

SITING OF HIGH VOLTAGE POWER LINE

ACT

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Peter C. Knudson

House Sponsor: Ben C. Ferry

LONG TITLE

General Description:

This bill requires a public utility to give notice before constructing a high voltage power line.

Highlighted Provisions:

This bill:

- ▶ requires a public utility to notify an affected entity and affected landowner when applying for a land use permit to construct a high voltage power line;
- ▶ requires a public utility to conduct public workshops and distribute information to the public on the proposed high voltage power line;
- ▶ authorizes a public utility or local government to appeal a high voltage power line route to the Utility Facility Review Board; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

54-14-103, as last amended by Laws of Utah 2008, Chapter 360

54-14-202, as enacted by Laws of Utah 1997, Chapter 197

54-14-303, as enacted by Laws of Utah 1997, Chapter 197

30 **54-14-305**, as last amended by Laws of Utah 2007, Chapter 242

31 ENACTS:

32 **54-18-101**, Utah Code Annotated 1953

33 **54-18-102**, Utah Code Annotated 1953

34 **54-18-201**, Utah Code Annotated 1953

35 **54-18-301**, Utah Code Annotated 1953

36 **54-18-302**, Utah Code Annotated 1953

37 **54-18-303**, Utah Code Annotated 1953

38 **54-18-304**, Utah Code Annotated 1953

39 **54-18-305**, Utah Code Annotated 1953

40

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

42 Section 1. Section **54-14-103** is amended to read:

43 **54-14-103. Definitions.**

44 As used in this chapter:

45 (1) "Actual excess cost" means the difference in cost between:

46 (a) the standard cost of a facility; and

47 (b) the actual cost of the facility, including any necessary right-of-way, as determined
48 in accordance with Section 54-14-203.

49 (2) "Board" means the Utility Facility Review Board.

50 (3) "Commencement of construction of a facility" includes the project design and the
51 ordering of materials necessary to construct the facility.

52 (4) "Estimated excess cost" means any material difference in estimated cost between
53 the costs of a facility, including any necessary right-of-way, if constructed in accordance with
54 the requirements of a local government and the standard cost of the facility.

55 (5) (a) "Facility" means a transmission line, a substation, a gas pipeline, a tap, a
56 measuring device, or a treatment device.

57 (b) "Facility" includes a high voltage power line route as defined in Section

58 54-18-102.

59 (6) (a) "Gas pipeline" means equipment, material, and structures used to transport gas
60 to the public utility's customers, including:

61 (i) pipe;

62 (ii) a compressor;

63 (iii) a pressure regulator;

64 (iv) a support structure; and

65 (v) any other equipment or structure used to transport or facilitate transportation of gas
66 through a pipe.

67 (b) "Gas pipeline" does not include a service line.

68 (7) "Local government":

69 (a) means a city or town as defined in Section 10-1-104 or a county; or

70 (b) may refer to one or more of the local governments in whose jurisdiction a facility is
71 located if a facility is proposed to be located in more than one local government jurisdiction.

72 (8) "Pay" includes, in reference to a local government paying the actual excess cost of
73 a facility, payment by:

74 (a) a local district under Title 17B, Limited Purpose Local Government Entities -
75 Local Districts;

76 (b) a special service district under Title 17D, Chapter 1, Special Service District Act;
77 or

78 (c) a private entity other than the public utility pursuant to a regulation or decision of
79 the local government.

80 (9) (a) "Standard cost" means the estimated cost of a facility, including any necessary
81 right-of-way, if constructed in accordance with:

82 (i) the public utility's normal practices; and

83 (ii) zoning, subdivision, and building code regulations of a local government,
84 including siting, setback, screening, and landscaping requirements:

85 (A) imposed on similar land uses in the same zone; and

86 (B) that do not impair the ability of the public utility to provide service to its
87 customers in a safe, reliable, adequate, and efficient manner.

88 (b) With respect to a transmission line, "standard cost" is the cost of any overhead line
89 constructed in accordance with the public utility's normal practices.

90 (c) With respect to a facility of a gas corporation, "standard cost" is the cost of
91 constructing the facility in accordance with the public utility's normal practices.

92 (10) (a) "Substation" means a separate space within which electric supply equipment
93 is located for the purpose of switching, regulating, transforming, or otherwise modifying the
94 characteristics of electricity, including:

95 (i) electrical equipment such as transformers, circuit breakers, voltage regulating
96 equipment, buses, switches, capacitor banks, reactors, protection and control equipment, and
97 other related equipment;

98 (ii) the site at which the equipment is located, any foundations, support structures,
99 buildings, or driveways necessary to locate, operate, and maintain the equipment at the site;
100 and

101 (iii) the structure intended to restrict access to the equipment to qualified persons.

