

PUBLIC UTILITY AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: David Ure

AN ACT RELATING TO PUBLIC UTILITIES; SPECIFYING THE DUTIES OF THE PUBLIC SERVICE COMMISSION; CREATING AND PRESCRIBING DUTIES OF THE OFFICE OF THE PUBLIC ADVOCATE AND THE ADVISORY BOARD; REPEALING SECTIONS RELATING TO THE DIVISION OF PUBLIC UTILITIES AND THE COMMITTEE OF CONSUMER SERVICES; PRESCRIBING A BALANCING TEST FOR THE DETERMINATION OF WHAT IS JUST AND REASONABLE AND IN CARRYING OUT DUTIES; ENACTING AND MODIFYING PROVISIONS FOR INFORMAL AND EXPEDITIOUS RESOLUTION OF ISSUES; CLARIFYING THE COMMISSION'S USE OF A TEST YEAR IN RATE CASES; AMENDING THE PROCEDURE FOR RECOVERING CERTAIN FUEL AND ENERGY COSTS; REPLACING THE UTILITY GROSS PROCEEDS FEE WITH THE UTILITY REGULATION TAX; MAKING TECHNICAL CHANGES; PROVIDING AN EFFECTIVE DATE; AND PROVIDING A PROCEDURE FOR THE TRANSITION PERIOD.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 13-1-2**, as last amended by Chapter 313, Laws of Utah 1994
- 54-1-1**, as last amended by Chapter 246, Laws of Utah 1983
- 54-1-3**, as last amended by Chapter 246, Laws of Utah 1983
- 54-1-6**, as last amended by Chapters 101 and 122, Laws of Utah 1988
- 54-1-6.5**, as enacted by Chapter 246, Laws of Utah 1983
- 54-1-7**, as last amended by Chapter 246, Laws of Utah 1983
- 54-1-10**, as last amended by Chapter 246, Laws of Utah 1983
- 54-1-11**, as enacted by Chapter 246, Laws of Utah 1983
- 54-3-1**, as last amended by Chapter 206, Laws of Utah 1977
- 54-3-21**, Utah Code Annotated 1953

54-4-1.1, as enacted by Chapter 50, Laws of Utah 1984

54-4-4, as last amended by Chapter 166, Laws of Utah 1975

54-7-1, as last amended by Chapter 161, Laws of Utah 1987

54-7-1.5, as enacted by Chapter 246, Laws of Utah 1983

54-7-12, as last amended by Chapter 170, Laws of Utah 1996

54-7-15, as last amended by Chapter 161, Laws of Utah 1987

54-8b-13, as enacted by Chapter 141, Laws of Utah 1990

54-8b-17, as enacted by Chapter 96, Laws of Utah 1998

54-8b-18, as enacted by Chapter 113, Laws of Utah 1999

67-1-13, as enacted by Chapter 307, Laws of Utah 1999

ENACTS:

54-1-6.7, Utah Code Annotated 1953

54-4-37, Utah Code Annotated 1953

54-5a-1, Utah Code Annotated 1953

54-5a-2, Utah Code Annotated 1953

54-5a-3, Utah Code Annotated 1953

54-5a-4, Utah Code Annotated 1953

54-7-11.5, Utah Code Annotated 1953

54-10a-1, Utah Code Annotated 1953

54-10a-2, Utah Code Annotated 1953

54-10a-3, Utah Code Annotated 1953

54-10a-4, Utah Code Annotated 1953

54-10a-5, Utah Code Annotated 1953

54-10a-6, Utah Code Annotated 1953

54-10a-7, Utah Code Annotated 1953

54-10a-8, Utah Code Annotated 1953

REPEALS:

54-4-1.5, as enacted by Chapter 246, Laws of Utah 1983

54-4a-1, as last amended by Chapter 225, Laws of Utah 1989
54-4a-2, as last amended by Chapter 225, Laws of Utah 1989
54-4a-3, as last amended by Chapter 122, Laws of Utah 1988
54-4a-4, as enacted by Chapter 246, Laws of Utah 1983
54-4a-5, as enacted by Chapter 246, Laws of Utah 1983
54-4a-6, as enacted by Chapter 246, Laws of Utah 1983
54-5-1.5, as last amended by Chapter 170, Laws of Utah 1996
54-5-2, as last amended by Chapter 214, Laws of Utah 1993
54-5-3, as last amended by Chapter 214, Laws of Utah 1993
54-5-4, Utah Code Annotated 1953
54-8b-12, as last amended by Chapter 122, Laws of Utah 1997
54-10-1, as enacted by Chapter 54, Laws of Utah 1977
54-10-2, as last amended by Chapter 243, Laws of Utah 1996
54-10-3, as last amended by Chapter 243, Laws of Utah 1996
54-10-4, as enacted by Chapter 54, Laws of Utah 1977
54-10-4.5, as enacted by Chapter 216, Laws of Utah 1981
54-10-5, as last amended by Chapters 20 and 215, Laws of Utah 1995
54-10-6, as enacted by Chapter 54, Laws of Utah 1977
54-10-7, as last amended by Chapter 20, Laws of Utah 1995

This act enacts uncodified material.

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-1-2** is amended to read:

13-1-2. Creation and functions of department -- Divisions created -- Fees.

(1) (a) There is created the Department of Commerce.

(b) The department shall execute and administer state laws regulating business activities and occupations affecting the public interest.

(2) Within the department the following divisions are created:

(a) the Division of Occupational and Professional Licensing;

- (b) the Division of Real Estate;
- (c) the Division of Securities;
- (d) the ~~[Division of Public Utilities]~~ Office of the Public Advocate;
- (e) the Division of Consumer Protection; and
- (f) the Division of Corporations and Commercial Code.

(3) (a) Unless otherwise provided by statute, the department may adopt a schedule of fees assessed for services provided by the department by following the procedures and requirements of Section 63-38-3.2.

(b) The department shall submit each fee established in this manner to the Legislature for its approval as part of the department's annual appropriations request.

(c) (i) All fees collected by each division and by the department shall be deposited in a restricted account within the General Fund known as the Commerce Service Fund.

(ii) At the end of each fiscal year, the director of the Division of Finance shall transfer into the General Fund any fee collections that are greater than the department's legislative appropriation for that year.

(d) The department may not charge or collect any fee nor expend monies from this fund without approval by the Legislature.

Section 2. Section **54-1-1** is amended to read:

54-1-1. Establishment of commission -- Functions.

(1) The Public Service Commission [of Utah] is established as an independent agency. The [Public Service] commission is charged with discharging the duties and exercising the legislative, adjudicative, and rulemaking powers committed to it by law and may sue and be sued in its own name.

(2) In the discharge of its duties under this title, the commission shall balance the interests of consumers of public utility services in the state and public utilities providing service in the state by considering factors as required by law including:

(a) consumers obtaining safe, efficient, and reliable utility service at a fair price based on the utility's cost of providing service; and

(b) reasonable opportunities for a public utility to achieve earnings that are sufficient to:
(i) assure confidence in the financial integrity and well-being of the public utility; and
(ii) yield returns to equity holders commensurate with returns on investments in other business enterprises having corresponding risks and uncertainties.

(3) In balancing the interests of consumers and public utilities, the commission:

(a) shall resolve matters subject to its jurisdiction promptly, fairly, and, if possible, in a nonadversarial manner; and

(b) may consider the following:

(i) promoting the safe, healthy, economic, efficient, and reliable operation of public utilities and their services, instrumentalities, equipment, and facilities;

(ii) providing reasonable classifications, rules, regulations, practices, and service of public utilities;

(iii) making the regulatory process as simple and understandable as possible so that it is:

(A) acceptable to the public;

(B) feasible, expeditious, and efficient to apply; and

(C) designed to minimize controversies over interpretation and application;

(iv) promoting efficient management and operation of public utilities;

(v) providing for fair apportionment of public utility charges among customer categories and individual customers and preventing undue discrimination in rate relationships;

(vi) promoting stability in prices for customers and financial stability for utilities from year to year;

(vii) protecting against wasteful use of public utility services;

(viii) providing methods of reducing wide periodic variations in the demand for products, commodities, or services;

(ix) encouraging conservation of resources and energy;

(x) the cost of providing service to each category of customer;

(xi) the economic impact of charges on each category of customer; and

(xii) the well-being of the state.

(4) When applying a just and reasonable standard in the performance of its duties under this title, the commission shall balance the interests of consumers and the public utility as prescribed in this section.

(5) If any provision relating to the balancing of interests in this section, Subsection 54-1-6(5), 54-1-6.5(2), 54-3-1(4), or Section 54-10a-6 conflicts with Title 54, Chapter 8b, Public Telecommunications Law, then the provisions in Title 54, Chapter 8b, Public Telecommunications Law, shall control.

Section 3. Section **54-1-3** is amended to read:

54-1-3. Transaction of business by commissioners -- Quorum -- Proceedings by less than majority or administrative law judge -- Effect of actions.

(1) (a) A majority of the commissioners shall constitute a quorum for:

(i) the transaction of any business~~[, for]~~;

(ii) the performance of any duty; or ~~[for]~~

(iii) the exercise of any power of the commission.

