularly if impacts differ substantially among offers and take time and other resources to fully evaluate? ○ How will the utility take into account the development status (e.g., types of permits in hand, construction completed) of resource options in ways that support competitive responses while fully accounting for significant differences in risks to consumers? ○ How will the process incorporate any non-price factors that are relatively easy to put into dollar terms (e.g., transmission enhancement costs), and those (such as project development risk) which are harder to monetize? 	
<p>☑ If you have committed to having your regulated utilities use competitive procurement processes, are you willing to align your own regulatory practices to support them?</p>	<p>➔ Assuming that markets assign risk to uncertain regulatory outcomes, how will the commission arrange – and commit to implementing and enforcing – its own actions to support outcomes that appropriately balance risks between suppliers, the utility and ratepayers? Relevant regulatory risks that can show up in price premiums include:</p> <ul style="list-style-type: none"> ○ Uncertainty about cost-recovery for utilities' contracts with power suppliers versus the utility's own investment; ○ Uncertainty about how long contract approval will take; ○ Uncertainty about whether the regulator will enforce the rules requiring fairness and objective processes; ○ Uncertainty about whether the commission will reopen the process – or throw out the results – if it doesn't like the particular outcome of a solicitation; and ○ Uncertainty about whether the regulator will allow the utility to take actions that circumvent the procurement, alter procurement procedures mid-stream, or dissolve the procurement (irrespective of rationale)? 	<p>The higher the market's confidence that the regulatory agency will support its own past policies and decisions, the lower the risk premium that will be built into offers from the market. Past commission policies and decisions may include meeting certain procedural time requirements to which it has committed and enforcing as appropriate any procurement rules previously adopted.</p>

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I. INTRODUCTION AND BACKGROUND

Competitive procurements are not new to the electric industry. Over the past two decades, regulators and the electric distribution utilities (“utilities”⁵) they supervise have experimented with various forms of competitive process as a way to assure lowest-cost, reliable supply for retail electricity customers. In response, the industry has grown to include a wide array of competitive suppliers interested in and capable of providing utilities with power supplies to meet retail customers needs.

Despite this long experience, the use and regulation of competitive procurements has undergone important changes in recent years. Today, many states require⁶ – directly or indirectly – that their utilities use competitive procurements as a means of obtaining supplies to serve their retail customers. All told, more than 40 percent of the U.S. states (or jurisdictions)⁷ have formal regulations or guidance that requires or encourages utilities to use competitive processes.

In some states with restructured electric industries where the utility no longer owns or controls its own generating resources, utilities are required to procure all of their supply for retail customer’s power through competitive processes. Many states with a more traditional industry structure require or at least encourage their utilities to test the market to determine what new source of supply offers the “best” option for meeting incremental customer requirements. In such procurements, the utility’s own investment in a new generating resource may compete against offers from third-party power suppliers or the utility’s own affiliate. While competitive procurement processes are not new, states in recent years have increased requirements on utilities for when and how such procurements must be undertaken.

With this growing interest in the design and use of competitive procurements, the members of the National Association of Regulatory Utility Commissioners (“NARUC”), through its Committee on Electricity, have been engaged in a collaborative dialogue with the Federal Energy Regulatory Commission (“FERC”) on issues related to competitive

⁵ Unless otherwise stated, we use the term “utility” to refer to the local distribution utility with certain obligations to serve retail electricity customers.

⁶ We note that our use of the word “require” may encompass directives that are a part of non-binding, legislative or commission “guidelines”.

⁷ States or jurisdictions with formal rules or guidance include Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Illinois, Maine, Maryland, Massachusetts, Montana, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Utah, and Washington. Some other states, such as North Carolina, have less-formal policies and/or have case precedent directing utilities to have tested the market if they propose to build a new generating station.

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power procurement. As part of this collaborative dialogue, NARUC engaged Analysis Group⁸ to perform a study of competitive procurement of retail electric supply.⁹

This report provides the findings from our study. In the sections below, we:

- Identify key state policy and technical issues associated with current competitive procurement practices;
- Develop criteria for evaluating the success of procurement policies and practices;
- Evaluate current state procurement policies and practices against such criteria;
- Develop guidance on and tradeoffs between "model" competitive procurement practices that are appropriate in different contexts that reflect these criteria; and
- Where possible, identify best practices in procurement design and implementation.

Our findings are intended to provide guidance for states as they determine the appropriate role of and regulations affecting competitive procurements. We do not include any specific recommendations for what any individual state should do with respect to competitive procurements.

To accomplish these goals, we have collected and assembled information on the design and implementation of utility supply procurements. We have researched current state policies that influence whether and how these procurements occur. This information provides many examples of policy designs and practical experiences that have taken shape over many years under different regulatory traditions and industry settings. An important part of our information collection was a survey of state utility commissions that requested detailed information about competitive procurements. Responses to that survey, along with our own research and information collection, identified many key relevant documents, including:

- State legislation;
- Commission orders related to general procurement policy and to individual utility procurements;
- Utility request for proposals ("RFPs");
- Independent monitor ("IM") reports;

⁸ The study has been conducted by Analysis Group's team: Susan Tierney, Ph.D., Managing Principal; Todd Schatzki, Ph.D., Manager; Andrea Okie, Associate; Pavel Gavrilov, Senior Analyst; and Mary DiMatteo, Analyst.

⁹ NARUC, "Request for Proposal to Identify Model State and Utility Practices for Competitive Procurement of Retail Electric Supply," Proposal Number 000-07-01, September 26, 2007.

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- Regulatory filings by various stakeholders (including electricity suppliers); and
- Other relevant documents.

The body of documents we have collected through this process is available electronically for access by the public.¹⁰

Our review focuses primarily upon activities in states that have formal requirements or guidelines for competitive procurements.¹¹ Specifically, we do not review the relevant competitive procurement policies or practices of publicly-owned utilities (e.g., municipally owned utilities and cooperatives), small investor-owned utilities, or unregulated competitive retail suppliers in states with retail competition (e.g., Texas). Additionally there are a number of other things which we explicitly did not study, based on our understanding of the original scope of work from NARUC.¹² Notably, our analysis is confined to a review of competitive procurements as regulated by state public utility commissions.¹³

¹⁰ Documents are available at: <<http://procurement.webexworkspace.com/>>. Members of the public may access these documents by registering as a "guest" at this website.

¹¹ Many utilities in states without formal policies on procurement may undertake competitive procurements as a part of, for example, demonstrations that certain resources (such as those, for which the utility is seeking certification and cost recovery), are least-cost.

¹² We do not make recommendations about whether states should or should not rely on competitive procurements. Nor do we prescribe a "correct" approach to be adopted across all states that decide to use competitive procurements. We believe that this is entirely a matter of state policy preference, and in some cases, legislative authority. Also, because use of competitive procurements and their design involves a number of important trade-offs that affect how risks are assigned between utilities and their customers, on the one hand, and utilities and their suppliers, on the other, we do not conclude that one or another trade-off is right or wrong. In some cases, we attempt to elucidate implications of trade-offs between particular approaches. We refrain from critiquing particular states' approaches by name; instead, we focus on issues in procurements that are relevant for states in designing or refining competitive approaches in their states. We do not specifically cover competitive procurement practices in prior periods that are no longer being used in states (e.g., for PURPA implementation). We do not focus on competitive procurement for supplies of relatively short-term length (e.g., less than one year). We do not focus on policy the details for states with open dockets on whether to modify their current approaches to procurements. And, in situations where prior problems have been addressed in subsequent policy or other regulatory decisions, we have not dwelt on the prior problems.

¹³ As requested in the original scope of work, we do not directly review the relationship between: (a) states' policies for competitive procurements and the practices of their distribution utilities, and (b) other policies of the FERC, the states or regional entities throughout the United States.

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II. OVERVIEW OF STATE COMPETITIVE PROCUREMENTS

While utility competitive procurement practices vary in many important details across the states, certain common frameworks have arisen. Table 4 describes some of these patterns. It shows, in the middle column, that utilities generally utilize one of two types of procurement frameworks: (a) procurement of "incremental supply," or (b) procurement of "supply for full-requirements service." The common approaches result primarily from patterns of regulatory and market conditions that have influenced the types of resources, or electricity products, that regulated distribution utilities need to procure. Table 4 shows different circumstances under which utilities are required (or strongly encouraged) to make use of competitive procurement processes to obtain power supplies for their retail customers.

Table 4 Frameworks for Procurement of Electricity Supply for Retail Customers				
Electric Industry Structure	Divestiture of Power Plants	Procurement Framework / Product Solicited	Supply Portfolio Management	State Examples
Traditional	None	Incremental Supply – typically for resources from a specific power plant obtained through requests for proposals ("RFPs")	Utility	CO, GA, LA, OK
Restructured, No Retail Choice	None or Partial	Incremental Supply (via RFP)	Utility	CA, MT
Restructured, Retail Choice	Full (or near full)	Full Requirements Service ("FRS") (via auctions or RFPs)	Market	MA, MD, ME, NJ
		Hybrid FRS Frameworks: <ul style="list-style-type: none"> • Long-term contracts (with FRS procurement) • Utility ownership of generation, with some degree of portfolio management by the utility • Public power authority • Specialized procurements (e.g., renewables or renewable energy credits) 	Various Assigned to Market and to Utility	CT, DE, IL, OH, PA

In a procurement for "incremental supply," a utility seeks to add a new supply source to its existing portfolio of supply arrangements. This existing portfolio generally includes significant ownership (or control) of generation facilities, but may also include purchase power agreements (short-term or long-term), financial hedges, demand-management, and other forms of resources and supply commitments. This type of procurement is the typical approach used in states with a traditional industry structure, where the utility has the obligation to serve retail customers in its franchise area.

Some traditionally structured states (such as Colorado, Georgia, Louisiana, and Oklahoma) have adopted relatively explicit regulations or formal guidance addressing

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when and how utilities are to use competitive procurements as part of identifying their next resource additions. Other state commissions do not have codified procurement regulations, *per se*. Some, such as North Carolina, have issued various decisions in the past that have the effect of imposing a presumption that utilities will “test the market” for attractive resource offers at least as a means of demonstrating that their plans (including any proposals to build their own power plants) are economical. Other traditionally structured states do not have policies related to utilities’ use of competitive procurements.

Incremental supply procurements are also used in some states (like California and Montana) where utilities divested much of their generating assets under electric industry restructuring, but where retail competition has been suspended. Utilities in these states, as well as in Arizona, currently use incremental procurements to meet resource needs above and beyond the supplies provided by long-term contracts and/or their remaining generating resources.

The other type of procurement is for supply for “full requirements service” (or, a “FRS” procurement). This type is used mostly in states where: (a) retail customers have the right to choose their electricity supplier, (b) distribution utilities have divested all or nearly all of their generation assets as part of electric industry restructuring, and (c) the utility still retains obligations to serve basic service (or default service) customers. Under FRS procurements, the distribution utility obtains all (or most) electricity supply for its basic-service customers (or a particular class of customers). Because these utilities lack their own generation resources but still retain certain service obligations to customers, the utilities’ competitive procurements essentially shift much of the responsibility for assembling and managing an array of electricity services to suppliers who are willing to provide needed electricity services for these retail customers.¹⁴

In a few states with retail competition (e.g., New York, New Hampshire), utilities retain portfolio management responsibilities and functions for basic service customers, similar to the way in which vertically integrated utilities manage a portfolio of assets in states without retail competition. The portfolio of assets managed by these utilities may include generation facility ownership, long-term supply contracts, financial hedges, spot market purchases, and other agreements.¹⁵ While state commissions typically oversee these portfolios for purposes of cost recovery, regulators generally do not direct or

¹⁴ In Maine, electric distribution utilities are not involved in the procurement of supply for FRS customers. Instead, FRS procurements are run by the Maine Public Utility Commission, and winning bidders become the retail providers for customers.

¹⁵ For example, certain utilities in New York and New Hampshire manage supply portfolios, which may include long-term contracts arising from industry restructuring. Utilities recover the costs of these portfolios through rates approved by regulators. Competitive retail providers also generally rely on development of supply portfolios to supply power for their customers. The amount of supply provided through such retail providers varies from state-to-state. In Texas, where there is no “standard offer” service provider, all retail providers procure supply through these unregulated portfolios.

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investigate the specific resources utilities arrange as part of the individual components of these portfolios.¹⁶

In recent years, some states have introduced or are considering adopting policies that create a hybrid framework, in which utilities (or other regulated entities) may consider developing certain types of long-term supply arrangements in addition to the on-going use of FRS contracts for its retail customers. These modifications include requirements (or incentives) for utilities to enter into long-run supply contracts (e.g., New York), utility development and/or ownership of generation facilities (e.g., in Connecticut, Ohio), and development of state power authorities (e.g., in Illinois).¹⁷

Incremental supply procurements and FRS procurements differ in an important, fundamental way. FRS supply procurements are typically designed as *price-only* procurements, in which the utility requests bids to supply a uniform product using a standard contract. By standardizing product specifications and contract terms, price is the only factor differentiating alternative offers and suppliers offering the lowest prices are selected as the winning bidders. In contrast, offers submitted in response to incremental supply procurements *differ along multiple dimensions*, including price and non-price factors. To select the "best" offer, the utility not only must evaluate and compare each offer's unique attributes, but must also evaluate how each possible new resource would interact with the rest of the utility's overall supply portfolio. This significantly complicates the evaluation and selection process.

As a result of these procurement characteristics, price-only auctions for FRS supply are similar to on-line shopping for a mass market product (such as a specific book or a particular toy) that a consumer has already decided to purchase.¹⁸ In contrast, incremental supply procurements are more akin to buying a house, because no two houses are alike and the choice among houses requires comparison of the many different attributes that differ between houses. Because of this fundamental difference in these two approaches, we discuss each of these approaches separately below. Before doing so, though, we describe various criteria to use in evaluating procurement processes.

¹⁶ Our assessment does not focus on the development of these portfolios, although lessons from incremental supply procurements may provide some guidance for best practices for and oversight of procurement of individual components of such portfolios.

¹⁷ Additionally, Massachusetts has just passed a law (the Green Communities Act, signed on July 2, 2008) that will require utilities to rely on all cost-effective energy efficiency and allow utilities to enter into certain long-term contracts for renewable energy, while also retaining the basic FRS framework.

¹⁸ Bidder eligibility requirements are also similar to the types of minimum standards for merchant quality (e.g., merchant ratings) that people use when considering on-line purchases.

III. CRITERIA FOR THE EVALUATION OF COMPETITIVE PROCUREMENTS

In the end, the goal of using competitive procurements is to enhance the process of identifying and securing resources that “best” meet customers’ electricity requirements on the “best” possible terms. With this in mind, we describe the types of criteria that help to distinguish well-designed versus poorly designed competitive procurement processes. We offer five key criteria (listed in Table 5). While each is important and seemingly obvious, together they can pose difficult trade-offs as regulators and utilities design procurements to fit the needs of particular situations. Any commission that decides to rely on competitive procurement processes should use criteria similar to these to guide the design and implementation of such procurements.

- ***The procurement process should be fair and objective.***

A fair and objective process will help to ensure that the outcome of a procurement “best” satisfies retail customers’ supply requirements and does not reflect any undue preferential treatment of particular bidders. Such a process also promotes participation by assuring market participants that their offers will be fairly considered on their merits. To achieve this goal, procurements must include appropriate safeguards built into the design of the procurement to prevent undue preferential treatment of any offers. These safeguards must be supported through the practical elements of the implementation phase so that unforeseen circumstances are addressed in manner that is fair and consistent with a competitive outcome. The fairness and integrity of a procurement process is affected not only by the actions of the utility, but also by regulatory oversight of the procurement process. If a commission decides to rely on competitive processes, its own actions to enforce fundamental fairness objectives and uphold any prior commitments to use markets are a critical component of the process of identifying the “best” retail supply for utility customers.

- ***The procurement should be designed to encourage a robust competitive response and creative offerings from market participants.*** In developing a competitive procurement, the regulators’ goal is to design and carry out a process in which suppliers of the most cost-effective resources not only participate but also submit their most competitive offers. Several conditions are key to encouraging such participation. First, market participants must perceive that their offers will be

Table 5

Criteria for evaluating competitive procurements for retail supply:

Where regulators have committed to relying upon competitive procurement approaches as a means to help identify the “best” resources needed to meet the needs of the utility’s customers, the process should have and be viewed as being:

- Fair and objective;
- Encouraging of a robust competitive response and creative proposals from market participants;
- Based on appropriate and relevant evaluation of price and non-price factors;
- Efficient and timely in offer selection;
- Positively supported by regulatory actions that reinforce the commission’s commitment to the other criteria.

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considered fairly and objectively. Concerns about preferential treatment will lower market participants' willingness to incur the up-front costs necessary to submit offers. Second, procurements must protect confidential and commercially sensitive information submitted by market participants. Third, market participants must have access to adequate information about bidder requirements, product specifications, model contract terms, evaluation and selection procedures and criteria, and other factors that would affect the resources they choose to offer. Finally, procurements should allow sufficient creativity to solicit the best offer for customers.

- ***The procurement should select winning offers based on appropriate evaluation of all relevant price and non-price factors.*** Selecting the "best" offer(s) requires first identifying appropriate evaluation criteria and then evaluating the offers objectively against them. Designing an effective evaluation process is inherently challenging when such evaluations require comparisons of an array of price and non-price factors. In particular, many of these non-price factors are quite complex to quantify and/or qualitative in nature. By contrast, procuring products that meet standardized specifications (such as full requirements service for standard-offer-service customers) greatly simplifies the evaluation process by allowing for the selection of winning offers based on price terms alone. Identifying evaluation criteria that reflect the attributes of greatest importance will increase the likelihood of eliciting offers that best suit retail customers' supply needs.
- ***The procurement should be conducted in an efficient and timely manner.*** Competitive procurements should avoid unnecessary administrative and procedural costs that may discourage market participants and ultimately impose greater costs on ratepayers. Because bidders are generally required to honor the terms of their offers once made, an unnecessarily slow process increases the financial risks they face from unanticipated changes in market conditions that occur while their offers are "open." Design of bid submission requirements, evaluation and selection procedures, and the timing of commission review should aim to minimize transaction costs for utilities and/or bidders (and the price premiums they include in their bids).
- ***When using a competitive procurement process, regulators should align their own procedures and actions to support the development of a competitive response.*** Regulators' own actions can positively – and in some cases, negatively – affect the integrity and outcomes of a procurement process. Positive signals can arise, for example, by doing what is legally possible to protect the confidentiality of commercially sensitive information submitted through supply offers, by conducting regulatory reviews in a time frame that supports the "best" price terms in offers, and enforcing elements of the procurement design that enhance the overall fairness and objectivity of the process and the integrity of the procurement results.

As may be evident, there are potentially important interrelationships among these criteria. Establishing a fair and objective process provides suppliers with confidence that their up-front investment in submitting bids is worth the effort. A fair and objective process will provide regulators with greater confidence that procurements will result in just and reasonable rates, thereby allowing them to provide greater assurance of cost recovery of winning proposals. All else equal, regulators' actions to support the integrity

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of a competitive process will provide confidence that the process will be fair and objective; this in turn will increase the likelihood that there will be a competitive response from the market and that the winner of the process will be the "best" resource for customers.

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VI. PROCUREMENT OF INCREMENTAL RESOURCES

A. OVERVIEW

Incremental resource procurements are used by electric distribution utilities to obtain new resources to add to their existing portfolio of assets, supply contracts and demand-side programs to meet the utility's service obligations to its retail customers. This type of procurement is the basic form relied upon in states with more traditional electric industry structures where the state requires a market test for new resources. In addition, incremental resource procurements are used in states with retail competition where distribution utilities are procuring long-term resources in addition to FRS supplies (e.g., Connecticut) or where utilities serve their basic-service offer customers using a portfolio of resources they manage (e.g., New York).

In states with a more traditional industry structure, utilities provide bundled electricity service as the sole option for retail customers. The utility has the responsibility to manage a resource portfolio, which typically¹⁹ includes large amounts of generation assets under its ownership, but may also include short- and long-term purchase power agreements, demand-management resources, and other forms of financial hedges and supplies. The extent to which these utilities actually use competitive procurements when seeking to identify and secure the next new resource(s) to add to the resource portfolio varies across and within states.

The design of these incremental supply procurements is shaped by several key factors. First, the array of potential resources available to fill a utility's incremental needs varies along many dimensions. Among others, key differences include:

- the physical characteristics of the resources used to provide supply (e.g., location; technology type; fuel type; availability factors; start-up, ramp rates and cycling features; maintenance requirements);
- operational commitments (e.g., dispatchability or non-dispatchability; provision of energy, capacity, ancillary services, or environmental attributes; plant operation, management and fuel provision by the utility under a "tolling agreement"); and
- development status (e.g., site control; environmental permits; interconnection studies; financing; construction).

Offers also differ in the contract structure that will define the:

¹⁹ Note that we previously described that our report focuses on investor-owned electric utilities; specifically, we do not review the competitive procurement policies or practices of publicly owned utilities (e.g., municipally owned utilities and cooperatives), small investor-owned utilities, or unregulated competitive retail suppliers in states with retail competition (e.g., Texas).

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- structure of payments (e.g., all-in prices versus separate payments for such things as energy, capacity, ancillary services; fixed prices versus indexed prices; allowances for payment adders in the event of changed circumstances; penalties and bonuses for certain performance targets (such as delay in meeting development milestones or availability targets);
- the service provided (e.g., energy; capacity; unit dispatch control, in which the utility has control over when the resource delivers power; tolling agreements, in which the utility operates and manages the plant and controls the fuel supply as well; extra compensation for "regulation" service, allowing the output of the plant to be controlled by the system control area operator or system dispatcher; provision of "environmental attributes" such as renewable credits);
- supplier obligations, such as purchase requirements (e.g., minimum quantities of energy over a specified time period, or take-or-pay provisions) and fuel cost requirements (e.g., e.g., tolling agreements in which the utility provides the fuel, or the supplier has responsibility for fuel); and
- the resulting allocation of risks borne by suppliers and utilities.

Assessing the implications of these various contract structures is inherently complex due to an array of important technical details. How a specific power purchase agreement ("PPA") associated with an RFP addresses many of these details has important implications for the types and prices of offers submitted in response to an RFP. If these technical issues and risk allocations are different than those that would arise in a utility self-build proposal, then there will be difficult apples-to-oranges comparison of the offers. That said, a utility self-build proposal could be designed to reflect comparable contract terms (e.g., through price, schedule and other performance conditions as might be contained in a utility contract for engineering, procurement, and construction services (i.e., an "EPC" contract). For these reasons, model contract terms matter, in ways that warrant careful attention by regulators.

While it is possible to design a procurement to elicit offers for comparable products through detailed specification of fuel, technology type, project size, and contract terms, many procurements are designed to leave such important details to the discretion of bidders. As a result, procurements typically involve both price and non-price factors which introduce complexity into comparisons between offers.²⁰ This complexity makes it challenging, to say the least, to design and implement an overall competitive procurement architecture and the details of its evaluation process in ways that: (a) treat all offers fairly and objectively, (b) arrive at selections efficiently and rigorously, (c) provide enough transparency to be credible without revealing commercially sensitive

²⁰ Even when there are clear metrics relating to the price terms for an offer, there are often "non-price" issues (both monetized and non-monetized) associated with, among other things, how a proposed resource interacts with the rest of the utility's portfolio in a simulated dispatch and how risks are assigned to the buyer and seller.

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business information, and (d) allow the utility sufficient flexibility to respond to potentially innovative and creative solutions from the marketplace. This complexity means that commissions that commit to rely on competitive procurements must be sensitive to these trade-offs.

Second, and perhaps because of the complexity of these trade-offs, incremental resource procurements that include utility self-build (and rate-based) proposals and/or proposals from the utility's affiliates inevitably pose special regulatory challenges to assure that the process is designed and implemented to be fair and objective. Because the utility's (and/or its parent's) financial interests may not be aligned with those of its customers when the utility selects from among the options, extra care is needed to prevent improper self-dealing by the utility. Best practices under these circumstances require a higher degree of regulatory supervision and scrutiny, such as the use of an independent monitor tasked to be the eyes and ears of the regulator and to help bolster the procurement's fundamental fairness and objectivity.

By using the phrase, "improper self-dealing," we intend to recognize that many states that require or encourage competitive procurements for incremental supply also require – indirectly or directly – that the utility participate in the process as one of the entities making a supply proposal. This inherently places a utility in the position of being a "competitor" as well as the entity who determines the "winning proposal." We are characterizing this situation as "proper self-dealing," in the sense that the utility has these two responsibilities, and may, through a fair and objective evaluation, select its own proposal as the "winning proposal." By contrast, we use the phrase "improper self-dealing" to indicate situations where the utility acts so as to structure the procurement design, the product to be procured, and the actual selection of the winning resource in ways that unduly favor its own proposal or any proposal offered by an affiliate of the utility.

Finally, when designing procurement processes to account for both the complexity of evaluating alternative offers and the need for regulatory oversight, it is important to make such choices in light of two other factors involving administrative efficiency. First, it is important to keep the costs to administer procurements relatively low for the bidders and the utility. Second, all else equal, it is important to minimize the time between the submission of offers, development of short-lists of preferred offers, and final selections. Because bidders may be constrained from offering their resources into other markets while their offers are being considered and they may need to maintain firm price terms in spite of market changes, delays in these evaluation stages can increase bidder's opportunity costs to participating in the procurement.

The following sections provide further details on how states and utilities active in competitive solicitations have managed these various trade-offs in the design and implementation of competitive procurements. Our assessment starts with a review of recent policies addressing procurement design, then describes the key components in procurement process architecture, and finally provides a more detailed discussion of key issues relating to the procedures and methods for evaluating offers.

B. RECENT STATE POLICIES ADDRESSING DESIGN OF COMPETITIVE PROCUREMENTS

In recent years, legislatures and regulators in many states have taken steps to either require or amend requirements for when and how utilities should undertake competitive procurements when satisfying resource needs. Table 6 below lists some of these recent policy actions. The recent spate of legislative and regulatory changes suggests that requirements and guidelines for incremental resource procurements may continue to evolve in coming years. Therefore, regulators, utilities and market participants interested in following the progress of such procurement experience will need to continue to track relevant changes. That said, actual procurements tend to occur relatively infrequently, so the evolution may occur at a relatively measured pace.

C. PROCUREMENT PROCESS ARCHITECTURE

1. *Introduction to Procurement Design*

When designing an overall procurement process to be used by utilities in their state, regulators must consider a number of design ("architecture") elements. Specifically, the elements should address not only the procurement criteria previously identified in Section III, but also a number of practical issues. These practical issues include such things as the responsibilities of different parties, the rules governing communications between various parties, and the materials and information that must be developed and made available to various parties. Designing such an overall procurement framework addressing all of these elements involves a number of important tradeoffs.

First, the process must be designed to ensure that winning bids are chosen based on a fair and objective process. In particular, the process must be structured to avoid improper self-dealing should the utility or its unregulated affiliates be required or allowed to offer a proposal in the procurement. Many elements of the overall design of the procurement process can mitigate the utility's ability to improperly bias the outcome of a procurement. These include:

- Commission review of RFP instruments (including what electricity supply products should be procured) and oversight of RFP procedures;
- Codes of conduct regarding interactions between utility personnel involved in evaluating offers and (a) personnel involved with developing cost projections and other elements associated with the utility's self-build proposal, and (b) any personnel of its unregulated generation affiliate;
- Engagement of an independent monitor ("IM") with reporting responsibilities to the regulatory commission and a clear scope of work with regard to procurement design, implementation, oversight, and reporting;

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- Public participation in procurement design, and in commenting on draft RFP instruments, including key evaluation assumptions and model contract terms;
- Information requirements for RFP instruments (e.g., product specification, evaluation criteria, etc.), and reporting of evaluation process and results; and
- Means to control various utility personnel's access to bidders' commercially sensitive information, including information shared by utility senior managers with responsibility for both self-build offers and procurements from the market.

Table 6
Recent Changes in State Policy Requirements Involving
Competitive Procurements for Incremental Resources

State	Date	Docket Name	Description
AZ	2007	Recommended Best Practices for Procurement (ACC Decision No. 70032)	Commission adoption of "Best Practices" for procurements that identify acceptable procurement methods, and circumstances when RFPs and independent monitor should be used [1]
CA	2003 - present	Energy Action Plan, PUC Decision 04-01-050, AB57 and various other rulings	A series of legislative and commission decisions have established procedures by which utilities develop long-term procurement plans and implement resource procurements.
FL	2002	Rule 25-22.082 Amended	Amendment to rules requiring competitive procurements for approval of utility self-build proposals, including procedures regarding bid-refreshing and information requirements regarding the self-build offer and evaluation process.
GA	2004	Amendment to Georgia Code 515-3-4-.04 Identification of Capacity Resources	Georgia General Assembly revision to the IRP Act, to include competitive procurement rules, including requirements for independent monitors
LA	2004	Market Based Mechanism Order (General Order, Docket No. R-26172 Sub Docket A)	Requirement that utilities use an RFP process to acquire and justify new resource acquisitions, including requirements for independent monitors and providing information to the public in advance of procurements
OK	2007	Title OCC, Subchapter 35: Electric Utilities – Amendments, Competitive Procurements	Specific requirements for competitive procurements necessary for filling new resource needs, including use of independent monitors and requirements related to affiliate bids and evaluation processes
OR	2006	PUC Order No. 06-446	Update of prior order providing guidelines for competitive procurements, including 13 guidelines for RFP design, bid evaluation and selection, role of an independent evaluator, treatment of self-build and affiliate offers, and other elements
UT	2005	Utah Energy Resource Procurement Act Statute (Title 54, Chapter 17)	Requirements for procurement process for new energy resources, including requirements for an independent monitor
	2007	Rules R746-420, R746-430, R746-440	Rules refining requirements for competitive procurements mandated in Title 54, Chapter 17 (2005)
WA	2003	General Order No. R-509	Requirements that utilities solicit supply offers, including: specifications for RFP contents, bid ranking, and contracts; bidder option to request an independent monitor to assist commission review if the utility or its affiliates participate as bidders.

[1] A formal rulemaking process has not been undertaken. Some investor-owned utilities are subject to specific procurement requirements arising from restructuring settlement agreement.

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These approaches may limit opportunities for improper self-dealing by (a) establishing clear standards for procurement design and implementation to which utilities will be held accountable, and (b) making procurement development and evaluation transparent to regulators and market participants (as appropriate for each), so that improper conduct is easily observed.

Second, the process must be designed to encourage a competitive response from the market. Doing so will increase the likelihood that all suppliers with potentially valuable resources will participate in the procurement process, and will submit their most competitive offers. Ensuring a fair and objective process will encourage supplier participation by giving potential market participants confidence that their offers will be considered fairly against all other offers including any submitted by the utility or its affiliates. In order to submit offers that best reflect the utility's needs and system conditions, potential bidders need access to accurate and sufficiently comprehensive information on product specifications, model contract terms, credit and collateral requirements, relevant transmission constraints, costs to integrate generators into the transmission system, evaluation criteria, and other relevant factors. In addition, suppliers need to have a means of requesting supplemental information or clarifying information in ways open to all other competitors. However, while aiming for transparency of and access to information, utilities must also balance the need for confidentiality of certain supplier and utility information.

Finally, procurements must be designed to be efficient and timely, consistent with both the utility's own needs as well as those of market participants. The need to keep processes efficient yet thorough and fair creates tradeoffs in procurement design. For example, utilities should balance the cost of information requirements on suppliers with the need to obtain sufficient information to ensure that bidders offer suitable proposals. Similarly, streamlining regulatory reviews can help avoid creating time-consuming delays that may increase risk premiums that market participants build into their offers. With that in mind, it is helpful for regulators to review various early elements of procurement design (such as RFP instruments, evaluation approaches, and model contracts) prior to the utility issuing a final RFP as a means of limiting the extent of regulatory reviews in later procurement stages (e.g., review of final selections or final contracts). Reducing such delays will help to support the eventual procurement of the best resources from consumers' standpoint.

