

Representative Chad E. Bennion proposes the following substitute bill:

**AMENDMENTS RELATED TO ELECTRIC PUBLIC
UTILITIES**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Chad E. Bennion

This act modifies the Public Utilities Title to provide for open bidding for significant electric generating resources and to address affiliate contracts of electrical corporations.

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

ENACTS:

54-4-8.5, Utah Code Annotated 1953

54-4-39, Utah Code Annotated 1953

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

Section 1. Section **54-4-8.5** is enacted to read:

54-4-8.5. Open bidding requirement for certain electrical generating resources.

(1) As used in this section "significant electrical generating resource" means any of the following that will have a cost to an electrical corporation equal or greater than \$10,000,000:

(a) a contract with a term greater than one year for:

(i) electricity;

(ii) electrical generating capacity; or

(iii) electricity and electrical generating capacity; or

(b) the construction of an electric generation plant that is to be owned or operated by an electrical corporation.

(2) (a) Beginning July 1, 2004, except as provided in Subsections (2)(b) and (2)(c), an electrical corporation shall conduct an open bid process established by rule by the commission before entering into any contract for the construction or acquisition of a significant electrical



26 generating resource.

27 (b) A distribution electrical cooperative or wholesale electrical cooperative is not
28 subject to this section if:

29 (i) the board of directors of the electrical cooperative approve any contract for the
30 construction or acquisition of the significant electrical generating resource; and

31 (ii) before a contract described in Subsection (2)(b)(i) is approved by the board of
32 directors, the cooperative holds any public hearings required by the governing documents of
33 the electrical cooperative.

34 (c) An independent energy producer that is not affiliated with an electrical corporation
35 that is constructing or acquiring a significant electrical generating resource is not subject to this
36 section.

37 (3) (a) By no later than January 1, 2004, in accordance with Title 63, Chapter 46a, Utah
38 Administrative Rulemaking Act, the commission shall make rules establishing an open bid
39 process for the construction or acquisition of a significant electrical generating resource.

40 (b) The rules required by this section shall create an open bid process that:

41 (i) the commission finds is:

42 (A) fair;

43 (B) reasonable; and

44 (C) consistent with the public interest;

45 (ii) subject to Subsection (4), provides access to books, records, models, data, or other
46 information that is appropriate or necessary to facilitate an open bid process that is competitive;

47 (iii) includes development, review, and analysis of the following by persons other than
48 the electrical corporation:

49 (A) bid procedures followed by the electrical corporation;

50 (B) bid documents received by the electrical corporation;

51 (C) bid evaluations by the electrical corporation; and

52 (D) contracts entered into by the electrical corporation as a result of an open bid
53 process;

54 (iv) includes protections against unfair business practices as defined by the commission
55 including:

56 (A) the electrical corporation giving preference to resources developed by:

- 57 (I) an affiliate; or
58 (II) the electrical corporation; or
59 (B) abuse of confidentiality requirements;
60 (v) provides sufficient time for reasonable investigation of the open bid process;
61 (vi) permits an electrical corporation to make decisions regarding the electrical
62 corporation's operations or assets on a reasonably timely basis;
63 (vii) accommodates emergency circumstances that the electrical corporation
64 demonstrates:
65 (A) are beyond the reasonable control of the electrical corporation; and
66 (B) are not a means for the electrical corporation to create a preference or benefit for:
67 (I) the electrical corporation; or
68 (II) an affiliate of the electrical corporation;
69 (viii) provides an opportunity for appeal by a bid participant to the commission prior to
70 the execution of a contract entered into by the electrical corporation as a result of the open bid
71 process; and
72 (ix) is designed so that the expenses incurred by an electrical corporation for a
73 significant energy resource owned by itself or an affiliate of the electrical corporation should
74 not exceed the expenses that would be incurred if the significant energy resources were
75 constructed or acquired through a person that is not affiliated with the electrical corporation.
76 (4) In providing access to the books, records, models, data, or other information
77 described in Subsection (3)(b)(ii), the commission shall establish rules that:
78 (a) provide how the information that the commission determines should be treated as
79 confidential is to be treated as part of the open bid process; and
80 (b) protects against:
81 (i) an electrical corporation using a claim of confidentiality to impede the fairness of:
82 (A) the open bid process; or
83 (B) the commission's review of the open bid process; or
84 (ii) any person disclosing information that the commission determines is confidential.
85 Section 2. Section **54-4-39** is enacted to read:
86 **54-4-39. Affiliate transactions.**
87 (1) For purposes of this section:

88 (a) "Affiliate" is as defined by rule by the commission.

