

PUBLIC UTILITIES AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory S. Bell

House Sponsor: Sheryl L. Allen

LONG TITLE

General Description:

This bill makes changes to Title 54, Chapter 17, Energy Resource Procurement Act, allowing a waiver of requirements for solicitation and approval of acquisition or construction of a significant energy resource.

Highlighted Provisions:

This bill:

- ▶ eliminates existing language concerning a waiver of the requirement for solicitation of significant energy resource acquisition;
- ▶ provides a process for obtaining a waiver of requirements for solicitation and approval of acquisition or construction of a significant energy resource, including providing for:
 - participation by any interested person; and
 - protection of confidential information disclosed in the waiver application; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

54-17-201, as enacted by Chapter 11, Laws of Utah 2005

54-17-302, as enacted by Chapter 11, Laws of Utah 2005

30 ENACTS:

31 **54-17-501**, Utah Code Annotated 1953

32 **Uncodified Material Affected:**

33 ENACTS UNCODIFIED MATERIAL

34

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

36 Section 1. Section **54-17-201** is amended to read:

37 **54-17-201. Solicitation process required -- Exception.**

38 (1) (a) An affected electrical utility shall comply with this chapter to acquire or
39 construct a significant energy resource after February 25, 2005.

40 (b) Notwithstanding Subsection (1)(a), this chapter does not apply to a significant
41 energy resource for which the affected electrical utility has issued a solicitation before February
42 25, 2005.

43 (2) (a) Except as provided in Subsection (3), to acquire or construct a significant
44 energy resource, an affected electrical utility shall conduct a solicitation process that is
45 approved by the commission.

46 (b) To obtain the approval of the commission of a solicitation process, the affected
47 electrical utility shall file with the commission a request for approval that includes:

- 48 (i) a description of the solicitation process the affected electrical utility will use;
- 49 (ii) a complete proposed solicitation; and
- 50 (iii) any other information the commission requires by rule made in accordance with
51 Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

52 (c) In ruling on the request for approval of a solicitation process, the commission shall
53 determine whether the solicitation process:

54 (i) complies with this chapter and rules made in accordance with Title 63, Chapter 46a,
55 Utah Administrative Rulemaking Act; and

56 (ii) is in the public interest taking into consideration:

57 (A) whether it will most likely result in the acquisition, production, and delivery of

58 electricity at the lowest reasonable cost to the retail customers of an affected electrical utility
59 located in this state;

60 (B) long-term and short-term impacts;

61 (C) risk;

62 (D) reliability;

63 (E) financial impacts on the affected electrical utility; and

64 (F) other factors determined by the commission to be relevant.

65 (d) Before approving a solicitation process under this section the commission:

66 (i) may hold a public hearing; and

67 (ii) shall provide an opportunity for public comment.

68 (e) As part of its review of a solicitation process, the commission may provide the
69 affected electrical utility guidance on any additions or changes to its proposed solicitation
70 process.

71 (f) Unless the commission determines that additional time to analyze a solicitation
72 process is warranted and is in the public interest, within 90 days of the day on which the
73 affected electrical utility files a request for approval of the solicitation process, the commission
74 shall:

75 (i) approve a proposed solicitation process;

76 (ii) suggest modifications to a proposed solicitation process; or

77 (iii) reject a proposed solicitation process.

78 (3) ~~[(a)]~~ Notwithstanding Subsection (2), an affected electrical utility may acquire or
79 construct a significant energy resource without conducting a solicitation process if ~~[the~~
80 ~~commission finds that waiving the requirement of a solicitation process is in the public interest~~
81 ~~because:]~~ it obtains a waiver of the solicitation requirement in accordance with Section
82 54-17-501.

83 ~~[(i) there exists:]~~

84 ~~[(A) a clear emergency; or]~~

85 ~~[(B) a time-limited commercial or technical opportunity that provides value to the~~

86 ~~customers of the affected electrical utility; or]~~

87 ~~[(ii) there exists a factor not described in Subsection (3)(a)(i) that makes waiving the~~
88 ~~requirement of conducting a solicitation in the public interest.]~~

89 ~~[(b) To obtain a finding from the commission under Subsection (3)(a), the affected~~
90 ~~electrical utility shall file with the commission the information required by the commission by~~
91 ~~rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.]~~

92 ~~[(c) Unless the commission determines that additional time to analyze a request for~~
93 ~~waiver of a solicitation process is warranted and is in the public interest, within 30 days of the~~
94 ~~day on which the affected electrical utility files a request for waiver of the solicitation process,~~
95 ~~the commission shall:]~~

96 ~~[(i) approve the waiver;]~~

97 ~~[(ii) approve the waiver subject to conditions imposed by the commission; or]~~

98 ~~[(iii) reject the waiver.]~~

99 ~~[(d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~
100 ~~the commission may define what constitutes:]~~

101 ~~[(i) a clear emergency; or]~~

102 ~~[(ii) a time-limited commercial or technical opportunity.]~~

103 (4) In accordance with the commission's authority under Subsection 54-12-2(2), the
104 commission shall determine:

105 (a) whether this chapter or another competitive bidding procedure shall apply to a
106 purchase of a significant energy resource by an affected electrical utility from a small power
107 producer or cogenerator; and

108 (b) if this chapter applies as provided in Subsection (4)(a), the manner in which this
109 chapter applies to a purchase of a significant energy resource by an affected electrical utility
110 from a small power producer or cogenerator.