Although there are differences in particular procurement designs, most incremental resource procurements involve the following basic components, in which the utility:

- Identifies needed resources (such as through a long-range resource planning process);
- Designs an RFP instrument to solicit offers to provide needed resources, including potential public participation through comments on the draft instrument (including its anticipated evaluation process, and model contract terms and conditions);
- Receives bids in response to a final RFP from interested suppliers;

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- Evaluates all offers and selects a winning offer, in either a single phase or multiple stage process (e.g., pre-qualification of bidders before issuing the RFP; or a review process to develop a short-list of the best set of offers);
- Informs bidders and regulators of resource selections;
- Enters into contract negotiations with the final award group; and
- Submits the results of the process (e.g., the award group with winning contracts) to the Commission for approval.

Box 1 illustrates these stages and other aspects of a specific procurement through a summary description of the competitive procurement process in Georgia.

Box 1

Incremental Supply Procurement Process in Georgia

In 2004, the Georgia General Assembly passed new rules requiring utilities to obtain incremental supply-side resources through an RFP process that includes use of an Independent Evaluator, application of utility codes of conduct, and various specific requirements for RFP content and public participation.^a Georgia Power has procured a wide range of resources under these new rules, including: baseload and intermediate resources for a particular location (i.e., Northeast Georgia); baseload resources of varying potential terms (e.g., for 7-, 15- and 30-year periods); and long-term supply-side resources starting in 2016 (for which Georgia Power is offering a self-build nuclear facility). Georgia Power and its affiliates have been allowed to participate in these procurements.

In Georgia, RFP documents go through a public comment period that includes: issuance of a draft RFP; the utility's response to public comments on the draft RFP; public access to all drafts and comments through a public web site; and hosting of bidder conferences. Georgia's rules provide detailed requirements for substantive content of the RFP, including information on all evaluation criteria, transmission impacts, and procurement schedules. Bidders submit offers that include necessary details, such as price terms, technical details of resources relied upon, delivery locations, credit information, and market qualifications. The utilities undertake an evaluation process based on a "total cost impact analysis" as performed in a prior solicitation.

The Georgia Public Service Commission approves the IRP, the final RFP document, and the final resource selection through its "certification of need." After certification, the Commission allows the utility to recover an "additional amount" through rates which is "provided as an incentive for electric utilities to enter into purchase power agreements ... [because] ... if the Companies would only earn on their investments, not on their PPA expenses, they would be more inclined to build than buy."^b

An Independent Evaluator oversees many phases and components of the procurement process, including review of all participant communications, review of RFP comments and utility responses to such comments, oversight of public web site, and development of an independent evaluation of offers. Additionally the Independent Evaluator provides interim and final reports on the procurement's performance. According to the Independent Evaluator, success in development of model agreements acceptable to all participants, as required by rules, has been "elusive."^c

^a Amendments to Georgia Code 515-3-4-.04, Identification of Capacity Resources.

^b GA PSC Order, 15392-U, December 2002.

^c Accion Group, Report to the Georgia Public Service Commission on the Georgia Power Company 2009 RFP, p.31.

2. *Resource Plans and Related Issues Preceding Procurements*

For utilities using competitive procurements for incremental resources, the process by which a utility determines what resource(s) to procure through a competitive solicitation often involves and is linked to preparation and regulatory review of a resource plan.

Irrespective of policies with respect to competitive procurements, most utilities with load-serving obligations in states with a traditional industry structure undertake some form of resource planning process. Broadly defined, such a process identifies incremental resource needs using a variety of lenses, including changes in customer requirements, resource adequacy, economics, portfolio mix or diversity, and external considerations (such as environmental policy requirements). In some states, this planning process may require oversight and approval by the state commission in formal integrated resource plan ("IRP") proceedings.²¹ By identifying the utility's medium- to long-term resource deficiencies or opportunities, these planning processes are typically the first step in a procurement process in traditionally structured states relying on competitive procurements of incremental resources.

Resource plans have many implications for how resource needs are determined, managed and fulfilled that we do not address in this report. For the purposes of our examination of competitive procurements of incremental supply, we focus on the implications of utility plans for identifying the specific electricity product(s) to be procured from the market. For example, some utility procurements define products very broadly or flexibly, while others define products more narrowly.

More open and flexible procurements, for example, may simply request offers from any resource type/technology delivered to any points within the utility's service territory for a period of some unspecified duration. If a wide variety of types of resources may respond to such requests, the utility will need to compare price and non-price features among offers that may differ along many dimensions.²² Comparison of such varied offers poses evaluation challenges that inevitably introduce subjectivity into the evaluation process. However, defining products in this way provides the market with the greatest flexibility to propose creative alternatives to meet the utilities' needs most cost-effectively.

²¹ For example, California, Colorado, Georgia, and Oklahoma require integrated resource plans (or similar plans requiring commission approval).

²² Montana's utility, Northwest Energy issued an open RFP for baseload, dispatchable, shaped and wind resources. The RFP indicated that "The exact quantity and type of resources the Utility procures will substantially depend upon the economic and operational parameters of the bids received and therefore may not match the quantity and type of resources identified as beneficial in the Resource Procurement Plan." Northwest Energy, Request for Proposals, July 2, 2004, prepared by Lands Energy Consulting. Similarly, PacifiCorp's 2009 RFP, which requested 525 MW of supply that could be "prescheduled," involved solicitation of offers providing for a minimum of 100 MW using any one of eight contractual approaches for terms of 10 to 35 years. PacifiCorp 2009 Request for Proposals, September 2005, Flexible Resource.

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Competitive procurements can also define products and potential agreements more narrowly. They might, for example, request specific quantities of renewable power, demand response, or energy efficiency,²³ or request new baseload power plant supply located in or deliverable to a particular zone by a certain start date.²⁴ Commissions may influence the specificity of these narrower resources procurements through a resource planning process that attempts to identify the type of resources "best" suited to meet the utility's incremental needs. More narrowly defined procurements also eliminate some but not all of the evaluation challenges posed by broader procurements.

Despite the potential benefits of using an IRP process to arrive at a set of narrowly defined resource needs, such a process may result in product specifications based on planning assessments of hypothetical resources rather than on actual prices and resource alternatives offered by the market. For a variety of reasons, important differences may exist between the assumptions used in the planning process and the realities of the markets. Further, utilities may seek to change product definitions (or evaluation criteria) if changes in market conditions make initial resource selections made during planning stages imprudent. Under such circumstances, regulators often must determine whether and, if so, when to review the prudence of the utility's proposed changes. These reviews are likely to be difficult because such amendments may be proposed to avoid investments that are not in consumers' interests or to change opportunistically the terms of the procurement to promote the utility's preferred resources.

In some states, certain types of resources are exempt from commission or legislative requirements that otherwise call for competitive procurements of incremental supply. Exemptions are generally allowed for procurements involving small quantities (e.g., less than 100 megawatts ("MW")) or short durations (e.g., less than one year).²⁵ These exemptions are provided to avoid imposing excessive administrative burdens on the small, short-term supply purchases that utilities commonly make. While such exemptions provide the utility with needed flexibility to effectively manage a short-term portfolio to maintain resource balances, regulators should also be attentive to situations in which utilities use such exemptions to avoid competitive procurements for longer-term

²³ In California, the Energy Action Plan creates specific targets for certain preferred resources (including renewable power, demand response, and energy efficiency) to be achieved through separate resource procurements. State of California Energy Commission and Public Utilities Commission, Energy Action Plan II, Implementation Roadmap for Energy Policies, September 21, 2005.

²⁴ For example, Georgia Power's 2011 RFP requests resources with interconnection to the Northeastern portion of Georgia's grid. Georgia Power, "Overview of the Georgia Power and Savannah Electric 2010 and 2011 RFPs." Southern California Edison's 2005 procurement sought only supply from new generation resources because of the perceived need to encourage new generation to mitigate potential market power and forecasted resource adequacy concerns in that area. Southern California Edison, 2006 Request for Offers, New Gen RFO, Transmittal Letter, V6.0 revised November 30, 2007.

²⁵ For example, procurements in Utah are required for resource additions greater than 100 MW and for longer than ten years. Energy Resource Procurement Act, 54-17-102. In Oregon, the criteria are 100 MW and five years. Public Utility Commission of Oregon, Order No. 06-446, p. 3.

resources which might produce offers that would otherwise offer favorable terms for customers.

Box 2

Dealing with capital-intensive, new and untested technologies

Much of the recent experience with utilities' competitive procurements has been limited to solicitation of and/or proposals for procurements of power from natural gas-fired facilities. For a variety of reasons, regulators and utilities may seek to depart from this trend. Recent experiences with using procurements to elicit proposals for baseload resources have varied. Some utilities have sought exemptions from competitive procurements in order to develop coal-fired facilities,^a while others have asked for proposals (including self-build offers) using coal or nuclear generation technologies.^b

Development of large, baseload, capital-intensive generation facilities (especially ones using advanced technologies) may raise new types of uncertainties in resource development. First, in some states, development, permitting, and construction risks for coal and nuclear facilities are typically greater than those for natural gas plants. Second, advanced power production technologies face greater technology uncertainty because of their less advanced stage of development. For projects involving advanced technologies (e.g., the next generation nuclear facility, or a large-scale coal facility with carbon capture and sequestration), it may be difficult – either prohibitively expensive or not commercially possible – for suppliers to obtain either equipment manufacturers' performance guarantees or EPC contractors' willingness to take on construction risk.

Capital-intensive advanced technologies pose unique challenges for competitive procurements. Are these risks and technology issues sufficient reason to allow utilities exemptions from competitive procurements? How should these risks, technology issues and need for unique supplier attributes be addressed within eligibility requirements and evaluation procedures? Are there means of effectively quantifying these risks? Are there innovative ways of sharing risks and developing technologies collaboratively that can be developed with potential suppliers, and then built into model contracts that assign an acceptable allocation of risks among suppliers, the utility and, ultimately, electricity customers? These questions are beyond the scope of this review, but are important considerations for policy makers interested in considering the next generation of advanced technologies and how best to use markets as a way to discipline costs associated with them. Further, because the large capital investments necessary for development of these types of resources pose potentially valuable opportunities for utilities to enter new resources into rate base, commissions should be aware that utilities may attempt to shield such projects from competition even in situations where market processes are applicable. Despite these challenges, the potential economic gains from imposing the market discipline of competitive procurements on development of capital-intensive and advanced technologies may be great. In particular, the scope for potential cost savings may be significantly greater than those under procurement of natural gas-fired resources. In light of the expected introduction of greenhouse gas emission controls in the future that will require development of advanced technologies, we encourage regulators and the industry to continue to examine these issues in other forums.

^a Duke Power, Preliminary Application for Certificate of Public Convenience and Necessity, Cliffside Project, Submitted to the North Carolina Public Utility Commission, May 11, 2005; Public Utilities Commission of Colorado, Order of Settlement, Decision No. C05-0049, December 17, 2004.

^b PacifiCorp considered benchmark coal resources in its 2009 Request for Proposals for Flexible Resources, and Georgia Power is considering nuclear resources in its 2016 Request for Proposals.

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Procurement rules also often allow utilities to petition for exemption from rules requiring a competitive procurement. The reasons for such requests have varied, but have been related to reliability and development risk,²⁶ or utility financial condition.²⁷ Some state rules also explicitly allow utilities to petition for “emergency” exemptions if there is insufficient time to implement a full competitive procurement for needed resources.²⁸ However, some commissions have explicitly cautioned against abuse of such “emergency” self-build proposals, particularly those that arise after a competitive procurement that fails to identify needed resources.²⁹ For similar reasons, commissions may require that utilities submit a self-build offer to avoid the situation in which the utility rejects all offers in a competitive procurement, and then subsequently submits a self-build proposal to fill resource requirements. When considering such exemptions and requirements as allowed or required under their authorities, commissions must balance potential lost gains from a competitive procurement against the particular factors raised by the utility in its application.

3. *Procurement Oversight, Stakeholder Participation, and Utility Codes of Conduct*

Participation by suppliers, commissions, the public, and independent monitors can be important to ensuring a fair and objective process. Such participation early in the process can also help to avoid (or at least lessen) later regulatory disputes by providing opportunities for differences of opinion, misunderstandings, or information problems to be resolved ahead of the competitive solicitation itself.

a. *Independent Monitor*

Independent monitors have become an important component of procurement oversight in many of the incremental supply procurements, particularly when the procurement includes utility self-build proposals or affiliate bids. State policies, however, differ in their requirements relating to IMs. Apart from the threshold issue of determining

²⁶ For example, although North Carolina has no formal requirements for competitive procurements, Duke Energy explicitly requested approval to forgo a competitive procurement given the nature of the proposed resources. Duke Power, Preliminary Application for Certificate of Public Convenience and Necessity, Cliffside Project, Submitted to the North Carolina Public Utility Commission, May 11, 2005.

²⁷ Public Service of Colorado requested, and was granted, exemption from procurement rules for a 500 MW coal-fired power plant. Among other reasons suggested, Public Service of Colorado argued the need for the project to maintain sufficient equity on financial balance sheet.

²⁸ For example, Public Utility Commission of Oregon, Order No. 06-446, p. 3. PacifiCorp argued that the purchase of a 500 MW power plant should be exempt from procurement requirements because it is a “time-limited resource opportunity of unique value to customers.” See: Clearing Up, “PacifiCorp Signs Stealth Deal to Acquire 500-MW Generator,” April 23, 2008; Public Utility Commission of Oregon, Order No. 06-446, August 10, 2006, p. 4. See also Ohio’s newly enacted law (127 SB 221) that sets forth the market-condition criteria under which the Commission may not approve the winning bids (and market-based prices) of a competitive procurement process. Sec. 4928.142.(B)(3)

²⁹ For example, resources may not be selected if they fail to meet a competitive benchmark, such as short-term market purchases. Public Utility Commission of Oregon, Order No. 06-446, p. 5.

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whether and when an IM is required to be part of the procurement process, the other key issues include:

- What are the IM's roles and responsibilities (e.g., oversee the utility's actions? Independently evaluate the bids? Select the winning offers?)
- Who selects the IM (e.g., the utility and/or the commission?)
- To whom does the IM report (e.g., the utility and/or the commission?)

Independent monitors are currently required in nearly all states that impose some procurement requirements, although there are exceptions.³⁰ In some states, IM monitors are required for all procurements;³¹ in other states, IMs are required only if utility self-build or affiliate offers are considered.³²

Using an IM involves many trade-offs in terms of costs and benefits to the process. The potential roles an IM may play (and services it may provide) include:

- Reviewing initial procurement documents (e.g., the RFP, model contracts, credit requirements);
- Overseeing communications with potential bidders, and between utility teams to comply with "codes of conduct";
- Reviewing utility bid evaluation methodologies, and in some cases even carrying out parallel independent bid evaluations;
- Monitoring contract negotiations; and
- Reporting to commission staff and supporting the regulatory review of the entire process and its results.

Appendix A provides a more detailed list of the various activities that IMs often perform.

By playing these roles, an IM may add substantial benefits, particularly in terms of maintaining process fairness and objectivity to mitigate the potential exercise of

³⁰ Florida's Rule 25-22.082 does not require that competitive procurements use an independent monitor, although some procurements by Florida utilities may incorporate utility-hired monitors to evaluate certain procurement elements. For example, see Direct Testimony of Alan S. Taylor, In re: Florida Power and Light Company's Petition to Determine Need for West County Energy Center Units 1 and 2 Electrical Power Plant, Docket No. 02162-06.

³¹ For example, Oregon (Public Utility Commission of Oregon, Order No. 06-446, p. 6), Louisiana (Louisiana Public Service Commission, General Order, Docket No. R-26172 Sub Docket A).

³² For example, California requires an IM in all procurements in which the utility or its affiliates has a proposal. California Public Utilities Commission, Decision 04-12-048, Opinion Adopting Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company's Long-Term Procurement Plans, April 1, 2004.

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improper self-dealing. However, an IM can also improve the efficiency of the process and the quality of the results. For example, the IM can monitor communications to ensure an appropriate level and substance of communications. The IM can assist in ensuring appropriate resolution of technical challenges that inevitably arise in the course of a complex competitive procurement. Similarly, the IM can monitor and report on the utility's conduct and the procurement's competitiveness as a way to help the commission evaluate whether the results of the procurement should be approved as consistent with just and reasonable rates. In addition to these important oversight roles, an IM may also provide substantive feedback on procurement design and "lessons learned" that can improve effectiveness of future procurements.

Against these benefits of including an IM are the costs to the process – especially the cost of hiring the IM, which can be substantial. However, as many states have determined, the benefits of IMs seem to outweigh these costs in most instances, and are a necessary element of a credible process where the utility itself has a financial stake in the outcome of the competitive procurement itself. In many states, legislation or commission rulings provide specific guidance on these activities, while other states provide no explicit guidance or requirements.³³

Achievement of these IM benefits requires a degree of separation between independent monitors and the utilities they are overseeing. Thus, decisions about who selects the IM, and to whom the IM reports may affect their independence and their ability to fulfill their duties in effective ways. In some states, IMs are selected by commission staff, potentially with input from various stakeholders, including the utility and potential bidders.³⁴ In other states, the utility selects the IM, although the commission or its staff usually retains some control over the selection process.³⁵ In nearly all states, the soliciting utility is responsible for compensating the IM and, in many states, can recover such costs from rate payers (as part of the costs of the procured resources) or through fees imposed on bidders.³⁶

³³ For example, Arizona's guidelines provide limited specification of IM duties. Arizona Corporation Commission, Decision No. 70032. In contrast, Utah's rules identify very specific IM roles and responsibilities. Utah Administrative Code, R746-420.

³⁴ For example, Oregon (Public Utility Commission of Oregon, Order No. 06-446, p. 6), and Utah (Utah Administrative Code, R746-420, Requests for Approval of a Solicitation Process, at R746-420-1).

³⁵ In Arizona, the Staff endorses a short-list of IMs from which the utility can select. Arizona Corporation Commission, Decision No. 70032, p. 3-4. In Louisiana, the Commission can reject the utility's proposed IM. Louisiana Public Service Commission, General Order, Docket No. R-26172 Sub Docket A.

³⁶ In Utah, the utility charges "reasonable" bid fees of up to \$10,000 per bid to defray IM costs, but can also recover any remaining costs through customer rates. Utah Administrative Code, R746-420, Requests for Approval of a Solicitation Process, at R746-420-5. Georgia also allows the utility to recover IM costs through bid fees up to \$10,000 per bid. Georgia Code 515-3-4-.04.

b. Public (or Stakeholder) Participation

While public participation may occur at any stage of a procurement process, most activity tends to occur in certain discrete periods: (a) during the policy development period when a commission is considering whether to require competitive processes and what structures and rules to require; (b) prior to a particular procurement, when the utility is developing RFP instruments and procedures, defining products and contract terms, and determining information to provide to potential bidders; (c) immediately after the RFP is issued and potential market participants have a chance to gather any additional information they need to respond to the RFP; (d) during a formal process the commission uses to review the results of the procurement; and (e) after the procurement process when the commission is considering what "lessons learned" can lead to process improvements in future procurements.

While public participation during these phases may add time to their completion, such participation may avoid delays later in the process by minimizing incomplete supplier offers and by decreasing the opportunity for misunderstandings or disputes about bid requirements, other RFP terms and conditions, and evaluation procedures. Final RFPs often reflect input from market participants and other interveners obtained through comments on draft RFPs.³⁷ Workshops provide an opportunity for more informal discussions amongst the procuring utility, regulators, and potential bidders about draft or final RFPs. Such conferences may also provide a means for utilities to clarify particular aspects of RFP terms and conditions.

c. Utility Codes of Conduct

Because of the inherent and well-recognized potential conflicts of interest that arise in competitive procurement processes where the utility is both a buyer and potential supplier of power, utilities and their affiliates are typically required to act under "codes of conduct" that limit and/or guide certain types of communications and interactions between utility employees. In particular, these codes of conduct limit and guide communications between the utility's personnel with different functions: the team of individuals developing utility self-build proposals, the team evaluating competitive offers, the team providing estimates of transmission impacts, and the team administering the utility's transmission functions.³⁸ By operating pursuant to these conduct codes and

³⁷ For example, comments to draft RFPs have been requested by utilities in various states, including Georgia, Louisiana, Oregon, and Utah. For example, see, the Georgia PSC maintains a web site providing access to draft RFPs and comments from all interveners. <https://www.gpsc.com/_gpscie/home.asp>. See also, Entergy Services Inc., 2006 Request for Proposals for Long-term Resources, April 17, 2006.

³⁸ For example, see, Georgia Public Utilities Commission Rules, 515-3-4-.04; Utah administrative Code R746-420, Requests for Approval of a Solicitation Process. We also note that FERC's Standards of Conduct govern interactions between utility personnel involved in certain transmission functions and other personnel. See, Standards of Conduct for Transmission Providers (see, e.g., 122 FERC ¶ 61,263, Standards of Conduct for Transmission Providers Docket No. RM07-1-000, Notice of Proposed Rulemaking, March 21, 2008)

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standards, the utility's bid evaluation team is less likely to bias decisions in favor of the utility's or its affiliate's proposals, and the utility's teams developing self-build or affiliate offers are less likely to have advantageous access to confidential information not available to all bidders. IMs often oversee such interactions to ensure that utilities are not in violation of these prohibitions and requirements.

Procurement processes vary in the means by which any offers from an affiliate and self-build proposals are introduced into the solicitation process. In some cases, such offers must be submitted under seal ahead of those of other bidders to provide assurance that these offers have not been shaped with knowledge of information from other proposals.³⁹ In other cases, utilities compare supplier offers against utility or market benchmarks whose content may or may not be known to suppliers prior the submission of their offers. The utility may choose to reject all offers that fail to beat either type of benchmark. In all of these cases, there need to be safeguards so that market participants know in advance the rules for how affiliate proposals and self-build offers will be treated.

4. *Design/Structure of the Evaluation Process*

a. *Evaluation Timing*

The process of evaluating and selecting offers in incremental supply procurements takes at least many months. During this time period, bidders are typically required to honor the terms of their initial offers, which can create financial risk for suppliers due to fluctuations in the cost of construction materials, fuel prices and other cost factors. Because suppliers are likely to add risk premiums to their offers to capture such risks, procurements that minimize the time between submission of offers and awarding of contracts are likely to encourage offers with lower prices, all else equal. By reducing these supplier risks, keeping the evaluation period as short as possible helps to reduce such risks and costs. However, it is difficult to eliminate such costs altogether. The evaluation of incremental resource offers is, by its nature, highly complex and time consuming due to the need for multiple stages of analysis, development of supplemental data, complex production simulation modeling, and multi-attribute comparisons of offers. Thus, an evaluation that is hurried may result in poor resource choices.

While some procurements result in the selection of bidders within three to four months,⁴⁰ it is not unusual for procurements to take significantly longer. In practice,

³⁹ An IM can manage the receipt of supplier bids and dissemination of certain parts of the bids to the evaluation team during different stages of the process as ways to prevent any (intentional or unintentional) preferential treatment.

⁴⁰ For example, in Montana, Northwest Energy's 2004 all-source procurement scheduled roughly four months between bid submission and contract signing. Northwest Energy, Request for Proposals, Issued July 2, 2004. Similarly, PacifiCorp's 2009 RFP was scheduled to achieve a selected offer for more detailed

evaluation periods will reflect many factors such as the number of offers anticipated, the complexity of the required quantitative evaluations given system conditions, the number and complexity of evaluation criteria, and the diversity of supply offers in terms of contractual forms, resource types, and other factors that complicate offer evaluation. Given such differences, utilities should tailor procurement schedules to the types of resources that are being procured.⁴¹

Given the costs of delays in competitive procurements, procurement design should consider taking steps to shorten evaluation periods and taking steps to mitigate against unanticipated events that may create delays. For example, public participation prior to issuance of the RFP may reduce delays by increasing the likelihood that suppliers conform with bid requirements. Similarly, IMs may have to help mediate unanticipated events that lead to disputes or require arbitration of appropriate procedures.

b. Contract Negotiation, Including Model Agreements and Bid Refreshing

Just as with the process to purchase a house, the multi-faceted nature of incremental resource procurements suggests that some degree of negotiation after initial bids are received is inevitable. The extent of such negotiations can vary from relatively minor adjustments in the RFP's model contract terms, to negotiations over payment terms and more substantive elements on contract terms. Allowing broad negotiations after offer selection creates incentives for suppliers to understate initial offers and then attempt to recapture value during contract negotiations. Such broad negotiations may also reduce the transparency of the procurement process. However, some scope for negotiation in the terms of incremental resource agreements is important to ensure that potential modifications that expand the scope of benefits to suppliers and utilities can be considered.

Competitive procurements often make their policies regarding negotiation of contract terms explicit to ensure that both the utility and the supplier have common expectations about the likelihood of such negotiations when initial offers are being reviewed. In particular, utilities have explicitly allowed an opportunity for suppliers to "refresh" offers (usually only downwards) at a pre-determined point in the evaluation process, often after a short-list of offers has been identified.⁴² Allowing suppliers to "refresh" offers

negotiations within three months. PacifiCorp 2009 Request for Proposals, September 2005, Flexible Resource, December 1, 2005.

⁴¹ For example, Southern California Edison's 2006 procurement for new generation includes both a Fast Track (five months) for projects that are well into or have completed development phases and are ready to move to construction phases and a Standard Track (14 months) for projects that are earlier in the development process. Southern California Edison, 2006 Request for Offers, New Gen RFO, Transmittal Letter, August 14, 2006.

⁴² For example, see Benson, Elizabeth, "Report of Elizabeth Benson, Process Independent Monitor of the Entergy Services Inc. 2006 Request for Proposals for Long-term Supply-side Resources," Docket No. U-30192. September 14, 2007.

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may reduce their financial risks given the potentially long delays between bid submission and the awarding of contracts. Of course, such an opportunity also invites suppliers to understate their initial offers. Also, to the extent that there are opportunities for the utility to refresh the cost terms of its self-build proposals, other competitive suppliers should also be given similar opportunities. In some cases, indicative offers are used as a means to move offers into a final stage at which the suppliers sharpen their pencils and refresh their bids.⁴³

Most RFPs include model contracts, which provide bidders with guidance about the utility's preferred terms and conditions and about expected allocations of risk among the buyer and seller which would affect the price terms offered by the bidder. The value of such model contracts is that they provide suppliers with a common set of assumptions about the overall shape of an ultimate transaction. The more these terms parallel those which the utility itself will face if it proposes a self-build offer, the fairer will be the competition between proposals from third parties and the utility and the less likely there will be proposal differences that lead to improper self-dealing.

However, model contracts accompanied by tight limitations on contract negotiations may unnecessarily constrain the range of mutually beneficial agreements between suppliers and utilities. Many utilities recognize the potential cost of such constraints and allow suppliers to propose alternative contractual arrangements as part of their initial offer. In contrast, amendments to model contracts may penalize the supplier's offer, since the bidder is typically prohibited from raising a final offer price relative to the indicative offer. In either case, procurements should clearly state the conditions related to amendments to model contracts to avoid a situation in which some suppliers design their offers around model agreements to avoid penalties, while other suppliers offer amendments to model agreements under the belief they will be able to negotiate a more favorable allocation of risk without being penalized in their price terms.

5. *Commission Reviews of Procurement Process and Results*

State commissions have many opportunities to review and approve particular aspects of the procurement process. Regulators often do so – formally or informally – during certain periods: (1) an IRP process when the utility may be identifying the type and amount of incremental resources it plans to procure and/or build; (2) RFP design, which may occur if the utility proposes a design in advance of implementing the RFP; (3) offer evaluation and selection; or (4) the approval of agreements (or proposed self-build investments) and cost-recovery related to them.

When making such choices, commissions face not unfamiliar problems of balancing their role of providing prescriptive policy guidance and holding the utility management

⁴³ Where this occurs, it is one more instance in which the utility's team responsible for refreshing its self-build offer should not have access to commercially sensitive information from other potential suppliers' bids.

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responsible and accountable for its own decisions. While commissions in some states actively participate in overseeing different stages of procurements, other commissions take a relatively light-handed role in intervening in utility management analysis and decision-making until utility proposals are formally submitted for approval.⁴⁴

A critical issue affecting those states that have chosen to use a competitive procurement process for incremental resources, of course, is the signals sent by regulatory reviews and decisions with regard to the regulators' actual commitment to the competitive process and the assurances regulators will provide with regard to recovery of the costs of transactions emanating from the competitive process. Regulators thus end up balancing competing objectives. On the one hand, they must consider the need to provide assurance to the market about cost-recovery. On the other hand, they need to maintain their ability to act on consumers' behalf to deter imprudent utility actions and maintain "fair and just" energy prices.

Commission rulings that allow the market (and investors) to infer relatively greater commitment to the outcomes of a competitive procurement process may reduce uncertainty about the utility's ability to recover the costs of PPA(s) that result from a procurement. This in turn can reduce the associated regulatory and financial risks, and any cost premiums associated with them.⁴⁵ For complex competitive procurements for incremental supplies, it may be difficult (if not impossible) for regulators to provide utilities with a before-the-fact, iron-clad commitment to allow cost recovery for any transactions that result from a competitive procurement found to have been fully competitive (unless such regulatory authority were sanctioned in a state's legislation). That said, once regulators (or their legislators) have called for reliance on competitive procurements, the actions of regulators to show their willingness to allow cost-recovery of transactions resulting from solicitations found to be competitive will help to buttress a favorable investment climate in the state. Commission approvals may also provide other market participants with greater confidence that the commission supports the outcome of the procurement process. Thus, for example, approval of the utility's proposed RFP process may provide the market with greater confidence that the commission supports the procurement process and that the procurement will eventually result in signed agreements with suppliers.

⁴⁴ Members of the North Carolina PUC have referred to their role as a quasi-judicial entity, which responds to utility/regulatory issues and controversies brought to the commission to resolve. At the other end of the spectrum on procurement issues is the Maine PUC, which is the entity that actually decides what resource(s) to select in the context of procurements and then assigns such resources and related costs to regulated utilities in the state. (Ohio's new law gives the PUC authority to select winning offers of competitive procurements under some circumstances.) In the middle are a large number of states with traditional or hybrid electric industry structures (e.g., Arizona, California, Georgia, Louisiana, Oklahoma) with an array of utility practices, in which the state gives more or less guidance over preferred procurement approaches, and different levels of supervision and decision-making about utility actions in different phases of the RFP process.

⁴⁵ All else equal, the longer that a bidder has to keep its resource out of the market while its bid is being considered by a utility in the course of a procurement, the higher the opportunity costs and other risk premium will be built into the offer price.

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D. IMPLEMENTING THE PROCUREMENT: THE UTILITY'S EVALUATION OF OFFERS

1. Overview

As described earlier, offers to provide incremental resources typically vary along multiple dimensions related to the type and character of resources offered, and the structure of the proposed contractual arrangements. Because incremental supply offers may differ along many of these dimensions, utility evaluations must consider trade-offs across various criteria related to economic, reliability and other considerations. Key criteria for evaluation of offers include:

- Price, on a dollar per kilowatt and a dollar per megawatt-hour basis, reflecting anticipated fixed and variable payments given likely dispatch as part of the utility's system;
- System benefits (related to congestion relief or transmission losses) or costs (in terms of transmission upgrades necessary to enable a resource to power in accordance with the proposed agreement);
- Shifts in risks among the utility, the seller and retail customers associated with various provisions in the contract, such as fuel price indices, availability penalties, collateral requirements of the utility and supplier; and
- Other non-price policy factors and considerations (e.g., environmental impacts, development risk for a new project, the utility's fuel or portfolio diversity, etc.).

A successful evaluation should attempt to account for these costs and risks, assign weights that appropriately reflect the value proposition (and risks) to customers, make comparable evaluations across all offers (including self-build and affiliate offers), and complete evaluations in a timely and efficient fashion to provide proper incentives for bidders.