(b) Any action taken by a majority of the commission shall be ~~[deemed]~~ considered the action of the commission. ~~[Any]~~

(c) A vacancy in the commission ~~[shall]~~ does not impair the right of the remaining commissioners to exercise ~~[all]~~ the powers of the commission ~~[so long as]~~ if a majority of the commission remains.

(d) The commission may hold hearings at any time or place within or without the state.

(2) ~~[The]~~ (a) Except as provided in Subsection (2)(b), the following proceedings shall be heard by [at least] a majority of the commissioners:

~~[(a) General]~~ (i) general rate proceedings to establish rates for public utilities ~~[which]~~ that have annual revenues generated from Utah utility service in excess of \$200,000,000; or

~~[(b) Any]~~ (ii) any proceeding which the commission determines involves an issue of significant public interest.

(b) If a commission proceeding requiring a majority has commenced and the unavoidable absence of one or more commissioners results in less than a majority being available to continue the

proceeding, the proceeding may continue before a single commissioner or specified administrative law judge only upon agreement of the involved public utility and, if it is a party, the [~~Division of Public Utilities~~] Office of the Public Advocate.

(3) Any other investigation, inquiry, hearing, or proceeding which the commission has power to undertake may be conducted before less than a majority of the commission or before an administrative law judge appointed by the commission.

(4) [~~All proceedings~~] (a) Any proceeding conducted before less than a majority of the commission or before an administrative law judge shall be [~~deemed proceedings~~] considered a proceeding of the commission; and

(b) the findings, orders, and decisions made by less than a majority of the commission or by an administrative law judge, when approved and confirmed by the commission and filed in its office, shall be [~~deemed~~] considered findings, orders, and decisions of the commission and shall have the same effect as if originally made by the commission.

Section 4. Section **54-1-6** is amended to read:

54-1-6. Employment of staff -- Status and compensation -- Employees not to be parties or witnesses and may not appeal commission decisions.

(1) (a) The annual budget of the [~~Public Service~~] commission shall provide sufficient funds for the commission to hire, develop, and organize an advisory staff to assist the commission in performing the powers, duties, and functions committed to it by statute.

[~~(a)~~] (b) The commission may hire:

(i) economists, accountants, engineers, statisticians, lawyers, law clerks, and other professional and technical experts;

(ii) court reporters, transcribers of tape recordings, clerks, secretaries, and other administrative and support staff;

(iii) additional experts as required for a particular matter; and

(iv) administrative law judges, who shall be members of the Utah State Bar, and constitute a separate organizational unit reporting directly to the commission.

[~~(b)~~] (c) The commission may provide for funds in the annual budget to acquire suitable

electronic recording equipment to maintain a verbatim record of [~~proceedings~~] hearings before the commission, any commissioner, or any administrative law judge.

(2) (a) With the exception of clerical workers in nonconfidential positions, all staff of the [~~Public Service~~] commission are exempt employees under [~~the~~] Title 67, Chapter 19, Utah State Personnel Management Act, and serve at the pleasure of the commission.

(b) Administrative law judges are exempt employees under [~~the~~] Title 67, Chapter 19, Utah State Personnel Management Act, and may only be removed from office upon due notice and by a unanimous vote of the commission.

(c) (i) The Department of Human Resource Management shall determine pay schedules using standard techniques for determining compensation.

(ii) The Department of Human Resource Management may make its compensation determinations based upon compensation practices common to utility companies throughout the United States.

(3) (a) [~~The staff or other employees of the commission may not~~] Except as otherwise provided in this title, no member of the commission's staff or other commission employee may appear as [~~parties~~] a party or [~~witnesses~~] witness in any proceeding before the commission, any commissioner, or any administrative law judge.

(b) The commission's staff or [~~other~~] employees [~~of the commission~~] may not apply for a rehearing of or appeal any finding, order, or decision of the commission.

(4) The commission may, with respect to consumer complaints and matters brought before the commission under Section 54-7-11.5, direct the commission staff to:

(a) assist the commission in facilitating the resolution of matters brought before the commission;

(b) review proposals or complaints brought before the commission;

(c) conduct research, studies, and investigations;

(d) provide information, documents, or records to the commission; and

(e) assess the impact of proposed utility rate changes.

(5) In performing its duties, the commission staff shall balance the interests of consumers and

public utilities in the same manner as the commission is directed in Section 54-1-1.

Section 5. Section **54-1-6.5** is amended to read:

54-1-6.5. Executive staff director -- Appointment -- Functions.

(1) The commission shall appoint an executive staff director, who shall:

- (a) serve at the pleasure of the commission [~~and shall~~];
- (b) supervise and coordinate staff functions[;];
- (c) assist the [~~chairman of the commission~~] chair with administrative duties[;]; and
- (d) perform any other duties the commission may direct.

(2) In performing his or her duties, the executive staff director shall balance the interests of consumers and public utilities in the same manner as the commission is directed in Section 54-1-1.

Section 6. Section **54-1-6.7** is enacted to read:

54-1-6.7. Investigations, audits -- Notice -- Adjudicative proceeding.

(1) Any investigation, study, audit, inspection, action, or request for discovery of information pursuant to this title, shall be preceded by reasonable advance notice to the person or entity against whom an investigation, study, audit, inspection, enforcement, or discovery is sought.

(2) The person or entity under Subsection (1) may require that an adjudicative proceeding be commenced prior to the initiation of an investigation, study, audit, inspection, action, or discovery by commission staff.

Section 7. Section **54-1-7** is amended to read:

54-1-7. Secretary of commission -- Appointment -- Functions.

(1) The commission [~~may~~] shall appoint a secretary of the commission, who shall serve at the pleasure of the commission.

(2) It shall be the duty of the secretary to keep a full and true record of [~~all~~]:

- (a) the adjudicative proceedings of the commission [~~and of all~~];
- (b) determinations, rulings, and orders made by the commission, or by any of the commissioners[;]; and [~~of~~]

(c) the approval and confirmation by the commission of the determinations, rulings, and orders made by individual commissioners or administrative law judges.

(3) The secretary shall:

(a) be the custodian of the records of the commission~~[-and shall];~~

(b) file and preserve at its general office ~~[aH]~~ any books, profiles, tariffs, schedules, reports, maps ~~[and]~~, documents, and ~~[aH]~~ papers ~~[whatsoever]~~ filed with ~~[it]~~ the commission or entrusted to its care~~[-];~~ and ~~[the secretary shall]~~

(c) be responsible to the commission for the custody ~~[thereof]~~ of the items specified in Subsection (3)(b).

(4) Under the direction of the commission, the secretary shall:

(a) superintend its clerical business~~[-];~~

(b) conduct its correspondence~~[-];~~

(c) give notice of ~~[aH]~~ hearings, determinations, rulings, and orders of the commission~~[-];~~

(d) prepare for service papers and notices required by the commission~~[-];~~ and

(e) perform other duties the commission may prescribe.

(5) The secretary ~~[shall have power to]~~ may administer ~~[oaths]~~ an oath in ~~[all parts]~~ any part of the state in ~~[all proceedings];~~

(a) any proceeding by or before the commissioners ~~[and];~~ or

(b) in ~~[all cases]~~ any case or ~~[matters]~~ matter pertaining to the duties of the office of secretary.

(6) In the absence of the secretary, the ~~[commission]~~ chair may designate another individual to perform the secretary's duties.

Section 8. Section **54-1-10** is amended to read:

54-1-10. Conservation planning -- Annual reports.

(1) The ~~[Public Service]~~ commission shall engage in long-range planning regarding public utility regulatory policy in order to facilitate the well-planned development and conservation of utility resources.

(2) (a) The commission shall make and submit to the governor and the Legislature an annual report containing a full and complete account of the transactions of its office, together with any facts, suggestions, and recommendations it ~~[may deem]~~ considers necessary.

(b) The ~~[Division of Public Utilities]~~ Office of the Public Advocate shall provide any assistance the commission may require in the preparation of the annual report.

(c) The report shall be made and submitted by October 1 of each year, or as soon after as may be feasible, and shall be published as are the reports of other departments of the state.

Section 9. Section **54-1-11** is amended to read:

54-1-11. Prohibited interests, relationships, and actions by commissioners and employees.

(1) No person employed as a commissioner or as personnel of the commission shall, while so employed:

(a) have any direct pecuniary interest, whether as the holder of stock or other securities, or otherwise have any conflict of interest with any public utility or other entity subject to the jurisdiction of the commission;

(b) have any office, position, or relationship, or be engaged in any business or avocation which interferes or is incompatible with the effective and objective fulfillment of the duties of office or employment with the commission;

(c) accept any gift, gratuity, emolument, or employment in violation of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, from any public utility or other entity subject to the jurisdiction of the commission or from any other officer, agent, or employee thereof; or

(d) solicit, suggest, request, or recommend, directly or indirectly, the appointment of any person or entity to any office or employment with any public utility or other entity subject to the jurisdiction of the ~~[Public Service]~~ commission.

(2) No officer, agent, attorney, or employee of any public utility shall directly or indirectly solicit, request, or recommend to the governor, any state senator, the commission, or the ~~[Division of Public Utilities]~~ Office of the Public Advocate the appointment of any person as a commissioner or as executive director of the commission, or the appointment of any person to any commission staff position.

