

Part 5

Waiver of Energy Resource Procurement Requirements

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

- (1) An affected electrical utility may obtain a waiver of the requirement that it conduct a solicitation process under Part 2, Solicitation Process, or the requirement that it obtain approval of a significant energy resource decision under Part 3, Resource Plans and Significant Energy Resource Approval, if the commission determines that waiving the requirement is in the public interest because there exists:
 - (a) a clear emergency;
 - (b) a time-limited commercial or technical opportunity that provides value to the customers of the affected electrical utility; or
 - (c) any other factor that makes waiving the requirement in the public interest.
- (2) To obtain a finding from the commission under Subsection (1), the affected electrical utility shall, as soon as practicable after learning of the existence of a circumstance specified in Subsection (1):
 - (a) file a verified application with the commission; and
 - (b) serve an electronic and paper copy of the verified application, including all associated exhibits and attachments, on each person reflected on a list to be maintained and published by the commission on its Internet website that has requested service of waiver requests and has signed a generic protective order issued by the commission limiting the use of information contained in or attached to a waiver request.
- (3) A verified application filed pursuant to Subsection (2) shall:
 - (a) identify any waiver requested;
 - (b) explain the basis for each waiver requested;
 - (c) specify any time sensitivity associated with the verified application;
 - (d) explain why the waiver requested is in the public interest; and
 - (e) contain other information required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (4) Upon receipt of a verified application filed under Subsection (2), the commission shall, before the end of the next business day, provide public notice of a technical conference to be held no sooner than three business days and no later than seven calendar days following the day on which the verified application is filed and served.
- (5)
 - (a) At the technical conference held under Subsection (4), the affected electrical utility shall provide adequate support for its verified application and shall respond to questions of the commission, an independent evaluator if one is participating, and any other interested person.
 - (b) The commission shall prepare and retain a transcript of the technical conference.
- (6) No less than three business days and no more than seven calendar days following the technical conference, the independent evaluator and any interested person may file and serve comments concerning the verified application.
- (7) The commission shall issue a written decision either granting, granting with conditions, or denying each waiver requested no later than seven calendar days following the deadline for the independent evaluator and any interested person to file comments under Subsection (6).
- (8)
 - (a) If confidential or trade secret information is provided or used in the verified application, in the technical conference, in comments filed on the verified application or otherwise in the

process, that information shall be clearly identified by the providing person as confidential and shall be provided on a confidential basis subject to the terms of a protective order issued by the commission.

(b)

- (i) The commission shall issue a generic protective order to govern access to and use of confidential information in connection with a request for waiver under this part.
- (ii) Upon request by the affected electrical utility or any interested person, the commission may issue a supplemental protective order in connection with any verified application.

(c)

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

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

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

- (a) shall take action or schedule proceedings as soon as reasonably practicable in light of the circumstances and urgency demonstrated by the verified application and any subsequent information provided during the process; and
- (b) may shorten or lengthen the time frames if the commission determines that changing them is warranted and in the public interest, except that a time frame may not be lengthened solely because an independent evaluator is not available to participate or to complete a recommendation.

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

- (a) the provisions of Sections 54-17-303 and 54-17-304 do not apply to the significant energy resource decision;
- (b) any cost recovery that an affected electrical utility seeks in connection with that significant energy resource is subject to a future prudence review by the commission under Subsection 54-4-4(4); and
- (c) the waiver grant does not create any presumption that the affected electrical utility's action in acquiring or constructing a significant energy resource was prudent.

(11)

- (a) Subject to Subsection (11)(b), the commission shall use reasonable efforts to have an independent evaluator available to participate in any application for a waiver under this part.
- (b) The commission may decline to use an independent evaluator in the consideration of a waiver application if the commission determines the use of an independent evaluator is:
 - (i) not appropriate under the circumstances;
 - (ii) not available under terms or conditions the commission considers reasonable; or
 - (iii) not available to participate or complete a recommendation within any time frame established under Subsection (4), (6), (7), or (9).
- (c) The validity of an order entered under this part is not affected by:
 - (i) the unavailability of an independent evaluator; or
 - (ii) the failure of an independent evaluator to participate or complete a recommendation within any time frame established under Subsection (4), (6), (7), or (9).

- (12) The commission shall issue a generic protective order as provided in Subsections (2)(b) and (8)(b).
- (13) By September 1, 2007, the commission shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules concerning the process for obtaining a waiver of the solicitation or approval process consistent with this section.

Amended by Chapter 382, 2008 General Session

54-17-502 Renewable energy source -- Solicitation -- Consultant.