To reduce evaluation costs and the time between offer submission and selection, evaluations typically proceed in three stages, including: (i) identification of bidders and/or offers meeting basic eligibility requirements; (ii) a preliminary evaluation to identify a "short list" composed of the "best" offers; and (iii) a full evaluation of "short-list" offers to identify a final selection. While most incremental resource procurements follow such a three-step process, there is little uniformity in how (and whether) particular evaluation criteria are considered in each of these stages. However, in general, initial eligibility criteria are utilized primarily to ensure that offers meet financial and electricity market participation criteria necessary to deliver power reliably.

2. *Economic Modeling of the Benefits and Costs of the Offer as Part of the Utility's System*

Evaluation of offers – at least the set of short-listed offers – typically involves an analysis of how an offer and/or groups of offers, interacts with the utility's system. This typically involves a series of simulations of the system with different base-case conditions and with different offers or groups of offers, along with sensitivity analysis exploring the robustness of outcomes under different fuel prices conditions.

Final evaluation of the costs of proposed power supplies, including associated transmission-related impacts,⁴⁶ typically relies on the use of highly detailed production cost models among other things. These models have a long history of use within the context of utility planning and regulatory proceedings. As such, we do not revisit the many issues arising in the proper valuation of the costs of alternative electricity supply resources. Several issues regarding the use of these models within the competitive procurement context are, however, worth noting.

Due to their complexity, production cost models (and their data inputs and assumptions) used to evaluate and compare the economic costs of various offers may have limited transparency to market participants. While frustrating to market participants concerned about whether their proposals have been treated fairly and objectively, there are inherent challenges in opening these processes up for public scrutiny. Competitive procurements may take several approaches to ensuring that modeling is performed in ways that support fair and objective evaluations. First, utilities might rely on the same production cost models used in other regulatory proceedings. Past experience with such models may reduce the cost of oversight of the evaluation process. Second, regulators or independent monitors may review portions of the utility's evaluation studies, perform completely independent evaluations of all offers, or perform evaluations using the same models as the utility's evaluation team. In particular, review of modeling assumptions and data prior to the submission of bids may allow any controversial issues to be identified and resolved prior to the evaluation stage.⁴⁷

To the extent possible, utilities should aim to provide bidders with information about input assumptions used in these models, such as demand forecasts and key parameters of other system resources. This will allow suppliers to shape their competitive offers to be more attractive than other offers. However, utilities may find it prudent under some circumstances to revise these assumptions during the course of the evaluation process, so that evaluations reflect up-to-date market conditions. Procedures for updating data

⁴⁶ In Section VI.D.7, "Transmission", we discuss these types of costs, including congestion impacts, losses, and any transmission-system upgrades that may be needed to integrate a new resource into the utility's transmission system.

⁴⁷ As these evaluations frequently rely on assumptions and models developed as a part of the utility's IRP process, the evaluation structure has already undergone some degree of review. For an example of an independent model evaluation, see, Potomac Economics, Independent Monitoring of the Evaluation of Proposals for Entergy Long-Term Supply-Side Resources, Solid-Fuel Final Report, September 2007.

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should be specified prior to evaluation and be sensitive to concerns about the transparency of evaluation procedures or improper self-dealing.⁴⁸ Certain design procedures might mitigate these tensions, such as indexing key assumptions to publicly available metrics. The involvement of IMs may mitigate such concerns through review of modeling assumptions or implementation of parallel, independent evaluations.

In some procurements, offers are compared to “benchmarks” that reflect estimates (but not actual offers) for a utility self-build facility or purchase of power on short-term wholesale markets. The potential use of such benchmarks may present a dilemma for regulators, however, if they are faced with having to decide what to do in the event that no offers beat the assumed benchmarks, that the benchmarks do not reflect the actual products being procured in the RFP, or that cost-recovery policies for utility self-build proposals do not bind the utility to these benchmarks.

Finally, choice of evaluation methodology may have implications for comparing offers that differ along certain dimensions. For example, comparison of offers of different duration (e.g., comparing a 15-year contract offer to a “life-of-unit” self-build proposal) is sensitive to methodology choice, since these methodologies implicitly make different assumptions about the prices that prevail for periods when offers of different duration do not overlap.⁴⁹ End-effects associated with offers of different duration can have a large impact on overall system benefits and costs, and therefore must be treated with care when evaluating proposals with significantly different terms. Commission guidance on these and similar technical issues prior to issuing an RFP may contribute to more efficient processes in the end.

3. *Economic and Financial Risks*

Competitive procurement of incremental resources involves important questions associated with who bears the burden of the financial and economic risks in power supply arrangements, as between:

- the power supplier (as seller) and the utility (as buyer) in a PPA;
- the utility and its customers in a PPA; or
- the utility and its customers in a self-build proposal in which commissions will eventually determine cost-recovery on the investment.

⁴⁸ For example, see, Staff of the Public Utilities Commission of the State of Colorado, Report on Public Service Company of Colorado’s 2003 Least-Cost Resource Plan, Volume 1: Commission Rules and Practices, Docket No. 07M-147E, June 14, 2007.

⁴⁹ Boston Pacific Company. “Bid Evaluation Methods in Competitive Solicitations: A White Paper on Techniques Used to Evaluate Power Supply Proposals with Unequal Lives,” prepared for Calpine Corporation.

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In fact, because of their ability to influence the allocation of certain risks, competitive procurements have begun to be used in utility settings as a means to address core issues associated with such risks.

The cost of arranging for and obtaining generation services on behalf of retail customers depends on many uncertainties. Regulators are quite familiar with many of these risks: the risk of fuel price increases; the risk that it will cost more to construct a plant than originally expected; the risk that new laws will be enacted that change the future investment requirements and operating costs at a power plant; the risk that a plant will not perform as expected over time; and so forth. Regulators understand these and other categories of risk and have addressed them in a variety of ways over time.

The magnitude of such risks depends on many factors. In particular, three risk factors are important to competitive procurement of incremental supply: (i) the assignment of obligations and responsibilities between the buyer and the seller, as set forth in agreements; (ii) the character of inherent risks associated with the type of resource involved in offers; and (iii) the risks associated with the development status of power plant projects underlying different supply offers.

Table 7:
Illustrative Shifts in Financial Risks for Alternative Supplier Agreement Structures
* = Risk shifted to supplier relative to a self-build with no comparable agreements in place
(illustrative)

Types of Risks (examples):	Engineering, Procurement, Construction Agreement	Asset Purchase and Sale Agreement	Tolling Agreement	Purchase Power Agreement
Development Risks:				
Construction Risk (timing, cost)	*	*	*	*
Operating Performance and Cost Risk				
Fuel Price				*
Heat Rate Performance O & M Costs Specific to a Plant Power Plant Availability			*	*
Regulatory Risk				
Cost-recovery Risk			*	*
Environmental Policy Risk			*	*

Note: Some risks can be shared between suppliers and the utility (and its customers) through various means, such as indexing measures relying on fuel price or construction cost indexes. Indexing can control for market risks, but not idiosyncratic risks associated with supplier performance.

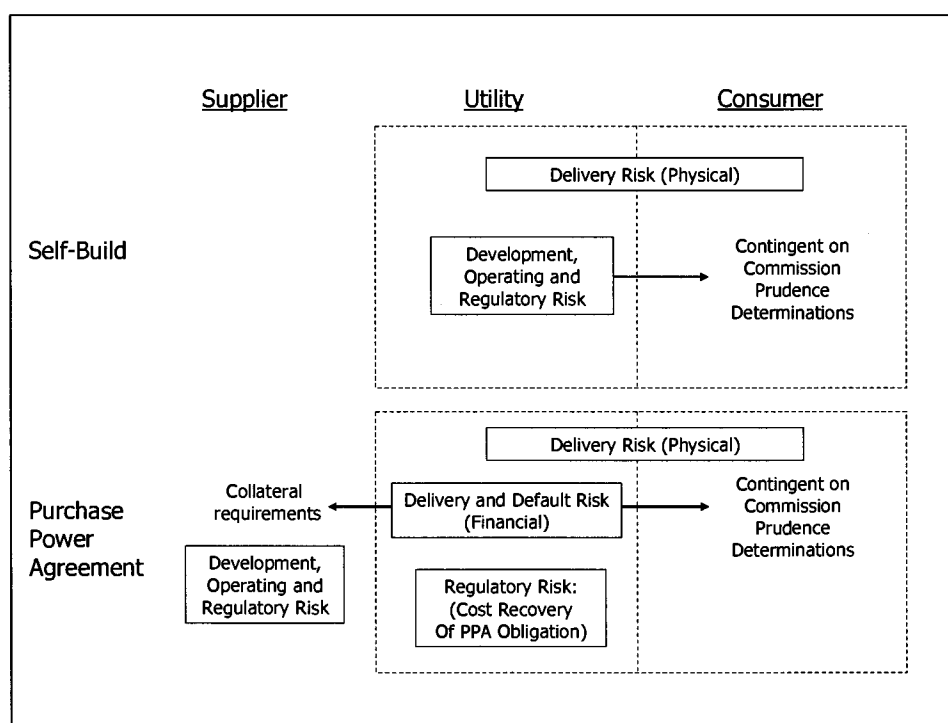
How these risks are allocated between third-party suppliers, the utility (as buyer in a PPA or as a power plant owner) and retail customers is a fundamental issue for utilities and regulators relying upon competitive procurements. Table 7 shows how the terms of PPAs can shift various project risks away from the utility (and its retail customers) to

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suppliers, as compared to utility self-build. With a self-build, these risks are distributed between utilities and customers depending on commission rulings.⁵⁰ By contrast, at the other end of the spectrum are PPAs. These agreements shift many of these risks to suppliers, by requiring, for example, that they deliver replacement power at a certain price even if fuel prices increase or pay other penalties if the plant performs poorly. Other types of agreements, such as those presented in Table 7, shift certain pieces of these financial risks.

The development, operating and regulatory risks identified in Table 7 reflect only a portion of the entire risk story. Figure 1 provides a stylized illustration of the distribution of risks under a PPA, on the one hand, and a self-build approach, on the other. There are various ways to assign responsibility for certain risks identified in Figure 1. For example, default and delivery risks from PPAs can be mitigated through supplier collateral requirements and/or other performance penalties. Also, utility risks from uncertainty over recovery of the costs of contractual agreements made with suppliers (so-called "debt equivalency") can be mitigated through certain measures. The sections that follow provide further discussion of each of these risks.

Figure 1
Illustrative Distribution of Financial Risks of
Self-Build and Purchase Power Agreement Offers for Retail Supply



⁵⁰ Such regulatory decisions include, for example, determinations as to the prudence of utility actions when the it proposes to add investment to rate base (whether at the point when the project becomes used and useful, or over time as new capital investments are required at the facility). Other cost recovery decisions are made over the life of the plant (e.g., utility fuel purchases of fuel and plant operating performance.)

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Other aspects of agreement structure can also impact the distribution of financial risks. For example, financial risks to suppliers can be shifted back to the utility (and its customers) by making energy-related payment terms dependent on market prices as reflected in publicly available price indices, or by making capacity-related payment terms tied to changes in construction cost indices during the construction period. By using these and other mechanisms, utilities and commissions can design procurements to achieve a desired distribution of these risks and – to some degree – avoid the challenges of reliably assessing the economic cost imposed by these risks.

In principle, evaluations should aim to account for the allocation of various risks when comparing alternative supply offers. Figure 1 illustrates how the distribution of these financial risks can vary dramatically between a PPA and a utility self-build project. While PPAs shift much of the development and operational risks traditionally associated with a cost-of-service regulatory model to third-party suppliers, they leave utilities with the risk that regulators may decide not to approve cost recovery for contracted power. Because of this risk, many utilities condition any contracts they sign with bidders (as a result of a procurement) upon regulatory approvals of cost-recovery of contract payments.

Measuring the implications of alternative contractual forms for the transfer of risk is complicated by many factors. First, many of the uncertainties are difficult to quantify given limited information and limited experience with the relevant risk. The shifting of risk is never as tidy as suggested in Figure 1 despite contractual provisions.⁵¹

Second, the relevant financial risks vary not only with contractual form but also with other attributes of suppliers' offers, such as the type of proposed technology. Some technologies (e.g., gas-fired combustion turbines) rely on equipment for which there is significant construction and operating experience; this creates relatively low financial risk. By contrast, other technologies require plant construction tailored to particular site conditions (e.g., large baseload facilities) or have relatively little operating experience (e.g., coal-fired integrated gasification combined cycle facilities). Further, uncertainty in future fuel prices, future environmental policy (particularly with regard to greenhouse gas emissions), and transmission infrastructure availability (e.g., for remote wind power) may create differences in financial risks of competing offers that are difficult to compare.

Finally, a contract framework may not fully capture certain development risks faced by the utility due to its obligation to maintain the reliability of the electric system. Thus, while some contractual provisions, such as collateral requirements, may mitigate certain financial aspects of development and delivery risks, they may not mitigate the physical risk that suppliers fail to develop generation resources needed to maintain system adequacy requirements.

⁵¹ For example, EPC agreements may not fully shift development risks given contractual clauses that provide contractors with opportunities to plea for changes in original agreement terms, including change orders that inevitably occur given the difficulty of fully specifying the facility prior to construction.

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4. *Credit*

Utilities that enter into PPAs face the risk that suppliers will be unable or unwilling to deliver in accordance with the agreement's terms. In parallel, suppliers face the risk that the utility will be unable to pay for contracted-for supplies. These uncertainties create financial risks because utilities may incur higher costs to replace supplies that are not delivered, or because the seller may lose revenues if a utility bankruptcy or regulatory action undermines the utility's ability to pay what is owed to the seller. To mitigate these and other financial risks, utility procurement processes introduce various means to evaluate the credit of sellers and to identify suppliers less likely to impose such risks. In addition, the PPAs can create incentives for suppliers and utilities to fulfill agreements as specified, and can minimize either party's financial losses in the event the other fails to perform.

One typical requirement in competitive procurements is a minimum credit rating that all bidders are required to meet. When used, such criteria should be transparent to suppliers so they have sufficient opportunity to address any credit deficiencies and to avoid such standards from inadvertently excluding suppliers from participating in the procurement.

Potentially more important than these credit standards are the financial guarantees or collateral requirements imposed on suppliers (and in some cases, of the utility as the buyer). These guarantees ensure that the counterparties to the PPA have access to sufficient funds to recover contractual penalties or remedies in the event that either the supplier or the utility cannot fulfill its obligations under the agreement. By ensuring the availability of these funds, the incentive to renege on the agreement's terms is reduced, and funds are available to compensate for the corresponding financial losses, such as utility losses arising from the need to replace power the supplier has failed to deliver.

The following list identifies key issues related to the design of supplier collateral requirements and are discussed in further detail in Appendix B (along with a summary of collateral requirements in selective procurements):

- *The level of financial guarantees.* The level of credit required should reflect a balance between (a) the benefits of insuring against financial losses and creating proper supplier incentives, and (b) the costs of imposing additional financial requirements on suppliers that are likely to increase the price of their offers (or the depth of offers submitted into the procurement). Some methodologies, such as those reflecting mark-to-market accounting, adjust the required level of financial guarantees to market conditions over time.⁵² Utilities that make explicit the assumptions and methodology used in setting required levels of credit

⁵² KEMA, "The Cost of Credit: A Review of Credit Requirements in Western Energy Procurement," prepared for the California Energy Commission, CEC-300-2006-014, 2006, p. 6.

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provide regulators and stakeholders with greater opportunity to assure the reasonableness of these requirements.⁵³

- *Collateral requirements during procurement.* To ensure that suppliers' offers are sufficiently developed and financially credible, some utilities require bid deposits when offers are initially submitted, and/or require financial guarantees of the offers chosen for the "short-list" of considered offers. However, such requirements may act as a barrier to entry for smaller and less-well-financed suppliers, which may be a particular constraint in some procurements, such as those for renewable resources.⁵⁴ As a result of this trade-off, regulators and utilities should carefully consider the likelihood that non-bona-fide offers will be a problem, as regulators/utilities determine whether and what kind of bid deposits and other financial guarantees to require in the initial stages of offer submission and review.
- *Collateral requirements over the contract life-cycle.* The level of financial guarantee necessary to address delivery risk varies over the project's life-cycle, with different risks associated with bid selection, development and operation stages. PPAs should appropriately address these changing realities over the course of the supply agreement.
- *Flexibility in the means of fulfilling collateral requirements.* To minimize the cost to suppliers of providing collateral, utilities can provide suppliers with alternative means of fulfilling these requirements. In addition to letters of credit, financial guarantees from credit-worthy entities, and cash, the utility may consider other forms of guarantee, including second liens, claims to plant warranties or insurance policies, or step-in rights, in which the utility can take-over project development in the event of developer default.⁵⁵

5. **Debt Equivalency**⁵⁶

Over the years, utility obligations made under PPAs with third party suppliers have given rise to concerns about the best way to assess the implications of such financial risks on

⁵³ For example, in PacifiCorp's 2012 RFP process, delays in producing details regarding credit requirements and a justification for the credit approach eventually proposed raised concerns for the Independent Evaluator and various stakeholders. Merrimack Energy Group, Inc., "Report of the Independent Evaluator Regarding PacifiCorp's 2012 Request for Proposals for Base Load Resources" August 30, 2006.

⁵⁴ KEMA reports that short-list deposits for proxy projects in California Renewables RFPs were \$300,000 in three of three of ten RFPs reviewed and over \$1.5 million in another. KEMA, 2006, p.4 and 11-11.

⁵⁵ Aspen Environmental Group and Sentech, "Lowering the Effective Cost of Capital for Generation Projects, California Credit Policies Report, Summary of June 27, 2006 Workshop," prepared for the California Energy Commission, CEC-100-2007-001, 2007.

⁵⁶ Several references provide a broad overview of debt equivalency issues, including: Brattle Group, "Understanding Debt Imputation Issues," prepared for the Edison Electric Institute, 2008; GF Energy LLC, 2005.

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utilities and their investors. In general, there are two issues associated with financial and ratemaking treatment of PPAs that are relevant in the context of competitive procurements.

First, under a PPA, the utility's contractual obligations to the supplier may create a financial risk if this obligation is not matched with a correspondingly firm expectation about the utility's ability to recover such costs from consumers in rates. This financial risk may arise because PPAs set up binding commitments that must be paid under the contract, such as certain fixed payments for available capacity or take-or-pay energy payments. The lack of a corresponding regulatory promise of cost recovery would thus create a potential financial risk for the utility. Second, despite these potential risks, commissions have traditionally treated utilities' obligations to pay suppliers under PPAs as expenses for ratemaking purposes, thus allowing the utility no opportunity to earn a financial return; by contrast, when utilities pursue capital investments (such as self-build power plant proposals), the utility has the opportunity to earn a return of and on its investment. This can affect not only value of the utility's investment opportunities, but also its capital structure, in some circumstances. While not generally recognized as such by commissions, the utility's commitments under PPAs are generally recognized by credit-rating agencies as debt-like obligations on utility balance sheets. Because these credit ratings affect utilities' overall cost of borrowing on debt markets, a PPA might affect a utility's cost of capital irrespective of commission treatment of PPAs. As a result of these issues, utilities are concerned with commission treatment of a number of related issues, including commitment to PPA cost recovery, access to adequate investment opportunities, and the impact of PPA's on utility capital structure. As a result, so-called "debt equivalency" issues have become an area of tension as commissions expect regulated utilities to undertake procurement processes that may lead to PPAs.

Over time, two basic approaches to addressing debt equivalency issues have evolved. In one, these issues are addressed as part of the overall utility ratemaking process. In a utility's rate case during which its capital structure and cost of capital are determined, regulators consider what adjustments (if any) to a utility's allowed returns (e.g., cost of equity, capital structure) are appropriate in order to acknowledge impacts on the utility when it enters into PPAs with debt-like obligations. In the other approach, these issues are addressed during the evaluation of PPAs when the utility compares offers from third parties to those of a utility self-build proposal. In this approach, the utility makes adjustments to the economic cost of PPA offers to reflect the inferred value of the PPAs' impact on the utility's debt costs. (Appendix C provides further details on construction of such adders.)

In general, regulatory decisions about how best to adjust any inferred debt are complicated by the less-than-complete empirical evidence available on the financial risks associated with PPAs versus other means of supply. To date, there is relatively little research that has assessed how alternative means of fulfilling resource needs impact a

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utility's overall cost of debt or return on equity.⁵⁷ In fact, there is even uncertainty regarding how PPAs impact the credit ratings developed by credit-rating agencies. While certain credit agencies have clearly described certain quantitative balance sheet adjustments made for PPAs, they also note that these are only one among many possible adjustments that may affect a utility's credit rating.⁵⁸ However, because many of these other considerations are less clearly described and are more qualitative in nature, determining a PPA's net impact on utility credit ratings is difficult. These considerations again caution against assessment of debt equivalency, or any risk factor, outside of a comprehensive evaluation that accounts for all of the various risks posed by alternative utility obligations and commitments from the standpoint of consumers, while leaving the utility fairly compensated for its financial risks. These issues are normally addressed by commissions in general rate cases in which regulators examine the capital structure and cost of capital of the utilities they regulate.

State policies regarding debt equivalency vary substantially and continue to evolve. A few states have allowed adjustments for inferred debt associated with PPAs in rate proceedings.⁵⁹ For example, in Colorado, Public Service Company of Colorado's equity ratio was increased to account for the debt equivalent value of PPAs on the company's balance sheet.⁶⁰ More common is the use of debt equivalency "adders,"⁶¹ although many commissions have disallowed the use of adders proposed by procuring utilities.⁶² In states that allow the use of debt equivalency adders, the quantitative measure of financial risk used in these adders has varied significantly.⁶³

⁵⁷ One study suggests that PPAs have little effect on a utility's cost of capital, while utility self-builds actually raise the utility's cost of capital. While various limitations to this study caution against reaching any broad conclusions from its results, the results do suggest that it is important to understand the risk tradeoffs posed by alternative agreement forms when assessing the risk posed by any individual agreement. Kahn, Edward et al., "Impact of power purchased from non-utilities on the utility cost of capital," *Utilities Policy* 5(1): 3-11, 1995.

⁵⁸ For example, Standard & Poors notes: "That said, PPAs also benefit utilities that enter into contracts with supplier because PPAs will typically shift various risks to the suppliers, such as construction risk and most of the operating risk." Standard & Poor's. "Standard & Poor's Methodology For Imputing Debt for U.S. Utilities' Power Purchase Agreements," Ratings Direct, May 7, 2007.

⁵⁹ For example, Colorado, Florida, and Wisconsin.

⁶⁰ See Colorado Public Utilities Commission, Final Decision, C05-0049, ¶195, December 17, 2004.

⁶¹ For example, procurements in Florida, Louisiana, and Washington allow debt equivalency adjustments.

⁶² For example, procurements in California, Colorado, Connecticut, and Georgia do not use debt equivalency adjustments. In some cases, this decision was reached as a result of settlement, rather than commission policy. For example, see Public Utilities Commission of Colorado, Order of Settlement, Decision No. C05-0049.

⁶³ "Risk factors," which are commonly used to measure the level of regulatory risk when calculating debt equivalency adders, range from 15% to 50% among procurements we are aware of. Washington allows a risk factor of 40% for take-or-pay contracts, and 15% for other PPAs. Puget Sound Energy, All-Source RFP Pre-Proposal Conference, February 11, 2004, Meeting Notes, as referenced in: GF Energy, 2005. In Louisiana, Entergy's use of a 50% risk factor was approved by the Commission. Potomac Economics. "Independent Monitoring of the Evaluation of Proposals for Entergy Long-term Supply-side Resources, Solid-Fuel Final Report," Exhibit DBP-2. Docket No. U-30192, 2007.

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However, state policies continue to evolve both in terms of how to account for potential inferred financial impacts and the quantitative measure of such impacts. For example, after initially allowing use of inferred debt adders, California has recently precluded utilities from using such adders in its procurements, while recognizing the potential for recovery of potential inferred debt impacts in later rate hearings.⁶⁴ Commissions can also mitigate such risks by increasing assurances about PPA cost recovery, which will likely affect how rating agencies take PPAs into account in their evaluations.

6. *Economic Risk Mitigation Aspects of PPAs*

Under self-build proposals, regulators typically must make decisions about which of the utility's actual investment and operating costs are prudent, used and useful, and therefore recoverable from ratepayers. However, the timing of these decisions is sometimes out of synch with competitive procurement cycles. Therefore, there is a special challenge for procurement processes to deal with the potential situation in which the utility determines that its self-build proposal is more attractive for customers than any of the offers from the market, rejects offers from the market, and then proceeds in pursuit of its own plant.

Under a self-build proposal, it is not until much later on – after actual construction of the facility and in light of the actual costs incurred in doing so – that the utility takes its investment in plant to regulators to determine cost-recovery for the plant. By that time, the original offers from the market may be quite stale and may not reflect what was reasonably known at the time the decision was made to proceed with self-build proposal. The regulator will have to address what market or other information to use in considering the cost-effectiveness of the actual plant as built by the utility and whether the utility's actual costs were prudently incurred. In the end, the utility's self-build costs may turn out to be much higher than anticipated at the time the alternative offers from third parties were rejected.^{65,66} (Similarly, performance of a self-build plant may end up

⁶⁴ California Public Utility Commission, Opinion Adopting Pacific Gas and Electric Company's, Southern California Edison's, and San Diego Gas & Electric's Long-Term Procurement Plans, Decision 07-12-052, December 20, 2007.

⁶⁵ Not only in the past, but also in more recent instances, actual cost overruns for utility self-build facilities illustrate that these risks are real. The history of past nuclear plant cost overruns is well known in the electric industry. See, for example, Bonbright, James C. et al., *Principles of Public Utility Rates*, Public Utilities Reports Inc.: Arlington, VA, 1988, p. 257-8. More recently, self-build projects developed by Entergy in Louisiana and Duke in North Carolina have experienced similar cost increases. See National Economic Research Associates. "Competitive Electricity Markets: The Benefits for Customers and the Environment," prepared for the COMPETE Coalition, 2008, p. 14.

⁶⁶ It is also possible for self-build plants to end up costing the same or less than originally anticipated. A recent example of a utility self-build project which ended up with a lower cost (on a dollar-per-kilowatt basis) than originally expected is Sierra Pacific Power Company's new Tracy Combined Cycle Unit in Nevada. It was originally approved by regulators at a budget of \$421 million for a 514-MW unit, and ended up costing that amount for a unit with a 541-MW unit; in effect, the cost went from \$819/KW to \$778/KW. Sierra Pacific Power Company, Application to Increase Annual Revenue Requirements, Before the Public Utility Commission of Nevada, Docket No. 07-12001, Application Volume 1, Page 2.

being lower than anticipated when it was reviewed.) Determining what portions of these higher costs will be borne by ratepayers will need to be determined by the commission at different points in the life of the investment. Thus, the self-build facility raises particular types of inherent ratepayer risks that generally do not exist for resources supplied under PPAs. While it is possible to impose the same economic discipline on self-build offers as that applied to offers from third parties – such as through contracts that hold the utility to the price and performance terms that it assumed in its evaluations of self-build and third party offers – it is not the norm to do so.

Therefore, PPAs can provide inherent benefits to consumers by shifting these risks to suppliers.⁶⁷ Consequently, evaluations should aim to capture differences in the financial risks associated with different types of proposed agreements (e.g., PPAs and self-build proposals) and differences arising from particular contractual terms, such as the use of pricing terms dependent on fuel indices. Failing to account for risk mitigation will inherently disadvantage offers from third-party suppliers (who must account for such risks when making binding offers and contractual commitments) relative to self-build proposals from utilities (which tend to have such risks at least partially mitigated by the fact that regulatory review is based on actual rather than anticipated costs).

Procurements generally do not consider these risk mitigation benefits when evaluating competing supply offers. Several approaches could address these risks. First, similar to adjustments for debt equivalency, quantitative adjustments for risk mitigation could be developed.⁶⁸ As with debt equivalency, empirical understanding of these risks is limited, although, in principal, adjustments reflecting historical variances between initial and final cost estimates could be developed. Such adjustments may be no less accurate (and potentially more accurate) than current debt equivalency adjustments. We are unaware of any procurements that have utilized such adjustments to capture risk mitigation benefits.

There are other alternatives proposed to adjust for risk mitigation. One approach mitigates a portion of the supplier's risk (whether the utility or a third party) by allowing payments to vary depending on the level of market indices that capture these risks. Examples include the use of a natural gas price index to capture fuel prices risks, and use of a construction/materials cost price index (e.g., for steel and other materials) to capture construction cost risks.⁶⁹ Such approaches, however, do not completely resolve

⁶⁷ Further, incentives to control costs may be improved by assigning these financial risks to suppliers, who bear the full burden of these risks, rather than utilities, who share these risks with consumers. However, assuming that these risk transfers are accurately captured, supplier and utility offers should reflect the potential gains from these improved incentives.

⁶⁸ Boston Pacific Company. "Getting the Best Deal for Electric Utility Customer, A Concise Guidebook for the Design, Implementation and Monitoring of Competitive Power Supply Solicitations," prepared for the Electric Power Supply Association, 2004, p. 16.

⁶⁹ For example, the PacifiCorp 2012 RFP allows 40% of capacity payments to be tied to market indices, and up to 25% to be tied to the Consumer Price Index and up to 15% to be tied to the Producer Price Index for Metals and Steel Products. PacifiCorp, Request for Proposals, Baseload Resources, April 5, 2007, p. 39.

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the inherent differences in risks between PPAs, self-build proposals and other forms of agreement. For example, these approaches typically do not fully mitigate project-specific risk that can be particularly daunting for certain types of projects (e.g., large, capital-intensive baseload plants). In addition, by shifting risks back onto consumers, indexing of payments may be undesirable in terms of other policy goals related to rate stability. As discussed previously, another approach to closing the gap between PPA and self-build risks is to shift development and capital cost risks from consumers to the utility by requiring that the utility agree not to pursue cost recovery for increases in construction costs beyond initial estimates. Thus, the utility would bear the risk of cost increases, which would then need to be reflected in its self-build offer.

7. *Transmission*

The transmission impacts associated with particular incremental resource additions can vary considerably from one proposal to another. These transmission-related costs can include the costs of connecting the facility to the transmission network, changes in overall system production costs arising from congestion on the transmission system introduced by the operation of the new facility, and any costs associated with upgrades on the transmission network needed to enable the new resource to qualify for network service.

In comparing the value of incremental supply offers to retail customers, utilities therefore must not only examine the direct costs to purchase power supply but also the indirect costs arising from the manner in which an offer interacts with the utility's system dispatch and the impact (if any) of the output from the proposed resource on power flows on the utility's transmission system. As part of this analysis, competitive solicitations typically must involve evaluation of any transmission-system upgrades needed to deliver the proposed resource(s) to target customers. The costs of congestion and/or transmission upgrades necessary to achieve deliverability are an important consideration in resource procurements.

In the context of competitive power procurements, there are two important concepts associated with a proposed resource's deliverability:

1. *Interconnection* – This refers to the transmission connection between the generation facility and the existing transmission network.
2. *Integration* – This refers to any changes to the transmission system that may be necessary to enable new generation resources to meet load requirements and meet relevant reliability standards.

The costs of interconnecting generating facilities are relatively predictable. A bidder may be able to develop its own rough estimates to interconnect its facilities to the

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grid.⁷⁰ Typically, competitive procurements require the developer of the generation resource to bear such interconnection costs.⁷¹

By contrast, the costs to integrate fully a new resource into a system are likely to vary dramatically across systems, and across particular regions or nodes within a system. The costs may also vary depending on whether the resource is intended to supply firm or interruptible power under a variety of system contingencies. Typically a bidder will not have the detailed technical information necessary to calculate integration costs. Complex modeling of the transmission and generation systems is needed to identify what facilities are needed and then to estimate their costs. For example, in some cases, adding a new facility may delay the need for a planned transmission facility, and in other cases, the new generating resource may hasten the need for transmission upgrades. In the end, cost estimates for both interconnection and system integration enhancements rely on studies and engineering specifications developed by transmission providers, with these studies themselves taking time and money to accomplish. Because the cost of such system enhancements may differ between competing offers in competitive procurements, utilities should aim to find efficient and timely ways to obtain estimates of these costs.