102 (b) "Substation" does not include a distribution pole-mounted or pad-mounted
103 transformer that is used for the final transformation of power to the voltage level utilized by
104 the customer.

105 (11) (a) "Transmission line" means an electrical line, including structures, equipment,
106 plant, or fixtures associated with the electrical line, operated at a nominal voltage of 34,000
107 volts or above.

108 (b) "Transmission line" includes, for purposes of Title 54, Chapter 18, Siting of High
109 Voltage Power Line Act, an electrical line as described in Subsection (11)(a) operated at a
110 nominal voltage of 230 kilovolts or more.

111 Section 2. Section **54-14-202** is amended to read:

112 **54-14-202. Public utility to provide standard cost and estimated excess cost.**

113 [Hf] (1) (a) A public utility shall provide the information described in Subsection

114 (1)(b) if a local government:

115 (i) is considering imposing requirements or conditions on construction of a facility
116 that may result in an estimated excess cost and requests ~~that~~ the public utility ~~to~~ provide the
117 estimated excess cost~~[-, the]~~; or

118 (ii) recommends an alternative to the public utility's proposed high voltage
119 transmission line corridor in accordance with the provisions of Title 54, Chapter 18, Siting of
120 High Voltage Power Line Act.

121 (b) Subject to Subsection (1)(a), a public utility shall provide to the local government
122 ~~the~~:

123 (i) (A) the estimated standard cost of the facility; and

124 (B) the estimated excess cost of the facility if constructed in accordance with local
125 government requirements or conditions~~[-]; and~~

126 (ii) the estimated cost of the alternative line corridor proposed by a local government
127 provided that all affected land use authorities agree to the alternative line corridor proposed by
128 the local government.

129 (2) If a public utility does not provide the information as described in Subsection (1),
130 the local government may:

131 (a) appeal to the board; and

132 (b) request that the board review the information provided by the public utility.

133 (3) (a) If the board finds that the public utility has failed to provide the standard costs
134 and estimated excess costs in accordance with the provisions of Subsection (1), the board may
135 request additional information from the public utility.

136 (b) In accordance with Subsection (3)(a), a public utility shall provide any information
137 requested by the board within 30 days of the day that the request was made.

138 (c) If a public utility fails to comply with Subsections (3)(a) and (b), the board may
139 suspend issuing its written decision in accordance with Section 54-14-305 for 30 days after
140 the day on which the public utility provides the information requested under Subsection (3)(a).

141 Section 3. Section **54-14-303** is amended to read:

142 **54-14-303. Actions or disputes for which board review may be sought.**

143 (1) A local government or public utility may seek review by the board, if:

144 [~~(+)~~] (a) a local government has imposed requirements on the construction of a facility
145 that result in estimated excess costs without entering into an agreement with the public utility
146 to pay for the actual excess cost, except any actual excess costs specified in Subsection
147 54-14-201(2)(a) or (2)(b), at least 30 days before the date construction of the facility should
148 commence in order to avoid significant risk of impairment of safe, reliable, efficient, and
149 adequate service to customers of the public utility;

150 [~~(2)~~] (b) there is a dispute regarding:

151 [~~(a)~~] (i) the estimated excess cost or standard cost of a facility;

152 [~~(b)~~] (ii) when construction of a facility should commence in order to avoid significant
153 risk of impairment of safe, reliable, and adequate service to customers of the public utility;

154 [~~or~~]

155 [~~(c)~~] (iii) whether the public utility has sought a permit, authorization, approval,
156 exception, or waiver with respect to a facility sufficiently in advance of the date construction
157 should commence, based upon reasonably foreseeable conditions, to allow the local
158 government reasonable time to pay for any estimated excess cost;

159 (iv) the geographic boundaries of a proposed corridor as set forth in a notice submitted
160 by a public utility to a local government pursuant to the provisions of Subsection
161 54-18-301(1)(a), provided the action is filed by the local government before the public utility
162 files an application for a land use permit as set forth in Subsection 54-18-304(1)(a); or

163 (v) a modification proposed by a local government to a utility's proposed corridor that
164 is identified in the public utility's notice of intent required pursuant to Subsection
165 54-18-301(3);

166 [~~(3)~~] (c) a local government has required construction of a facility in a manner that
167 will not permit the utility to provide service to its customers in a safe, reliable, adequate, or
168 efficient manner;

169 [~~(4)~~] (d) a local government has prohibited construction of a facility which is needed

170 to provide safe, reliable, adequate, and efficient service to the customers of the public utility;