Section 10. Section **54-3-1** is amended to read:

54-3-1. Charges must be just, service adequate, rules reasonable.

~~[All charges]~~ (1) (a) Each charge made, demanded, or received by any public utility ~~[, or by any two or more public utilities,]~~ for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, shall be just and reasonable. ~~[Every]~~

(b) Any unjust or unreasonable charge made, demanded, or received for ~~[such]~~ a product ~~[or]~~, commodity, or service specified in Subsection (1)(a) is ~~[hereby]~~ prohibited ~~[and declared unlawful. Every]~~.

(2) Each public utility shall furnish, provide, and maintain ~~[such]~~ service, instrumentalities, equipment, and facilities ~~[as]~~ that:

(a) will promote the safety, health, comfort, and convenience of its patrons, employees, and the public ~~[, and as will]; and~~

(b) be in all respects adequate, efficient, just and reasonable. ~~[All rules and regulations]~~

(3) Each rule or regulation made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable. ~~[The scope of definition "just and reasonable" may include, but shall not be limited to, the cost of providing service to each category of customer, economic impact of charges on each category of customer, and on the well-being of the state of Utah; methods of reducing wide periodic variations in demand of such products, commodities or services; and means of encouraging conservation of resources and energy.]~~

(4) The application of a just and reasonable standard to the charges, service, instrumentalities, equipment, facilities, rules, and regulations of a public utility shall be consistent with the balancing of interests as prescribed in Section 54-1-1.

Section 11. Section **54-3-21** is amended to read:

54-3-21. Commission to be furnished information and copies of records -- Adjudicative hearings before commission to be public -- Privilege.

(1) ~~[Every]~~ Each public utility shall:

(a) furnish to the commission, in ~~[such]~~ the form and [such] with the detail as the commission ~~[shall]~~ may prescribe [all], any tabulations ~~[and]~~, computations, and ~~[all]~~ other information required by it to carry into effect any of the provisions of this title ~~[;]~~; and ~~[shall]~~

(b) make specific answers to ~~[all questions]~~ any question submitted by the commission.

(2) ~~[Every]~~ Each public utility receiving from the commission any ~~[blanks]~~ document with directions to ~~[fill the same]~~ provide information shall ~~[cause the same to be properly filled so as to]~~ answer each information request fully and correctly ~~[each question propounded therein; in case].~~ If it is unable to answer any question, it shall give a good and sufficient reason for ~~[such]~~ the failure.

(3) ~~[Whenever]~~ When required by the commission ~~[every]~~, each public utility shall deliver to the commission:

(a) copies of any ~~[or all]~~ maps, profiles, contracts, agreements, franchises, reports, books, accounts, papers ~~[and]~~, or records:

(i) in its possession ~~[or]~~;

(ii) in any way relating to its property; or

(iii) affecting its business~~[-and also];~~ or

(b) a complete inventory of ~~[all]~~ its property in ~~[such]~~ the form as the commission may direct.

(4) ~~[Hearings]~~ (a) Adjudicative hearings or adjudicative proceedings of the commission or of any commissioner shall be open to the public~~[-and all]~~.

(b) Except as provided in Subsection (4)(c), records of ~~[all]~~ adjudicative hearings ~~[or]~~, adjudicative proceedings ~~[or]~~, and orders, rules ~~[or]~~, and investigations by the commission or any commissioner shall be at all times open to the public~~[-provided, that any]~~.

(c) Any information furnished the commission by a public utility or by any officer, agent, or employee of any public utility may be withheld from the public ~~[whenever]~~ when and during ~~[such]~~ the period of time ~~[as]~~ the commission ~~[may determine]~~ determines that it is ~~[for]~~ in the best interests of the public to withhold ~~[such]~~ the information.

(d) Any officer or employee of the commission who in violation of the provisions of this Subsection (4) divulges any such information is guilty of a misdemeanor.

Section 12. Section **54-4-1.1** is amended to read:

54-4-1.1. Wholesale electrical cooperative exempt from rate regulation -- Requirements for rate increase.

(1) The commission ~~[does]~~ may not ~~[have the authority under the provisions of this title to]~~ regulate, fix, or otherwise approve or establish the rates, fares, tolls, or charges of a wholesale

electrical cooperative.

(2) A wholesale electrical cooperative ~~[shall]~~ may not vary its charges within any type or classification of service to any member or the public, one from the other, or from schedules of rates, fares, tolls, or charges which schedules shall be filed at least annually with the ~~[Division of Public Utilities]~~ Office of the Public Advocate for informational purposes only.

(3) The prohibition of this section applies only to the rates, fares, tolls, or charges and does not exempt wholesale electrical cooperatives from other areas of regulation under this title including, but not limited to, regulation having an indirect effect on rates, fares, tolls, or charges but which does not constitute an approval or establishment of them.

(4) (a) (i) A wholesale electrical cooperative must, prior to the implementation of any rate increase after January 1, 1984, hold a public meeting for ~~[all]~~ its customers and members.

(ii) Notice must be mailed at least ten days prior to the meeting. ~~[In addition, any]~~

(b) Any schedule of new rates or other change that results in new rates must be approved by the board of directors of the wholesale electrical cooperative.

Section 13. Section **54-4-4** is amended to read:

54-4-4. Classification and fixing of rates after hearing.

(1) ~~[Whenever]~~ If the commission ~~[shall find]~~ finds after a hearing that the rates, fares, tolls, rentals, charges, or classifications~~[, or any of them]~~ demanded, observed, charged, or collected by any public utility for, or in connection with, any service ~~[or]~~, product, or commodity, ~~[or in connection therewith,]~~ including the rates or fares for excursion or commutation tickets, or that the rules, regulations, practices, or contracts~~[, or any of them,]~~ affecting ~~[such]~~ the rates, fares, tolls, rentals, charges, or classifications~~[, or any of them,]~~ are unjust, unreasonable, discriminatory ~~[or]~~, preferential, or ~~[in anywise]~~ otherwise in violation of any provisions of law, or that ~~[such]~~ the rates, fares, tolls, rentals, charges, or classifications are insufficient, the commission shall determine the just, reasonable, or sufficient rates, fares, tolls, rentals, charges, classifications, rules, regulations, practices, or contracts to be thereafter observed and in force, and shall fix the same by order as ~~[hereinafter]~~ provided in this section.

(2) The commission ~~[shall have power to]~~ may:

(a) investigate [a single rate, fare, toll, rental, charge, classification, rule, regulation, contract or practice, or any number thereof, or the entire schedule or];

(i) one or more rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts, or practices of any public utility; or

(ii) one or more schedules of rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts [and], or practices[, or any number thereof,] of any public utility[, and to]; and

(b) establish, after hearing, new rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts [or], practices, or [schedule or] schedules in lieu [thereof] of them.

(3) (a) [The commission, in] In its determination of just and reasonable rates, [may consider recent changes in the utility's financial condition or changes reasonably expected, but not speculative, in the utility's revenues, expenses or investments and may adopt an appropriate future test period, not exceeding twelve] if the commission uses a test period, it shall select a test period that is demonstrated by the evidence to best reflect conditions that the public utility will encounter during the period when the rates will be in effect.

(b) In establishing the test period, the commission may use:

(i) a future test period based on projected data not exceeding 20 months from the date of filing[, including projections or projections together with a period of actual operations in determining the utility's test year for rate-making purposes.];

(ii) a test period based on historic data that are adjusted for known and measurable changes;
or

(iii) a combination of future projections and historic data.

(c) If the test period is not based exclusively on future projections, the commission shall consider recent changes outside the test period which are known in nature and measurable in amount.

Section 14. Section **54-4-37** is enacted to read:

54-4-37. Transactions with utility affiliates -- Presumptions.

(1) A public utility's transactions with an affiliate do not carry any presumption of unreasonableness. The burden of proof in any proceeding is not affected by this provision.

(2) Nothing in this section shall affect the obligations of a telecommunications corporation

under:

(a) Federal Telecommunications Act of 1996, 47 U.S.C. Sec. 251, 252, or 253; or

(b) Title 54, Chapter 8b, Public Telecommunications Law.

Section 15. Section **54-5a-1** is enacted to read:

CHAPTER 5a. PUBLIC UTILITY REGULATION TAX

54-5a-1. Regulation tax.

(1) A tax is imposed upon the gross operating revenue of each public utility subject to the jurisdiction of the commission.

(2) The tax shall be the greater of:

(a) 3/10 of 1% of the public utility's gross operating revenues for the preceding calendar year derived from each public utility's business and operations during that period within this state; or

(b) \$50.

(3) The following revenue is exempt from the tax imposed by this chapter:

(a) revenue derived from interstate business; and

(b) revenue of a wholesale electric cooperative derived from the sale of power to a rural electric cooperative which resells that power within the state.

(4) The tax is due and payable to the Department of Commerce on or before July 1 of each year.

(5) The Department of Commerce shall remit the tax to the state treasurer.

(6) The proceeds of the tax shall be used for:

(a) the administration, support, and maintenance of the commission and the Office of the Public Advocate;

(b) expenditures by the Office of the Attorney General to provide legal counsel for the commission and the Office of the Public Advocate; and

(c) the support and maintenance of any other programs, services, or functions provided by the state, as appropriated by the Legislature.