Procurement design for incremental resources therefore must address several key issues related to transmission costs:

- ***Identification of transmission-related costs to include in the review of alternative offers*** – What might seem like a straight-forward issue in theory typically turns out to be quite complicated in practice. On the one hand, it is clear that if incremental offers for generation resources have different implications for transmission system integration costs, then utilities seeking to understand which offer provides the best value to customers should look not only at the direct costs associated with the generation offers, but also take into account their indirect costs (e.g., transmission system upgrades.) This should be the goal, but there will be important technical issues that must be addressed to accomplish this objective in a way that dovetails well with other features of the

⁷⁰ Interconnection costs reflect the costs of the engineering and construction of transmission wires and other equipment necessary to connect new resources to the existing transmission network or to increase transmission capacity for re-powered facilities that will increase net output. Existing generation facilities or re-powered facilities not increasing net output typically do not incur any additional interconnection costs. The transmission company generally provides estimates of interconnection costs for all bids if bidders have not already obtained such estimates through prior requests for interconnection.

⁷¹ Although there have been some allegations of bias in the interconnection cost estimates used to evaluate self-build or affiliate proposals, concerns about non-comparability of interconnection costs appear less serious than those related to integration costs. Further, it is likely easier for independent monitors to identify non-comparability for interconnection costs than for integration costs. (For example of such allegations, a report from the Colorado Public Utility Commission Staff noted that Public Service of Colorado estimated interconnection costs at \$4.5 million for their self-build option while assessing interconnection costs of \$60.5 million to other offers for similar coal-fired facilities. Staff of the Public Utilities Commission of the State of Colorado, "Report on Public Service Company of Colorado's 2003 Least-Cost Resource Plan," Volume 2, Docket No. 07M-147E, June 29, 2007, p. 26.)

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procurement process. First, in procurements for new resources, some specific generating project proposals may not have advanced far enough in the development process to be captured in studies by the transmission provider. The depth of the information available about congestion impacts, system upgrades, and facility cost estimates thus may vary significantly across offers. The planning studies and detailed technical analyses of such transmission issues are typically conducted by the transmission provider and can be costly and take time to complete. Therefore, a utility should anticipate the need for planning studies in advance of a procurement, and may find it useful to ask for appropriate studies to be performed as part of the transmission provider's transmission planning process (under FERC's Order 890).⁷² The results of such studies can assist the utility in developing proxy cost estimates for integrating certain types of facilities located in different areas on the system.

- ***Bidder information on transmission costs*** – Although transmission-system integration costs are often an important component of a utility's economic evaluation of bids, such costs may not be well known to prospective bidders prior to submission of their offers. Without such information, bidders may not have a good sense of whether their proposals stand a good chance of winning a procurement. Given this uncertainty, utilities and transmission companies should attempt to provide bidders with information that will provide guidance about the relative costs of integration across alternative locations. Analyses performed by transmission providers when undertaking planning studies and specific network impact studies provide a useful source of information for utilities in their evaluation of the costs of integrating new generation into the system. These public processes and their results can also provide insights to market participants about possible cost advantages or disadvantages of offers located in one area or another. In addition, such information will help to explain (in part) the outcomes of the utility's evaluation of how individual offers interact with the utility's current portfolio of resources. Using this or other available transmission information, utility RFP documents should assist bidders by identifying to the extent possible such things as: any favored delivery points given the existing configuration of loads and generation in the network; locational information about a benchmark resource;⁷³ or information about likely integration costs.⁷⁴

⁷² See, for example, FERC Order 890, Section V.B (Coordinated, Open and Transparent Planning), 2007, paragraphs 418-551; 18 CFR Parts 35 and 37 (Docket Nos. RM05-17-000 and RM05-25-000; Order No. 890) Preventing Undue Discrimination and Preference in Transmission Service (Issued February 16, 2007).

⁷³ For example, regulations in Florida require identification of details about the self-build option being pursued by the utility, including the proposed location. Such information is required to be accurate and any revisions to such information are to be provided to potential bidders in a timely fashion. Reliant Energy Power Generation, "Amended Complaint of Reliant Energy Power Generation, Inc. Against Florida Power and Light Company," Florida Docket 020175, May 17, 2002.

⁷⁴ For example, Georgia Power Company's 2010 RFP provided information on regions of the Southern Company's Control Area that are likely to have higher integration costs and more "difficulty meeting transmission firmness requirements." Georgia Power Company, 2010 Request for Proposals, March 22, 2006.

- ***Bidder assumptions about who pays for system integration costs for winning offers*** – In theory, the transmission-related costs associated with individual offers can be borne by either the bidder or the utility soliciting the offers. Most utility procurements require that bidders assume in their offers that they will absorb the costs to interconnect their facilities to the grid. But procurements for incremental resources have varied with regard to assumptions about for transmission upgrades needed to integrate the facility into the system. On the one hand, there are instances where procurements have required that bidders assume that they will directly have to absorb the costs of any incremental system upgrades associated with its project; in these instances, a reasonable bidder will construct a bid that allows for recovery of such costs as part of the purchase of power from the project. Other competitive procurements have incorporated a different assumption – that is, as long as a bidder's resource is located in or delivered into the utility's service area, the bidder should assume that it will not have to directly absorb system integration costs if the bidder's project is selected by the utility.⁷⁵ These two approaches can introduce quite different assumptions into the price of power supply bids. In the former type of bid, on-system transmission integration costs may be built into generation prices; in the latter, generation offer prices do not incorporate system integration costs and differences in transmission-cost implications of alternative offers are accounted for in the utility's evaluation of those offers. In the end, either way approach leads to a result in which the transmission costs associated with winning (and approved) offers will inevitably be born by consumers, whether it is through inclusion of such costs in suppliers' bids or through distribution utilities' charges to their retail customers to support transmission investment needed to deliver power to them. However, the size of these costs may not be the same under both circumstances. For example, suppliers facing the requirement that they pay for transmission system impacts, but with limited information useful to determining such costs, may add price premiums to their offers to account for such uncertainty.
- ***Transmission study timeliness and cost*** – Because transmission system planning studies can be time consuming, expensive and otherwise resource-intensive,⁷⁶ these studies have the potential to create a bottleneck in evaluation

⁷⁵ Some procurements have attempted to level this playing field by treating all offers as though they have network status. For example, the Georgia Commission required Southern to treat all bidders as competing network resources in its 2005 RFP. ("... in order to mitigate the relative size of Southern and to increase alternative supplies, the Commission required Southern to treat unaffiliated entities as if they are competing network resources in meeting load and load growth." Calpine Corporation, "Protest and Alternative Request for Hearing of Calpine Corporation", FERC Docket No. ER03-713-000, April 29, 2003.)

⁷⁶ The cost and time of a full system impact study may place real constraints on how these studies are used in the evaluation stage of a competitive procurement process. Most procurements rely upon a preliminary transmission analysis for early stages of the evaluation process, both to lower the cost the evaluation and complete these initial assessments in a timely fashion. Once the initial evaluation stage has identified a short-list of the most competitive bids, full system impacts studies are then performed for bids on this short-list. For example, see the Georgia Power 2009 RFP (Accion Group, "Report to the Georgia Public Service Commission on the Georgia Power Company 2009 RFP," p. 27.) Also, the Entergy Louisiana Little Gypsy 3

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procedures unless care is taken by utilities to plan their requests to transmission providers in ways that support competitive procurements. The time required to complete such formal planning studies has led some utilities to develop less costly and quicker approaches to estimate the cost of system impacts and needed transmission investments for use in evaluating procurement supply offers.⁷⁷ Such approaches help to identify the relative cost implications (for transmission and dispatch) of various resource options within a reasonable time frame; and it reduces the number of formal studies that eventually need to go through the transmission provider's formal transmission planning studies and/or facility review processes.

- ***Comparability of transmission-related costs*** – Estimates of system integration costs should be developed in ways that do not introduce unfair or undue discrimination among offers from third-parties, affiliates and the utility's self-build proposal. The complexity and "black box" nature of system impacts studies raise many challenging issues for ensuring such comparability.⁷⁸ In situations where the utility's competitive procurement team is reviewing offers from third parties, the utility's affiliates and any self-build proposals from the utility itself, an independent evaluator should review the comparability of any methodologies and the basis for cost estimates prepared by the utility team to review the offers.

For some types of resources, such as wind power, procurements have also had to address the "chicken and egg" problem of coordinating the timing and commitment to large transmission investments necessary to interconnect and integrate new resources on to the grid. Wind resources typically require both large interconnection investments, due to their remote locations, and potentially large integration investments to avoid regulation and loop flow problems that may arise due to sudden power variability.⁷⁹

The complexity of these various transmission-related issues suggests that competitive procurements should include clear ground rules about the transmission-related assumptions to be used in preparing all bids and evaluating all offers (including self-build proposals). As a result of the complexity of these transmission issues, oversight by independent monitors may be important to ensuring bidder confidence and enforcement of procurement rules.

procurement (Potomac Economics, "Independent Monitoring of the Evaluation of Proposals for Entergy Long-term Supply-side Resources, Solid Fuel Final Report," September 2007).

⁷⁷ Some procurements have considered the use of initial preliminary estimates in later stages of evaluation should system impacts studies be delayed. For example, see Benson, 2007, p. 40.

⁷⁸ For example, see, Accion Group, "Report of the Independent Evaluator, [Georgia Power] 2010 and 2011 RFPs, Re: Draft RFP Documents," November 21, 2005, p. 4.

⁷⁹ See, for example, "Oregon Department of Energy's Reply Comments on Bidding Guidelines," Oregon Docket No. UM 1182, October 21, 2005. Also, see the approach adopted by the California ISO to support interconnection and integration of "energy resource areas," such as areas with the potential to develop wind resources. 119 FERC ¶ 61,061, Order Granting Petition for Declaratory Order, California Independent System Operator, Docket No. EL07-33-000 (Issued April 19, 2007).

8. *Other Non-price Criteria and Bid Requirements*

While some “non-price” price criteria, such as transmission impacts or certain financial risks, may be quantifiable in dollar terms, other non-price factors that impact the value of a competitive offer may be difficult to measure on such terms. Such “non-monetized” criteria may include factors such as development risk, contribution to the overall fuel diversity of the utility’s portfolio, environmental benefits, and operational flexibility.

There is substantial variation across procurements in which non-price factors are considered, and which non-price factors should be introduced via non-monetary metrics or other subjective approaches. (Appendix D provides details on the criteria considered in selected competitive procurements and whether these criteria are evaluated in monetary or non-monetary terms.) Some procurements include few non-monetized criteria, while others include many. There are obvious but nonetheless difficult tradeoffs in reliance on many of these criteria. While non-monetized factors may reflect important policy or service objectives, they also may increase the subjectivity of evaluation outcomes and increase the opportunity for preferential treatment of the utility’s self-build or affiliate offers.

The means by which non-monetized criteria are evaluated and compared also varies significantly. An important issue is whether non-monetized factors are used as threshold eligibility requirements that proposals must meet in order to proceed to further evaluation and possible selection. Because such threshold criteria serve to leave some offers outside the door while others are able to proceed, these criteria must be chosen with care. In practice, their use is generally limited to factors that are in some way essential to a proposal’s success, such as technical requirements (e.g., location of the resource on the system) or minimum supplier credit-worthiness. Winnowing out potentially valuable offers from consideration because of non-essential considerations can undermine the goal of providing the “best” resource options to consumers. To the extent they are used, such eligibility criteria should be stated explicitly in RFP documents to ensure that suppliers have an opportunity to fulfill such criteria and/or determine that it is not worth expending resources to prepare a bid.

For offers meeting these eligibility requirements, the further assessment of non-monetized criteria can take many forms. These assessments may range from evaluations that explicitly score and weight identified criteria to those that simply list non-monetized criteria that will be considered by the utility using their discretion. These alternatives balance several factors. Explicit scoring and weighting provides transparency to bidders, independent monitors and commissions, but may lead to evaluations that constrain the utility’s ability to exercise appropriate judgment about these non-monetized criteria. Choices made by firms every day reflect these types of judgments about non-monetized factors, similar to the types of judgments made by homeowners when choosing a construction contractor. While procurements that simply identify relevant non-monetized criteria provide evaluators with flexibility in how such factors are considered, however, they may provide the utility with a subtle and difficult-to-trace way to exert improper preferential treatment for or against certain supplies. For example, in some circumstances, bids have been eliminated in the initial review or short-list stage due to concerns about the viability of the resource given information on:

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project schedules; engineering, finance and permitting status; credit-worthiness; and other considerations.⁸⁰ In particular where utility self-build proposals or affiliate offers are involved, regulators should scrutinize the use of non-monetized criteria and expect to rely on on-the-ground oversight from an independent monitor to help ensure that such criteria are not used to improperly exclude certain offers from consideration.

⁸⁰ For example, several offers in PacifiCorp's RFP that lead to a proposed self-build were eliminated due to such factors. Oliver, Wayne. "Direct Testimony of Wayne Oliver on Behalf of Division of Public Utilities," Docket No. 04-035-30, DPU Exhibit 2.0., September 27, 2004, p. 21-22.

VI. PROCUREMENT OF FULL REQUIREMENT SERVICE

A. OVERVIEW OF FRS SUPPLY PROCUREMENTS

Utilities in states with competition for retail generation service typically do not rely upon incremental resource procurements. Instead, these utilities generally procure so-called full-requirement service ("FRS") products. In these states, utilities retain certain service obligations to provide supply for certain retail customers and yet may have no (or insufficient) generation resources to supply these customers' needs. This is true in states where the utilities divested most if not all of their generation assets and long-term supply agreements as part of industry restructuring. In these states, commissions have typically developed policies affecting the design and implementation of FRS procurements, which often reflect requirements embedded in each state's electric industry restructuring legislation.

In FRS procurements, suppliers submit offers to provide all electricity services for a standardized block (slice, or share) of the distribution utility's customer load. By standardizing the components of FRS and the terms of FRS contracts, price becomes the only factor differentiating offers from potential suppliers. Thus, the utility selects the offers with the lowest prices, after identifying sufficient blocks to supply customers' demand requirements. In most cases, the utility is the contracting agent, and in effect passes through the cost of buying power supply from the selected FRS contractors.⁸¹

By eliminating subjectivity and complexity from the evaluation of offers, the price-only nature of FRS procurements provides many benefits. For example, in those FRS procurements involving highly structured auctions (such as New Jersey, described Box 3), minimum procedural safeguards are needed to protect against self-dealing; the safeguards relied up are an independent auction manager, code-of-conduct requirements, and various monitoring procedures to deter outright bid rigging. Because price is the only factor affecting the choice of winning offers (assuming all bidders have met eligibility requirements), the evaluation process leaves little opportunity for improper assessment of offers. Consequently, participation of unregulated generation affiliates does not generally require additional safeguards to protect against improper self-dealing.

⁸¹ The particular components of these products vary across utility service areas depending on the particular products offered in wholesale markets administered by Regional Transmission Organizations, transmission tariffs, and state requirements on electric generators (e.g., renewable portfolio standards). In the case of New Jersey, for example, full requirements service includes fifteen products from various markets. There are some deviations from these generalizations. Some commissions have excluded certain products from FRS contracts due to pending regulations that increased the uncertainty of the associated costs for suppliers.

COMPETITIVE PROCUREMENTS OF RETAIL ELECTRICITY SUPPLY**Box 3****New Jersey's Procurement of Full Requirements Service
(or "Basic Generation Service")**

As part of its restructuring legislation, New Jersey's major electric distribution utilities undertake competitive procurements for the provision of electricity services to customers that continue to take Basic Generation Service ("BGS") from the utility. Utilities procure BGS supply through auctions using a "descending-clock" mechanism. In this type of auction, the utility posts a price and suppliers submit offers for the share of the utility's customer load they are willing to supply at that price. If there are more offers for supply blocks than are needed, the auction manager lowers the price in succeeding rounds of bidding until bidders offer just enough power to satisfy the utility's load requirements. Binding agreements are signed shortly thereafter, which allows the bidders to develop financial positions to hedge the financial risks of their BGS supply contracts. Winning bidders must also post sufficient collateral to mitigate the risk of defaulting on their supply commitments to the utility. Auctions are held at the same time for all affected utilities in New Jersey, although each utility procures supply for its own customers. The rules for these auctions have been relatively consistent since the first auction in 2001.

Bidders must meet certain eligibility requirements, but do not need to own generation facilities. Suppliers are responsible for needed components of supply (including energy, baseload energy, capacity, renewable credits, ancillary services, and so forth). And it is up to the supplier to determine over time what mix of resources (and what combination of physical supply contracts or assets and financial arrangements) to rely upon to service the BGS supply contracts.

The auction starts with all potential bidders submitting indicative bids prior to the auction to help determine appropriate starting prices. The auction occurs over one to two days, with new rounds occurring at relatively frequent intervals within the auction period. Various bidding rules are imposed to improve price discovery and mitigate against strategic manipulation intended to raise auction prices. For example, bidders that chose not to offer supply in one round are prohibited from bidding in subsequent rounds. A variety of supply blocks (for different customer classes (e.g., a commercial supply product) and for different utilities) are auctioned in parallel, and bidders are allowed to shift their bids between product auctions over the course of the auction, until it closes. Affiliates may offer supply into the BGS auctions.

Currently, three-year contracts are procured for one-third of each utility's load in each year. Pricing terms vary depending on the type of customer being supplied. Supply for residential and retail customers is set at a fixed price over the three-year contract, while supply for customers with loads exceeding certain thresholds is set at a price that varies by hour.

The process is overseen by an independent auction manager/monitor hired by the utilities. The auction manager must approve the auction results in order for them to be forwarded to the Board of Public Utilities ("BPU"). The BPU has two days to approve the results of the process. In total, the auction takes about six days from the time the auction is held to the time when contracts are signed and approved.

The design of FRS procurements also has important implications for the distribution of financial risks associated with providing supply. By requiring that each supplier construct its offers and then commit to arrange for and manage all aspects associated with supplying electricity for a share of the utility's entire customer load, the utility effectively shifts important financial risks from itself to the competitive suppliers. One type of risk is the portfolio risk associated with constructing whatever mix of short-, medium- and long-term financial and physical arrangements the supplier believes are necessary and appropriate to service the contract. Another type of risk is the volumetric risk that arises from uncertainty about the size of customer load; this risk is particularly sensitive to the migration of customers to and from the utility's service territory.

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Experience with FRS procurements varies across states depending on the implementation of industry restructuring, and particularly the duration of transition rate caps. While some states (e.g., New Jersey, Maine, Massachusetts) have many years of experience with FRS procurements, many other states' experiences are significantly shorter, particularly where transition rate caps and associated supply contracts have limited supply procured through FRS procurements.⁸² Despite this variation in experience, because of many common design elements across states, existing experience provides a good basis for developing lessons about FRS procurements.

Most FRS procurements follow a common format: first, information about FRS products, the procurement approach, and a procurement schedule is released to bidders in advance of the actual date when offers are to be submitted. Because of experience with past FRS procurements, few recent changes in rules or products between procurements, and the opportunity to ask clarifying questions, these procedures are generally well understood by bidders in advance of submitting their offers. Next, bidders submit offers in accordance with specified procedures. Utilities then select winning bids, and regulators generally approve results within a short period of time. As an example of an auction style of FRS procurement, Box 3 describes the basic elements of FRS procurements in New Jersey.

Some states with retail competition are undertaking or considering policy changes with potentially important implications for competitive procurements. For example, several states have undertaken or are considering requirements that utilities develop integrated resource plans to identify potential resource deficiencies.⁸³ Some options for addressing resource deficiencies potentially alter current reliance on FRS procurements for procuring supply. Box 4 summarizes some of the revisions being undertaken or considered in different states.

Because these changes may lead to increased reliance on incremental resource procurements, lessons from such procurements as used by vertically integrated utilities may be valuable for providing insights into design issues. These changes may also have implications for future FRS procurements. So far, the relatively simple structure of FRS procurements arises because utilities procure all customer supplies through these procurements. However, in the future, procurements processes will need to accommodate both of these activities. For example, a utility that is supplying peaking resources itself will also be procuring FRS products in some form. At a minimum, such

⁸² In many states that restructured their electric industries to allow for retail competition, customer choice and encouragement of divestiture of utility assets, the transition periods involved situations where distribution utilities met their customers' supply requirements through initial long-term "transition supply" contracts. This was true, for example, of Illinois, Massachusetts, Pennsylvania, and Rhode Island, among others. The presence of these multi-year supply contracts accompanied by transition rate periods meant that distribution utilities did not need to procure other supplies for many years. As these contracts have expired with the end of transition rate caps, distribution utilities have had to rely on FRS procurements to procure all supply for their customer.

⁸³ Delmarva Power & Light Company's Delaware IRP Update, March 5, 2008. Delaware PSC Docket No. 07-20. Integrated Resource Plan for Connecticut, January 1, 2008.

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changes may lead to a re-definition of the utility's need for supply beyond its own assets and agreements, may shift some volumetric risk back onto rate payers, and re-introduce certain portfolio management responsibilities to the utility.

Some elements of the design of FRS procurements can have important implications for their success in terms of achieving an efficient and timely process, encouraging supplier participation, and developing the best offers for consumers. We discuss these further below.

B. PRODUCT DEFINITION – DIFFERENT TYPES OF FULL REQUIREMENT SERVICE SUPPLY

How FRS supply products are defined is an important means by which regulators may influence the consequences of FRS procurements for ratepayers. The early FRS procurements often sought to procure all service for all customers through a single procurement, so that consumer rates tended over time to closely follow changes in wholesale market prices. In recent years, regulators in many states have attempted to mitigate the resulting rate volatility arising from FRS procurements in a number of ways.

One approach to mitigate price volatility is to increase the duration of full requirements contracts. Procuring supply through longer-term contracts (e.g., two or three years) reduces price volatility by reducing the frequency of power purchases. A second approach to mitigating volatility is to pool or average procurements over time by procuring only a portion of load in each auction. By staggering procurements, customer prices at any point in time are based on a blend or rolling average of prices from different points in time.⁸⁴ Finally, volatility can be mitigated through the pricing terms offered to customers. Supply agreements (and thereby customer rates) can be set based on flat, non-varying rates over the duration of the agreement, or designed to vary by hour, day, or season in a predictable fashion over the agreement's duration.

Regulators' decisions about mitigating price volatility often seek to balance potentially competing policy tradeoffs. On the one hand, reducing rate volatility may shield consumers from certain undesirable economic consequences. However, shielding consumers from price volatility may inadvertently slow the development of competitive retail markets in these retail access states, as well as preventing customers from seeing the true cost of supplying power. This latter effect blunts price signals that might otherwise better inform customer decisions about using electricity or reducing demand.⁸⁵

⁸⁴ Mixing contracts of different duration allows a blending of long-term contracts that stabilize prices and shorter-term contracts that may create fewer stranded cost and cost recovery risks for the utility.

⁸⁵ In states where competitive retail options exist, customers can mitigate rate volatility, and thereby avoid facing current market prices in all hours, by contracting with competitive retail suppliers offering fixed price service. In this case, however, the choice is made by the consumer, rather than the regulator.

Box 4

Elements of Evolving Regulatory Frameworks in States with "Hybrid" Full Requirements Service Procurements

Utility participation in resource procurements – In Connecticut, new legislation requires that electric utilities obtain certain new generation resources. Connecticut Light and Power, and United Illuminating were required to submit a self-build proposal for new peaking capacity. Third party suppliers were also permitted to make offers for peaking capacity. The legislation specified that suppliers be compensated based on a traditional "cost plus" regulatory model. In Ohio, a recently enacted law (127 SB 221) preserves the right of customer choice previously established in the state and retains the utility's standard offer requirement. The law allows a utility to propose a market rate option ("MRO") under some circumstances (e.g., existence of forward price benchmarks, and an RTO with a market monitor having certain roles and responsibilities), or an "electric security plan" (that allows the utility to undertake its own generation investment). If approved by regulators, the MRO must use open competitive bidding for establishing the suppliers and prices of MRO service; the law sets forth findings the Commission must make in order to approve the results of the competitive solicitation.

Utility procurement of resource portfolio – In Delaware, Delmarva power was required by legislation to pursue long-term supply contracts as a part of an IRP process. Delmarva is now in the midst of procuring a portfolio of new peaking generation resources, wind power resources, demand-side management and energy efficiency programs, short- and long-term bilateral contracts, and market purchases. State agencies have recently issued rules on utility portfolio development and management, and the terms of individual procurements.

Long-term contracts – A number of states are considering or have allowed utilities to enter into long-term contracts to provide supply for their customers on standard offer service. In Maine, for example, regulators have directed utilities to enter into long-term contracts, with a particular focus on capacity resources. Massachusetts recently passed a new "Green Communities Act" (July 2008) with requirements that utilities enter into long-term contracts with renewable suppliers for up to 3 percent of the utility's load.

Government involvement in procurements – The recently enacted Illinois Power Agency Act (2007) calls for the formation of a state agency with the power to construct and operate power generation facilities, procure supply through contracts with market participants, and sell power "at cost" to customers. Retail service provided by the state power agency would not replace standard offer service provided by the utility, but would offer customers an "at cost" alternative to standard offer service and service offered by existing competitive retail suppliers.

Procurement of renewable and/or alternative energy attribute credits – Under policies adopted by New York regulators, the state uses a hybrid approach to implement its renewable portfolio standard requirements. Electricity customers pay for renewable energy credits through a non-bypassable payment on their utility bills. The funds collected are used by the New York State Energy Research and Development Authority ("NYSERDA") to purchase renewable energy credits ("RECs") from renewable power suppliers; a single-clearing price auction process is used to make awards and sign contracts for different quantities of RECS for different contractual durations. New York's utilities have recently been directed to pursue renewables more directly, as well. In Pennsylvania, utilities are responsible for compliance with the state's Alternative Energy Portfolio requirements. PECO Energy has been authorized to use a competitive process to procure and bank Alternative Energy Credits ("AECs").

As a result of these competing goals and particular customer attributes, regulators and utilities often design standard-offer products – and the procurement of supply for them – to meet the different needs of different customer classes. Products for residential and small commercial customers are typically designed to minimize price variation through

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use of overlapping, two- to three-year contracts with fixed prices. By contrast, products for larger customers (i.e., customers above some pre-determined load threshold) generally follow market prices through single, short-duration (e.g., three-month) contracts with prices that vary by month or hour. Regulators appear more willing to shield smaller customers from market volatility given the fewer number of competitive suppliers available to them and, potentially, other policy concerns. Appendix E provides examples of different types of FRS products currently being procured in different states.

Utilities and their regulators may choose to mitigate certain risks facing suppliers in order to encourage participation in FRS procurements and avoid high risk premiums associated with particular regulatory uncertainties. For example, multi-year contracts may create risks for suppliers when significant policy changes loom on the horizon, such as now may exist with climate change legislation, or the adoption of a new capacity market in the relevant Regional Transmission Organization region. Given such uncertainties, some states have eliminated certain products from those procured as a part of FRS procurements, including potential renewables requirements and capacity market products.⁸⁶ Some states have even attempted to limit supplier's volumetric risk by placing limits on the extent to which the supplier's load obligations can shift over time give potential customers' migration.⁸⁷

C. PROCUREMENT APPROACH – AUCTION AND REQUESTS FOR PROPOSALS

FRS procurements have been implemented through either single-price auctions, such as the descending-price clock auctions used in New Jersey (described in Box 3), or RFPs with sealed bid offers. To date, descending-price clock auctions have been used in several states, most notably, Illinois in addition to New Jersey, while other states rely on sealed-bid RFPs.

Under a sealed-bid RFP, bidders provide a single, binding, sealed offer that specifies the quantity they are willing to supply and the price demanded to deliver that supply. Utilities select the lowest-cost supply from among these offers and the price paid to each supplier reflects that supplier's offer price ("pay-as-bid"). By contrast, under descending-price clock auctions, suppliers submit multiple offers until the market clears, and suppliers are all paid the same price (the "single clearing price".)

In principle, clock auctions produce lower prices by promoting price discovery through multiple rounds of bidding and eliciting bids that better reflect underlying economic

⁸⁶ For example, in the past, Maryland utilities have exempted suppliers from future renewables requirements and Massachusetts utilities have exempted suppliers from uplift and capacity requirements. Maryland Utilities, "Maryland Utilities' Request For Proposals for Full Requirements Wholesale Electric Power," Pre-bid Conference, December 12, 2006. *See also*, Competitive Procurement Survey Response from Massachusetts.

⁸⁷ For example, starting in June 2008, power (MW) supply obligations under Maryland utility FRS contracts are capped at a fixed quantity. Any increase in supply obligation beyond this cap as a result of customer migration or other factors is the responsibility of the utility. Maryland Utilities, 2006, p. 63-65.

costs.⁸⁸ Although they impose greater cost and complexity on administrators and market participants, the overall cost of implementing such auctions is likely to be modest relative to the total value of services procured in these auctions. While clock auctions provide better performance in principal than pay-as-bid RFPs, empirically demonstrating the magnitude of this benefit (if any) is difficult.

Under either type of procurements, bidders may be required to submit preliminary or "indicative" bids prior to the actual RFP or auction. These indicative bids may be used to determine initial prices in clock auctions and provide information to commissions useful for performing a preliminary assessment of likely market prices and the competitiveness of market response.

Such information may also be used as a part of procedures designed to protect against unanticipated, adverse procurement outcomes. For example, Maryland has developed a price anomaly procedure, under which higher-price bids may be rejected if average prices exceed thresholds designed to reflect current market conditions.⁸⁹ In other states, the commission has the authority to delay a procurement in the event of unforeseen events that may undesirably elevate market prices (e.g., hurricanes.)⁹⁰ Use of these procedures has potential implications for other aspects of procurement performance by, for example, increasing supplier uncertainty and leaving the utility out of compliance with other state regulations. For example, Massachusetts utilities would be unable to fulfill state requirements that they post rates in advance of providing service to customers if the result of a procurement were rejected and the utility had to rely entirely on spot markets to procure supply.⁹¹

D. OTHER ELEMENTS OF FULL REQUIREMENTS SERVICE DESIGN

1. *Bidder Eligibility and Collateral Requirements*

Because they are designed to select supplies on the basis of price alone, FRS procurements rely upon eligibility and collateral requirements to ensure that potential winning suppliers are able to fulfill their supply obligations. In particular, eligibility requirements generally require that suppliers demonstrate their credit-worthiness. In effect, these requirements attempt to ensure that all eligible suppliers have the means

⁸⁸ Cramton, Peter et al., "Auction Design for Standard Offer Service." Working Paper, Charles River Associates and Market Design, Inc, 1997.

⁸⁹ Under the price anomaly procedure, the commission's consultant, with input from its staff, develops a price anomaly threshold ("PAT"). If the load weighted average price from all winning bids exceeds this PAT, then the highest priced bids are dropped until the average price is at or below the PAT. Any deficiency in supply from dropping high priced offers is made up at subsequent or reserve procurements. Maryland Utilities, 2006.

⁹⁰ Public Service Commission of the State of Delaware, Order No. 7053.

⁹¹ Competitive Procurement Survey Response from Massachusetts.

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and incentives to deliver FRS supplies, along with insuring the utility and its customers against financial loss in the event of supplier default. In addition, suppliers are typically required to demonstrate their ability (and qualification) to participate in the relevant wholesale electricity markets needed to provide FRS supplies. Physical ownership of generation facilities is typically not a requirement.

Bidders generally are required to provide collateral in support of non-performance of the contract when offers are submitted. The level of collateral required is pre-determined based on the quantity of supply offered, and may also depend on the supplier's own credit-worthiness.⁹² The forms of credit acceptable to utilities varies, with some utilities requiring cash or letters of credit, and others allowing bidders to propose alternate forms. Because fulfilling these requirements may be costly, it is important that collateral requirements are set to balance the utility's need to insure against default against the deterrence such requirements may have on supplier participation.