171 [~~(5)~~] (e) a local government has not made a final decision on the public utility's
172 application for a permit, authorization, approval, exception, or waiver with respect to a facility
173 within [~~120~~] 60 days of the date the public utility applied to the local government for the
174 permit, authorization, approval, exception, or waiver;

175 [~~(6)~~] (f) a facility is located or proposed to be located in more than one local
176 government jurisdiction and the decisions of the local governments regarding the facility are
177 inconsistent; or

178 [~~(7)~~] (g) a facility is proposed to be located within a local government jurisdiction to
179 serve customers exclusively outside the jurisdiction of the local government and there is a
180 dispute regarding the apportionment of the actual excess cost of the facility between the local
181 government and the public utility.

182 (2) (a) If an action is filed by a local government pursuant to Subsection (1)(b)(iv) or
183 (v) seeking a modification to a target study area or a proposed corridor, the local government
184 shall provide written notice of the action to any potentially affected landowner, as defined in
185 Section 54-18-102, or affected entity, as defined in Section 54-18-102.

186 (b) A potentially affected landowner, as defined in Section 54-18-102, or affected
187 entity, as defined in Section 54-18-102, shall have a right to intervene as a party in the
188 proceeding.

189 Section 4. Section **54-14-305** is amended to read:

190 **54-14-305. Written decisions of board.**

191 (1) The board shall issue a written decision on the review expeditiously and, in any
192 event, not later than 45 days following the initial hearing.

193 (2) The written decision shall:

194 (a) specify whether the facility should be constructed and, if so, whether any
195 requirements or conditions imposed by the local government may not be imposed because they
196 impair the ability of the public utility to provide safe, reliable, and adequate service to its
197 customers; and

198 (b) resolve any dispute regarding:
 199 (i) the standard cost or estimated excess cost of the facility;
 200 (ii) the date on which construction of the facility should commence in order to avoid a
 201 significant risk of impairment of safe, reliable, and adequate service to customers of the public
 202 utility;

203 (iii) whether the public utility has sought a permit, authorization, approval, exception,
 204 or waiver with respect to a facility sufficiently in advance of the date construction should
 205 commence, based upon reasonably foreseeable conditions, to allow the local government
 206 reasonable time to pay for any estimated excess cost; [or]

207 (iv) apportionment of the actual excess cost of the facility between the local
 208 government and the public utility pursuant to Subsection 54-14-303(7)[-]; or

209 (v) the proposed location and siting of a facility subject to Title 54, Chapter 18, Siting
 210 of High Voltage Power Line Act, and in accordance with Section 54-14-102.

211 (3) (a) Notwithstanding Subsection (6), the written decision of the board may
 212 designate the facility route for a high voltage transmission line pursuant to a dispute described
 213 under Section 54-14-304.

214 (b) The public utility shall be entitled to recover from its ratepayers any actual excess
 215 costs apportioned to it under Subsection (2)(b)(iv).

216 [~~3~~] (4) If the board determines that a facility that a local government has prohibited
 217 should be constructed, the written decision shall specify any general location parameters
 218 required to provide safe, reliable, adequate, and efficient service to the customers of the public
 219 utility.

220 [~~4~~] (5) The written decision shall leave to the local government any issue that does
 221 not affect the provision of safe, reliable, adequate, and efficient service to customers of the
 222 public utility or that does not involve an estimated excess cost.

223 [~~5~~] (6) With respect to local government requirements or conditions that impose an
 224 estimated excess cost but do not impair the provision of safe, reliable, and adequate service to
 225 the customers of the public utility, the written decision shall leave each siting issue to the local

226 government except determination of the estimated excess cost and determination of when the
227 construction of the facility should commence.

228 ~~[(6)]~~ (7) In determining when the construction of the facility should commence, the
229 board shall consider whether the public utility sought a permit, authorization, approval,
230 exception, or waiver from the local government in a timely manner based upon reasonably
231 foreseeable conditions, and, if the board determines that the public utility did not do so, it shall
232 allow sufficient time for the local government to pay any actual excess cost that may be
233 imposed as a result of requirements or conditions the local government has imposed that do
234 not impair the provision of safe, reliable, and adequate service to customers of the public
235 utility.

236 Section 5. Section **54-18-101** is enacted to read:

237 **CHAPTER 18. SITING OF HIGH VOLTAGE POWER LINE ACT**

238 **Part 1. General Provisions**

239 **54-18-101. Title.**

240 This chapter is known as the "Siting of High Voltage Power Line Act."

241 Section 6. Section **54-18-102** is enacted to read:

242 **54-18-102. Definitions.**

243 As used in this chapter:

244 (1) "Affected entity" means an entity as defined in Sections 10-9a-103 and
245 17-27a-103.