89 (b) "Affiliate contract" means a contract between:

90 (i) an electrical corporation; and

91 (ii) an affiliate of the electrical corporation.

92 (c) "Significant affiliate contract" means an affiliate contract that:

93 (i) involves the construction, acquisition, or disposal of assets of an electrical
94 corporation if:

95 (A) the value of those assets exceed \$5,000,000; or

96 (B) the commission considers the electrical corporation's expenditures related to those
97 assets to be capital expenditures for purposes of a rate proceeding under this title; or

98 (ii) requires an electrical corporation to make annual expenditures in excess of
99 \$1,000,000 that for purposes of a rate proceeding under this title the commission would
100 consider operating expenses.

101 (2) (a) Before the day on which an electrical corporation executes a significant affiliate
102 contract, the electrical corporation shall obtain commission approval of the significant affiliate
103 contract in accordance with the procedures established by the commission by rule.

104 (b) Before the day on which an electrical corporation executes an affiliate contract that
105 is not a significant affiliate contract, the electrical corporation may request that the commission
106 approve the contract in accordance with the procedures established by the commission by rule.

107 (3) (a) The commission may approve an affiliate contract if the commission finds that
108 the affiliate contract is:

109 (i) fair;

110 (ii) reasonable; and

111 (iii) consistent with the public interest.

112 (b) In approving an affiliate contract under this Subsection (3), the commission:

113 (i) is not required to make a determination as to all financial or other issues that are
114 considered in a rate proceeding under this title; and

115 (ii) may address financial or other issues related to an affiliate contract in a rate
116 proceeding held subsequent to the day on which the commission approves an affiliate contract
117 under this Subsection (3).

118 (c) When the commission considers whether or not to approve an affiliate contract in

119 accordance with this section, the electrical corporation has the burden to show that the affiliate
120 contract meets the standards of Subsection (3)(a).

121 (4) In a rate proceeding under this title:

122 (a) there is no presumption of unreasonableness or reasonableness of an affiliate
123 contract; and

124 (b) the commission shall review an affiliate contract on the same basis that the
125 commission would review a contract between the electrical corporation and a person who is not
126 an affiliate.

127 (5) Notwithstanding Subsection (3)(a), if the affiliate contract is a significant affiliate
128 contract for the acquisition of generating resources, the commission may not approve the
129 significant affiliate contract unless the electrical corporation complies with Section 54-5-8.5.

130 (6) (a) An electrical corporation shall provide the commission and parties to a
131 proceeding for the approval of an affiliate contract access to all books, records, models, data,
132 and other information necessary for the commission to make the determination described in
133 Subsection (3).

134 (b) In providing access under this Subsection (6) to the books, records, models, data, or
135 other information, the commission shall establish rules that:

136 (i) provide how the information that the commission determines should be treated
137 confidential is to be treated as confidential as part of the review of the affiliate contract; and

138 (ii) protects against:

139 (A) an electrical corporation using a claim of confidentiality to impede the fairness of
140 the commission's review of the affiliate contract; and

141 (B) any person disclosing information that the commission determines is confidential.

142 (7) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
143 the commission shall make rules to establish a procedure consistent with this section for:

144 (i) the investigation of an affiliate contract; and

145 (ii) the approval of an affiliate contract.

146 (b) The procedure described in Subsection (7)(a) shall be designed to:

147 (i) provide sufficient time for reasonable investigation of an affiliate contract;

148 (ii) permit an electrical corporation to make decisions regarding the electrical
149 corporation's operations or assets on a reasonably timely basis; and

150 (iii) accommodate emergency circumstances that the electrical corporation
151 demonstrates:
152 (A) are beyond the reasonable control of the electrical corporation; and
153 (B) are not a means for the electrical corporation to create a preference or benefit for:
154 (I) the electrical corporation; or
155 (II) an affiliate of the electrical corporation.