

Part 3

Utility Facility Review Board

54-14-301 Creation, purpose, and composition of board.

- (1) The Utility Facility Review Board is created to resolve disputes between local governments and public utilities regarding the siting and construction of facilities as provided in this part.
- (2) The board shall be composed of:
 - (a) the three members of the commission;
 - (b) an individual appointed by the governor from a list of nominees of the Utah League of Cities and Towns; and
 - (c) an individual appointed by the governor from a list of nominees of the Utah Association of Counties.
- (3) The chair of the commission shall serve as chair of the board.
- (4) Members of the commission shall serve as members of the board during their terms of office as commissioners and until their successors on the commission have been appointed and taken office.
- (5)
 - (a) Members of the board who are not commissioners:
 - (i) shall have four-year terms, except the initial term of the individual first appointed by the governor from nominees of the Utah Association of Counties shall be two years;
 - (ii) may be appointed for one succeeding term; and
 - (iii) may continue to serve until their successor takes office.
 - (b) Vacancies in the board of members who are not commissioners shall be filled for the unexpired term.
- (6) Three members of the board constitute a quorum.
- (7) A member of the board may be removed for cause by the governor.
- (8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 89, 2013 General Session

54-14-302 Staff and support for board.

The Department of Commerce and the commission shall provide any staff, services, or meeting rooms the board requires to perform its duties.

Enacted by Chapter 197, 1997 General Session

54-14-303 Actions or disputes for which board review may be sought.

- (1) A local government or public utility may seek review by the board, if:
 - (a) a local government has imposed requirements on the construction of a facility that result in estimated excess costs without entering into an agreement with the public utility to pay for the actual excess cost, except any actual excess costs specified in Subsection 54-14-201(2) (a) or (2)(b), at least 30 days before the date construction of the facility should commence in

order to avoid significant risk of impairment of safe, reliable, efficient, and adequate service to customers of the public utility;

- (b) there is a dispute regarding:
 - (i) the estimated excess cost or standard cost of a facility;
 - (ii) when construction of a facility should commence in order to avoid significant risk of impairment of safe, reliable, and adequate service to customers of the public utility;
 - (iii) whether the public utility has sought a permit, authorization, approval, exception, or waiver with respect to a facility sufficiently in advance of the date construction should commence, based upon reasonably foreseeable conditions, to allow the local government reasonable time to pay for any estimated excess cost;
 - (iv) the geographic boundaries of a proposed corridor as set forth in a notice submitted by a public utility to a local government pursuant to the provisions of Subsection 54-18-301(2) (a), provided the action is filed by the local government before the public utility files an application for a land use permit as set forth in Subsection 54-18-304(1)(a); or
 - (v) a modification proposed by a local government to a utility's proposed corridor that is identified in the public utility's notice of intent required pursuant to Subsection 54-18-301(3);
 - (c) a local government has required construction of a facility in a manner that will not permit the utility to provide service to its customers in a safe, reliable, adequate, or efficient manner;
 - (d) a local government has prohibited construction of a facility which is needed to provide safe, reliable, adequate, and efficient service to the customers of the public utility;
 - (e) a local government has not made a final decision on the public utility's application for a permit, authorization, approval, exception, or waiver with respect to a facility within 60 days of the date the public utility applied to the local government for the permit, authorization, approval, exception, or waiver;
 - (f) a facility is located or proposed to be located in more than one local government jurisdiction and the decisions of the local governments regarding the facility are inconsistent; or
 - (g) a facility is proposed to be located within a local government jurisdiction to serve customers exclusively outside the jurisdiction of the local government and there is a dispute regarding the apportionment of the actual excess cost of the facility between the local government and the public utility.
- (2)
- (a) If an action is filed by a local government pursuant to Subsection (1)(b)(iv) or (v) seeking a modification to a target study area or a proposed corridor, the local government shall provide written notice of the action to any potentially affected landowner, as defined in Section 54-18-102, or affected entity, as defined in Section 54-18-102.
 - (b) A potentially affected landowner, as defined in Section 54-18-102, or affected entity, as defined in Section 54-18-102, shall have a right to intervene as a party in the proceeding.

Amended by Chapter 340, 2011 General Session

54-14-304 Initial hearing.

- (1) The board shall convene an initial hearing within 50 days after the date review is initiated.
- (2) At the initial hearing, the board shall:
 - (a) determine how the review will take place, including whether it will be conducted as a formal or informal adjudicative proceeding; and
 - (b) set a schedule for the review proceeding.
- (3) The board shall hold a hearing on the merits within 60 days after the initial hearing.

Amended by Chapter 89, 2013 General Session

54-14-305 Written decisions of board.