2. *Independent Monitors*⁹³

Independent monitors may play several important roles in FRS procurements. First, they may review RFPs and related materials, oversee distribution of procurement information, and participate in public workshops to ensure that participants receive sufficient information to allow them to compete effectively. As information such as data on customer loads and migration is critical to suppliers' ability to submit competitive offers, ensuring that information is provided in a thorough and timely fashion is important to procurement success. Second, IMs typically monitor all procurement phases to ensure a fair and objective process. While the evaluation process in FRS procurements is fairly straightforward, IM oversight nonetheless helps to provide assurance to the utility, regulators, suppliers, and consumers that there are appropriate safeguards to prevent inappropriate bidding behavior or preferential treatment in selection. IMs, or other consultants hired by commission staff, may also provide an assessment of the procurement's competitiveness (e.g., number of bidders and quantity of supply bid), whether the procurement has occurred during a spike in wholesale market prices, or whether other "anomalous" events have adversely affected procurement outcomes.⁹⁴ The monitor may provide feedback on potential modifications

⁹² For example, see, Maine Public Utilities Commission, "Request for Proposals to Provide Standard Offer Service to Central Maine Power Company's Residential and Small Commercial Customers," October 9, 2007.

⁹³ In an FRS procurement in which price is the only factor used in selecting bids, the independent monitor has sometimes been called an "independent auction manager" or an "independent evaluator." Although there are important nuanced differences among their functions, the essential feature is the involvement of a party who is neither an employee of the utility nor of the regulatory agency, with specific responsibilities relating to the competitive procurement. In Illinois' FRS auctions, the Auction Manager was responsible for designing and implementing the descending clock auction on behalf of the utilities. Her responsibilities included communications with bidders, conduct of the auction, monitoring the status of offer prices and participation, identifying the award group, and reporting to the Illinois Commerce Commission. Thus her role included monitoring the process, managing the auction, and evaluating the process and its results.

⁹⁴ Maryland Utilities, 2006; Public Service Commission of the State of Delaware, Order No. 7053.

to procurement procedures. In some cases (e.g., Illinois), the auctions were actually run, or managed, by the independent monitor (in this case, called the auction manager, selected by the utility).

Use of IMs in FRS procurements varies across states. In some states, procurements are reviewed by IMs that provide formal reports on procurement results to state commissions.⁹⁵ Other states do not use IMs and rely on oversight provided by the PUC to ensure the integrity of the procurement process.⁹⁶

3. *Timing and Commission Approvals*

Procurement timing is particularly important for creating positive incentives for supplier participation and avoiding additional costs that may raise the prices of supplier bids. FRS procurements generally aim to minimize the time between submission of bids and awarding of contracts. This serves not only to minimize suppliers' financial risks associated with potential changes in market conditions that may occur after they submit their bids, but also to minimize the risk premium that suppliers would likely include in their offer to cover their exposure to these market risks. Because of the price-only nature of FRS procurement, evaluation of offers by utilities and approval of results by commissions can generally be completed quite quickly. All FRS-procurement states that we reviewed, with the exception of Maine, issued finalized procurement decisions within a five day period, and some finalized these decisions in as little as one day.

4. *Confidentiality*

Policies to protect the confidentiality of bidder information reflect a balance between (a) the benefits of transparency about the market's performance, and (b) protection of valuable and commercially sensitive bidder information. Commission policies on release of bid information typically involves bidder identities, quantities of offers (bids amounts), and the price level of winning bids.

Supplying actual bid information from the bidding rounds themselves raises a number of concerns. First, such information may reveal valuable information about bidding strategies. Second, such information may raise suppliers' costs of hedging the financial risks to supply FRS, and thereby the price of their FRS offers, by alerting financial market participants to their need for financial hedges. Potentially adverse consequences of these policies can often be mitigated through careful design. For example, release of information about winning bidders can be delayed to avoid raising the costs of financial transactions made after securing the FRS contract. In practice, policies regarding release of supplier information vary across utilities. For example, Delaware utilities only release information from its RFP procurements that reveal averaged bid prices and bid

⁹⁵ For example, Delaware, Maryland, New Jersey, and Washington, D.C.

⁹⁶ For example, Maine and Massachusetts.

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ranges, while New Jersey utilities release information on market-clearing prices and winning bidders for each utility.⁹⁷

⁹⁷ Response to Survey by Janis Dillard, Delaware PSC; "The 2006 BGS Auction Results," <http://www.bgs-auction.com/documents/2006_BGS_Auction_Results.pdf>.

VII. CONCLUSION

Competitive procurements for retail electricity supply have been used for many years in different states. More than forty percent of the states now rely on formal policies and rules for procurements, while regulators in many other states encourage use of competitive procurements by utilities in determining which resources to add to their mix of retail supply.

Where regulators have committed to relying upon competitive procurement approaches as a means to help identify the “best” resources needed to meet the needs of the utility’s customers, the process should be designed and implemented so that it reflects the following criteria (and is generally viewed as being consistent with them):

- fair and objective;
- designed to encourage a robust competitive responses from market participants with creative responses from the market;
- based on evaluations that incorporate all appropriate and relevant price and non-price factors;
- efficient, with a timely selection process; and
- supported by regulatory actions that positively reinforce the commission’s commitment to the other criteria.

While the use and design of procurements continues to evolve, there is a growing body of experience that provides a relatively clear set of issues that commissions and utilities should consider when they design competitive procurements to suit the industry structure and regulatory norms in their states. The checklists (in Tables 2 and 3 in the Executive Summary) and discussions of individual issues provided in this report lay out regulators’ key decisions and options for the design of competitive procurements, the tradeoffs they must assess when choosing among these options, and the other lessons learned from past procurement experience.

While past experience provides valuable lessons for the design of future procurements, there are still many issues that require further development as regulators consider expanding the use of competitive procurements and using these procurements to develop the types of new resources that will likely be needed to meet future electricity needs in a manner consistent with other environmental and policy objectives. Notable among these issues are how regulators will incorporate the efficiency benefits of market forces in situations where capital-intensive resources and advanced technologies are needed to satisfy such long-term electricity requirements in a carbon-constrained economy. This merits continued attention from regulators and members of the industry.

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APPENDIX A – INDEPENDENT MONITOR ACTIVITIES AND ROLES

The range of potential activities in which an IM might participate is extremely broad, spanning from the initial stages of procurement design to its final approval. In these interactions, the IM may assist commission staff or perform independent monitoring in the following areas:⁹⁸

- Review and comment on completeness of proposed RFP materials and conformance with relevant requirements;
- Review and comment on proposed evaluation methods and assumptions;⁹⁹
- Oversee written and verbal communications between the commission, its staff, potential bidders, and the utility (including its evaluation teams, transmission evaluation teams, and unregulated generation affiliates);
- Monitor and in some cases, moderate utility public workshops;
- Identify and assist in the resolution of potential disputes arising between parties involved in the procurement;¹⁰⁰
- Provide feedback to the utility and commission on different elements of the procurement process;
- Validate utility self-build (prior to bid submission);¹⁰¹
- Review and validation of models and assumptions used in evaluating offers;
- Management of submitted offers, including initial review of submitted offers and “blinding” of offers in conformance with relevant requirements;
- Oversee of the utility’s evaluation process;
- Independently evaluate submitted offers;
- Independently assess portfolios of offers according to broader planning goals;¹⁰²
- Oversee negotiations with bidders; and
- Report on procurement process, results, and lessons learned to regulators.

⁹⁸ Other states providing detail on IM roles include Georgia (Georgia Code 515-3-4-.04)

⁹⁹ Utah Administrative Code, R746-420 requires such reviews, and procurements in Oregon have included such reviews. For example, see Boston Pacific Company and Accion Group, “The Oregon Independent Evaluator’s Assessment of PacifiCorp’s 2012 RFP Design,” April 13, 2007.

¹⁰⁰ Utah Administrative Code, R746-420.

¹⁰¹ Utah Administrative Code, R746-420.

¹⁰² Public Utilities Commission of Colorado, Emergency Rules Amending the Commission’s Electric Resource Planning Rules, Decision No. C07-0829, September 19, 2007.

APPENDIX B – CREDIT REQUIREMENTS

This appendix provides additional details on several aspects of how credit requirements are treated in competitive procurements, including:

- Rationales for the level of credit guarantees and/or collateral requirements;
- Means of reducing the cost of credit requirements; and
- A summary of credit requirements in illustrative procurements.

THE LEVEL OF GUARANTY OR COLLATERAL REQUIREMENTS

Financial guaranty or collateral requirements should be related to the actual financial consequences to utilities of suppliers' failure to perform under the terms of the contract. The risk of non-performance arises because of the potential for supplier bankruptcy or default, and the potential that it may not be in the supplier's financial interest to fulfill the terms of the contract. PPA agreements typically impose penalties on suppliers in the event that they cannot (or do not have sufficient incentive to) fulfill agreement terms, and provide financial compensation to the utility for the potentially higher cost of replacing lost power. To ensure that suppliers have sufficient financial resources to fulfill these terms, they are required to provide a financial guarantee that such funds are available.

(While less often the focus of scrutiny in procurements, some suppliers may seek to require that utilities (as buyers) put up some form of financial assurances that the utility will also perform under the terms of the contract. Reasons of commercial symmetry and fairness may warrant such reciprocal financial assurances, which may include conditions (e.g., a utility credit rating falling below a particular point) under which the utility needs to post forms of financial guaranty or credit to support their performance under the contract.)

Collateral requirements for power suppliers should reflect the likelihood that they will fail to perform and the financial consequences for the utility in the event of the seller's non-performance. Estimating the financial cost of non-performance will depend on many factors, such as the market alternatives available for replacing lost power, the type of supply being replaced (e.g., peaking or baseload), the value of the contract that remains to be fulfilled, and likely payments received through litigation of the contract. Some of these risks can be directly addressed in the terms of the contract (e.g., size of penalties for non-performance), with collateral in place to support the agreement.

In some procurements, bidders have questioned the level of credit requirements as unrelated to the actual non-performance risks facing utilities.¹⁰³ Regulators should attempt

¹⁰³ For example, see Louisiana Public Service Commission Staff, "Preliminary Comments of the LPSC Staff on the Draft RFP," Southwestern Electric Power Company, 2005 RFP for Intermediate and Long-term Resources, p. 3, 8-9.

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to gauge whether the particular level of credit requirements is warranted or are so strict as to inappropriately stifle a robust level of participation from the market. The implication of credit requirements on supplier cost structures is not particularly well understood. For example, alternative assessments of impact of credit requirements on total project costs for recent California procurements suggested that such requirements raised costs as much as nine percent and as little as two percent.¹⁰⁴

The level of financial guarantee necessary to address the risk of non-performance may change over the course of the procurement and the term of the contract. For example, during the bidding and evaluation phase of an incremental resource procurement, utilities may face some risk that a supplier's offer is not sufficiently developed and financed to be credible. Such offers may lead to unnecessary administrative costs and potential failures to develop resources in a timely fashion if they lead to procurement delays. Utilities often require a bid deposit or fee when offers are initially submitted, and then impose additional requirements for offers that are selected for the short-list. Regulators should be aware that initial bid deposits can act as a barrier to entry for certain suppliers – some of whom may submit desirable offers in certain procurements, such as those for demand side management services or renewable resources.¹⁰⁵

Suppliers may also be required to post financial security during the time between the awarding of the contract and the time when delivery begins. Such requirements may be needed in the event that facilities under development do not meet contracted schedules, if the project defaults, or if the facility does not meet technical specifications (e.g., heat rate guarantee, availability levels, or emissions rate). During the period when suppliers are obligated to deliver power, many solicitations use a mark-to-market approach to set collateral requirements, in which the amount of required collateral changes in proportion to the utility's expected financial loss if it needed to obtain replacement power. However, the actual procedures by which mark-to-market approaches are implemented vary substantially across procurements.¹⁰⁶ Additionally, contract provisions allowing for penalties in the event of poor supplier performance (e.g., availability below acceptable target levels) may be able to address directly various risks, so that collateral can be focused more directly on default risk.

MEANS OF REDUCING THE COST OF CREDIT REQUIREMENTS

If credit protections are sought, procurement design should attempt to minimize their economic costs to bidders, while still providing adequate assurance to buyers. A way to minimize the cost of credit requirements on suppliers (and potentially on the resulting cost

¹⁰⁴ See reference to estimates reported by Starwood, Caithness and Black & Veatch in: Aspen Environmental Group and Sentech, 2007, p. 13.

¹⁰⁵ KEMA reports that short-list deposits for proxy projects in California renewables RFPs were \$300,000 in three of ten RFPs reviewed and over \$1.5 million in another. KEMA, 2006, p. 10.

¹⁰⁶ KEMA, 2006, p. 6.

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of the winning supply) is for the utility to allow some flexibility to suppliers in how credit requirements are met.

Traditional means for providing credit include letters of credit from large, investment-grade financial institutions or financial guaranty from a credit-worthy entity, such as the parent company of the entity offering supply. These forms of security provide the procuring utility with a liquid source of funds that can be immediately drawn upon in the event of non-performance or default. However, the cost of obtaining and maintaining letters of credit may be high for developers. There may be situations where parent companies' desire to avoid providing additional finance beyond the equity typically included in such projects acts as a barrier to a supplier's participation in the procurement. Regulators should monitor the credit requirements placed on suppliers by utilities to assure themselves that the level and terms of the financial guarantees are appropriate to the risks involved in various stages of the process.

Recognizing the need for flexibility, other approaches have been used and are under development in an effort to provide lower-cost means of providing financial assurances to utilities. One approach is to provide the utility with a claim to project-specific assets, such as subordinate liens, in which the utility is granted rights as a creditor in the event of bankruptcy or default. Similarly, utilities may be granted rights to payments associated with plant equipment warranties or project insurance policies. The utility may receive step-in rights, in which it has the ability to take over project development in the event of developer default.¹⁰⁷ Suppliers may also provide an exclusivity guarantee to prevent it from selling to other parties. Because the value of many of these claims depend on market conditions at the time of non-performance, determining the financial value of the security provided by these claims may be more difficult than more traditional lines of credit or guaranties.¹⁰⁸ Other approaches are also being considered, such as securitizing specific agreement credit risks across multiple agreements, power supply clearinghouses or state operated risk pools.¹⁰⁹

¹⁰⁷ Aspen Environmental Group and Sentech, 2007, p. 17.

¹⁰⁸ Comments by Southern California Edison in: Aspen Environmental Group and Sentech, Inc., 2007, p. 15.

¹⁰⁹ For example, see Ghosh, Partho S., "MMC Presentation to Electricity Committee Workshop on Lowering the Effective Cost of Capital for Generation Projects," June 27, 2006; references to MMC comments in: Aspen Environmental Group and Sentech, 2007, p. 17-18, 28, 33-34.

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Table B1 – Credit Requirements From Selected Procurements

RFP	Timing of Credit Requirements (after short-list; during construction; during operation)	Allowed Forms of Credit	Credit Requirement Amount
Southern California Edison 2006 RFO (All Source)	<ul style="list-style-type: none"> Development security from effective date (regulatory and contract approvals) to beginning of delivery Delivery security 	Unspecified	<ul style="list-style-type: none"> Development security of \$109.6/kW (fast track) and \$54.8/kW (standard track) Delivery security required for amounts above unsecured credit to cover mark-to-market exposure over a 24- or 48-month period. (Only investment grade bidders eligible for unsecured credit.) Seller grants secondary liens to SCE
Pacific Gas & Electric 2005 (New Generation Resources)	<ul style="list-style-type: none"> Proposal fee Selection security (upon request for CPUC approval) Development security Operating security 	Unspecified	<ul style="list-style-type: none"> Proposal fee: \$5/kW Selection security: \$10/ kW Development security: \$61/ kW Operation security: mark-to-market (either a 2- or 5-year window, depending on time to replace generation), and collateral threshold
Georgia Power Company and Savannah Electric Company 2009 RFP	Unspecified, but ability to meet credit standards or security requirements must be demonstrated in offer	<p>Credit requirements may be met through:</p> <ol style="list-style-type: none"> 1) Seller net worth threshold; 2) Guaranty from entity meeting net worth threshold; 3) Investment grade credit rating based on utility evaluation; or 4) Collateral sufficient to cover potential damages resulting from seller default (levels are not specified). <p>Unless a successful bidder (or its guarantor) is rated at least one notch above investment grade, then 50% of such bidder's security collateral must be in the form of cash or a letter of credit.</p>	Credit requirements standards can be met through either demonstration of credit-worthiness (with specific Allowed Forms of Credit) or posting of collateral sufficient to cover necessary damages resulting from default
Progress Energy Florida (2003)	<ul style="list-style-type: none"> Development security starting 30 days after contract signing Operating security starting 30 days prior to planned operation date for the duration of the contract 	Letter of credit, cash, or U.S. bonds held in escrow	<ul style="list-style-type: none"> Development security starting at \$20/kW and rising to \$50/kW (at 12 months before commercial operation) Initial operation security of \$10/kW, \$20/kW after 5 years, and \$30/kW after 10 years

COMPETITIVE PROCUREMENTS OF RETAIL ELECTRICITY SUPPLY

Table B1 – Credit Requirements From Selected Procurements			
RFP	Timing of Credit Requirements (after short-list; during construction; during operation)	Allowed Forms of Credit	Credit Requirement Amount
Entergy 2006 RFP for Long-Term Supply-Side Resources	<ul style="list-style-type: none"> Letter of intent security Performance collateral upon execution of agreement 	<ul style="list-style-type: none"> Traditional forms of collateral and non-traditional forms on a case-by-case basis (e.g., lien on assets and step-in rights) 	<ul style="list-style-type: none"> Letter of intent security of \$2 million Performance collateral: \$200 per kW for solid fuel; \$100 per kW for CCGT Entergy determines amount of uncollateralized exposure based on the bidder's credit rating (up to \$100 million for AAA to A-)
Northwestern Energy (Issued July 2, 2004)	Unspecified	<ul style="list-style-type: none"> Demonstration of investment grade credit rating Acceptable performance assurance, including letter of credit, guaranty from parent company, or cash 	Unspecified
PacifiCorp's 2012 RFP	Security starting on the date of PUC contract approval or execution by parties (starting at 10% of full credit and rising to 100% in 2 years, with full credit due when financing secured)	<ul style="list-style-type: none"> On-going: letters of credit, guaranties, cash or other collateral Asset-back agreements "must" backup agreement with the resource through certain options, including step-in rights, second lien, leverage limitations, and other financial covenants Initial (10%) security must be posted with letter of credit or cash unless 100% of security is posted at effective date 	<ul style="list-style-type: none"> Credit requirements reflect PacifiCorp's market exposure given type of agreement, agreement term, and other factors Credit matrix identifies security requirement based on type of resource, size of resource, and the year the resource is expected to be operational PacifiCorp permits some uncollateralized supplier exposure depending on seller's credit rating and the type of resource
PacifiCorp's 2009 RFP	Security starting on the date of PUC contract approval or execution by parties (starting at 10% of full credit and rising to 100% in 2 years)	Acceptable "credit assurances" are unspecified (letter of credit is acceptable)	<ul style="list-style-type: none"> Credit matrix based on type of resource, size of resource, and the year the resource is expected to be operational PacifiCorp permits some uncollateralized supplier exposure depending on seller's credit rating and the type of resource
Puget Sound Energy 2008 All Source RFP	Unspecified	Unspecified	May be required to post collateral absent demonstration of credit-worthy status (BB+ or better) or guaranty from credit-worthy parent company

COMPETITIVE PROCUREMENTS OF RETAIL ELECTRICITY SUPPLY

Sources:

- [1] Southern California Edison, RFO for New Generation Resources, Transmittal Letter, August 14, 2006, pp. 16-17.
- [2] [Pacific Gas & Electric] KEMA, Inc., "The Cost of Credit: A Review of Credit Requirements in Western Energy Procurement," prepared for the California Energy Commission, CEC-300-2006-014, 2006.
- [3] Georgia Power Company and Savannah Electric Company 2009 RFP (Draft), July 5, 2005, pp. 10-11.
- [4] [Progress Energy Florida] Merrimack Energy Group, Inc., "Report of the Independent Evaluator Regarding PacifiCorp's 2012 Request for Proposals for Base Load Resources," Utah PSC Docket 0503547, August 30, 2006, pp. 2-3.
- [5] [Enenergy] Merrimack Energy Group, 2006, pp. 9-10.
- [6] Northwestern Energy RFP Issues July 2, 2004, p. 12.
- [7] PacifiCorp 2009 RFP for Flexible Resources (Draft), Responses due December 1, 2005, pp. 15-16.
- [8] PacifiCorp 2012 Credit Security Requirements Methodology Overview, pp. 1-5.
- [9] Puget Sound Energy 2008 All Source RFP, January 2008, pp. 10-11.

APPENDIX C – DEBT EQUIVALENCY

The report previously described the two most common methods for addressing the financial impact of the debt-like commitments taken on by utilities when entering into power purchase agreements. These two methods address these issues either

- (a) through the cost-of-capital and capital structure phases of general rates cases; and/or
- (b) through use of adders to third-party offers that introduce an economic penalty on third-part offers relative to utility self-build proposals.

Because regulators are more familiar with addressing a variety of risk issues faced by utilities in cost-of-capital and capital structure issues in general rate case proceedings, in this appendix we focus on the latter approach; that is, methods used to develop adders to account for debt-equivalency affects in the context of competitive procurement proceedings.

The methods used to estimate inferred debt “adders” generally draw upon the explicit balance sheet adjustments made by credit ratings agencies to take into account a utility’s relative default risk as a result of its contractual financial obligations, including PPAs.¹¹⁰ Under these methods, the level of inferred debt depends on the size of fixed payments assumed in these contracts and a risk factor that reflects the likelihood of full cost recovery of these PPA costs given the specific regulatory and legislative conditions affecting recovery. The risk factors used by credit agencies may depend on the relevant state commission’s “reputation” regarding cost recovery and specific aspects of state’s utility regulation, such as whether there is a mechanism for automatic rate adjustment, whether the Commission has approved the RFPs or the selection of offers, and whether legislative requirements are supportive of cost recovery.¹¹¹

When considering whether to allow utilities to use some form of risk-adjustment adder to compare contracts against self-build options in the context of competitive procurements, commissions should be mindful of what they already know in general – that is, that the inferred debt adjustment made by credit agencies is not the only impact on credit ratings from a utility signing a PPA. In fact, Standard & Poor’s has explicitly indicated that it accounts for many factors when assessing utility credit risk, including other factors that may affect the choice between alternative types of supply agreements. For example, credit agencies would recognize the reduced utility exposure to commission prudence determination that would arise from entering into a PPA rather than adding additional

¹¹⁰ For example, *see* Standard & Poor’s, 2007.

¹¹¹ For example, *see* Standard & Poor’s, 2007.

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capital to the utility's rate base.¹¹² Because inferred debt calculations do not account for these factors, regulators should be careful not to infer that risk factors account for the *net* impact of PPAs on either the utility's cost of capital (via its credit status), let alone the final financial risks to consumers. Unfortunately, there is relatively little empirical analysis to shed light on the net impact of PPAs on utility's cost of capital.¹¹³

Because of these factors, while most states that include debt equivalency "adders" utilize the same basic methodologies, the specific risk factors that commissions have used range from 15% to 50% across procurements. For example, Washington allows a risk factor of 40% for take-or-pay contracts, and 15% for other PPAs, and, in Louisiana, Entergy procurements use of a risk factor of 50%.

¹¹² "That said, PPAs also benefit utilities that enter into contracts with supplier because PPAs will typically shift various risks to the suppliers, such as construction risk and most of the operating risk." Standard & Poor's 2007).

¹¹³ What research has been done suggests that PPAs have little effect on a utility's cost of capital, while utility self-builds raise it. However, various limitations to this study caution against any broad conclusions from its results, the results do suggest that the importance of understanding the risk tradeoffs posed by alternative agreement forms to selecting the most desirable supply alternatives. Kahn, Edward et al., "Impact of power purchased from non-utilities on the utility cost of capital," *Utilities Policy* 5(1): 3-11, 1995.

APPENDIX D – EVALUATION OF PRICE AND NON-PRICE FACTORS

Illustrative Examples – Ways that Different Utilities Have Addressed Various Price and Non-Price Factors, and Whether These Factors Have been Monetized				
Source	State	RFP	Monetized	Non-monetized
[1]	UT	PacifiCorp 2009	Price, based on ratio of bid price to projected price (60%) ¹¹⁴ : (for a ratio of [x], the bid gets [y] points): <ul style="list-style-type: none"> Ratio < or = 80%: 100% Ratio > 80%, but < 120%: 100% times ratio Ratio > or = 120%: 0% 	Non-price factors will be weighted (40%): <ul style="list-style-type: none"> Flexibility of resource dispatch: day-ahead and adjustment: 20%; or only day-ahead: 10% Exceptions to any pro forma agreements: 10% Environmental attributes relative to the resource, if applicable: 10%
[2]	OR	PacifiCorp 2012	Price, based on ratio of bid price to projected price (70%) ¹¹⁵ : <ul style="list-style-type: none"> Ratio < or = to 80% of adjusted price curves: 100% Ratio > 80%, but < 120%: 100% times ratio Ratio > or = 120%: 0% 	Nonprice factors will be weighted (30%): <ul style="list-style-type: none"> Development, construction, operational experience: 10%¹¹⁶ Compliance with pro forma agreements submitted with proposal: 10%¹¹⁷ Site control and permitting: 10%
[3]	OK	Oklahoma Gas & Electric Co. 2008-2010 RFP	Price factor (60%), reflecting: <ul style="list-style-type: none"> Capacity charge Energy charge Start-up charge Transmission system impact 	<ul style="list-style-type: none"> Bidder's proposed changes to Model PPA: 10% SPP RTO market risk cost allocation: 15%¹¹⁸ Quality of output: 15% <ul style="list-style-type: none"> - Dispatchability/scheduling - Reliability/availability - Operating profile/characteristics

¹¹⁴ Total score reflects score on price ratio multiplied by weight, for example if ratio = 90%, score = (90*0.6) = 54.

¹¹⁵ Total score reflects score on price ratio multiplied by weight, for example if ratio = 90%, score = (90*0.7) = 63.

¹¹⁶ One percent point for each project the bidder has previously developed, constructed and/or operated, with partial points awarded for partial experience.

¹¹⁷ Modifications to pro forma agreements could result in a reduction in the bidders score (out of 10%) if those modifications resulted in a material shifts in risk or cost from the bidder to the utility. This process and percentage application per section within the pro formas was to be validated by the IE.

¹¹⁸ SPP/RTO Market criteria was intended to relates to the bidder's proposed methodology for the sharing or allocation of market benefits and risks between bidder and OG&E that may arise from changes to SPP RTO market rules.

COMPETITIVE PROCUREMENTS OF RETAIL ELECTRICITY SUPPLY

Illustrative Examples – Ways that Different Utilities Have Addressed Various Price and Non-Price Factors, and Whether These Factors Have been Monetized				
Source	State	RFP	Monetized	Non-monetized
[4]	AZ	Arizona Public Service Commission 2007 RFP for Renewables	Quantitative ¹¹⁹ : Respondent Bid Price plus Additional Costs is compared against Market Cost of Comparable Conventional Generation ¹²⁰	<ul style="list-style-type: none"> • Financial risk • Regulatory risk • Counterparty credit risk • Transmission risk • Operations risk • Project development risk
[5]	MT	NWE 2004 RFP	Proposal price and value, including: <ul style="list-style-type: none"> • Costs/benefits of transmission • Value of dispatchability • Firmness of products • Ability to remarket energy • Value of points of delivery • Ancillary services value • Costs of resource integration 	<ul style="list-style-type: none"> • Development and performance risk (2nd most important factor) • Environmental factors (3rd most important factor)
[6]	FL	Progress Energy 2007 RFP	<ul style="list-style-type: none"> • All costs, as reflected in 30 year optimization analyses 	Minimum bidder eligibility requirements: <ul style="list-style-type: none"> • Environmental • Engineering and design • Fuel supply and transportation plan • Project financial viability • Project management plan Technical criteria: ¹²¹ <ul style="list-style-type: none"> • Development feasibility • Project value • Operational quality

¹¹⁹ Respondents were advised that price would be a major factor in APS' evaluation, but APS will consider other quantitative and qualitative risk factors.

¹²⁰ "Respondent Bid Price" referred to the amount APS would pay to the respondent. "Additional Costs" were costs that are needed to incorporate the renewable resources into APS' system, including additional interconnection costs, system integration costs, and costs associated with imputed debt (for PPA proposals). "Market costs of conventional generation" were to reflect the utility's energy and capacity cost of producing or procuring incremental electricity from a conventional resource.

¹²¹ "Development feasibility" were to reflect the bidder's ability to meet development schedules, such as permitting certainty, financial viability, commercial operation date certainty, and bidder experience. "Project value" were to reflect the project's cost and flexibility, including acceptance of key terms and conditions, fuel supply and transportation reliability, reliability impact, and flexibility provisions. "Operational quality" was to measure the proposed unit's flexibility to respond to changes in system demand, including minimum load, start time, ramp rate, max starts/year, minimum run-time/down-time constraint, and annual operating hour limit.

COMPETITIVE PROCUREMENTS OF RETAIL ELECTRICITY SUPPLY

Illustrative Examples – Ways that Different Utilities Have Addressed Various Price and Non-Price Factors, and Whether These Factors Have been Monetized				
Source	State	RFP	Monetized	Non-monetized
[7]	WA	Puget Sound Energy (PSE)	<ul style="list-style-type: none"> • Resource cost • Transmission • Portfolio cost impact¹²² • Capital structure impacts • Guarantees and security¹²³ 	<ul style="list-style-type: none"> • Timing • Resource match to monthly need • Operational flexibility • Performance within utility's own resource mix/portfolio • Status and schedule • Price volatility • Resource flexibility and stability • Resource technology • Long-term flexibility • Project risk • Impact on PSE's overall risk¹²⁴ • Environmental & permitting risk • Ability to deliver as proposed • Status of transmission right • Managerial control • Security & control • Federal regulatory approvals • Environmental impacts • Resource location • Community impacts • Future exposure to taxes and/or environmental regulation
[8]	LA	Entergy Fall 2006 RFP	Individual and portfolio costs, as estimated by a production cost model	Non-quantifiable aspects of: <ul style="list-style-type: none"> • Transmission • Fuel cost and availability Portfolio design criteria, including: <ul style="list-style-type: none"> • Product category supply cost ranking • Maximum total resource objective • Regional dispersion • Product category needs • Mix of product terms

¹²² Portfolio cost impacts taken into consideration for proposals that make the preliminary shortlist.

¹²³ PSE took into consideration credit information provided by the bidder to determine whether PSE would require any additional guarantees or credit support, and include the estimated costs of providing such guarantees or credit support to the bidders proposed offer terms.

¹²⁴ The impact on PSE's overall risk position was considered for proposals making the preliminary shortlist.

COMPETITIVE PROCUREMENTS OF RETAIL ELECTRICITY SUPPLY

Illustrative Examples – Ways that Different Utilities Have Addressed Various Price and Non-Price Factors, and Whether These Factors Have been Monetized				
Source	State	RFP	Monetized	Non-monetized
[9]	GA	Georgia Power Company and Savannah Electric 2009 RFP	<p>Fixed costs:</p> <ul style="list-style-type: none"> Capacity cost payment Fixed O&M payment Cost due to inferred debt from PPA¹²⁵ Startup costs Fuel pipeline costs, including the estimated costs for adequate firm natural gas transportation and natural gas storage <p>Variable generation costs:</p> <ul style="list-style-type: none"> Fuel cost Variable O&M Proposal dispatch characteristics <p>Transmission costs:</p> <ul style="list-style-type: none"> Integration costs The increase (or decrease) in transmission system energy losses 	<p>Development schedule:</p> <ul style="list-style-type: none"> Reasonableness Contingencies Current developmental status <p>Resource schedule and dispatch flexibility:</p> <ul style="list-style-type: none"> Lead time for dispatch schedules¹²⁶ Ability to change schedules hourly/daily¹²¹ Quick start capability or curtailment Minimum schedule and downtime Minimum energy take¹²¹ Response to emergencies Dispatchability¹²¹ AGC capability <p>Fuel:</p> <ul style="list-style-type: none"> Type of fuel Risk of fuel supply interruption Price risk <p>Environmental:</p> <ul style="list-style-type: none"> NOx, VOC and SO² compliance strategy Toxic release inventory Future permitting restrictions Water requirements <p>Proposed PPA changes</p> <p>Transmission:</p> <ul style="list-style-type: none"> Impact on transmission interface capability¹²¹ Transmission delivery risk¹²¹ Voltage control¹²¹ Other grid impacts¹²¹

¹²⁵ The equity cost of lease reflects an estimate of the "debt equivalency" impacts as measured by either the PPA's balance sheet impact on the balance sheet (in the case of capital lease) or the capital structure adjustment necessary to cover the imputed debt burden (in the case of an operating lease).