111 Section 2. Section **54-17-302** is amended to read:

112 **54-17-302. Approval of a significant energy resource decision required.**

113 (1) If pursuant to Part 2, Solicitation Process, an affected electrical utility is required to

114 conduct a solicitation for a significant energy resource or [~~is exempt from conducting a~~
115 ~~solicitation under Subsection 54-17-201(3)] obtains a waiver of the requirement to conduct a
116 solicitation under Section 54-17-501, but does not obtain a waiver of the requirement to obtain
117 approval of the significant energy resource decision under Section 54-17-501, the affected
118 electrical utility shall obtain approval of its significant energy resource decision:~~

- 119 (a) after the completion of the solicitation process, if the affected electrical utility is
120 required to conduct a solicitation; and
- 121 (b) before an affected electrical utility may construct or enter into a binding agreement
122 to acquire the significant energy resource.

123 (2) (a) To obtain the approval required by Subsection (1), the affected electrical utility
124 shall file a request for approval with the commission.

125 (b) The request for approval required by this section shall include any information
126 required by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
127 Administrative Rulemaking Act.

128 (3) In ruling on a request for approval of a significant energy resource decision, the
129 commission shall determine whether the significant energy resource decision:

130 (a) is reached in compliance with this chapter and rules made in accordance with Title
131 63, Chapter 46a, Utah Administrative Rulemaking Act;

132 (b) (i) is reached in compliance with the solicitation process approved by the
133 commission in accordance with Part 2, Solicitation Process; or

134 (ii) is reached after the waiver of the solicitation process as provided in Subsection
135 54-17-201(3); and

136 (c) is in the public interest, taking into consideration:

137 (i) whether it will most likely result in the acquisition, production, and delivery of
138 electricity at the lowest reasonable cost to the retail customers of an affected electrical utility
139 located in this state;

140 (ii) long-term and short-term impacts;

141 (iii) risk;

- 142 (iv) reliability;
- 143 (v) financial impacts on the affected electrical utility; and
- 144 (vi) other factors determined by the commission to be relevant.

145 (4) The commission may not approve a significant energy resource decision under this
 146 section before holding a public hearing.

147 (5) Unless the commission determines that additional time to analyze a significant
 148 energy resource decision is warranted and is in the public interest, within 180 days of the day
 149 on which the affected electrical utility files a request for approval, the commission shall:

- 150 (a) approve the significant energy resource decision;
- 151 (b) approve the significant energy resource decision subject to conditions imposed by
 152 the commission; or
- 153 (c) disapprove the significant energy resource decision.

154 (6) The commission shall include in its order under this section:

- 155 (a) findings as to the total projected costs for construction or acquisition of an
 156 approved significant energy resource; and
- 157 (b) the basis upon which the findings described in Subsection (6)(a) are made.

158 (7) Notwithstanding any other provision of this part, an affected electrical utility may
 159 acquire a significant energy resource without obtaining approval pursuant to this section if it
 160 obtains a waiver of the requirement for approval in accordance with Section 54-17-501.

161 [~~7~~] (8) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
 162 Act, the commission shall make rules regarding the process for approval of a significant energy
 163 resource decision under this section.

164 Section 3. Section **54-17-501** is enacted to read:

Part 5. Waiver of Energy Resource Procurement Requirements

54-17-501. Waiver of requirement for solicitation or approval.

167 (1) An affected electrical utility may obtain a waiver of the requirement that it conduct
 168 a solicitation process under Part 2, Solicitation Process, or the requirement that it obtain
 169 approval of a significant energy resource decision under Part 3, Resource Plans and Significant

170 Energy Resource Approval, if the commission determines that waiving the requirement is in
171 the public interest because there exists:

- 172 (a) a clear emergency;
- 173 (b) a time-limited commercial or technical opportunity that provides value to the
174 customers of the affected electrical utility; or
- 175 (c) any other factor that makes waiving the requirement in the public interest.

176 (2) To obtain a finding from the commission under Subsection (1), the affected
177 electrical utility shall, as soon as practicable after learning of the existence of a circumstance
178 specified in Subsection (1):

- 179 (a) file a verified application with the commission; and
- 180 (b) serve an electronic and paper copy of the verified application, including all
181 associated exhibits and attachments, on each person reflected on a list to be maintained and
182 published by the commission on its Internet website that has requested service of waiver
183 requests and has signed a generic protective order issued by the commission limiting the use of
184 information contained in or attached to a waiver request.