- (1) The board shall issue a written decision on the review expeditiously and, in any event, not later than 75 days following the initial hearing.
- (2) The written decision shall:
 - (a) specify whether the facility should be constructed and, if so, whether any requirements or conditions imposed by the local government may not be imposed because they impair the ability of the public utility to provide safe, reliable, and adequate service to its customers; and
 - (b) resolve any dispute regarding:
 - (i) the standard cost or estimated excess cost of the facility;
 - (ii) the date on which construction of the facility should commence in order to avoid a significant risk of impairment of safe, reliable, and adequate service to customers of the public utility;
 - (iii) whether the public utility has sought a permit, authorization, approval, exception, or waiver with respect to a facility sufficiently in advance of the date construction should commence, based upon reasonably foreseeable conditions, to allow the local government reasonable time to pay for any estimated excess cost;
 - (iv) apportionment of the actual excess cost of the facility between the local government and the public utility under Subsection 54-14-303(1)(g); or
 - (v) the proposed location and siting of a facility subject to Chapter 18, Siting of High Voltage Power Line Act, and in accordance with Section 54-14-102.
- (3)
 - (a) Notwithstanding Subsection (6), the written decision of the board may designate the facility route for a high voltage transmission line pursuant to a dispute described under Section 54-14-304.
 - (b) The public utility is entitled to recover from its ratepayers any actual excess costs apportioned to it under Subsection (2)(b)(iv).
- (4) If the board determines that a facility that a local government has prohibited should be constructed, the written decision shall specify any general location parameters required to provide safe, reliable, adequate, and efficient service to the customers of the public utility.
- (5) The written decision shall leave to the local government any issue that does not affect the provision of safe, reliable, adequate, and efficient service to customers of the public utility or that does not involve an estimated excess cost.
- (6) With respect to local government requirements or conditions that impose an estimated excess cost but do not impair the provision of safe, reliable, and adequate service to the customers of the public utility, the written decision shall leave each siting issue to the local government except determination of the estimated excess cost and determination of when the construction of the facility should commence.
- (7)
 - (a) In determining when the construction of the facility should commence, the board shall consider whether the public utility sought a permit, authorization, approval, exception, or waiver from the local government in a timely manner based upon reasonably foreseeable conditions.
 - (b) If the board determines that the public utility did not seek a permit, authorization, approval, exception, or waiver in a timely manner, the board shall allow sufficient time for the local government to pay any actual excess cost that may be imposed as a result of requirements or conditions the local government has imposed that do not impair the provision of safe, reliable, and adequate service to customers of the public utility.

- (c) There is a presumption that the utility has sought a permit, authorization, approval, exception, or waiver in a timely manner if the utility has complied with:
 - (i) the notice and filing requirements of Chapter 18, Siting of High Voltage Power Line Act; or
 - (ii) the timing requirements imposed by a local government land use ordinance.

Amended by Chapter 89, 2013 General Session

54-14-306 Action required of local government following board decision.

- (1) If the board decides that a facility permitted to be constructed by a local government is subject to requirements or conditions that impose an estimated excess cost but do not impair the provision of safe, reliable, and adequate service to customers of the public utility, the local government shall, within 20 days following the decision of the board, determine whether it will impose the requirement or conditions imposing an estimated excess cost or issue the permit, authorization, approval, exception, or waiver without the requirements or conditions imposing an estimated excess cost.
- (2) If the board decides that a facility should be constructed that the local government has prohibited, the local government shall, within 60 days following the decision of the board, issue the permit, authorization, approval, exception, or waiver consistent with the decision of the board.
- (3) The local government may impose requirements or conditions pursuant to its zoning, subdivision, or building code regulations if:
 - (a) the requirements or conditions do not impair safe, reliable, and adequate service to the customers of the utility; and
 - (b) the local government enters into an agreement with the public utility within the 20-day time limit specified by Subsection (1) or the 60-day time limit specified by Subsection (2) to pay for the actual excess cost to the public utility, except any actual excess costs specified in Subsection 54-14-201(2)(a) or (2)(b), at least 30 days before the date construction of the facility should commence.

Enacted by Chapter 197, 1997 General Session

54-14-307 Stay of board's decision pending review or appeal.

- (1) A petition for review, rehearing, or reconsideration or a petition for judicial review does not stay or suspend the effectiveness of a written decision of the board.
- (2) Any party seeking to stay the effectiveness of a decision of the board shall seek a stay under Section 63G-4-405.

Amended by Chapter 382, 2008 General Session

54-14-308 Judicial review in formal adjudicative proceedings.

The Court of Appeals has jurisdiction to review any decision of the board in a formal adjudicative proceeding.

Enacted by Chapter 197, 1997 General Session