¹²⁶ Where possible, this might be converted into an explicit price factor.

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Illustrative Examples – Ways that Different Utilities Have Addressed Various Price and Non-Price Factors, and Whether These Factors Have Been Monetized				
Source	State	RFP	Monetized	Non-monetized
[10]	CA	Southern California Edison 2006 RFO	<ul style="list-style-type: none"> • Market assessment: the market value of the benefits contained in each offer versus its costs¹²⁷ • Transmission impact: cost of network upgrades • Debt equivalence as additional cost • Environmental: greenhouse gas emissions adder (\$8 per ton of CO₂) • Credit: ability to post collateral if necessary 	<ul style="list-style-type: none"> • Ability to fill capacity requirements • Portfolio fit: impact the offer has on (i) the demand and supply effect on CAISO zone and (ii) the ability of SCE's portfolio to meet SCE's RAR¹²⁸ • Project viability: ensure project can be constructed consistent with terms of RFO • Physical concentration risk¹²⁹ • Financial concentration risk

Sources:

[1] PacifiCorp 2009 RFP Flexible Resources, September 2005, pp. 26-38.

[2] PacifiCorp 2012 RFP Base Load Resources, April 5, 2007, pp. 30-35.

[3] Oklahoma Gas & Electric Company, RFP for Capacity and Energy Resources Years 2008-2010, Issued March 29, 2007, pp. 13-17.

[4] Arizona Public Service Commission 2007 RFP for Renewable Resources, March 5, 2007, pp. 8-11.

[5] Puget Sound Energy, RFP for All Generation Resources, January 2008, Exhibit B; and Puget Sound Energy, 2006 RFP for Long-Term Supply Side Resources, p. F-4.

[6] Progress Energy Petition for Determination of Need of Hines 4 Combined Cycle Unit, August 4, 2004, pp. 50-66.

[7] Northwestern Energy RFP issued July 2, 2004, pp. 6-8.

[8] Entergy Fall 2006 RFP for Limited-Term Supply-Side Resources, October 24, 2006, Appendix E.

[9] Georgia Power Company and Savannah Electric and Power Company 2009 RFP, July 5, 2005, pp. 18-19.

[10] Southern California Edison 2006 New Gen RFO, Transmittal Letter, August 14, 2006, pp. 15-16.

¹²⁷ Potentially including capacity payments, start up charges, variable operating and maintenance costs, and fuel costs resulting from offer heat rates.

¹²⁸ Factors influencing the portfolio fit could also include but are not restricted to: the range of offers that are available for selection; variable costs; volume in MW offered; unit flexibility (e.g., ramp rates, start times, ancillary service capabilities); the proposed initial delivery date; and the agreement's duration.

¹²⁹ Portfolio Concentration Risk referred to both (1) "portfolio concentration risk" reflecting potential electric system reliability and continuity of service risks from over reliance on purchases from a particular technology, and (2) "financial concentration risk" from significant monetary exposure to a single counterparty. CPUC Decision 02-10-062 requires SCE to devise procurement strategies that procuring generation from a variety of fuel sources and a variety of counterparties.

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APPENDIX E – STATES WITH PROCUREMENTS FOR RETAIL SUPPLY OF FULL REQUIREMENTS SERVICE

Overall Frameworks Used in Selected States Procuring FRS Supply¹³⁰

	CT	DE	DC	ME	MD	MA	NJ
Does state have regulations about FRS procurement?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Bid Payment Form	Pay-as-bid	Pay-as-bid	Pay-as-bid	Pay-as-bid	Pay-as-bid	Pay-as-bid	Uniform price
Price-only offers?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Are generation-owning affiliates able to bid?	–	Yes	Yes	Yes	Yes	Yes	Yes (With BPU approval)
Annual “lessons learned” process?	Yes	Yes	Yes	–	Yes	No	Yes
Does bidder eligibility include credit criteria?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Do bidders need to post collateral?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Do bidders provide indicative bids?	No (based on recent RFP)	No (based on recent RFP)	No	Yes	No (based on recent RFP)	Yes	Yes
Who oversees process on a daily basis?	Utility, with oversight by IM	PUC, with help of PUC-retained IM	IM	PUC; No IM	IM (retained by utilities)	Utility No IM.	IM retained by utilities; BPU has a consultant
Time between submitting final bids and selection of winner	5 hours (e.g., UI’s recent SOS procurement)	1 day	1 day	1+ months	4 hours beginning in 2008 (previously 1 day)	5 hours (e.g., recent RFP)	~50 minutes between bidding rounds
Timing of RFPs / Auction	Separate RFPs for each utility (one solicits semi-annually; the other each year)	Largest utility staggers two tranches (1-2 months apart)	Only one utility	All utilities procure power at same time but use separate RFPs.	All utilities procure power at same time but use separate RFPs.	Utilities stagger annual procurements (2 in Jan, 1 in Feb, 1 in Mar)	All utilities solicit through a single auction

¹³⁰ There are other states (e.g., Illinois) that have carried out FRS procurements.

Additional information About Products Recently Procured in Selected States Procuring FRS Supply¹³¹

State	FRS Products Procured:
CT	Four product classes for standard offer service with separate pricing for: (1) residential; (2) small commercial and industrial; (3) large commercial and industrial, and (4) street lighting classes. Both major utilities have used a laddering approach, with a portion of the total power requirements contracted over a three-year cycle, to create a blended portfolio.
DE	Four product classes, in two overall groupings: Small – residential/small commercial and industrial: procurement has 3 contract lengths, offered simultaneously (13-month term, 25-month term, and 37-month term in 2005; in 2006 only a 36-month term); Larger – (a) medium general service – secondary; (b) large general service – secondary; and (c) general service – primary customers: 13-month term only in 2005 (in 2006 only a 12-month term)
DC	Three product classes, procured via the following two contract terms: (1) residential and (2) small commercial = 30% using 16-month contracts; 30% using 28-month contracts; 40% using 40-months or more; (3) large commercial 60% using 16-month contracts; 40% using 28-month contracts;
ME	Three product classes: (1) residential/small commercial: procurement is 3-year contract offered once per year for 1/3 of load; (2) medium commercial/industrial and (3) large commercial industrial: procurement is 6-month contract offered twice per year for 100% of load
MD	Beginning in 2008 the products are: (1) residential and small commercial: 2-year contracts for 25% of load, RFP issued twice a year; and (2) mid-to-large commercial and mid-sized industrial: 3-month contracts for 100% of load, RFP is issued 4 times a year
MA	Two product classes: (1) residential (and small commercial): procurement is 12-month contract offered twice per year for 50% of load; and (2) medium/large commercial & industrial: procurement is 3 month contract offered 4 times per year for 100% of load.
NJ	Two types of contract approaches: (1) fixed price contract to serve small to mid-size customers; must serve a fixed % share of load; 3-year contract; 1/3 of load procured each year (2) hourly-priced contract for large customers; must serve a fixed % share of load; receive a capacity payment and an energy payment determined by the PJM real-time hourly market; 1-year contract; 100% of load procured

¹³¹ There are other states (e.g., Illinois) that have carried out FRS procurements.

COMPETITIVE PROCUREMENTS OF RETAIL ELECTRICITY SUPPLY

REFERENCES

As part of our analysis of competitive procurements of retail electricity supply, we compiled and reviewed a substantial amount of literature. These documents include regulations, opinions, and reports from government agencies; white papers from industry experts and interest groups; actual procurement documents; and other sources in the public domain.

These documents are posted on the website of the NARUC-FERC Collaborative Process on Competitive Procurements. Members of the public can gain access to these documents by logging on to the website as a guest. The address is:

<http://procurement.webexworkspace.com/login.asp?loc=&link=>

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<input type="checkbox"/>	Title	File	Size	Posted By	Modified
<input type="checkbox"/>	 Agenda 5-28-08		1 item		
<input type="checkbox"/>	 Best Practices		1 item		
<input type="checkbox"/>	 Case Studies		1 item		
<input type="checkbox"/>	 Documents from Guests		2 items		
<input type="checkbox"/>	 February 17, 2008 Naruc Meeting		1 item		
<input type="checkbox"/>	 Information Request for Study		2 items		
<input type="checkbox"/>	 July 18, 2007 Collaborative Meeting		10 items		
<input type="checkbox"/>	 Literature		17 items		
<input type="checkbox"/>	 News Releases		1 item		
<input type="checkbox"/>	 November 13, 2007 Meeting		2 items		
<input type="checkbox"/>	 RFP		1 item		
<input type="checkbox"/>	 State Procurement Documents		51 items		
<input type="checkbox"/>	 Supplier Call		1 item		

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COMPETITIVE PROCUREMENTS OF RETAIL ELECTRICITY SUPPLY

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Procurement of New Power Generation Resources by Investor-owned Electric Public Utilities; Request for Competitive Proposals and Independent Evaluator Process.

The legislation requires utilities to perform a request for competitive proposals subject to scrutiny by an independent evaluator as a prerequisite for the procurement of a supply-side electric energy or capacity resource.

Once a generation resource procurement need is identified through a utility's long-term resource plan, a competitive resource procurement process will be required that is transparent to regulators, unbiased, and free of conflicts of interest. The process will be designed to permit an objective evaluation of expected direct costs as well as the financial and operational risks associated with fuel price volatility, resource reliability, credit worthiness associated with potential suppliers, and environmental regulations.

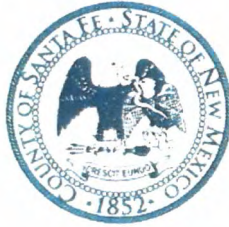
The legislation brings New Mexico into line with the practice of many states, e.g. Oklahoma and Arizona, by opening utility resource choices to competitive bidding. Doing so will protect the public interest and ensure compliance with state law that requires utilities to select the least-cost solutions to energy resource demands with preference for the least environmentally damaging resource. Given recent controversy over ratemaking and resource replacement cases, this legislation will help to ensure that an unbiased evaluation of all resources is conducted and that it is informed by competitive market bids solicited through a transparent Request for Proposal (RFP) process.

Any application by an investor-owned electric public utility for commission approval of its proposed procurement of a supply-side electric energy or capacity resource for a duration greater than one (1) year, including but not limited to an application for commission issuance of a certificate of public convenience and necessity (CCN) or for commission approval of a power purchase agreement (PPA) for a resource or for inclusion of a resource in the utility's rate base, must be accompanied by testimony by an independent evaluator providing and describing the results of a request for competitive proposals and competitive bidding process for the resource as well as the recommendation of the independent evaluator as to which, if any, resource should be selected.

Henry P. Roybal
Commissioner, District 1

Anna Hansen
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Anna T. Hamilton
Commissioner, District 4

Ed Moreno
Commissioner, District 5

Katherine Miller
County Manager

Transmitted Via Email

March 3, 2017

Troy Warburton
Automated Lands Program - Deputy Program Manager
U.S. Forest Service
trwarburton@fs.fed.us

Bob Ader
Steward for the Public Land Survey System Data
Bureau of Land Management
bader@blm.gov

RE: Santa Fe County Boundary in New Mexico

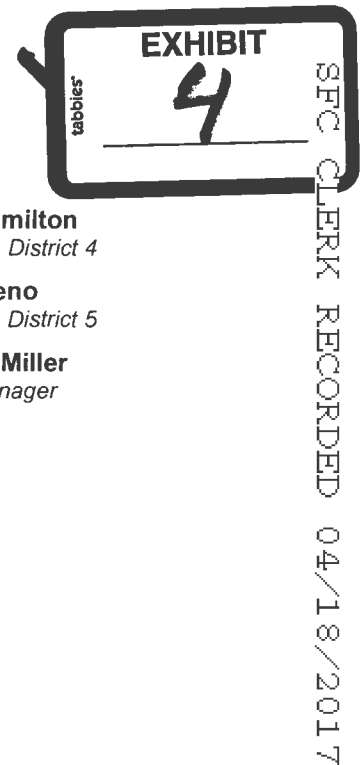
Dear Mr. Warburton and Mr. Ader:

Santa Fe County GIS Division recently discovered a change to its county boundary that resulted from the use of the Bureau of Land Management (BLM) Public Land Survey System Cadastral National Spatial Data Infrastructure (PLSS CadNSDI) framework data during the 2015 U.S. Census Bureau (Census) Boundary Quality Assessment and Reconciliation Project (BQARP). The changes were acceptable except for the northeast corner of the county boundary in an area entirely encompassed by U.S. Forest Service lands. Santa Fe County GIS Division respectfully requests U.S. Forest Service review of the attached documentation and U.S. Forest Service support to return the county boundary as it was prior to the adjustment to the PLSS CadNSDI in this area until such time as further investigations and/or surveys are performed to delineate the actual Range line that represents the county boundary in this location. This request is based on the information presented below.

Santa Fe County GIS Division reviewed this issue with Jim Castagneri of the U.S. Census Bureau, Denver, Colorado; Nancy von Meyer of Fairview Industries; and the New Mexico BAS State Certifying Official, Larry Brotman with the New Mexico Taxation and Revenue Department. Santa Fe County GIS Division also reviewed the issue with Monica Faux with the BLM, Santa Fe, New Mexico office and is thankful for her assistance in locating the original plats. Santa Fe County GIS Division appreciates the time and input of all involved along with the recommendation from Ms. von Meyer to reach out to you due to the location of this county boundary area within U.S. Forest Service land.

Santa Fe County GIS Division reviewed the 2016 Census partnership files on January 10, 2017, particularly the Santa Fe County boundary shapefile (PVS_16_v2_county_35049.shp). Santa Fe County GIS Division was pleased to see many outstanding errors had been corrected in

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www.santafecountynm.gov



1.4.4

PVS_16_v2_county_35049.shp, in several different places around the county boundary. However, the Santa Fe County GIS Division requested one change through the Census 2017 Boundary and Annexation Survey (BAS) update process of Santa Fe County's northeast county boundary.

Santa Fe County GIS Division discovered a large discrepancy in the northeast area of the county boundary, on the eastern edge, where the previous boundary has been moved, specifically, the Range line between Ranges 12E and Range 11E at T19N (see attached illustration that accompanied the Santa Fe County GIS Division BAS update). This move was based on aligning the county boundary to the PLSS line as represented in the PLSS CadNSDI. The boundary had been moved ~0.276 miles west to approximately align with the western border of T19N R12E, as represented in the PLSS CadNSDI, then extended northward from the corner of T19N R12E to connect at the northeast corner of the county boundary. This generated a total loss of ~1,160 acres. The mutual county boundary between Santa Fe County and San Miguel, Mora, Rio Arriba Counties is defined by these Range lines. All four county boundaries were affected. This is a remote, high elevation area within the Santa Fe National Forest near Truchas Peak where a significant portion of the land (multiple Townships) has never been surveyed for the Public Land Survey System. The county boundary used by the Santa Fe County GIS Division was derived from the 1960's era U.S. Geological Survey 7.5' topo quadrangles.

Upon further research, this boundary change resulted from the use of PLSS CadNSDI framework data during the 2015 BQARP. The boundary was snapped to the western edge of T19N R12E referenced above; however the survey is one of dubious quality for the following reasons based upon Santa Fe County GIS Division investigation of the source data. Research into the origin and source of T19N R12E has raised concerns about not only the quality of the survey of T19N R12E, but also the resultant spatial accuracy and reliability of this particular Township in the CadNSDI.

According to the plat notes on the original surveys of both Townships (T19N R12E and T18N R12E) each were performed in a one-week period of the spring of 1883 by the same surveyors (John C. Taylor & Joseph J. Fuss). Hyperlinks are provided to BLM General Land Office Records plat images:

- [T19N R12E: Survey Commenced 3/28/1883, Survey Completed 4/4/1883](#)
- [T18N R12E: Survey Commenced 4/6/1883, Survey Completed, 4/14/1883](#)

The southern Township (T18N R12E) in question, apparently due to quality issues, had a dependent resurvey done over the summer and fall of 1925 that corrected and dramatically altered the appearance of the sections within T18N R12E. Of particular note:

- The resurvey took five months to complete, a much more appropriate time frame for a survey of lands in remote, high elevation backcountry ([Resurvey T18N R12E: Survey Commenced 6/24/1925, Survey Completed, 10/19/1925](#)).
- The original survey of T19N R12E, which is the source for the disputed 2015 boundary change, has never been resurveyed.

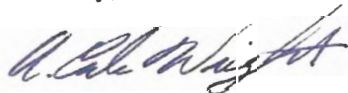
- Given the dubious one week survey period and the fact that the resurvey of its sister Township resulted in significant corrections to the original survey; the quality and reliability of the 1883 survey of T19N R12E is highly suspect. To note:
 - 1) Both Townships (T19N R12E and T18N R12E) from the original survey showed a width of 6 miles.
 - 2) During a resurvey of the southern Township (T18N R12E), the width was corrected to 5 $\frac{3}{4}$ miles wide even though the original survey showed 6 miles.
 - 3) Error ellipses around the CadNSDI points for the northern Township (T19N R12E) do not exhibit a normal distribution (see attached bar graph) and while somewhat reasonable (~27 feet) in the southeast corner, error increases toward the northwest corner (~300 feet). The northwest corner is what resulted in the significant boundary change to which Santa Fe County objects.

The surrounding Townships where the Santa Fe County boundary was changed were not surveyed or consisted of protracted surveys. This leaves the suspect T19N 12E survey floating on its east, west, and north borders; leaving no frame of reference to adjust the dubious coordinates of the original 1883 T19N R12E survey that was inserted in CadNSDI.

For the reasons outlined above, Santa Fe County GIS Division requests the county boundary be returned to the location indicated by the Santa Fe County GIS Division BAS submittal in this area (as it was prior to the adjustment to the PLSS CadNSDI) until such time as further investigations and/or surveys are performed to delineate the actual Range line that represents the county boundary in this location. A shapefile representing the boundary change is attached. Santa Fe County GIS Division requests U.S. Forest Service support for this change as this Range line is a boundary that is contained entirely within U.S. Forest Service land. Santa Fe County GIS Division concurs that the land description for Santa Fe County and the adjoining counties conform to the PLSS, however the referenced PLSS Township of T19N R12E seems to be in error and should be corrected. Santa Fe County GIS Division is reaching out to neighboring affected counties to alert them to the boundary change and the County's request to correct it.

Thank you for time in review of this request. Santa Fe County GIS Division looks forward to continuing the conversation on this matter. I may be reached at (505) 986-6350 or by email at: ewright@co.santa-fe.nm.us.

Sincerely,



A. Erle Wright
GIS Manager
Santa Fe County, New Mexico

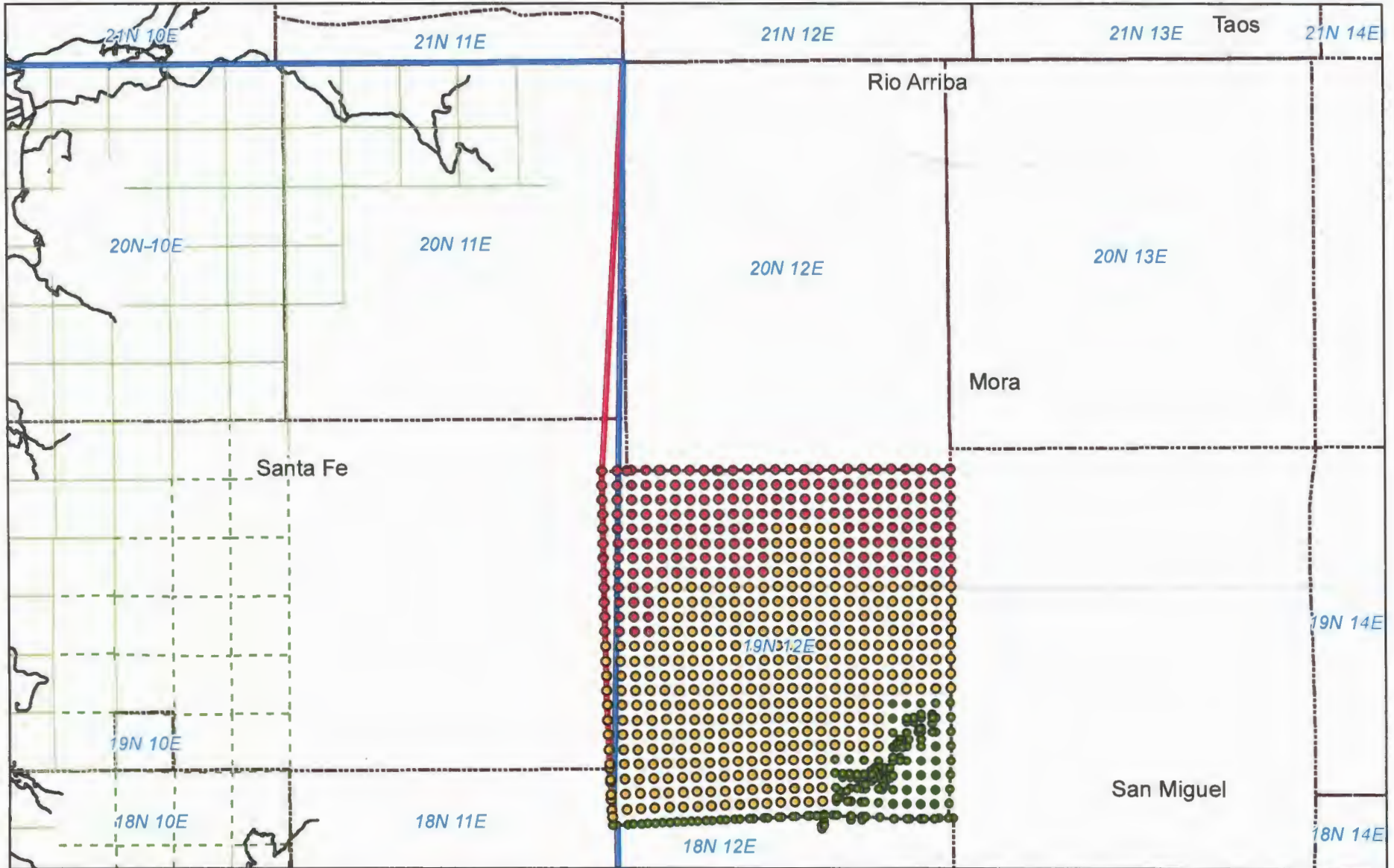
AEW/CWK

Enclosures:

- 1) Illustration Figure for the 2017 BAS shapefile update for the Santa Fe County Boundary
- 2) Bar Graph for the 2017 BAS shapefile update for the Santa Fe County Boundary
- 3) Shapefile of Santa Fe County Boundary update request:
SantaFeCountyNM_BoundaryUpdateCensusBAS.shp

cc: Jim Castagneri, U.S. Census Bureau – Denver, Colorado
(James.D.Castagneri@census.gov)
Nancy von Meyer, Fairview Industries (nancy@fairview-industries.com)
Larry Brotman, New Mexico Taxation and Revenue Department
(Larry.Brotman@state.nm.us)
Monica Faux, BLM – Santa Fe, New Mexico (mfaux@blm.gov)
Penny Ellis-Green – Santa Fe County Growth Management Department Director
(pengreen@santafecountynm.gov)
Tony Flores – Santa Fe County Deputy Manager (tflores@santafecountynm.gov)

Illustration for the 2017 BAS Shapefile Update for the Santa Fe County Boundary



Legend

CadNSDI PLSS Points

Error Ellipse Reliability number

- 24 - 46 feet
- 46 - 287 feet
- 287 - 354 feet

■ Santa Fe County Boundary

PLSS from USGS 7.5' Quadrangles

PLSS Class

- Protracted section line
- Surveyed section line
- PVS_16_v2_county_35049 (Census Partnership File)
- PLSS Township_NM (BLM CadNSDI)
- Roads



1:150,000
1 inch represents 2.37 miles



This information is for reference only.
Santa Fe County assumes no liability for
errors associated with the use of these data.
Users are solely responsible for
confirming data accuracy.



February 28, 2017

SFC CLERK RECORDED 04/18/2017

Bar Graph for the 2017 BAS Shapefile Update for the Santa Fe County Boundary

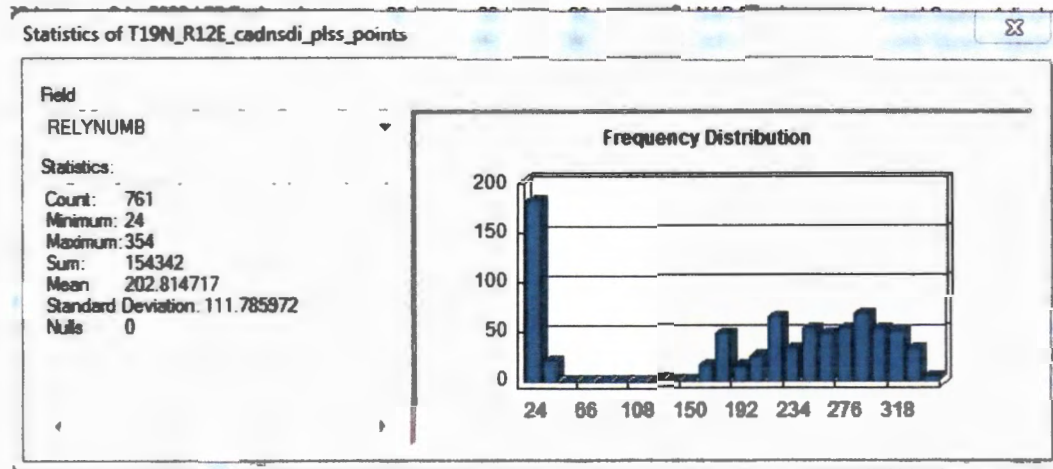
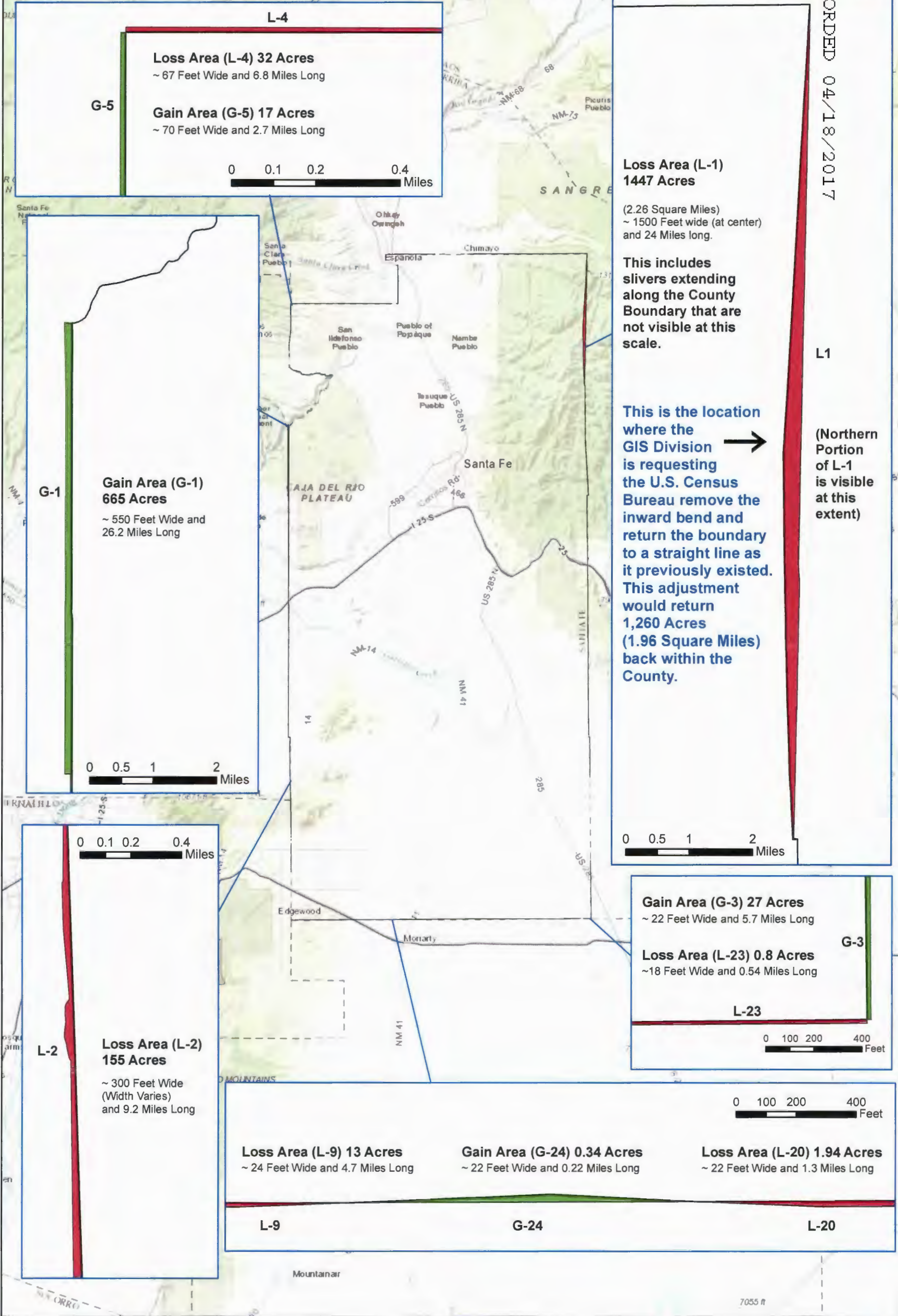


FIGURE 1
Comparison of U.S. Census Bureau Representations of the
Santa Fe County Boundary for Years 2014 and 2016

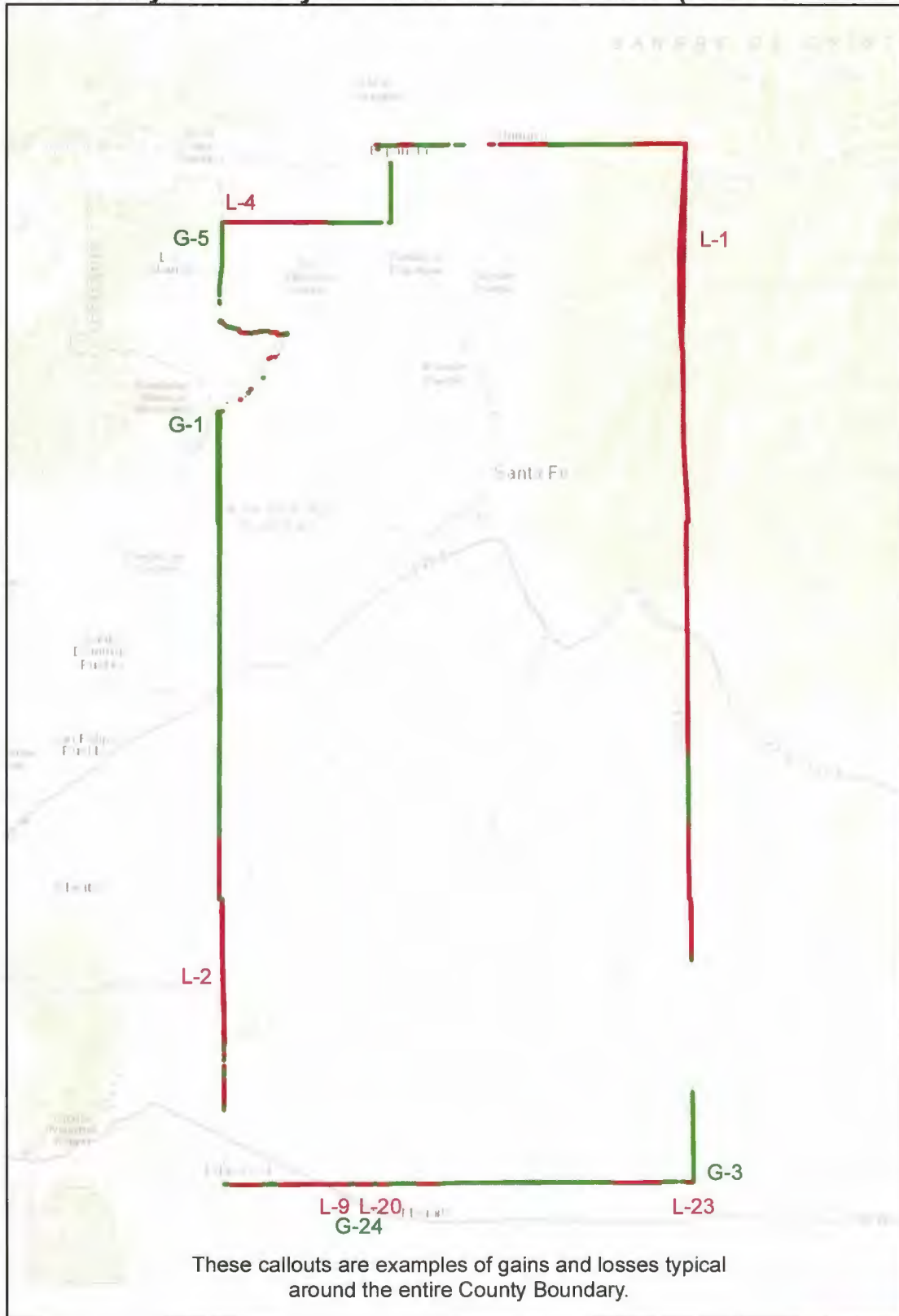
These callouts are examples of gains and losses typical around the entire County Boundary. Changes are noticeable when zoomed in. The majority of the changes are acceptable to the GIS Division. The northeast corner change is not acceptable (See L-1 Discussion Below).