Section 16. Section **54-5a-2** is enacted to read:

54-5a-2. Basis of the tax.

(1) The gross operating revenues of a public utility shall be determined by the executive director of the Department of Commerce from:

(a) the annual gross revenue reports filed with the commission; and

(b) other sources of information prescribed by rule of the commission.

(2) (a) A public utility liable for the tax assessed under this chapter shall file a report with the commission showing its gross operating revenue subject to the tax on or before April 15 of each tax year.

(b) If the public utility fails to file the report as required under Subsection (2)(a), the executive director of the Department of Commerce shall:

(i) compute or estimate the amount of tax due and payable; and

(ii) assess the tax against the public utility.

Section 17. Section **54-5a-3** is enacted to read:

54-5a-3. Default in payment of tax -- Procedure to collect -- Penalties.

(1) If the tax imposed under this chapter is due and the payment is in default, a lien in the amount of the tax may be filed against the property of the utility and may be foreclosed in an action brought by the executive director of the Department of Commerce in the district court of any county in which property of the delinquent utility is located.

(2) (a) If the tax computed and imposed under this chapter is not paid within 60 days after it becomes due, the rights and privileges of the delinquent utility shall be suspended.

(b) The executive director of the Department of Commerce shall transmit the name of the utility to the commission, which may immediately enter an order suspending the operating rights of the utility.

Section 18. Section **54-5a-4** is enacted to read:

54-5a-4. Penalties.

(1) Any utility whose operating rights have been suspended under Section 54-5a-3 which exercises or attempts to exercise any right or privilege as a utility during the time period for which its operating rights have been suspended is guilty of a class B misdemeanor.

(2) Each day's violation shall constitute a separate offense.

(3) Jurisdiction of the offense shall be held to be in any county in which any part of the transaction of business occurred.

(4) Each contract made in violation of this section is unenforceable by the corporation.

Section 19. Section **54-7-1** is amended to read:

54-7-1. Settlement -- Limitation of issues.

(1) Informal resolution, by agreement of the parties, of matters before the commission is encouraged~~[:] as a means to:~~

(a) resolve disputes while minimizing time and expense to public utilities, the state, and consumers;

(b) enhance administrative efficiency; and

(c) enhance the regulatory process by allowing the commission to concentrate on those issues which adverse parties cannot otherwise resolve.

(2) The commission may ~~[approve any agreement after considering the interests of the public and other affected persons]~~ use settlement proposals to resolve disputed matters, while reserving to the parties the right to maintain confidentiality in the negotiation process.

(3) (a) At any time before or during ~~[a hearing or]~~ an adjudicative proceeding before the commission, the parties, between themselves or with the commission or a commissioner, may engage in settlement conferences and negotiations.

(b) The commission may adopt ~~[any settlement proposal of the parties and may enter an order based upon the proposal:]~~ settlement proposals entered into by one or more of the parties, including all parties initiating a proceeding and all parties against whom a proceeding is initiated.

(c) The commission shall notify all parties to the proceeding of the terms of any proposed settlement.

(d) The commission shall consider the significant and material facts related to the case and may adopt settlement proposals provided that the evidence, enumerated in the record, supports a finding that the settlement is just and reasonable in result and the commission finds that the settlement is just and reasonable in result. If the commission finds that the settlement is just and reasonable in result, the commission may determine if the need exists to inquire into:

(i) each party's rationale for supporting the settlement; or
(ii) each party's position regarding the individual components or aspects of the case or settlement.

(e) The commission may adopt a settlement proposal after conducting any hearing required by statute. However, the commission shall conduct a hearing if requested by the party initiating the proceeding or the party against whom the proceeding is initiated.

(f) The commission may order a hearing at the request of an intervening party.

(g) The commission shall accept or reject settlement proposals within a reasonable time.

(4) In cases or procedures involving rate increases as defined in Section 54-7-12, the commission may limit the factors and issues to be considered in its determination of just and reasonable rates.

Section 20. Section **54-7-1.5** is amended to read:

54-7-1.5. Communications between commission personnel and parties restricted.

(1) No member of the [~~Public Service~~] commission, administrative law judge, or commission employee who is or may reasonably be expected to be involved in the decision-making process, shall make or knowingly cause to be made to any party any communication relevant to the merits of any matter under [~~adjudication~~] adjudicative proceedings, unless notice and an opportunity to be heard are afforded to all parties.

(2) (a) No party shall make or knowingly cause to be made to any member of the commission, administrative law judge, or commission employee who is or may reasonably be expected to be involved in the decision-making process, an ex parte communication relevant to the merits of any matter under [~~adjudication~~] adjudicative proceedings.

(b) Any member of the commission, administrative law judge, or commission employee who receives an ex parte communication shall place the communication into the public record of the proceedings and afford all parties an opportunity to comment on the information.

Section 21. Section **54-7-11.5** is enacted to read:

54-7-11.5. Initial conferences.

(1) (a) Before filing a request for agency action, a potential party or parties are encouraged

to confer with the commission and its staff concerning a contemplated request. The commission shall hold an initial conference with the potential party or parties requesting the conference. For any subsequent conferences, the commission shall invite to participate the Office of the Public Advocate and other potential parties with a substantial interest in the contemplated request and may invite other potential parties to participate.

(b) Requests for conferences described in Subsection (1)(a):

(i) are not requests for agency action under Subsection 63-46b-3(b); and

(ii) do not require notice of the conferences.

(c) The commission or a designated administrative law judge, and such staff as the commission or administrative law judge shall determine, shall offer advice and assistance and, in accordance with Section 63-46b-1, seek to:

(i) encourage settlement;

(ii) clarify the issues;

(iii) simplify the evidence;

(iv) facilitate discovery; and

(v) expedite the proceedings.

(2) During the conferences described in Subsection (1), the commission or the administrative law judge and staff are encouraged to seek resolution of the issues presented. If a resolution requiring commission action is achieved, the commission shall:

(a) issue an initial order reflecting the resolution; and

(b) initiate an adjudicative proceeding in accordance with Subsection 63-46b-3(1)(a) to implement the resolution.

(3) Nothing in this section precludes the initiation of an adjudicative proceeding by any party requesting a conference before the commission issues an initial order.

(4) (a) When an adjudicative proceeding is commenced by anyone other than the Office of the Public Advocate, the Office of the Public Advocate shall, except as provided in Subsections (4)(c) and (d), before intervening in the proceeding:

(i) make a bonafide effort to confer with the party initiating the request; or

(ii) if the adjudicative proceeding is commenced by the commission, make a bonafide effort to confer with the commission and any public utility directly affected by the commission action.

(b) The Office of the Public Advocate is directed at the conference to:

(i) encourage settlement;

(ii) clarify the issues;

(iii) simplify the evidence;

(iv) facilitate discovery; and

(v) expedite the proceedings.

(c) In any proceeding where the commission is required by statute to issue tentative or final orders in less than 30 days, the Office of the Public Advocate may intervene. If further proceedings follow, the Office of the Public Advocate shall confer as provided in Subsections (4)(a) and (b) as soon as practicable.

(d) If the commission has discretion, and intends, to issue a final or tentative order in less than 30 days, the commission shall notify the Office of Public Advocate of its intention to issue the order, and the Office of the Public Advocate may intervene. If further proceedings follow, the Office of the Public Advocate shall confer as provided in Subsections (4)(a) and (b) as soon as practicable.

Section 22. Section **54-7-12** is amended to read:

54-7-12. Rate increase or decrease -- Procedure -- Effective dates -- Electrical or telephone cooperative.

(1) As used in this section:

(a) "Rate increase" means any direct increase in a rate, fare, toll, rental, or other charge of a public utility or any modification of a classification, contract, practice, or rule that increases a rate, fare, toll, rental, or other charge of a public utility.

(b) "Rate decrease" means any direct decrease in a rate, fare, toll, rental, or other charge of a public utility or any modification of a classification, contract, practice, or rule that decreases a rate, fare, toll, rental, or other charge of a public utility.

(2) (a) Any public utility or other party that proposes to increase or decrease rates shall file appropriate schedules with the commission setting forth the proposed rate increase or decrease.

(b) The commission shall, after reasonable notice, hold a hearing to determine whether the proposed rate increase or decrease, or some other rate increase or decrease, is just and reasonable. If a rate decrease is proposed by a public utility, the commission may waive a hearing unless it seeks to suspend, alter, or modify the rate decrease.

(c) Except as otherwise provided in Subsections (3) and (4), no proposed rate increase or decrease is effective until after completion of the hearing and issuance of a final order by the commission concerning the proposed increase or decrease.

(3) ~~(a) [The following rules apply]~~ This Subsection (3) applies to the implementation of any proposed rate increase or decrease filed by a utility or proposed by any other party, or the commission in an initial order under Section 54-7-11.5, and to the implementation of any other increase or decrease in lieu of that proposed by a utility ~~[or],~~ other party ~~[that is determined to be just and reasonable by],~~ or the commission[:].