185 (3) A verified application filed pursuant to Subsection (2) shall:

- 186 (a) identify any waiver requested;
- 187 (b) explain the basis for each waiver requested;
- 188 (c) specify any time sensitivity associated with the verified application;
- 189 (d) explain why the waiver requested is in the public interest; and
- 190 (e) contain other information required by the commission by rule made in accordance

191 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

192 (4) Upon receipt of a verified application filed under Subsection (2), the commission
193 shall, before the end of the next business day, provide public notice of a technical conference to
194 be held no sooner than three business days and no later than seven calendar days following the
195 day on which the verified application is filed and served.

196 (5) (a) At the technical conference held under Subsection (4), the affected electrical
197 utility shall provide adequate support for its verified application and shall respond to questions

198 of the commission, an independent evaluator if one is participating, and any other interested
199 person.

200 (b) The commission shall prepare and retain a transcript of the technical conference.

201 (6) No less than three business days and no more than seven calendar days following
202 the technical conference, the independent evaluator and any interested person may file and
203 serve comments concerning the verified application.

204 (7) The commission shall issue a written decision either granting, granting with
205 conditions, or denying each waiver requested no later than seven calendar days following the
206 deadline for the independent evaluator and any interested person to file comments under
207 Subsection (6).

208 (8) (a) If confidential or trade secret information is provided or used in the verified
209 application, in the technical conference, in comments filed on the verified application or
210 otherwise in the process, that information shall be clearly identified by the providing person as
211 confidential and shall be provided on a confidential basis subject to the terms of a protective
212 order issued by the commission.

213 (b) (i) The commission shall issue a generic protective order to govern access to and
214 use of confidential information in connection with a request for waiver under this part.

215 (ii) Upon request by the affected electrical utility or any interested person, the
216 commission may issue a supplemental protective order in connection with any verified
217 application.

218 (c) (i) The generic protective order and any supplemental protective order restrict use
219 of confidential information to the proceeding on the verified application, however, use of the
220 confidential information in the proceeding is not considered a competitive purpose under
221 Subsection (8)(c)(ii).

222 (ii) The generic protective order and any supplemental protective order shall forbid the
223 use of confidential information for competitive purposes.

224 (d) An interested person may gain access to and use confidential information in
225 accordance with the terms of a protective order issued by the commission.

226 (9) Notwithstanding the time frames in Subsections (4), (6), and (7), the commission:

227 (a) shall take action or schedule proceedings as soon as reasonably practicable in light
228 of the circumstances and urgency demonstrated by the verified application and any subsequent
229 information provided during the process; and

230 (b) may shorten or lengthen the time frames if the commission determines that
231 changing them is warranted and in the public interest, except that a time frame may not be
232 lengthened solely because an independent evaluator is not available to participate or to
233 complete a recommendation.

234 (10) If an affected electrical utility is granted a waiver to acquire or construct a
235 significant energy resource in accordance with this section:

236 (a) the provisions of Sections 54-17-303 and 54-17-304 do not apply to the significant
237 energy resource decision;

238 (b) any cost recovery that an affected electrical utility seeks in connection with that
239 significant energy resource is subject to a future prudence review by the commission under
240 Subsection 54-4-4(4); and

241 (c) the waiver grant does not create any presumption that the affected electrical utility's
242 action in acquiring or constructing a significant energy resource was prudent.

243 (11) (a) Subject to Subsection (11)(b), the commission shall use reasonable efforts to
244 have an independent evaluator available to participate in any application for a waiver under this
245 part.

246 (b) The commission may decline to use an independent evaluator in the consideration
247 of a waiver application if the commission determines the use of an independent evaluator is:

248 (i) not appropriate under the circumstances;

249 (ii) not available under terms or conditions the commission considers reasonable; or

250 (iii) not available to participate or complete a recommendation within any time frame
251 established under Subsection (4), (6), (7), or (9).

252 (c) The validity of an order entered under this part is not affected by:

253 (i) the unavailability of an independent evaluator; or

254 (ii) the failure of an independent evaluator to participate or complete a
255 recommendation within any time frame established under Subsection (4), (6), (7), or (9).

256 (12) The commission shall issue a generic protective order as provided in Subsections
257 (2)(b) and (8)(b).

258 (13) By September 1, 2007, the commission shall, in accordance with Title 63, Chapter
259 46a, Utah Administrative Rulemaking Act, make rules concerning the process for obtaining a
260 waiver of the solicitation or approval process consistent with this section.

261 **Section 4. Commission issuance of protective order.**

262 Within 30 days after the effective date of this bill, the commission shall issue the
263 generic protective order described in Subsection 54-17-501(12).

264 **Section 5. Effective date.**

265 If approved by two-thirds of all the members elected to each house, this bill takes effect
266 upon approval by the governor, or the day following the constitutional time limit of Utah
267 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
268 the date of veto override.