Net Loss: 1.56 Square Miles (998.4 Acres) from 2014 to 2016 for entire County comparing solely the U.S. Census Bureau GIS files from those years.
Note: If the U.S. Census Bureau accepts the correction in the northeast corner (and returns 1,260 Acres back within the County as requested by the GIS Division), the result will be a net gain of 0.41 Square Miles (261.6 Acres).

FIGURE 2

Comparison of the U.S. Census Bureau Representations of the Santa Fe County Boundary for Years 2014 and 2016 (Loss and Gain Areas)



LEGEND

Comparison of Boundary Representations 2014 and 2016

1.35 Square Miles (898 Acres) Gained

2.91 Square Miles (1862 Acres) Lost

1:633,500

1 inch represents 10 miles

0 5 10 20 Miles

This information is for reference only.
Santa Fe County assumes no liability for errors associated with the use of these data.
Users are solely responsible for confirming data accuracy.



March 13, 2017

Net Loss: 1.56 Square Miles (998.4 Acres) from 2014 to 2016 for entire County comparing solely the U.S. Census Bureau GIS files from those years.

FIGURE 3
Comparison of U.S. Census Bureau Representations of the
Santa Fe County's Boundary for Years 2014 and 2016
(March 13, 2017)

Area Loss In Acres	
Count	Area Loss in Acres
L-1	1,447 (Detailed in Figures 1 and 2. 1,260 acres out of the 1,447 acres is the subject of the boundary correction requested by GIS Division)
L-2	155 (Detailed in Figures 1 and 2)
L-3	54
L-4	32 (Detailed in Figures 1 and 2)
L-5	29
L-6	28
L-7	20
L-8	17
L-9	13 (Detailed in Figures 1 and 2)
L-10	11
L-11	7.44
L-12	7.26
L-13	7.20
L-14	7.02
L-15	5.63
L-16	5.23
L-17	3.87
L-18	3.69
L-19	3.17
L-20	1.94 (Detailed in Figures 1 and 2)
L-21	1.24
L-22	0.82
L-23	0.80 (Detailed in Figures 1 and 2)
L-24	0.64
L-25	0.44
L-26	0.38
L-27	0.15
L-28	0.11
L-29	0.10
L-30	0.05
L-31	0.03
L-32	0.00107 (47 sq ft)
L-33	0.00088 (38 sq ft)
L-34	0.00066 (29 sq ft)
L-35	0.00056 (24 sq ft)
L-36	0.00042 (18 sq ft)
L-37	0.00035 (15 sq ft)
L-38	0.00030 (13 sq ft)
L-39	0.00020 (8.6 sq ft)
L-40	0.00020 (8.5 sq ft)
L-41	0.00019 (8.2 sq ft)
L-42	0.000097 (4.2 sq ft)
L-43	0.000087 (3.8 sq ft)
L-44	0.000082 (3.6 sq ft)
L-45	0.000071 (3.1 sq ft)
L-46	0.000067 (2.9 sq ft)
L-47	0.000045 (1.9 sq ft)
L-48	0.000035 (1.5 sq ft)
L-49	0.000031 (1.4 sq ft)
L-50	0.000027 (1.2 sq ft)
L-51	0.000020 (0.9 sq ft)
L-52	0.000018 (0.8 sq ft)
L-53	0.000015 (0.6 sq ft)
L-54	0.000014 (0.6 sq ft)
L-55	0.000007 (0.3 sq ft)
L-56	0.000003 (0.1 sq ft)
Sum (Acres)	1,861.89

Area Gain In Acres	
Count	Area Gain in Acres
G-1	665 (Detailed in Figures 1 and 2)
G-2	94
G-3	27 (Detailed in Figures 1 and 2)
G-4	23
G-5	17 (Detailed in Figures 1 and 2)
G-6	12
G-7	12
G-8	11
G-9	7.98
G-10	6.01
G-11	5.87
G-12	3.67
G-13	3.33
G-14	1.61
G-15	1.50
G-16	1.46
G-17	1.26
G-18	1.08
G-19	1.01
G-20	0.99
G-21	0.81
G-22	0.70
G-23	0.59
G-24	0.34 (Detailed in Figures 1 and 2)
G-25	0.30
G-26	0.25
G-27	0.17
G-28	0.17
G-29	0.13
G-30	0.019 (817.5 sq ft)
G-31	0.014 (628.1 sq ft)
G-32	0.011 (475 sq ft)
G-33	0.009 (407.5 sq ft)
G-34	0.004 (169.5 sq ft)
G-35	0.003 (118 sq ft)
G-36	0.003 (117.8 sq ft)
G-37	0.00093 (40.4 sq ft)
G-38	0.00042 (18.4 sq ft)
G-39	0.00034 (14.9 sq ft)
G-40	0.00028 (12.4 sq ft)
G-41	0.00012 (5.2 sq ft)
G-42	0.00008 (3.4 sq ft)
G-43	0.00004 (1.8 sq ft)
G-44	0.00002 (0.97 sq ft)
G-45	0.000005 (0.22 sq ft)
G-46	0.000003 (0.11 sq ft)
Sum (Acres)	898.69

The highlighted areas are examples of gains and losses typical around the entire County Boundary.

3/14/2017

EXHIBIT

5

tabbles

Santa Fe County

SANTA FE
COUNTY

BOARD OF COUNTY COMMISSIONERS

V.A.2

2017 REGULAR SESSION SCHEDULE (60 Day Session)

- 01/17/2017 -- Opening day (noon)
- 02/16/2017 -- Deadline for introduction
- 03/18/2017 -- Session ends (noon)
- 04/07/2017 -- Legislation not acted upon by governor is pocket vetoed
- 06/16/2017 -- Effective date of legislation not a general appropriation bill or a bill carrying an emergency clause or other specified date

2017 BILL STATISTICS

Current Statistics for All Bills (2017 Reg)	Total	Ratio
Bills Introduced	1461	100.00%
Bills Passed in 1st House	609	41.68%
Bills Passed in 2nd House	64	4.38%
Bills Sent to Governor	19	1.30%
Bills Signed into Law	8	0.55%

LEGISLATION THROUGH BOTH HOUSES

A

HB29	<i>Brown (R55)</i> CARLSBAD BRINE WELL REMEDIATION ADVISORY AUTHORITY (For the Radioactive and Hazardous Materials Committee) (See companion 2017 HB30 for appropriation) (Similar in concept to 2016 SB8 and HB12, but without regulatory authority and without the power of eminent domain.) Proposes a new section of law to create the Carlsbad Brine Well Remediation Advisory Authority and the Carlsbad Brine Well Remediation Fund to address the danger posed by the Carlsbad brine well. Does not carry a specific appropriation but authorizes funding from federal grants, appropriations, donations, earnings from investment of the fund, with its use subject to legislative appropriation. (2017:HB30)	03/13/2017	SPASS
HB42	<i>Stapleton (D19)</i> INSTRUCTIONAL MATERIALS DEFINITION AND ALLOCATION (For the Legislative Education Study Committee) (Related to 2015 HB146, passed by both chambers and vetoed by the Governor) Eliminates all references in the Instructional Materials Law to private schools and their students. Broadens the definition of "instructional materials." Makes development of a multiple list by PED permissive rather than mandatory. Changes the way districts and state institutions may spend their instructional materials fund allocation and eliminates authority of local superintendents to apply for waivers for the use of funds. Changes the date for determining total student enrollment for purposes of calculating funds allocations.	03/11/2017	SPASS
HB77	<i>Trujillo, J. (D45)</i> RESTRICTION ON TRANSPORTATION NETWORK COMPANIES Excludes from the Transportation Network Services Act (Section 65-7-1, et seq.) entities of any kind that receive funding to supplement transportation services through Title IIIB of the federal Older Americans Act of 1965.	03/11/2017	SPASS
HB88	<i>Salazar, T. (D70)</i> MINORITY DOCTORAL LOAN REPAYMENT ASSISTANCE (Identical to 2016 SB132) Changes the name of the Minority Doctoral Loan for Service Program Act to the Minority Doctoral Loan Repayment Act, changes eligibility for loans and conditions of forgiveness for repayment.	03/13/2017	SPASS
HB97	<i>Adkins (R29)</i> MUNICIPAL LIFE INSURANCE BENEFITS TRUST Allows a municipality to establish, maintain and use a post-employment life insurance benefits trust with the advice and consent of the municipal board of finance. Contributions to the trust are irrevocable and dedicated exclusively to funding post-retirement life insurance benefits as provided by the trust. Earnings and income from investment of the trust shall be credited to the trust. A trust company includes an individual or a company, corporation, firm, partnership, state-chartered bank, national bank or other legal entity that provides investment services pursuant to the Trust Company Act.	03/11/2017	SPASS
HB127	<i>Gentry (R30)</i> REQUIRES ELECTRONIC TRANSFER PAYMENT ON INSURANCE CLAIMS	03/11/2017	SPASS

	Amends the Insurance Code to require an insurer to pay claims arising under its policies by electronic transfer when a claimant requests payment by this method. Same penalties for nonpayment within 10 days by check or draft also apply for delayed payment by electronic transfer.		
HB137	<i>Trujillo, L. (D48)</i> REMOVES SUBDIVISION ORDINANCE FILING REQUIREMENT WITH STATE RECORDS Removes the requirement that county subdivision ordinances be filed with the State Records Administrator by amending the County Subdivision Regulations act. Under current law, a county subdivision regulation, amendment or repeal is not effective until 30 days after it is filed with the county clerk and the state records administrator; this bill would require filing only with the county clerk.	03/13/2017	SPASS
HB157	<i>Armstrong, D. (D17)</i> FIREFIGHTER OCCUPATIONAL DISEASES Amends the Occupational Disease Disablement Law, as it relates to firefighters, to include posttraumatic stress disorder and mental health disorder among the diseases presumed to be proximately caused by employment as a firefighter.	03/13/2017	SPASS
HB199	<i>Rodella (D41)</i> CONSUMER PROTECTION FOR DISTRIBUTED GENERATION ACT (Similar to 2016 SB59) Creates the Consumer Protection for Distributed Generation Act. Provides minimum disclosures for lease or sale of a distributed energy generation system; provides penalties and remedies for violations; provides for regulations and form disclosure statements; and amends the Real Estate Foreclosure Act.	03/13/2017	SPASS
HB202	<i>Trujillo, Carl (D46)</i> GROSS RECEIPTS TAX— PERSONS WITH NO PHYSICAL PRESENCE IN NEW MEXICO Expands reach of New Mexico gross receipts tax to some vendors outside New Mexico who sell products into New Mexico but who have no physical presence in New Mexico. Effective July 1, 2017.	03/11/2017	SPASS
HB249	<i>Martinez, R. (D39)</i> EXTEND NMSU GRT DEDUCTION FOR SPECIAL EVENTS (Duplicate of 2017 SB94) Extends for five years (from June 30, 2017 to June 30, 2022) the gross receipts deduction for receipts from admissions to nonathletic special events at NMSU. (2017:SB94)	03/13/2017	SPASS
HB259	<i>Powdrell-Culbert (R44)</i> ALLOWS ANOTHER COUNTY LOCAL OPTION GROSS RECEIPTS TAX TO BE BONDED Allows receipts from the imposition of the county emergency communications and emergency medical and behavioral health services gross receipts tax, whether imposed county-wide or only in the part of the county outside all municipalities, to be pledged to repay revenue bonds.	03/11/2017	SPASS
HB260	<i>Armstrong, D. (D17)</i> REGULATION OF BIO-SIMILAR PRODUCTS (Duplicate of 2017 SB180) Amends the New Mexico Drug, Device and Cosmetic Act to provide for regulation of biosimilar products. Authorizes a pharmacist to dispense an equivalent product that is lower in cost than the prescribed biological product unless the prescribing practitioner prohibits the substitution or the patient	03/13/2017	SPASS

requests otherwise. (2017:SB180)

SENATE ORIGINAL

SB24	<i>Padilla (D14); Smith (R22)</i> IDZ: LOCAL GOVERNMENT BROADBAND INFRASTRUCTURE DEVELOPMENT Amends the Infrastructure Development Zone Act (IDZ) to provide for broadband infrastructure development by a local government.	03/10/2017	HPASS
SB28	<i>Kernan (R42); Salazar, T. (D70)</i> EDUCATION RETIREMENT ACT REVISIONS (For the Investments and Pensions Oversight Committee) Bill makes several technical and stylistic changes to Educational Retirement Act but also some substantive changes. "Regular member" of the Educational Retirement Association now includes all employees of the educational institutions and related entities, not just the persons employed as teaching, nursing or administrative employees.	03/10/2017	HPASS
SB32	<i>Kernan (R42)</i> K-3 PLUS PROGRAM CHANGES (For the Legislative Education Study Committee) Adds a new feeder school qualification, and a funding priority, for schools that apply to the Public Education Department for funding of a K-3 Plus program. Deletes statutory reference to the K-3 Plus Pilot Program.	03/10/2017	HPASS
SB39	<i>Morales (D28)</i> DEFINITION OF "MEM" IN SCHOOL ENROLLMENT GROWTH CALCULATIONS (For the Legislative Education Study Committee) (Identical to 2016 SB165) Eliminates double-counting of certain students for new, formula-based programs in calculating enrollment growth program units through the Public School Funding Formula. For purposes of calculating those units, adds language to the definition of "current year MEM" in the Public School Finance Act to clarify that the term does not include student membership (MEM) calculated based on the first reporting date of the current year, who would already have been included in the prior year student membership, and who thus do not represent enrollment growth.	03/11/2017	HPASS
SB44	<i>Cervantes (D31)</i> NMFA LOANS OR GRANTS FOR CERTAIN WATER PROJECTS Authorizes the New Mexico Finance Authority to make loans or grants from the Water Project Fund to named qualifying entities for designated water projects on terms established by the Water Trust Board and the NMFA. (Note: This bill will be substantially changed during the course of the session and, at this stage, serves as more of a "filler" than an "actual" piece of legislation.)	03/10/2017	HPASS
SB51	<i>Neville (R2)</i> OFF-ROAD VEHICLE LICENSES AND PLATES Amends the Motor Vehicle Code and the Off-Highway Motor Vehicle Act to provide for the issuance of licenses and plates for the operation of off-highway motor vehicles on paved streets or highways; specifies age-appropriate operating licenses, permits and safety gear for paved road use. Makes an appropriation.	03/11/2017	HPASS
SB52	<i>Neville (R2); Salazar, T. (D70)</i> RONALD MCDONALD HOUSE CHARITIES LICENSE PLATES Provides for special license plates for supporters of Ronald McDonald House	03/11/2017	HPASS

	Charities. An additional \$35 fee will be charged for the license plate with \$10 applied to cover manufacturing costs and \$25 appropriated to UNM Board of Regents or use by Carrie Tingley Crippled Children's Hospital.		
SB64	<i>Stewart (D17)</i> REMOVES PUBLIC SCHOOL CAPITAL OUTLAY TIME PERIODS FOR TECHNOLOGY INFRASTRUCTURE (Relates to SB63) Deletes language limiting the time during which Public School Capital Outlay funds may be used for an education technology infrastructure deficiency corrections initiative. (2017:SB63)	03/09/2017	HPASS
SB65	<i>Stewart (D17)</i> COURT LANGUAGE ACCESS FUND (Identical to 2016 SB210, passed unanimously by both chambers and vetoed by the Governor) (Endorsed by the Courts, Corrections and Justice Committee) Relates to court administration; creates the Language Access Fund to provide for language access services in the courts; removes expenditures for court interpreters from designated uses for the Jury and Witness Fee Fund.	03/11/2017	HPASS
SB75	<i>White (R19); Gonzales (D42)</i> UPDATING DEFERRED COMPENSATION ACT FOR GOVERNMENTAL EMPLOYEES (For the Investments and Pensions Oversight Committee) Updates language of the Deferred Compensation Act. Collapses the list of types of deferred compensation investment options that may be approved to mutual funds, including stock, bond or capital preservation funds, or any other investments determined by the Public Employees Retirement Board to fulfill the goals, thereby dropping explicit mention of life insurance and annuity contracts and options provided by New Mexico banks and savings and loan associations.	03/11/2017	HPASS
SB80	<i>Morales (D28)</i> DOH TO DEVELOP EMS TRIAGE PLANS FOR STEMI— MYOCARDIAL INFARCTION Amends the Emergency Medical Services Act to require the Department of Health to coordinate with local and regional emergency medical services on the development and implementation of "ST segment elevation myocardial infarction" (STEMI) triage and transport plans.	03/11/2017	HPASS
SB86	<i>Cisneros (D6); Salazar, T. (D70)</i> ONLINE POSTING FOR WATER RIGHTS NOTIFICATIONS Requires online posting by the State Engineer on the website of that office, concurrently with newspaper publication by an applicant, of notice of an application for a permit to appropriate water rights; for ground-water storage and recovery; to lease the use of water; to use underground water; or to withdraw water from any surface or underground source and transport it outside the state.	03/11/2017	HPASS
SB184	<i>Papen (D38)</i> HORSE RACING: OCCUPATIONAL LICENSES AND EQUINE HEALTH AND TESTING (Identical to 2017 HB229; related to 2015 HB379 [vetoed], SB366, SB 403 and SB489 [c. 140 of 2015]) Removes the exceptions to conduct requiring denial or revocation of an occupational license where the otherwise forbidden conduct is specifically permitted by the commission or steward. (2017:HB229)	03/11/2017	HPASS
SB222	<i>Stefanics (D39)</i>	03/10/2017	HPASS

RAISING DOLLAR THRESHOLD FOR BEING EXEMPT FROM "LOCAL PUBLIC BODY"

Raises from \$10,000 to \$50,000 the amount of annual revenues (exclusive of capital outlay and federal or private grants) that a mutual domestic water association, land grant, incorporated municipality, special district or school district may receive without the organization being a "local public body".

- SB233** *Griggs (R34); Fajardo (R7)* 03/11/2017 HPASS
MINIMUM STANDARDS FOR NEW FORMATION UNDER THE SANITARY PROJECTS ACT
 (Related to 2016 HB171) Prohibits after July 1, 2017 the formation of new associations under the Sanitary Projects Act unless the association will serve at least 15 connections or a population of at least 25 people for at least six months of the year.
- SB265** *White (R19); Trujillo, Carl (D46)* 03/11/2017 HPASS
RECREATIONAL AVIATION LICENSE PLATE
 Requires the Taxation and Revenue Department to create a special license plate for supporters of recreational aviation in New Mexico; prescribes fees; and makes an appropriation.
- SB297** *Griggs (R34)* 03/13/2017 HPASS
DISABLED VETERANS' SPECIAL REGISTRATION PLATES
 Amends Motor Vehicle Code to clarify that a 50% or more disabled veteran shall be issued up to two distinctive or special registration plates for which he or she is eligible, in any combination of the special registration plates cited in Secs. 66-3-409 through 66-3-424.21 free of charge, notwithstanding any fee that would otherwise be charged for a special registration plate.
- SB320** *Campos, P. (D8)* 03/13/2017 HPASS
TRANSFER VIETNAM VETERANS PARK TO VETERANS' SERVICES DEPARTMENT
 Proposes to transfer the operational authority and personal property of Vietnam Veterans Memorial State Park in Colfax County from the Energy, Minerals and Natural Resources Department to the Veterans' Services Department (VSD) upon transfer of the real property of the park from EMNRD to the General Services Department.
- SB356** *Rodriguez (D24)* 03/10/2017 HPASS
NOTIFY COUNTY TREASURER WHEN FORMING PUBLIC IMPROVEMENT DISTRICT
 (Similar to SB67) When the formation of a public improvement district is approved, the governing body is required to notify the county treasurer (in addition to the county assessor) of the district's formation. (2017:SB67)
- SB357** *Smith (D35)* 03/10/2017 HPASS
SPECIAL REGISTRATION PLATE TO HONOR POLICE OFFICERS KILLED IN THE LINE OF DUTY
 (Identical to 2016 SB285) Authorizes the Motor Vehicle Division to issue a special automobile registration plate commemorating police officers who have died in the line of duty. Provides that the plate shall include the words "Honoring Fallen Officers."
- SB382** *Munoz (D4)* 03/13/2017 HPASS
LOCAL GOVERNMENT INVESTMENT POOL

Proposes an amendment to Sec. 6-10-10.1, expanding the allowable use of income from charges to participating governments for administration and management of the Local Government Investment Pool by the Office of the State Treasurer. Allows charges to be used for operations of the Office of the State Treasurer, and accordingly strikes the provision that amounts from the charges in excess of the Treasurer's costs in administering the pool be returned to the participants through reduced charges. Specifies that balances remaining at the end of the fiscal year from amounts deducted do not revert to the general fund.

SJR20 *Campos, P. (D8)*

03/13/2017 HPASS

VIETNAM VETERANS MEMORIAL STATE PARK

Authorizes the proposed donation and transfer of the property comprising the Vietnam Veterans Memorial State Park in Colfax County from the State Parks Division of the Energy, Minerals and Natural Resources Department to the Facilities Management Division of the General Services Department. State law requires that the sale, trade or lease of state real property whose value is \$100,000 or more be ratified and approved by the Legislature, and the property comprising the Vietnam Veterans Memorial State Park has a value in excess of \$100,000.

SIGNED & CHAPTERED

HB1	Stapleton (D19) LEGISLATIVE FEED BILL Makes a series of appropriations from the General Fund for expenses of the 2017 Session of the Legislature and the operation of legislative agencies during FY2017 and FY2018. The General Fund appropriation is apportioned as follows:	P.L.2017, c.4	02/02/2017	SIGNED
HB4	Lundstrom (D9) REVERTING FISCAL YEAR-END FUND BALANCES (For the Legislative Finance Committee) (Duplicate of 2017 SB111) Relating to fiscal solvency; reverts balances in the Insurance Operations Fund, the Fire Protection Fund, the Fire Protection Grant Fund and the Law Enforcement Protection Fund at the end of each fiscal year; requires periodic allotments during a fiscal year from those funds; and makes no transfers from the Fire Protection Fund to the Fire Protection Grant Fund for FY 2017 and 2018. (2017:SB111)	P.L.2017, c.1	02/01/2017	SIGNED
HB12	Trujillo, Christine (D25) MAGISTRATE COURT-HEARING SITES DOWN-SIZED IN TAOS AND CATRON COUNTIES (Endorsed by Courts, Corrections and Justice Committee) Closes court-hearing sites in Quemado, Catron County, and in Questa, Taos County, by removing requirement that the magistrates in each of these counties ride circuit to the outlying communities of Quemado and Questa, respectively.	P.L.2017, c.8	03/11/2017	SIGNED
HB60	Trujillo, Carl (D46) BROADBAND INFRASTRUCTURE IN LOCAL ECONOMIC DEVELOPMENT ACT Adds infrastructure for new broadband telecommunications network facilities to the definition of "economic development project" eligible for funding in the Local Economic Development Act.	P.L.2017, c.6	03/08/2017	SIGNED
HB113	Smith (R22) CHIEF INFORMATION OFFICER TO DEVELOP STATEWIDE BROADBAND NETWORK Requires the state's Chief Information Officer (CIO) (Department of Information Technology, DoIT) to develop and maintain a statewide, multipurpose, high-capacity scalable telecommunications and broadband network to meet the demand of state agencies, political subdivisions and educational institutions. The mandate is to be undertaken in partnership with the Public Education Department, Higher Education Department, political subdivisions, state universities and other educational institutions.	P.L.2017, c.7	03/08/2017	SIGNED
HB261	Gentry (R30); Ivey-Soto (D15)	P.L.2017, c.5	02/24/2017	SIGNED

SUPPLEMENTAL APPROPRIATIONS: AOC & 12TH
JUDICIAL DISTRICT

Makes a supplemental appropriation from the General Fund of (1) \$80,000 to the Supreme Court for use in FY2017 for operational needs; (2) \$800,000 to the AOC for use in FY2017 for the Jury and Witness Fee Fund and operational needs; and (3) \$37,100 to the 12th Judicial District Court for use in FY2017 for operational needs.

SB113 Smith (D35) P.L.2017, c.2 02/01/2017 SIGNED

REDUCTION AND TRANSFER OF FY 2016 AND 2017
GENERAL FUND APPROPRIATIONS

(For the Legislative Finance Committee) (Duplicate of 2017 HB6) Reduces 2015 and 2016 General Appropriations Act appropriations; allows for FY 2017 General Fund appropriation reductions; and transfers money from funds and accounts to the FY 2017 appropriation account and the Operating Reserve Account of the General Fund.

SB114 Neville (R2) P.L.2017, c.3 02/01/2017 SIGNED

SCHOOL DISTRICT CASH BALANCE CREDITS

(For the Legislative Finance Committee) (Duplicate of 2017 HB7) Takes credit for a total of \$50 million in school districts' and charter schools' FY 2016 cash balances against their 2017 State Equalization Guarantee Distribution over the remainder of FY 2017. (2017:HB7)

VETOED LEGISLATION

HB144	Gomez (D34) INDUSTRIAL HEMP RESEARCH AND DEVELOPMENT (Identical to 2017 SB6; 2016 SB3; almost identical to the final version of 2015 SB94, passed by both chambers and vetoed by the Governor; related to 2017 HB89). Authorizes the Department of Agriculture to adopt rules for research on industrial hemp and to issue licenses to grow industrial hemp for research and development. Defines "industrial hemp," authorizes the Department of Agriculture to promulgate rules and issue licenses, and establishes a nonreverting fund to be administered by the department. (2017:SB6; 2017:HB89)	03/08/2017	VETOED
HB241	Harper (R57) USE OF ATTENDANCE IN TEACHER EVALUATIONS (For the Legislative Education Study Committee) (Related to 2015 SB558) Amends the School Personnel Act to allow use of teacher attendance as part of a teacher's annual performance evaluation; excludes personal leave and up to 10 days of sick leave; requires documentation for more than three consecutive days of sick leave; allows the lowest score for teacher attendance on determination that use of sick leave was inconsistent with district policy, administrative regulation or a collective bargaining agreement.	03/10/2017	VETOED
SB6	McSorley (D16) INDUSTRIAL HEMP RESEARCH AND DEVELOPMENT (For the Courts, Corrections and Justice Committee and the Water and Natural Resources Committee) (Identical to 2016 SB3; almost identical to the final version of 2015 SB94 as passed by both chambers and vetoed by the Governor) Authorizes the Department of Agriculture to adopt rules for research on industrial hemp and to issue licenses to grow industrial hemp for research and development. Defines "industrial hemp," authorizes the Department of Agriculture to promulgate rules and issue licenses, and establishes a nonreverting fund to be administered by the department.	03/11/2017	VETOED
SB176	Smith (D35) LEGISLATIVE SESSION, LEGISLATIVE AGENCIES, COURTS AND ADULT PROTECTIVE SERVICES Legislative Session, Legislative Agencies, Courts and Adult Protective Services	01/30/2017	VETOED
SB200	Sapient (D9) CERTIFIED SCHOOL EMPLOYEE PROGRAM UNITS (Duplicate of 2017 HB130; identical to 2014 HB400, 2015 HB122) Makes the present award of extra program units to school districts or charter schools through the State Equalization Guarantee applicable to all licensed school employees certified by the National Board for Professional Teaching Standards, not just teachers. This expands the provision to include school administrators, counselors, school nurses, and other licensed personnel. (2017:HB130)	03/11/2017	VETOED

NMAC LEGISLATIVE ITEMS

BILL	DESCRIPTION	House 1				House 2				PL/Chap	Last Action	Status
		I	C	RC	P	C	RC	P	G			
HB32	<i>Gonzales (D42)</i> AMEND ENHANCED 911 AND 911 BOND ACTS (Similar to 2015 HB126; and 2011 HB328 and SB422, both of which were vetoed by the Governor) Amends the Enhanced 911 Act and the Enhanced 911 Bond Act, which were initially established in order to provide 911 service to (and authorize a related surcharge upon) commercial radio operators, to apply to users of modern telecommunication devices in addition to users of commercial radios. The bill contemplates existing communications technology as well as possible future advances.	•	•	•	•	•					03/11/2017	SJC
HB174	<i>Smith (R22); Ivey-Soto (D15)</i> LOCAL ELECTION ACT (Similar to 2017 HB104, relates to 2016 HJR 7) Proposes the Local Election Act to provide a single election day and uniform processes for many local government elections; provides for mailed ballot elections for special election ballot measures held at times other than general or local elections and for statewide ballot question elections, and establishes procedures for mailed ballot elections; prohibits advisory questions; eliminates write-in candidates in local elections; creates a fund appropriated to the Secretary of State to pay the costs of local elections, and authorizes the Secretary to assess local governments for the fund; repealing the School Election Law, the Mail Ballot Election Law, the Municipal Election Code and other conflicting sections of law; making conforming amendments to the Absentee Voter Act, Uniform	•	•	•	•	•	•	•			03/11/2017	SJC

- Military and Overseas Voters Act and many other sections of law.
- HB175** *Maestas (D16)* • • • • • 03/13/2017 SJC
 RESTRICTING SOLITARY CONFINEMENT IN CORRECTIONAL FACILITIES
 Creates the Isolated Confinement Act to restrict the use of solitary confinement in correctional facilities, including county jails, prisons or other detention facilities. Beginning July 1, 2017, no one under 18 years of age and no pregnant woman can be placed in solitary confinement. Beginning January 1, 2018, inmates with known serious mental illnesses cannot be placed in solitary confinement. Also includes reporting requirement.
- HB242** *Thomson (D24)* • • 01/25/2017 HSGIC
 RESTRICTING THE USE OF SOLITARY CONFINEMENT IN CORRECTIONAL FACILITIES
 (Identical to 2017 HB175; almost identical to 2016 HB193 and 2016 SB140) Creates the Isolated Confinement Act to restrict the use of solitary confinement in correctional facilities, including county jails, prisons or other detention facilities. Beginning July 1, 2017, no one under 18 years of age and no pregnant woman can be placed in solitary confinement. Beginning January 1, 2018, inmates with known serious mental illnesses cannot be placed in solitary confinement. Also includes a reporting requirement. (2017:HB175)
- HB321** *Gallegos, David (R61)* • • • • • 03/11/2017 SJC
 DEPUTY SHERIFFS
 (Almost identical to 2017 SB317, except this bill declares an emergency). Amends the powers of deputy sheriffs, in the event of a vacancy in the office of sheriff, to allow the highest-ranking deputy sheriff to exercise the powers of sheriff until a sheriff is appointed and qualified. (2017:SB317)
- HB332** *Garcia Richard (D43)* • • 02/23/2017 HTRC

EXCLUDES NONPROFIT
OPERATORS OF NATIONAL
LABORATORIES FROM
EXEMPTION

Excludes entities organized as 501(c)(3) organizations that operate a national laboratory in New Mexico from claiming the gross receipts tax exemption at 7-9-29 NMSA 1978 for receipts of certain nonprofits.