246 (2) "Affected landowner" means an owner of a property interest, as reflected in the
247 most recent county or city tax records as receiving a property tax notice, whose property is
248 located within a proposed corridor.

249 (3) (a) "Construction" means the excavation, construction, and installation of a high
250 voltage electric power line or upgraded high voltage transmission line.

251 (b) "Construction" does not include:

252 (i) the temporary use of sites; or

253 (ii) studies and tests for:

- 254 (A) requirements of this chapter;
- 255 (B) state regulations;
- 256 (C) federal regulations;
- 257 (D) securing geological and survey data; or
- 258 (E) any other actions taken by a public utility reasonably necessary to determine the
- 259 location of a target study area or proposed corridor.

260 (4) "High voltage power line" means:

261 (a) an electrical high voltage power line with a nominal voltage of 230 kilovolts or
262 more; and

263 (b) an upgraded high voltage power line.

264 (5) "Land use application" has the same meaning as provided in Sections 10-9a-103
265 and 17-27a-103.

266 (6) "Land use authority" has the same meaning as provided in Sections 10-9a-103 and
267 17-27a-103.

268 (7) "Land use permit" has the same meaning as Sections 10-9a-103 and 17-27a-103.

269 (8) "Legislative body" has the same meaning as provided in Sections 10-9a-103 and
270 17-27a-103.

271 (9) "Proposed corridor" means the transmission line route within a target study area
272 selected by the public utility as the public utility's proposed alignment for a high voltage
273 power line.

274 (10) "Proposed route" means the right-of-way needed for construction of the high
275 voltage power line.

276 (11) "Public utility" has the same meaning as provided in Section 54-2-1.

277 (12) "Target study area" means the geographic area for a new high voltage
278 transmission line or an upgraded high voltage power line as proposed by a public utility.

279 (13) "Upgraded high voltage power line" means increasing the voltage of an existing
280 transmission line to 230 kilovolts or more.

281 Section 7. Section **54-18-201** is enacted to read:

Part 2. Public Utility Duties for High Voltage Power Lines

54-18-201. Public utility to obtain approval for high voltage power lines.

(1) Except as provided in Subsections (2) and (3), a public utility shall comply with the requirements of this chapter before beginning construction or operation of:

- (a) a high voltage power line; or
- (b) an upgraded high voltage power line.

(2) A public utility is not subject to the provisions of this chapter if the public utility has on or before May 12, 2009:

- (a) filed an application for or obtained a certificate of convenience and necessity for a high voltage power line in accordance with the provisions of Section 54-4-25; or
- (b) has initiated the acquisition of right-of-way for the construction of the high voltage transmission line.

(3) A transmission line that is subject to federal permitting is not subject to the provisions of this chapter.

Section 8. Section **54-18-301** is enacted to read:

Part 3. Notification -- Process for Obtaining Land Use Permit -- Appeal

54-18-301. Notice of intent to file -- Content -- Prefiling procedures.

(1) If a public utility conducts any field work in preparation of establishing a target study area before a notice of intent is filed in accordance with Subsection (2)(a), the public utility shall first notify the local land use authority of the public utility's work.

(2) (a) At least 90 days before the day on which a public utility files a land use application in a city or county that requires a permit for the construction of a high voltage power line or an upgraded high voltage power line, the public utility shall submit a notice of intent to the land use authority of each affected entity.

(b) The notice of intent described in Subsection (2)(a) shall include:

- (i) the name and mailing address of the public utility, including:
 - (A) the name of a contact person; and
 - (B) an address and telephone number for the contact person;

- 310 (ii) the purpose and need for the high voltage power line;
- 311 (iii) a map showing the target study area;
- 312 (iv) a description of environmentally sensitive areas in the target study area;
- 313 (v) the timing of construction; and
- 314 (vi) a list of affected entities.
- 315 (c) The land use authority of an affected entity may provide written comments to the
- 316 public utility within 30 days after the day on which the notice of intent is mailed under
- 317 Subsection (2)(a).
- 318 (3) At least 60 days before filing a conditional use permit application with a local land
- 319 use authority, the public utility shall send a notice to:
- 320 (a) an affected entity;
- 321 (b) the land use authority of an affected entity; and
- 322 (c) an affected landowner.
- 323 (4) The notice required under Subsection (3) shall include:
- 324 (a) the name and mailing address of the public utility, including:
- 325 (i) the name of a contact person; and
- 326 (ii) an address and telephone number for the contact person;
- 327 (b) a description of the proposed corridor, including:
- 328 (i) location maps of:
- 329 (A) the target study area; and
- 330 (B) the public utility's proposed corridor within the target study area;
- 331 (ii) the width of the proposed route needed for the high voltage power line;
- 332 (iii) a description of the website described in Subsection (6); and
- 333 (iv) an explanation of:
- 334 (A) the land use application process;
- 335 (B) how an affected landowner may participate in a land use authority's land use
- 336 application process; and
- 337 (C) the rights of an affected land owner under Title 78B, Chapter 6, Part 5, Eminent