~~[(a)]~~ (b) (i) On its own initiative or in response to an application by a public utility or other party, the commission, after a hearing, may allow any proposed rate increase or decrease ~~[, or a]~~ which is just or reasonable, or a just and reasonable part of the rate increase or decrease, to take effect, subject to the commission's right to order a refund or surcharge, upon the filing of the utility's schedules or at any time during the pendency of its ~~[hearing proceedings]~~ adjudicative proceeding.

(ii) The evidence presented in the hearing held pursuant to this Subsection (3)(b) need not encompass all issues that may be considered in a rate case hearing held pursuant to Subsection (2)(b), but shall establish an adequate prima facie showing that the interim rate increase or decrease is justified.

~~[(b)]~~ (c) (i) If the commission completes a hearing concerning a utility's revenue requirement before the expiration of 240 days from the date the rate increase or decrease proposal is filed, it may issue a final order within that period establishing the utility's revenue requirement and fixing its interim allowable rates before it determines the allocation of the increase or decrease among categories of customers and classes of service.

(ii) If the commission in its final order on a utility's revenue requirement finds that the interim increase order under Subsection (3)~~[(a)]~~(b) exceeds the increase finally ordered, it shall order the

utility to refund the excess to customers.

(iii) If the commission in its final order on a utility's revenue requirement finds that the interim decrease order under Subsection (3)~~(a)~~(b) exceeds the decrease finally ordered, it shall order a surcharge to customers to recover the excess decrease.

~~(c)~~ (d) If the commission fails to enter its order granting or revising a revenue increase within 240 days after the ~~[utility's schedules are filed]~~ commencement of a request for a rate increase by a public utility or an increase proposed by an initial order of the commission, the rate increase proposed by the utility or the commission is final and the commission may not order a refund of any amount already collected by the utility under its filed rate increase.

~~(d)~~ (e) (i) ~~[When]~~ If a public utility files a proposed rate increase based upon an increased cost to the utility for fuel [or], energy, or services related to the production or transportation of fuel or energy, other than transportation by the public utility on its local distribution system, and the fuel, energy, or services are purchased or obtained from [independent contractors, other independent suppliers, or any supplier whose prices are regulated by a governmental agency, the commission shall issue a tentative order with respect to the proposed increase within ten days after the proposal is filed, unless it issues a final order with respect to the rate increase within 20 days after the proposal is filed] an independent contractor or independent source of supply or any supplier whose prices are regulated by a governmental agency, the requested increase shall take effect 20 days after the filing of the request with the commission or at any earlier time after the filing of the request as the commission may by order permit.

(ii) The commission shall ~~[hold a public hearing within 30 days after it issues the tentative order to determine if the proposed rate increase is just and reasonable]~~ issue a final or interim order within 20 days only after a showing has been made by the public utility to the commission that the increase is justified.

(iii) If the commission issues an interim order under Subsection (3)(e)(ii), the commission shall complete the hearing and issue a final order before the expiration of 240 days after the utility's proposed rate increase is filed. If the commission fails to enter its final order within the 240 days, the interim order becomes a final order and the commission may not refund any amount already collected

by the utility under the interim order.

(iv) The commission may, after a hearing, suspend, alter, or modify the increase.

(v) (A) The commission is not precluded from otherwise using mechanisms, such as a pass-through account or energy-balancing account, but the procedural mechanisms for expedited orders described in Subsections (3)(e)(i) and (ii) do not apply.

(B) Whenever the commission changes the method of recovery of expenses by removing them from mechanisms such as the pass-through or energy-balancing account, such change shall operate prospectively after the utility is afforded a reasonable opportunity to have its prudently-incurred expenses that were previously recovered in such mechanisms recovered by some other means.

(4) (a) Notwithstanding ~~[any other provisions of this title]~~ Subsection (3), any schedule, classification, practice, or rule filed by a public utility with the commission that does not result in any rate increase shall take effect 30 days after the date of filing or within any lesser time the commission may grant, subject to its authority after a hearing to suspend, alter, or modify that schedule, classification, practice, or rule.

(b) ~~[When]~~ If the commission suspends a schedule, classification, practice, or rule, it shall hold a hearing on the schedule, classification, practice, or rule before issuing its final order.

(c) For purposes of this Subsection (4), any schedule, classification, practice, or rule that introduces a service or product not previously offered may not result in a rate increase.

(5) ~~[(a)]~~ Notwithstanding ~~[any other provision of this title, whenever a public utility files with the commission any]~~ Subsections (2) through (4), any rate or price change or any change to a schedule, classification, practice, or rule [that does not result in an increase in any rate, fare, toll, rental, or charge, the schedule, classification, practice, or rule shall take effect 30 days after the date of filing or at any earlier time the commission may grant, subject to the authority of the commission, after a hearing, to suspend, alter, or modify the schedule, classification, practice, or rule.] determined by initial order under Section 54-7-11.5 may be adopted by the commission as its final order without a hearing if:

~~[(b) (i) Notwithstanding any other provision of this title, whenever a public utility files with~~

~~the commission a request for an increase in rates, fares, tolls, rentals, or charges based solely upon cost increases to the public utility of fuel supplied by an independent contractor or independent source of supply, the requested increase shall take effect ten days after the filing of the request with the commission or at any earlier time after the filing of the request as the commission may by order permit.]~~

~~[(ii) The commission shall order the increase to take effect only after a showing has been made by the public utility to the commission that the increase is justified.]~~

~~[(iii) The commission may, after a hearing, suspend, alter, or modify the increase.]~~

(a) the commission mails notice of its initial order to each person who has requested notice of the initial orders and the commission provides other notice it considers appropriate; and

(b) there is no objection to the initial order within 20 days from the service of notice.

(6) Any person receiving notice under Subsection (5)(a) who has not objected to the commission's order under Subsection (5)(b) may not seek judicial review of the commission's order under Title 63, Chapter 46b, Administrative Procedures Act.

(7) To the extent that time frames provided for the issuance of orders or for the effective date of schedules, classifications, practices, rules, or rate increases in Subsections (2) through (5) are inconsistent with any otherwise applicable time frames under Title 63, Chapter 46b, Administrative Procedures Act, the time frames provided in Subsections (2) through (5) shall supercede the time frames provided in Title 63, Chapter 46b, Administrative Procedures Act.

~~[(6)]~~ (8) (a) This section does not apply to any rate changes of an electrical or telephone cooperative that meets ~~[all of]~~ the ~~[following]~~ requirements~~[:]~~ of Subsections (8)(b) through (e).

~~[(a)]~~ (b) The cooperative is organized for the purpose of either distributing electricity or providing telecommunication services to its members and the public at cost. "At cost" includes interest costs and a reasonable rate of return as determined by the cooperative's board of directors.

~~[(b)]~~ (c) The cooperative's board of directors and any appropriate agency of the federal government have approved the rate increase or other rate change and all necessary tariff revisions reflecting the increased rate or rate change.

~~[(c)]~~ (d) Before implementing any rate increases, the cooperative has held a public meeting

for all its customers and members. The cooperative shall mail a notice of the meeting to all of the cooperative's customers and members not less than ten days prior to the date that the meeting is held.

~~[(d)]~~ (e) The cooperative has filed its tariff revisions reflecting the rate increase or other rate change with the commission, who shall make the tariffs available for public inspection.

~~[(7)]~~ (9) Procedures for the implementation of a proposed rate increase by a telephone corporation having less than 5,000 subscriber access lines are as follows:

(a) (i) The proposed rate increase may become effective upon the filing of the proposed tariff revisions and necessary information to support a determination by the commission that the proposed rate increase is just and reasonable.

(ii) The telephone corporation shall provide 30 days' notice to the commission and all potentially affected access line subscribers of the proposed rate increase.

(b) (i) The commission may investigate whether the proposed rate increase is just and reasonable.

(ii) If the commission determines, after notice and hearing, that the rate increase is unjust or unreasonable in whole or in part, the commission may establish the rates, charges, or classifications that it finds to be just and reasonable.

(c) The commission shall investigate and hold a hearing to determine whether any proposed rate increase is just and reasonable if 10% or more of the telephone corporation's potentially affected access line subscribers file a request for agency action requesting an investigation and hearing.

Section 23. Section **54-7-15** is amended to read:

54-7-15. Review or rehearing by commission -- Application -- Procedure -- Prerequisite to court action -- Effect of commission decisions.

(1) Before seeking judicial review of the commission's action, any party, stockholder, bondholder, or other person pecuniarily interested in the public utility who is dissatisfied with an order of the commission shall meet the requirements of this section.

(2) (a) After any order or decision, except an initial order and decision issued pursuant to Section 54-7-11.5, has been made by the commission, any party to the action or proceeding, or any stockholder ~~[or]~~, bondholder, or other party pecuniarily interested in the public utility affected may

apply for rehearing of any [matters] matters determined in the action or proceeding.

(b) No applicant may urge or rely on any ground not set forth in the application in an appeal to any court.

(c) Any application for rehearing not granted by the commission within 20 days is denied.

(d) (i) If the commission grants any application for rehearing without suspending the order involved, the commission shall issue its decision on rehearing within 20 days after final submission.

(ii) If the commission fails to render its decision on rehearing within 20 days, the order involved is affirmed.

(e) Unless an order of the commission directs that an order is stayed or postponed, an application for review or rehearing does not excuse any corporation or person from complying with and obeying any order or decision of the commission.