HB359 *Ely (D23)*

02/09/2017 HLED C

WORKERS' COMP CHANGES—
PARTIAL DISABILITY CLAIMS

Relates to Workers' Compensation changes to partial disability claims: points, independent medical exams, unsanitary or injurious practices, attorney fees and bad faith claims. Increases partial disability points for education and physical capacity (specific vocational preparation). Authorizes a workers' compensation judge to determine orders for independent medical examinations. Requires that unsanitary or injurious practices actually imperil, retard or impair the workers' recovery or increase the worker's disability. Requires reinstatement of suspended benefits when the worker ceases the unsanitary or injurious practices. Increases allowances for payment of discovery costs and attorney fees. Authorizes a private right of action for bad faith claims-processing and increases fines for violation of the act.

HB401 *Sweetser (D32)*

02/13/2017 HBIC

MANUFACTURED HOME
DEFINITION EXPANDED

Specifies that a "manufactured home" shall include a park model home or trailer among qualifying movable or portable housing structures. Eliminates the size requirements for a manufactured home but adds the requirement that it be primarily for long-term permanent placement at a single location.

HB418 *Armstrong, G. (R49)*

02/21/2017 HENRC

WATER DIVERSIONS:
ADDITIONAL APPLICATION
PROCEDURES AND PERMIT
REQUIRED

(Similar to 2014 SB77) Requires additional procedures in the application process for the diversion of surface or underground water from the basin of origin for use in another basin. Does not apply to diversions of less than 1,000 acre feet, or certain diversions by a municipality or inter-basin diversion project.

HB457 *Ely (D23)* •

02/15/2017 HTRC

TAX ADMINISTRATION ACT
CONFIDENTIALITY REVISION
Amends Section 7-1-8.9 to require federal authorization for the release of confidential tax information, specifically taxpayers' taxable gross receipts, by Taxation and Revenue Department to municipalities and counties only when release of the information is subject to an agreement with the IRS. Also changes the information subject to release from a range of taxable gross receipts to the actual amount of taxable gross receipts.

HB490 *Hall, J. C. (R28)* •

02/16/2017 HLGEC

FUNDS TO COUNTY-SUPPORTED
MEDICAID FUND
Mandates that, in addition to other required contributions, every county must transfer to the County-supported Medicaid Fund in quarterly installments, beginning March 2017, an amount equal to one-sixteenth of the taxable gross receipts reported for the county for the prior fiscal year. Declares an emergency.

SB46 *Neville (R2)* • • • • •

03/11/2017 HCAL

EXPANDS ENHANCED 911 ACT
AND RELATED SURCHARGES
(Similar to 2015 HB126) Amends the Enhanced 911 Act, which was initially established in order to provide 911 service to (and authorize a related surcharge upon) telephone companies and commercial radio operators, to

apply also to users of modern telecommunication devices. The bill contemplates existing communications technology as well as possible future advances.

- | | | | |
|-------|---|-----------|------------------|
| SB153 | <i>Smith (D35)</i>
ENDS ENHANCED
DISTRIBUTION TO LOCAL DWI
FUND BY ONE YEAR
(For the Legislative Finance
Committee) Reduces the distribution
from liquor excise revenues to the
Local DWI Fund from 46% to 41% on
July 1, 2017 instead of July 1, 2018. | • • | 01/23/2017 SCORC |
| SB185 | <i>Papen (D38)</i>
RESTRICTING THE USE OF
SOLITARY CONFINEMENT IN
CORRECTIONAL FACILITIES
(Identical to 2017 HB175 and HB242;
almost identical to 2016 HB193 and
2016 SB140) Creates the Isolated
Confinement Act to restrict the use of
solitary confinement in correctional
facilities, including county jails, prisons
or other detention facilities. Beginning
July 1, 2017, no one under 18 years of
age and no pregnant woman can be
placed in solitary confinement.
Beginning January 1, 2018, inmates with
known serious mental illnesses cannot
be placed in solitary confinement. Also
includes a reporting requirement.
(2017:HB175; 2017:HB242) | • • • | 02/17/2017 SJC |
| SB202 | <i>Ivey-Soto (D15); Wooley (R66)</i>
PROPERTY FORFEITURE
AUTHORITY BY LOCAL AND
STATE LAW ENFORCEMENT
AGENCIES
OVERVIEW. (Related to 2015 HB560)
Extends provisions of the Forfeiture
Act to apply to all seizures, forfeitures
and dispositions of property subject to
forfeiture in the state (except
contraband, controlled substances and
deadly weapons). "Property subject to
forfeiture" means property declared to
be subject to forfeiture by the act, a
state law outside of the act, or a local
ordinance. Expands the authority of | • • • • • | 03/08/2017 HJC |

state and local law enforcement agencies to seize and dispose of forfeited property. Deletes the prohibition of retention of the forfeited property by a law enforcement agency.

SB277 *Ortiz y Pino (D12)*

03/13/2017 HJC

RELEASING PREGNANT OR
LACTATING INCARCERATED
WOMEN

Provides for the release of incarcerated women who are pregnant or lactating. Requires the court to take into account an incarcerated woman's pregnancy and lactation status when determining whether she is eligible for release or bond and make a presumption in favor of release. Provides for release of an incarcerated woman due to give birth, at the court's discretion, continuing for up to eighteen months after the birth of her child or for as long as medically indicated, unless a finding is made in court that public safety or the well-being of the woman or her child would not be best served outside of a correctional setting. A woman released pursuant to this section shall be placed on the least restrictive conditions of release necessary to ensure her return to custody, and after the period of release, the woman shall serve any remaining portion of her sentence.

SB299 *Candelaria (D26)*

03/13/2017 PTABLE

CHANGING DEFINITIONS,
REPORTING REQUIREMENTS,
REMEDIES AND EXHAUSTION
OF ADMINISTRATIVE REMEDIES
REQUIREMENT OF THE
WHISTLEBLOWER PROTECTION
ACT.

(Related to 2015 HB532) Changes the definitions of "retaliatory action" and "unlawful or improper act." Changes to whom the public employee may report unlawful or improper acts. Changes reinstatement from a mandatory to a discretionary remedy and limits it to classified non-supervisory employees. Requires the employee to first exhaust

	all available grievance and other administrative remedies before being entitled to relief under the Whistleblower Protection Act.	•	•		
SB315	<i>Rue (R23)</i> EMS PERSONNEL LICENSURE INTERSTATE COMPACT Proposes adoption of the 35-page “Emergency Medical Services Personnel Licensure Interstate Compact” as a means facilitating the day-to-day movement of emergency medical services personnel across state boundaries and as a means of the “legal recognition” of licensed EMS personnel in a member state. The compact would come into effect on the date the 10th member state enacts the compact statute into law.	•	•		03/04/2017 SJC
SB317	<i>Kernan (R42)</i> DEPUTY SHERIFFS Amends the powers of deputy sheriffs, in the event of a vacancy in the office of sheriff, to allow the highest-ranking deputy sheriff to exercise the powers of sheriff until a sheriff is appointed and qualified.	•	•	•	03/11/2017 HLGEC
SB352	<i>Munoz (D4)</i> CONSTRUCTION INDUSTRIES LICENSING ACT Provides for licensing of private inspection companies; allows companies to provide private inspectors for governments and for contractors and homeowners; requires the employment of certified building officials; limits employment of inspectors; clarifies provisions of the Construction Industries Licensing Act; makes technical changes.	•			02/08/2017 SCORC
SB364	<i>Ingle (R27)</i> PROCEDURE FOR TRANSFERRING JURISDICTION OVER LAND, PARTICULARLY NATIONAL MONUMENTS Revises the procedures for transferring jurisdiction over land between the United States and the State of New	•	•		03/02/2017 SJC

- Mexico, adding requirements regarding land proposed to be designated a national monument.
- SB394** *Neville (R2)* • • 03/07/2017 SFC
INDUSTRIAL REVENUE BOND ACT
Includes provisions for County Industrial Revenue Bonds within the Industrial Revenue Bond Act; changes the list of projects that may be funded with Industrial Revenue Bonds; requires Industrial Revenue Bond funded projects to be located entirely inside certain boundaries of issuing local governments; provides for local government contributions toward certain projects, as permitted pursuant to the Local Economic Development Act; amends, repeals, enacts and recompiles sections of the NMSA 1978.
- SB402** *Baca (R29)* • • 03/08/2017 SJC
SECURITY PROVIDED FOR MAGISTRATE COURTS BY SHERIFFS
Amends Sec. 4-41-16 to provide for sheriffs to attend magistrate courts to provide security upon request. Adds to the duty of the sheriffs of the state to attend any session of a magistrate court for which the magistrate has requested the sheriff's presence for security purposes not less than seven days prior to the requested attendance. A sheriff may decline to attend due to lack of available resources.
- SB433** *Cisneros (D6)* • • 03/02/2017 SFC
HOSPITALS TAXED FOR TWO YEARS
Subjects hospitals to the state (but not local) gross receipts tax and the governmental gross receipts tax for the period July 1, 2017 through June 30, 2019. Distributes the tax proceeds from hospitals during the two-year period to the Medicaid Trust Fund.
- SB451** *Munoz (D4)* • 02/16/2017 SCORC
EXCLUDES CERTAIN LOCAL GOVERNMENTS FROM HOLD

HARMLESS DISTRIBUTIONS

(Similar to 2016 HB233 and similar in part to 2015 HB421 and 2014 HB132)
Denies food and medical hold harmless distribution amounts to municipalities and counties that have imposed a local option hold harmless gross receipts tax.

BUDGET LEGISLATION

Bill: HB2
Sponsors: Lundstrom (D9)
Title: GENERAL APPROPRIATION ACT
Summary: HAFC Substitute for HBs 2 and 3 appropriates money from the general fund, other revenue, internal services funds/interagency transfers, and federal funds for FY18 for the operations of state government including the Judiciary, Legislature, state agencies, higher education and public schools.
Progress: 2nd House: Passed
Status: 03/13/2017 – Concurrence Pending
History: 01/17/2017 – H Introduced and referred to House Appropriations & Finance.
 02/20/2017 – H Reported Do Not Pass but Do Pass as substituted by House Appropriations & Finance (Replaces HB2 & HB3).
 02/22/2017 – H Opened for floor debate.
 02/22/2017 – H Passed 37-32.
 02/23/2017 – S Received in the Senate and referred to Senate Finance.
 03/10/2017 – S Reported Do Pass as amended by Senate Finance.
 03/11/2017 – S Opened for floor debate.
 03/11/2017 – S Passed 33-8.
 03/13/2017 – H Note: Senate requests House concurrence w/House amendments..

HB2 SFC Committee Report 03/10/2017

SFC amendment to HAFC substitute for HB 2 and 3 deleted most of the original and replaced all the appropriated amounts with new figures, as follows:

Total General Fund appropriations for FY18 is \$6.113 billion (\$6,112,716,700).

Broken down by budget category, FY 18 General Fund appropriations proposed are:

- \$18.8 million for the Legislative branch;
- \$274.4 million for the Judicial branch;
- \$115.3 million for General Control agencies;
- \$47.9 million for Commerce and Industry agencies;
- \$62.9 million for Agriculture, Energy & Natural Resources agencies;
- \$1,651.5 million Health, Hospitals & Human Services agencies;

This includes \$.79 million for medical assistance, expected to draw down \$4,120.3 billion in federal funds, including enhanced medical assistance under the Affordable Care Act. Should the federal government reduce or rescind federal medical assistance percentage rates, HSD shall reduce or rescind eligibility for the new adult category;

- \$428.2 million for Public Safety agencies;
- \$870.4 federal and non-GF funds for Transportation agencies];
- \$99.2 million for Other Education agencies;
- \$779.3 million for Higher Education agencies and institutions;
- \$2,585.7 for Public School Support:

Of this, the SEG accounts for \$2,493.3 million;

- \$47.0 million for Special Appropriations:

Included in this amount is

- \$9.0 million (nonreverting) to TRD contingent on passage of HB412 or similar legislation to implement tax code changes mandated in legislation;
- \$26.4 million to HSD contingent on enactment of HB202 or similar legislation authorizing additional distributions to

the country-supported Medicaid fund for increases in hospital rates, including \$5.0 million for rate increases at hospitals classified as smallest and small for receiving payments for uncompensated care;

- The period of time for expending \$1.2 million appropriated in FY 16 to DPS for processing backlogged rape kits is extended through FY 18; and
- \$2.3 million for Supplemental & Deficiency appropriations.

Bill: HB202

Sponsors: Trujillo, Carl (D46)

Title: GROSS RECEIPTS TAX— PERSONS WITH NO PHYSICAL PRESENCE IN NEW MEXICO

Summary: Expands reach of New Mexico gross receipts tax to some vendors outside New Mexico who sell products into New Mexico but who have no physical presence in New Mexico. Effective July 1, 2017.

Progress: 2nd House: Passed

Status: 03/11/2017 – Passed in the Senate

History: 01/21/2017 – H Introduced and referred to House Business & Industry.

01/21/2017 – H Also referred to House Taxation & Revenue.

02/07/2017 – H Reported Do Pass by House Business & Industry.

02/20/2017 – H Reported Do Not Pass but Do Pass as substituted by House Taxation & Revenue.

02/22/2017 – H Opened for floor debate.

02/22/2017 – H Floor amendments adopted (Amendment 1) (Rep. Carl Trujillo) Voice Vote.

02/22/2017 – H Passed 37-32.

02/23/2017 – S Received in the Senate and referred to Senate Corporations & Transportation.

02/23/2017 – S Also referred to Senate Finance.

03/02/2017 – S Reported without recommendation by Senate Corporations & Transportation.

03/10/2017 – S Reported Do Pass as amended by Senate Finance.

03/11/2017 – S Opened for floor debate.

03/11/2017 – S Floor amendments adopted (Amendment 1) (Sen. William Sharer) Voice Vote.

03/11/2017 – S Passed 34-4.

HB202 House Floor Amendment 02/22/2017

House Floor Amendment to HB202 (Rep. Carl Trujillo) restricts the gross receipts deduction at 7-9-73.1 to the receipts of hospitals (the term used in the present deduction) instead of “entities licensed by the Department of Health principally engaged in providing health care services.” (According to the sponsor, this brings “parity” to the healthcare industry where today hospitals are being taxed differently.)

Cuts the authorization for county and municipal hold harmless gross receipts taxes from 0.75 to 0.50 percent, except that those local governments imposing a rate of 0.75 percent on July 1, 2017 may continue to impose that rate until such time as the local government reduces the rate.

Restores the deduction for sales to 501(c)(3) nonprofits organizations, instead repealing an obsolete distribution instruction.

HB202 SFC Committee Report 03/10/2017

SFC amendment to HTRC substitute for HB202, as amended, adds fuels tax increases, delays the reduction of corporate income taxes and single sales apportionment for manufacturers, revises the gross receipts tax treatment of hospitals and health care practitioners and changes the distribution of the motor vehicle excise tax and the distributions to the Judicial Retirement, Magistrate and Legislative Retirement Funds.

Fuels tax changes:

In general incorporates most of the substance of SCORC/SB95 & 135.

(1) raises the gasoline tax to 27 cents/gallon (from 17 cents), the special fuel tax to 26 cents/gallon (from 21 cents/gallon) Also sets temporarily the petroleum products loading fee at \$150/load (equivalent to 1.875 cents/gallon)
 (2) Apportions the additional revenues among state funds and municipalities and counties. Initially, revenue from the additional taxes is allocated as follows:

- Tax Stabilization Reserve: five cents/gallon of the gasoline tax, 2.5 cents/gallon of the special fuel tax and \$110 per load of the petroleum products loading fee.
- Municipalities and counties: 2.5 cents/gallon of the gasoline tax and 0.75 cents/gallon of the special fuel tax. Two-thirds of the revenue amount is distributed to municipalities (including Los Alamos) in proportion to the municipality's sales to aggregate sales of gasoline within all municipalities and one-third to counties (including Los Alamos) in proportion to a county's sales in areas outside its incorporated municipalities compared with aggregate sales of gasoline sold in all areas outside municipalities. This distribution may not be pledged to repayment of bonded indebtedness.
- State Road Maintenance Fund: 2.5 cents/gallon gasoline tax and 0.75 cent/gallon special fuel tax. Money in this fund is subject to appropriation by the Legislature but only to the Department of Transportation for reconstruction, resurfacing or other improvements or maintenance of existing roadways. Money in the fund may not be pledged to repayment of bonded indebtedness.
- Local Governments Road Fund: \$40 per load of the petroleum products loading fee (the current distribution amount).
- State Road Fund: one cent/gallon of special fuel tax.

The initial pattern of distribution continues until the State Board of Finance certifies to the Secretary of Taxation and Revenue that the total amount in state reserve funds at the end of the prior fiscal year are at least five percent of the appropriations from the General Fund in that prior fiscal year. Defines "state reserve funds" as the General Fund operating reserve, the Appropriation Contingency Fund, the Tax Stabilization Reserve, the Taxpayers Dividend Fund and the Tobacco Settlement Permanent Fund.

Once the certification is made, the distribution to the Tax Stabilization Reserve ceases and the additional tax revenues are allocated (under the same conditions as above) to:

- Municipalities and counties: five cents/gallon of the gasoline tax and two cents/gallon of the special fuel tax.
 - State Road Maintenance Fund: five cents/gallon gasoline tax and two cent/gallon special fuel tax.
 - Corrective Action Fund: any amount of petroleum product loading fee over \$40/load.
 - State Road Fund: one cent/gallon of special fuel tax.
 - Local Governments Road Fund: \$40 per load of the petroleum products loading fee (the current distribution amount).
- Also, Petroleum product loading fee is no longer fixed and the fee amount reverts to ranging from a minimum of \$40/load to \$150/load depending on the balance in the Corrective Action Fund.

Monthly distribution changes

- (1) Excepts net receipts attributable to nonprofit hospitals licensed by the Department of Health from the 1.225% distribution to municipalities from the state share of gross receipts tax revenues [7-1-6.4].
- (2) Distributes the net receipts attributable to the amount of tax deducted pursuant to the Oil and Gas Proceeds and Pass-through Entity Withholding Tax Act [7-1-6.43] as follows:
 - a. For the period July 1, 2019 through June 30, 2022, \$55,125 to the Judicial Retirement Fund and \$19,875 to the Magistrate Retirement Fund.
 - b. On and after July 1, 2022, the larger of \$75,000 or one-twelfth of the amount necessary to pay out retirement benefits to the Legislative Retirement Fund.
- (3) \$2.2 million to the County-Supported Medicaid Fund [7-1-6.new];
- (4) Applicable to receipts received on or after July 1, 2017, distributes [7-14-10] motor vehicle excise tax receipts, 100 percent of which currently flow to the state General Fund, as follows:
 - a. 75 percent to the state General Fund;

b. 25 percent to the Tax Stabilization Reserve Fund until the certification by the State Board of Finance and thereafter to the State Road Maintenance Fund.

Corporate income tax changes— from SB199:

- Delays the corporate income tax cuts scheduled for tax years 2017 and 2018. Also delays the increase in the weight of the sales factor in formulary income apportionment for those same tax years.
- The current corporate income tax rate schedule (top rate of 6.6 percent) will continue to apply for taxable years 2017 and 2018. The rate schedule (top rate of 5.9 percent) slated originally for January 1, 2018 takes effect January 1, 2019 for taxable year 2019 and all subsequent years.
- The phase-in of income apportionment to a 100 percent sales factor is delayed. For tax years 2016 through 2018, the sales factor weight remains at 70 percent. Starting with taxable year 2019 (a delay of one year), the sales factor will have a 100 percent weight.
- Forgives penalties and interest related to underpaid estimated corporate income taxes that may result from changes to the rate schedules and income apportionment if underpayment solely due to those changes.

Gross receipts tax changes:

- Exempts from every local option gross receipts tax, but not the state gross receipts tax, the net patient care revenue of a hospital licensed by the Department of Health that is also a 501(c)(3) organization.
- Prior to July 1, 2018, 60 percent of the receipts of a hospital licensed by the Department of Health may be deducted from gross receipts; thereafter 65 percent may be deducted.
- Until July 1, 2018, 60 percent of the net patient care revenue received by a hospital licensed by the Department of Health may be deducted from governmental gross receipts; thereafter 65 percent may be deducted.
- Strikes the amendments to 7-9-93 (receipts of health care practitioners) proposed in the substitute.

Weight-distance tax change:

Lowers from \$95 to \$55 the (possibly unconstitutional) permit tax for obtaining a weigh-distance identification permit.

Repealers

7-1-6.57 No longer necessary distribution instruction related to 7-9-96.1;

7-9-96.1 Gross receipts tax credit for certain hospitals.

HB202 Senate Floor Amendment 03/11/2017

SFA amendment to HTRC substitute for HB202, as amended, restores the ability of municipal and county governments to impose hold harmless gross receipts tax up to three-eighths percent, instead of a maximum of one-quarter percent as proposed in the House floor amendment.

Bill crosses back to House for concurrence.

Bill: HB412

Sponsors: Harper (R57); Smith (D35)

Title: TAX REFORM--SALES AND USE TAX ACT

Summary: (For the Revenue Stabilization and Tax Policy Committee) This 347-page bill restructures many components of the state's tax system, but centers on reforming and renaming the gross receipts and compensating taxes.

Progress: 2nd House: Referred to Committee

Status: 03/09/2017 – Senate Corporations and Transportation Committee

History: 02/14/2017 – H Introduced and referred to House Taxation & Revenue.

03/08/2017 – H Reported without recommendation by House Taxation & Revenue.
 03/08/2017 – H Opened for floor debate.
 03/08/2017 – H Floor substitute adopted (Substitute 1) (Rep. Carl Trujillo) Roll Call 64-0.
 03/08/2017 – H Passed 63-0.
 03/09/2017 – S Received in the Senate and referred to Senate Corporations & Transportation.
 03/09/2017 – S Also referred to Senate Finance.

HB412 House Floor Substitute 03/08/2017

House Floor substitute for HB412 is a 333-page bill largely centering on reforming and renaming the state and local gross receipts and compensating taxes.

SUMMARY:

Renames the gross receipts tax and the compensating tax as, respectively, the state sales tax and the state use tax but the sales tax base, remains the taxable gross receipts of the seller. Proposes a major overhaul of the exemptions, deductions and credits. Requires the Taxation and Revenue Department (TRD) to determine state and local sales and use tax rates applicable after June 30, 2018. Bill expands the use tax base, consolidates municipal and county local option sales taxes, authorizes local option use taxes and revises distributions of the motor vehicle excise tax and the liquor excise tax revenues.

Also renames all other “gross receipts” taxes (e.g., leased vehicle gross receipts tax) as “sales” taxes (e.g., leased vehicle sales tax).

STATE SALES AND USE TAXES

- Both state and local sales taxes are expressed in hundredths of a percent.
- A unique feature of this tax bill is that the sales and use tax rates are not specified. Rather, it establishes a process of determining those tax rates. The number and magnitude of the changes to exemptions, deductions and credits make the size of the new tax base uncertain. Therefore a pre-set rate could produce substantially more or less revenue, unnecessarily burdening either the taxpayers or creating yet another fiscal crisis for the state. A two-step process sets rates beginning July 1, 2018. For the period July 1, 2018 through January 1, 2020, the rate (calculated by TRD, in consultation with DFA, LFC and the executive directors of the NM Municipal League and the NM Association of Counties) equals the quotient of state baseline revenue divided by estimated FY 2019 total gross receipts, rounded up to the nearest one-hundredth percent. Beginning January 1, 2020, the sales tax rate is the quotient of the 103 percent of the FY 2019 baseline revenue divided by the actual FY 2019 sales tax base, rounded up to the nearest one-hundredth percent. If, on or before March 1, 2019, the Secretary of Finance and Administration certifies that actual sales tax revenue for FY 2019 is projected to be less than the estimated tax, the sales tax rate may be adjusted upward by as much as 0.3 percent, effective July 1, 2019. “Baseline revenue” equals the average of the net receipts from the gross receipts tax, compensating tax, liquor excise tax and motor vehicle excise tax for FY 2015 through 2017.

STATE SALES TAX:

- Expands the definition of “engaging in business” by including the wording “without regard to having physical presence, including the presence of a representative acting on behalf of the person, in the state” but does exclude such persons if the person and the person’s affiliates have less than \$100,000 in gross receipts in the state. Apparently this is an attempt to position New Mexico to broaden its reach over internet sales into New Mexico if Congress enacts legislation permitting states more latitude. To ease the transition (whether or not it occurs), TRD is barred from collecting sales tax for periods prior to July 1, 2017 from persons engaging in business if, for those periods, the person lacked physical presence in the state and did not report gross receipts.
- Related to the preceding item, the definition of “gross receipts” expands to include third-party sales made over a multi-vendor marketplace platform that acts as the intermediary, typically as the processor of the transaction, between the seller and the purchaser. Basically it would require Amazon (and similar companies) to collect and pay over sales tax on

sales into New Mexico by third parties through its website.

- The sales tax base expands because many exemptions and deductions are repealed.

EXEMPTIONS:

- ♣ 7-9-13.1--Services sold in New Mexico but performed outside New Mexico: exemption retained but expressed in positive terms rather than double negatives.
- ♣ 7-9-2, Insurance: Narrowed to apply only to those receipts of an insurer subject to the insurance premium tax or from eligible investments.
- ♣ Repealed exemptions: 7-9-13.4, textbooks by public college/university bookstores; 7-9-16, nonprofits operating facilities for providing accommodations for retired elderly persons; 7-9-18, agricultural products, 7-9-19, livestock feeding, penning, handling, training; 7-9-26.1, fuel for space vehicles; 7-9-29, receipts of 501(c)(3) and 501(c)(6) organizations; and 7-9-41.4, receipts from officiating at New Mexico Athletic Association school events.

DEDUCTIONS: Substantially re-writes 7-9-43, nontaxable transaction certificate (NTTC) provisions. While possession of a properly executed NTTC still entitles the holder to a deduction, alternative evidence may be accepted for all deductions--with the burden of proof on the person presenting the alternative evidence. The elements of what constitutes alternative evidence are lifted largely from TRD's regulation 3.2.201.10F NMAC.

- ♣ Expands 7-9-46, deduction for sales to manufacturers, to include sales of qualified equipment to manufacturers--which makes the Investment Credit Act redundant.
- ♣ Creates at 7-9-48.1 a new deduction for "overhead" business services (that is, services not re-sold), making the credit at 7-9-96 redundant. "Qualified business services" are services deductible for federal income tax purposes under IRC Section 162, when the receipts from the sale are subject to the sales tax and not otherwise exempt or deductible. A "qualified taxpayer" means a person, other than any federal, tribal, state or local governmental unit or subdivision, who purchases a qualified business service.
- ♣ Retains 7-9-92, food deduction.
- ♣ Sunsets the following deductions:
 - o July 1, 2032: 7-9-62, 50% deduction of receipts from selling agricultural implements and aircraft; 7-9-62.1, sale or maintaining or refurbishing large military or commercial aircraft;
 - o July 1, 2038: consolidated deduction for sale and use of locomotive engine fuel.
- o Repeals these deductions:
 - o 7-9-54.1, aerospace services to USAF;
 - o 7-9-54.2, spaceport operations & operationally responsive space programs;
 - o 7-9-54.3, wind and solar generation equipment sold to governments;
 - o 7-9-56, intrastate transportation linked with interstate transportation;
 - o 7-9-57, export of services;
 - o 7-9-57.2, software development services in non-urban areas;
 - o 7-9-58, sale of feed, fertilizer;
 - o 7-9-59, agricultural services;
 - o 7-9-60, sales to 501(c)(3) organizations;
 - o 7-1-61.1, certain bank charges connected with loans;
 - o 7-9-63, publication sales;
 - o 7-9-64, newspaper sales;
 - o 7-9-65, chemicals and reagents;
 - o 7-9-66, commissions on sales of tangible property not subject to tax;
 - o 7-9-66.1, commissions on certain real estate transactions;
 - o 7-9-68, warranty obligations;
 - o 7-9-79, administrative and accounting service transactions among affiliates;
 - o 7-9-70, lease of vehicles used in interstate transactions;
 - o 7-9-73, sale of prosthetic devices;

- o 7-9-73.1, 50% of receipts of for-profit hospitals;
- o 7-9-73.2, prescription drugs and oxygen;
- o 7-9-73.3, durable medical equipment;
- o 7-9-74, property used in manufacture of jewelry;
- o 7-9-75, services performed directly on manufactured products;
- o 7-9-76, certain commissions of travel agents;
- o 7-9-76.1, certain manufactured homes;
- o 7-9-76.2, films and tapes for commercial exhibition;
- o 7-9-77.1, certain medical and health care services;
- o 7-9-83, percentage of receipts from selling jet fuel;
- o 7-9-86, sales to qualified film production company;
- o 7-9-87, receipts from selling lottery tickets;
- o 7-9-90, sales of uranium hexafluoride and enrichment;
- o 7-9-93, services of health care provider;
- o 7-9-94, military transformational acquisition programs;
- o 7-9-95, back-to-school sales;
- o 7-9-97, certain sales by or on behalf of state;
- o 7-9-99, services for construction of sole community provider facilities;
- o 7-9-100, construction materials and equipment for sole community provider facilities;
- o 7-9-101, equipment for Tres Amigos;
- o 7-9-103, services provided to Tres Amigos;
- o 7-9-101.3, converting electricity;
- o 7-9-103.2, operation of electricity exchanges;
- o 7-9-104, non-athletic events at NMSU;
- o 7-9-106, (expired) military construction;
- o 7-9-107, boxing, wrestling or martial arts professional contests;
- o 7-9-108, management or investment advisory services for certain financial entities;
- o 7-9-109, veterinary services;
- o 7-9-110.3, purpose of locomotive fuel deduction;
- o 7-9-111, hearing and vision aids;
- o 7-9-112, solar energy systems;
- o 7-9-114, advanced energy systems.

♣ Deductions converted to exemptions: 7-9-55, exports; 7-9-57.1, exports through worldwide websites; 7-9-67, refunds and allowances and uncollectible debts; 7-9-71, trade-in allowances.

♣ Repealed credits: 7-9-79.2, credit for biodiesel blending facility; 7-9-96, certain sales for re-sale; 7-9-96.1, for hospitals credit for all but 0.125% of the state gross receipts tax 7-9-105 (expired) credit for (repealed) penalty for mis-reporting.

GOVERNMENTAL SALES TAX: Restores school districts and entities licensed by the Department of Health to the governmental bodies subject to this tax, canceling an exemption granted in 1992.

USE TAX:

- Extends the use tax to using a license, franchise or service in New Mexico if the property or service was sold, leased, licensed, or performed by a person outside the state and the receipts from the transaction were not subject to the state sales tax.
- Converts the current application of the compensating tax to property in a transaction in which the buyer violates the conditions of an NITC into a separate penalty. The penalty equals the greater of six percent of the value of the good or service or \$25.

- The state use tax rate equals the state sales tax rate but, like the state sale tax, the total rate applicable to a transaction will be the sum of the state use tax rate plus any applicable municipal or county use tax rate.
(Continued at EXTENDED ANALYSIS" section on welcome page.)