338 Domain.

339 (5) (a) For purposes of Subsection (3), a county, at the public utility's request, shall
340 provide a certified list of the most recent county tax records showing all affected landowners
341 within 30 days after the day on which the public utility submits the request.

342 (b) A public utility may not be required to restart the notification process if:

343 (i) the county information provided under Subsection (5)(a) is insufficient or
344 incorrect; and

345 (ii) the public utility fails to send an affected landowner a notice of intent based on the
346 insufficient or incorrect information.

347 (6) Within one week of filing the notice of intent with a land use authority in
348 accordance with Subsection (2), the public utility shall:

349 (a) (i) create and update a website to dispense information about the proposed high
350 voltage power line; and

351 (ii) on the website:

352 (A) designate a public utility point of contact; and

353 (B) explain how the public utility will respond to requests for information from the
354 public and public officials; and

355 (b) (i) publish a public notice in a daily or weekly newspaper of general circulation at
356 least once per week for two weeks in each county where the target study area is located
357 disclosing that the public utility has filed a notice of intent with an affected entity; and

358 (ii) describe in the public notice:

359 (A) the proposed high voltage power line, including a map of the target study area;
360 and

361 (B) how readers may obtain more information from the website or locations listed in
362 Subsection (3).

363 Section 9. Section **54-18-302** is enacted to read:

364 **54-18-302. Public workshops.**

365 After a public utility files the notice of intent in accordance with Subsection

366 54-18-301(3) and before it files a land use application, the public utility shall:

367 (1) conduct informal public workshops at locations along the proposed corridor to
368 provide information about:

369 (a) the high voltage power line; and

370 (b) the process for obtaining a land use permit; and

371 (2) provide notice of the public workshops at least 14 days before a public workshop
372 to:

373 (a) a newspaper of general circulation in the target study area;

374 (b) radio stations in the target study area; and

375 (c) an affected entity.

376 Section 10. Section **54-18-303** is enacted to read:

377 **54-18-303. Application for land use permit.**

378 (1) Before a public utility may file a land use application for a proposed high voltage
379 power line, the public utility shall, in accordance with Subsection (2), identify a proposed
380 corridor in the public utility's land use application after:

381 (a) providing a notice of intent in accordance with Section 54-18-301; and

382 (b) conducting the public workshops in accordance with Section 54-18-302.

383 (2) If a public utility files a land use application for a high voltage power line, the
384 public utility shall comply with the land use application requirements created by a legislative
385 body and land use authority in accordance with Title 10, Chapter 9a, Municipal Land Use,
386 Development, and Management Act, and Title 17, Chapter 27a, County Land Use,
387 Development, and Management Act.

388 (3) A local government may request cost information for modifications to the utility's
389 proposed corridor in accordance with the provisions of Title 54, Chapter 14, Utility Facility
390 Review Board Act.

391 Section 11. Section **54-18-304** is enacted to read:

392 **54-18-304. Review of land use application.**

393 (1) (a) A land use authority shall grant or deny a public utility's land use permit within

394 60 days after filing in accordance with the provisions of Title 10, Chapter 9a, Municipal Land
395 Use, Development, and Management Act, and Title 17, Chapter 27a, County Land Use,
396 Development, and Management Act.

397 (b) The Utility Facility Review Board may review a land use authority's land use
398 permit decision in accordance with Title 54, Chapter 14, Part 3, Utility Facility Review Board.

399 (2) Notwithstanding Subsection (1), if a public utility does not satisfy the notice of
400 intent requirements in accordance with Section 54-18-301 and public workshop requirements
401 in accordance with Section 54-18-302, a land use authority may withhold a decision on a
402 public utility's land use permit until the public utility satisfies the notification and public
403 workshop requirements.

404 Section 12. Section **54-18-305** is enacted to read:

405 **54-18-305. Appeal of high voltage power line route.**

406 This section does not affect a public utility's or local government's right to appeal a
407 high voltage power line route to the Utility Facility Review Board in accordance with the
408 provisions of Title 54, Chapter 14, Utility Facility Review Board Act.