(3) Any order or decision on rehearing that abrogates, changes, or modifies an original order or decision has the same force and effect as an original order or decision, but does not affect any right, or the enforcement of any right, arising from the original order or decision unless so ordered by the commission.

(4) Any order of the commission, including decisions on rehearing, shall have binding force and effect only with respect to public utilities that were actual parties to the proceeding, and do not determine any rights, privileges, obligations, duties, constraints, burdens, or responsibilities with respect to public utilities that were not party to the proceeding in which the order or decision was rendered unless the commission enacts a rule in compliance with Section 63-46a-3 of the Utah Administrative Rulemaking Act that incorporates the principles of law not already in its rules that are established by the order.

Section 24. Section **54-8b-13** is amended to read:

54-8b-13. Rules governing operator assisted services.

(1) The commission shall make rules to implement the following requirements pertaining to the provision of operator assisted services:

(a) Rates, surcharges, terms, or conditions for operator assisted services shall be provided to customers upon request without charge.

(b) A customer shall be made aware, prior to incurring any charges, of the identity of the operator service provider handling the operator assisted call by a form of signage placed on or near the telephone or by verbal identification by the operator service provider.

(c) Any contract between an operator service provider and an aggregator shall contain language which assures that any person making a telephone call on any telephone owned or controlled

by the aggregator or operator service provider can access:

(i) where technically feasible, any other operator service provider operating in the relevant geographic area; and

(ii) the public safety emergency telephone numbers for the jurisdiction where the aggregator's telephone service is geographically located.

(d) No operator service provider shall transfer a call to another operator service provider unless that transfer is accomplished at, and billed from, the call's place of origin. If such a transfer is not technically possible, the operator service provider shall inform the caller that the call cannot be transferred as requested and that the caller should hang up and attempt to reach another operator service provider through the means provided by that other operator service provider.

(2) (a) The [~~Division of Public Utilities~~] Office of the Public Advocate shall be responsible for enforcing any rule adopted by the commission under this section.

(b) If the [~~Division of Public Utilities~~] Office of the Public Advocate determines that any person, or any officer or employee of any person, is violating any rule adopted under this section, the [~~division~~] Office of the Public Advocate shall serve written notice upon the alleged violator which:

(i) specifies the violation;

(ii) alleges the facts constituting the violation; and

(iii) specifies the corrective action to be taken.

(c) After serving notice as required in Subsection (2)(b), the [~~division~~] Office of the Public Advocate may request the commission to issue an order to show cause. After a hearing, the commission may impose penalties and, if necessary, may request the attorney general to enforce the order in district court.

(3) (a) Any person who violates any rule made under this section or fails to comply with any

order issued pursuant to this section is subject to a penalty not to exceed \$2,000 per violation.

(b) In the case of a continuing violation, each day that the violation continues constitutes a separate and distinct offense.

(4) A penalty assessment under this section does not relieve the person assessed from civil liability for claims arising out of any act which was a violation of any rule under this section.

Section 25. Section **54-8b-17** is amended to read:

54-8b-17. Procedures for enforcement of interconnection service quality -- Penalties for violation -- Funds collected.

(1) Proceedings under Subsection 54-8b-2.2(1)(e) shall be conducted in accordance with the following procedure:

(a) The complaint shall be served upon the defendant telecommunications corporation and filed with the commission. A copy of the complaint shall also be served upon the [~~Division of Public Utilities~~] Office of the Public Advocate.

(b) An answer or other responsive pleading to the complaint shall be filed with the commission not more than ten days after receipt of service of the complaint. Copies of the answer or responsive pleading shall be served on the complainant and the [~~Division of Public Utilities~~] Office of the Public Advocate.

(c) A prehearing conference shall be held not later than ten days after the complaint is filed.

(d) (i) The commission shall commence a hearing on the complaint not later than 25 days after the complaint is filed, unless the commission finds that extraordinary conditions exist that warrant postponing the hearing date, in which case the commission shall commence the hearing as soon as practicable.

(ii) Parties shall be entitled to present evidence as provided by the commission's rules.

(e) The commission shall take final action on a complaint not more than 45 days after the complaint is filed unless:

(i) the commission finds that extraordinary conditions exist that warrant extending final action, in which case the commission shall take final action as soon as practicable; or

(ii) the parties agree to an extension of final action by the commission.

(2) The commission shall have the enforcement powers listed in Subsection (3) if, in the proceeding, the commission finds that:

(a) the telecommunications corporation has violated the terms of the commission's interconnection service quality rules;

(b) the telecommunications corporation has breached its obligations under the provisions of the Federal Telecommunications Act;

(c) either party to an approved interconnection agreement has violated the terms of the agreement; or

(d) either party has violated the terms of a statement of generally available terms.

(3) If the commission makes any of the findings described in Subsection (2), the commission shall:

(a) order the telecommunications corporation to:

(i) remedy the violation; and

(ii) comply, as applicable, with the terms of the commission's interconnection service quality rules, the interconnection agreement, or statement of generally available terms;

(b) if considered appropriate by the commission, prescribe the specific actions that the telecommunications corporation must take to remedy its violation, including a time frame for compliance and the submission of a plan to prevent future violations;

(c) if considered appropriate by the commission, impose a penalty on the defendant telecommunications corporation subject to the following:

(i) if the violation is of the duties imposed under Section 54-8b-2.2 or 54-8b-16, the commission may impose a penalty for such violation as provided in Section 54-7-25; or

(ii) if the violating telecommunications corporation is other than an incumbent telephone corporation with fewer than 50,000 access lines in this state, and the violation is of a duty imposed under an interconnection agreement, a statement of generally available terms, or the obligations of Section 251 of the Federal Telecommunications Act, the commission may impose a penalty subject to the following:

(A) if the commission finds that the violation was willful or intentional, the penalty may be

in an amount of up to \$5,000 per day and the period for which the penalty is levied shall commence on the date the commission finds the violation to have first occurred through and including the date the violation is corrected; or

(B) if the commission finds that the violation was not willful or intentional, the penalty may be in an amount prescribed by Section 54-7-25 and the period for which the penalty is levied shall commence on the day after the deadline for compliance in the commission's order.

(4) (a) The commission shall have the authority, on its own or at the request of the injured telecommunications corporation, to investigate a party's compliance with the commission's order under Subsection (3)(c)(ii).

(b) If corrective or remedial action acceptable to the commission is not completed:

(i) 45 days after the deadline set by the commission, the commission may increase the penalty up to \$10,000 per violation per day for a willful or intentional violation; or

(ii) 90 days after the deadline set by the commission, the commission may increase the penalty up to \$4,000 per violation per day for a violation that is not willful or intentional.

(5) (a) The penalty under Subsection (3)(c) shall be in addition to, and not in lieu of, civil damages or other remedies that may be available to the injured party.

(b) In determining the amount of the penalty or the amount agreed to in compromise, the commission shall consider:

(i) the appropriateness of the penalty to the size of the violating party;

(ii) the gravity of the violation;

(iii) the good faith of the defendant telecommunications corporation in attempting to achieve compliance after notification of the violation;

(iv) the impact of the violation to the establishment of competition; and

(v) the actual economic harm incurred by the plaintiff telecommunications corporation.

(c) Each day of a continuing violation or a failure to comply is a separate offense for purposes of levying a penalty under this section.

(6) All funds collected under this section shall go into the Universal Public Telecommunications Service Support Fund established under Section 54-8b-15, and shall be in

addition to any contributions required of a telecommunications corporation under that section.

Section 26. Section **54-8b-18** is amended to read:

54-8b-18. Definitions -- Unauthorized change of telecommunications provider -- Unauthorized charges -- Procedures for verification -- Penalties -- Authority of commission.

(1) For purposes of this section:

(a) "Agents" includes any person, firm, or corporation representing a telecommunications corporation for purposes of requesting a change in a subscriber's telecommunications provider, but does not include a local service provider when executing a request submitted by another service provider or its agents.

(b) "Freeze" means a directive from a subscriber to retain the provider of public telecommunications services selected by the subscriber until the subscriber provides authorization for a change to another provider of public telecommunications services through any means by which a freeze is implemented.

(c) "Small commercial subscriber" is a person or entity conducting a business, agriculture, or other enterprise in the state having less than five telecommunications lines.

(d) "Subscriber" means a corporation, person, or government, or a person acting legally on behalf of a corporation, person, or government who has purchased public telecommunications services from a telecommunications corporation.

(2) No telecommunications corporation or its agents shall make any change or authorize a different telecommunications corporation to make any change in the provider of any public telecommunications service to a subscriber unless it complies, at a minimum, with Subsections (2)(a) through (e). This Subsection (2) does not apply to a telecommunications corporation that effectuates a change in service provider pursuant to a change authorization submitted or requested by another telecommunications corporation.

(a) The telecommunications corporation or its agents shall, at a minimum, inform the subscriber of the nature, extent, and rates of the service being offered and any charges associated with the change.

(b) Notwithstanding Section 13-26-4, changes in provider of telecommunication service

accomplished through telephone solicitation shall comply with the Telephone Fraud Prevention Act, Sections 13-26-2, 13-26-8, 13-26-10, and 13-26-11.