- (1) Sections 54-17-102 through 54-17-404 do not apply to a significant energy resource that is a renewable energy source as defined in Section 54-17-601 if the nameplate capacity of the renewable energy source does not exceed 300 megawatts or, if applicable, the quantity of capacity that is the subject of a contract for the purchase of electricity from a renewable energy source does not exceed 300 megawatts.
- (2)
 - (a)
 - (i) An affected electrical utility shall issue a public solicitation of bids for a renewable energy source up to 300 megawatts in size by January 31 of each year in which it reasonably anticipates that it will need to acquire or commence construction of a renewable energy resource.
 - (ii) A solicitation for a renewable energy source issued by January 31, 2008 for up to 99 megawatts satisfies the requirement of this Subsection (2) for the year 2008 if:
 - (A) not later than 30 days after the day on which this section takes effect, the affected electrical utility amends the solicitation or initiates a new solicitation to seek bids for renewable energy source projects up to 300 megawatts in size; and
 - (B) within 60 days after the day on which this section takes effect and as soon as practicable, the commission retains a consultant in accordance with Subsection (3).
 - (b) A consultant hired under Subsection (2)(a)(ii)(B) shall perform the consultant's duties under Subsection (3) in relation to the status of the solicitation process at the time the consultant is retained and may not unreasonably delay the solicitation process.
 - (c) For a solicitation issued after January 31, 2008:
 - (i) the affected electrical utility shall develop a reasonable process for pre-approval of bidders; and
 - (ii) in addition to publicly issuing the solicitation in Subsection (2)(a)(i), the affected electrical utility shall send copies of the solicitation to each potential bidder who is pre-approved.
 - (d) The affected electrical utility shall evaluate in good faith each bid that is received and negotiate in good faith with each bidder whose bid appears to be cost effective, as defined in Section 54-17-602.
 - (e) Beginning on August 1, 2008, and on each August 1 thereafter, the affected electrical utility shall file a notice with the commission indicating whether it reasonably anticipates that it will need to acquire or commence construction of a renewable energy resource during the following year.
- (3)
 - (a) If the commission receives a notice under Subsection (2)(e) that the affected electrical utility reasonably anticipates that it will need to acquire or commence construction of a renewable energy source during the following year, the commission shall promptly retain a consultant to:

- (i) validate that the affected electrical utility is following the bidder pre-approval process developed pursuant to Subsection (2)(c) and make recommendations for changes to the pre-approval process for future solicitations;
 - (ii) monitor and document all material aspects of the bids, bid evaluations, and bid negotiations between the affected electrical utility and any bidders in the solicitation process;
 - (iii) maintain adequate documentation of each bid, including the solicitation, evaluation, and negotiation processes and the reason for the conclusion of negotiations, which documentation shall be transmitted to the commission at the conclusion of all negotiations in the solicitation; and
 - (iv) be available to testify under oath before the commission in any relevant proceeding concerning all aspects of the public solicitation process.
- (b) The commission and the consultant shall use all reasonable efforts to not delay the solicitation process.
- (4) Documentation provided to the commission by the consultant shall be available to the affected electrical utility, any bidder, or other interested person under terms and conditions and at times determined appropriate by the commission.
- (5)
- (a) The commission and the consultant shall execute a contract approved by the commission with terms and conditions approved by the commission.
 - (b) Unless otherwise provided by contract, an invoice for the consultant's services shall be sent to the Division of Public Utilities for review and approval.
 - (c) After approval under Subsection (5)(b), the invoice shall be forwarded to the affected electrical utility for payment to the consultant.
 - (d) The affected electrical utility may, in a general rate case or other appropriate commission proceeding, include, and the commission shall allow, recovery by the affected electrical utility of any amount paid by the affected electrical utility for the consultant.
- (6)
- (a) Nothing in this section precludes an affected electrical utility from constructing or acquiring any renewable energy source project outside the solicitation process provided for in this section, including purchasing electricity from any renewable energy source project that chooses to self-certify as a qualifying facility under the federal Public Utility Regulatory Policies Act of 1978.
 - (b) An affected electrical utility that constructs a renewable energy source outside the solicitation process of this section or Section 54-17-201 shall file a notice with the commission at least 60 days before the date of commencement of construction, indicating the size and location of the renewable energy source.
 - (c) The date of commencement of construction under Subsection (6)(b) is the date of any directive from an affected electrical utility to the person responsible for the construction of the renewable energy source authorizing or directing the person to proceed with construction.
 - (d) For an affected electrical utility whose rates are regulated by the commission, the utility has the burden of proving in a rate case or other appropriate commission proceeding the prudence, reasonableness, and cost-effectiveness of construction under this Subsection (6), including the method used to evaluate the risks and value of any bid submitted in the solicitation under this section.
- (7) Nothing in this section requires an affected electrical utility to enter into any transaction that it reasonably believes is not cost effective or otherwise is not in the public interest.

Enacted by Chapter 374, 2008 General Session