(c) For sales of residential service or small commercial subscriber service, the telecommunications corporation or its agents shall confirm that the subscriber is aware of any charges that the subscriber must pay associated with the change and that the subscriber authorizes the change of provider. The subscriber's authorization to change the provider shall be confirmed by any one of the following methods:

- (i) obtaining the subscriber's written authorization;
- (ii) having the subscriber's oral authorization verified by an independent third party; or
- (iii) any means provided by rule of the Federal Communications Commission or the commission.

(d) If the subscriber is not an individual, an authorization shall be valid only if given by an authorized representative of the subscriber.

(e) (i) The written authorization to change the provider shall be signed by the subscriber and shall contain a clear, conspicuous, and unequivocal request by the subscriber for a change of telecommunications provider.

(ii) A written authorization is not valid if it is presented to the subscriber for signature in connection with a sweepstakes, game of chance, or any other means prohibited by commission rule.

(iii) Nothing in this section shall be construed to prohibit any person from offering a premium, incentive, or a thing of value to another as consideration for authorizing a change of telecommunications service provider, provided that no element of chance or skill is associated with the offer of the premium, incentive, or thing of value or its receipt.

(3) The confirmation by a third-party verifier shall, at a minimum:

(a) confirm the subscriber's identity with information unique to the customer, unless the customer refuses to provide identifying information, then that fact shall be noted;

(b) confirm that the subscriber agrees to the requested change in telecommunications service providers; and

(c) confirm that the subscriber has the authority to select the provider as the provider of that

service.

(4) A third-party verifier shall meet each of the following criteria:

(a) any criteria for third-party verifiers set by the Federal Communications Commission;

(b) not be directly or indirectly managed, controlled, directed, or owned wholly or in part:

(i) by the telecommunications corporation or its agents that seek to provide the telecommunications service or by any corporation, firm, or person who directly or indirectly manages, controls, directs, or owns more than 5% of the telecommunications corporation; or

(ii) by the marketing entity that seeks to market the telecommunications service or by any corporation, firm, or person who directly or indirectly manages, controls, directs, or owns more than 5% of the marketing entity;

(c) operate from facilities physically separated from:

(i) those of the telecommunications corporation or its agents that seek to provide the subscriber's telecommunications service; or

(ii) those of the marketing entity that seeks to market a telecommunications service to the subscriber; and

(d) not derive commissions or compensation based upon the number of change authorizations verified.

(5) A telecommunications corporation or its agents seeking to verify the change authorization shall connect the subscriber to the third-party verifier or arrange for the third-party verifier to call the subscriber to verify the change authorization.

(6) A third-party verifier that obtains the subscriber's oral verification regarding the change shall record that verification by obtaining appropriate verification data.

(7) (a) The record verifying a subscriber's change of provider shall be available to the subscriber upon request.

(b) Information obtained from the subscriber through verification may not be used for any other purpose.

(c) Any intentional unauthorized release of the information in Subsection (7)(b) is grounds for penalties or other action by the commission or remedies provided by law to the aggrieved

subscriber against the telecommunications corporation, third-party verifier, their agents, or their employees who are responsible for the violation.

(8) The third-party verification shall occur in the same language as that in which the change was solicited.

(9) The verification requirements described in this section shall apply to all changes in the provider of any public telecommunications service.

(10) The commission may promulgate rules:

(a) necessary to implement this section;

(b) consistent with any rules promulgated by the Federal Communications Commission; and

(c) in a nondiscriminatory and competitively neutral manner.

(11) (a) Each subscriber may elect to require the telecommunications corporation providing the subscriber's local exchange service to implement a freeze until the subscriber provides authorization for a change to another provider of public telecommunications services.

(b) Once a subscriber has elected the freeze option under Subsection (11)(a), the telecommunications corporation providing the subscriber's local exchange service may not process a request to change the subscriber to another provider of telecommunications services without prior authorization directly from the subscriber.

(12) (a) Whenever the subscriber's provider of a telecommunications service changes, the new provider shall:

(i) retain a record of the verified change authorization consistent with requirements of the Federal Communications Commission or rules issued by the commission; and

(ii) be responsible for providing a conspicuous notice of the change within 30 days of the effective date of the change of service.

(b) At a minimum, the notice in Subsection (12)(a)(ii) shall identify the new provider, contain a general description of the service and price, and provide information necessary for the subscriber to have questions answered or to rescind the change.

(13) Any bill shall identify each telecommunications service provider of telecommunication service for which billing is rendered.

(14) (a) Any person or provider of telecommunications service inadvertently or knowingly designating or changing the subscriber's telecommunications service provider in violation of this section shall refund to the subscriber any amounts required by the rules of the Federal Communications Commission and the commission.

(b) The unauthorized provider in Subsection (14)(a) additionally shall:

(i) bear all costs of restoring the customer to the service of the subscriber's original service provider; and

(ii) pay to any other telecommunications provider any fees set by the commission for the designation or change.

(15) Proceedings for violations of this section may be commenced by request for agency action filed with the commission by a subscriber, a telecommunications corporation, the ~~[Division of Public Utilities]~~ Office of the Public Advocate, or by the commission on its own motion.

(16) Any telecommunications corporation, its agents, or a third-party verifier who violates this section or rules adopted to implement this section shall be subject to the provisions of Sections 54-7-23 through 54-7-29.

(17) The commission is granted authority to enforce provisions relating to an unauthorized telecommunication service provider change in interstate and intrastate telecommunication service involving telecommunications corporations operating in the state.

Section 27. Section **54-10a-1** is enacted to read:

CHAPTER 10a. OFFICE OF THE PUBLIC ADVOCATE

54-10a-1. Establishment of Office of the Public Advocate -- Functions.

(1) There is established within the Department of Commerce the Office of the Public Advocate which may:

(a) initiate and participate in initial conferences pursuant to Section 54-7-11.5, commence original proceedings, file complaints, appear as a party, present factual information and evidence, examine witnesses, advocate policy recommendations, commence appeals, otherwise participate in proceedings before the commission, and engage in all other activities consistent with its statutory responsibilities;

(b) commence original proceedings, file complaints, appear as a party, appeal, and otherwise represent the public interest in matters and proceedings involving regulation of a public utility pending before any officer, department, board, agency, commission, governmental authority, or court of Utah, of another state, or of the United States, and may intervene in, protest, resist, or advocate the granting, denial, or modification of any petition, application, complaint, or other proceeding, or any decision or order of any of those governmental authorities;

(c) investigate or study, upon complaint, upon order of the commission, or upon its own initiative, any matter within the jurisdiction of the commission;

(d) conduct audits and inspections, or take enforcement actions regarding any matter within the jurisdiction of the commission in order to insure compliance with decisions, orders, and policies of the commission, either upon order of the commission or upon its own initiative;

(e) require any person or entity subject to the jurisdiction of the commission to:

(i) provide information, reports, and other data compilations relevant to matters within the jurisdiction of the commission;

(ii) provide access to inspect and copy records and other data compilations relevant to matters within the jurisdiction of the commission;

(iii) permit inspection of properties and tangible things used in providing public utility service;
and

(iv) engage in other methods of discovery authorized by the commission;

(f) review applications filed with the commission and present recommendations to the commission on the disposition of those applications;

(g) make recommendations regarding public utility regulatory policy and long-range planning on matters within the jurisdiction of the commission;

(h) after balancing the interests of consumers and the public utility as outlined in Section 54-1-1, take a position in a matter before the commission, but may not specifically appear on behalf of any individual, organization, or entity;

(i) assess the impact of utility rate changes and other regulatory actions;

(j) assist residential consumers, agricultural consumers, and those engaged in small

commercial enterprises in appearing before the commission; and

(k) engage in settlement negotiations and make stipulations or agreements regarding matters within the jurisdiction of the commission.

(2) (a) Any investigations, studies, audits, inspections, enforcement actions, or requests for discovery of information pursuant to Subsection (1)(c), (d), or (e), shall be preceded by reasonable advance notice to the person or entity against whom investigation, study, audit, inspection, enforcement, or discovery is sought.

(b) The targeted person or entity may require that a complaint or an adjudicative proceeding be instituted with the commission prior to the commencement of the investigation, study, audit, inspection, enforcement, or discovery by the Office of the Public Advocate pursuant to Subsection (1)(c), (d), or (e).

Section 28. Section **54-10a-2** is enacted to read:

54-10a-2. Director of Office of the Public Advocate -- Appointment -- Authority and responsibility.

(1) The director of the Office of the Public Advocate shall be appointed by the executive director of the Department of Commerce and shall serve at the pleasure of the executive director.

(2) The director of the Office of the Public Advocate is subject to the administrative authority of the executive director of the Department of Commerce and is responsible for the administration and supervision of the division.

(3) The director of the Office of the Public Advocate shall have authority to adopt internal organizational measures to effectuate efficiency and economy in the management and operation of the Office of the Public Advocate.

Section 29. Section **54-10a-3** is enacted to read:

54-10a-3. Budget of Office of the Public Advocate -- Employment of personnel.

(1) The annual budget of the Office of the Public Advocate shall provide sufficient funds for the Office of the Public Advocate to hire, develop, and organize a technical and professional staff to perform the duties, powers, and responsibilities committed to it by statute.

(2) The director of the Office of the Public Advocate may:

(a) hire economists, accountants, engineers, inspectors, statisticians, and other technical and professional experts as may be required;

(b) retain additional experts as required for a particular matter, but only to the extent that it is necessary to supplement staff of the Office of the Public Advocate in order to fulfill its duties; and

(c) employ necessary administrative and support staff.

(3) (a) The Department of Human Resource Management shall determine pay schedules using standard techniques for determining compensation.

(b) The Department of Human Resource Management may make its compensation determinations based upon compensation common to utility companies throughout the United States.

Section 30. Section **54-10a-4** is enacted to read:

54-10a-4. Legal counsel.

The attorney general shall appoint sufficient full-time legal counsel to assist, advise, and represent the Office of the Public Advocate and its staff in the discharge of its duties and in all proceedings before the commission, and in all other proceedings.

Section 31. Section **54-10a-5** is enacted to read:

54-10a-5. Interests, relationships, and actions by employees prohibited.

No employee of the Office of the Public Advocate shall, while so employed:

(1) have any direct pecuniary interest, whether as the holder of stock or other securities, or otherwise have any conflict of interest with any public utility or other entity subject to the jurisdiction of the commission;

(2) have any office, position, or relationship, or be engaged in any business or avocation which interferes or is incompatible with the effective and objective fulfillment of the duties of office or employment with the Office of the Public Advocate;

(3) accept any gift, gratuity, emolument, or employment in violation of Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act, from any public utility or any other entity subject to the jurisdiction of the commission or from any officer, agent, or employee thereof; or

(4) solicit, suggest, request, or recommend, directly or indirectly, the appointment of any person or entity to any office or employment with any public utility or other entity subject to the

jurisdiction of the commission.

Section 32. Section **54-10a-6** is enacted to read:

54-10a-6. Objectives.

(1) After balancing the interests of consumers and the public utility as outlined in Section 54-1-1, the Office of the Public Advocate:

(a) shall, in the performance of its duties, powers, and responsibilities under this title, provide the commission with objective and comprehensive information, evidence, and recommendations; and

(b) may take a position which it determines to be:

(i) in the interest of consumers, including residential, agricultural, industrial, and commercial consumers;

(ii) in the interest of the utility; or

(iii) a reasonable compromise of the interests in Subsections (b)(i) and (b)(ii).

(2) (a) As used in this Subsection 54-10a-6(2), "small commercial consumer" means a person or entity conducting a business, agricultural, or other enterprise in the state having less than 25 employees or a gross income less than \$1,000,000 annually.

(b) Notwithstanding the requirement of Subsection (1) to balance the interests of consumers and the public utility, the director of the Office of the Public Advocate:

(i) shall designate one or more members of the staff of the Office of the Public Advocate to take positions and testify for the interests of residential or small commercial consumers in:

(A) any conference in which the Office of the Public Advocate participates pursuant to Section 54-7-11.5, if the conference is on a matter in which residential or small commercial consumers have a substantial interest; and

(B) each adjudicatory proceeding in which residential or small commercial consumers have a substantial interest; and

(ii) shall provide adequate resources described in Subsections 54-10a-3(2)(a) and (b) and Section 54-10a-4 to members of the staff of the Office of the Public Advocate to perform their duties under this Subsection (2).

Section 33. Section **54-10a-7** is enacted to read:

54-10a-7. Notice by commission.

The commission shall automatically provide notice to the Office of the Public Advocate of all requests for agency action or notices of agency action.

Section 34. Section **54-10a-8** is enacted to read:

54-10a-8. Establishment of advisory board.

(1) There is established an advisory board for the Office of the Public Advocate.

(2) (a) The advisory board shall consist of eight members, six of which shall be appointed by the governor to represent the following interests, as follows:

(i) large industrial users of public utility services;

(ii) small industrial or commercial users of public utility services;

(iii) agricultural users of public utility services;

(iv) residential public utility consumers;

(v) low-income residents; and

(vi) retired persons.

(b) The remaining members of the board shall be:

(i) the executive director of the Department of Commerce; and

(ii) the director of the Office of the Public Advocate.

(c) All members of the advisory board shall maintain their principal abode within Utah.

(d) In serving as a member of the advisory board, the director of the Office of the Public Advocate:

(i) may not vote; and

(ii) shall report on the activities of the Office of the Public Advocate.

(e) The advisory board shall annually select a member to serve as chair.

(3) (a) Except as required by Subsection (3)(b), as terms of current advisory board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of advisory board members are staggered so that approximately half of the advisory board is appointed every two

years.

(c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(4) No more than four members of the advisory board shall be from the same political party.

(5) (a) Members of the advisory board shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) Members may decline to receive per diem and expenses for their service.

(6) The advisory board may:

(a) set agendas and hold monthly meetings, and may hold other meetings, at the times and places as the chair or a majority of the advisory board may determine; and

(b) advise the office in the performance of the office's duties, powers, and responsibilities.

Section 35. Section **67-1-13** is amended to read:

67-1-13. Rural Telecommunications Task Force -- Creation -- Membership -- Quorum -- Compensation -- Staff -- Duties -- Reports and recommendations.

(1) There is created within the governor's office the Rural Telecommunications Task Force consisting of the following 11 members:

(a) one representative from state government appointed by the governor who shall serve as chair;

(b) one member of the Senate appointed by the president of the Senate;

(c) one member of the House of Representatives appointed by the speaker of the House of Representatives;

(d) the chair of the Public Service Commission or the chair's designee;

~~[(e) the administrative secretary of the Committee of Consumer Services or the administrative secretary's designee;]~~

~~[(f) the director]~~ (e) two members of the [Division of Public Utilities or the director's designee] Office of the Public Advocate, one of which shall be the director;

~~[(g)]~~ (f) two representatives from a local government organization in rural Utah, one

representing cities and one representing counties, appointed by the governor; and

~~(h)~~ (g) three representatives from telecommunications providers in rural Utah to be appointed by the governor.

(2) A majority of the members of the task force constitute a quorum. The action of a majority of a quorum constitutes the action of the task force.

(3) (a) Salaries and expenses of the members of the task force who are legislators shall be paid in accordance with Section 36-2-2 and Legislative Joint Rule 15.03.

(b) Members of the task force who are not legislators may not receive compensation for their work associated with the task force, but may receive per diem and expenses incurred as a member of the task force at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(4) The governor's office shall provide staff support to the task force.

(5) The task force shall review and make recommendations on the following issues:

(a) identify appropriate eligibility criteria for Universal Service Fund Support for capital investment in broadband data services in rural areas of the state so that:

(i) such support is limited to areas lacking those services;

(ii) an appropriate fund balance is maintained;

(iii) such support begins January 1, 2000; and

(iv) increases in surcharges to support the fund are minimal;

(b) identify areas of the state where state government should assume liability for the costs of relocating facilities in the case of right-of-way realignments in order to encourage deployment of digital infrastructure to those areas; and

(c) other possible solutions to aid in the deployment of advanced telecommunications services in rural areas of the state.

(6) The task force shall provide:

(a) recommendations on rule changes to the Public Service Commission by October 1, 1999;

and

(b) a report, including any proposed legislation, to the Public Utilities and Technology

Interim

Committee before November 30, 1999.

Section 36. **Repealer.**

This act repeals:

Section **54-4-1.5, Investigations, providing information, audits and recommendations by director.**

Section **54-4a-1, Establishment of division -- Functions.**

Section **54-4a-2, Director of division -- Appointment -- Authority and responsibility.**

Section **54-4a-3, Budget of division -- Employment of personnel.**

Section **54-4a-4, Legal counsel.**

Section **54-4a-5, Interests, relationships and actions by employees prohibited.**

Section **54-4a-6, Objectives.**

Section **54-5-1.5, Special regulation fee -- Supplemental Levy Committee -- Supplemental fee.**

Section **54-5-2, How gross operating revenue is determined.**

Section **54-5-3, Default in payment of fee -- Procedure to collect -- Penalties.**

Section **54-5-4, Penalties.**

Section **54-8b-12, Trust fund established -- Requirements -- Expiration -- Transfer of balance.**

Section **54-10-1, Definitions.**

Section **54-10-2, Committee of Consumer Services created -- Members -- Terms -- Qualifications -- Appointment -- Organization.**

Section **54-10-3, Per diem and expenses of members -- Meetings.**

Section **54-10-4, Duties and responsibilities of committee.**

Section **54-10-4.5, Representation of electric power utility by committee prohibited.**

Section **54-10-5, Residential and small commercial representative -- Duties.**

Section **54-10-6, Review of public utility accounting procedures and expenditures.**

Section **54-10-7, Attorney from attorney general's office to represent committee.**

Section 37. **Effective date.**

This act takes effect on July 1, 2001.

Section 38. Transition clause.

(1) Effective July 1, 2001, the Office of the Public Advocate shall assume all rights, duties, and powers of the former Division of Public Utilities and the Committee of Consumer Services with respect to actions filed prior to July 1, 2001.

(2) In order to avoid a conflict with its duties under Section 54-1-1, in proceedings commenced prior to July 2001, the Office of the Public Advocate shall retain the services of any person or entity to represent the public interests in those actions until completed.