

Representative David Ure proposes to substitute the following bill:

PUBLIC UTILITY AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: David Ure

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

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

19 AMENDS:

20 **13-1-2**, as last amended by Chapter 313, Laws of Utah 1994

21 **54-1-1**, as last amended by Chapter 246, Laws of Utah 1983

22 **54-1-3**, as last amended by Chapter 246, Laws of Utah 1983

23 **54-1-6**, as last amended by Chapters 101 and 122, Laws of Utah 1988

24 **54-1-6.5**, as enacted by Chapter 246, Laws of Utah 1983

25 **54-1-7**, as last amended by Chapter 246, Laws of Utah 1983

- 26 **54-1-10**, as last amended by Chapter 246, Laws of Utah 1983
- 27 **54-1-11**, as enacted by Chapter 246, Laws of Utah 1983
- 28 **54-3-1**, as last amended by Chapter 206, Laws of Utah 1977
- 29 **54-3-21**, Utah Code Annotated 1953
- 30 **54-4-1.1**, as enacted by Chapter 50, Laws of Utah 1984
- 31 **54-4-4**, as last amended by Chapter 166, Laws of Utah 1975
- 32 **54-7-1**, as last amended by Chapter 161, Laws of Utah 1987
- 33 **54-7-1.5**, as enacted by Chapter 246, Laws of Utah 1983
- 34 **54-7-12**, as last amended by Chapter 170, Laws of Utah 1996
- 35 **54-7-15**, as last amended by Chapter 161, Laws of Utah 1987
- 36 **54-8b-13**, as enacted by Chapter 141, Laws of Utah 1990
- 37 **54-8b-17**, as enacted by Chapter 96, Laws of Utah 1998
- 38 **54-8b-18**, as enacted by Chapter 113, Laws of Utah 1999
- 39 **67-1-13**, as enacted by Chapter 307, Laws of Utah 1999

40 ENACTS:

- 41 **54-1-6.7**, Utah Code Annotated 1953
- 42 **54-4-37**, Utah Code Annotated 1953
- 43 **54-5a-1**, Utah Code Annotated 1953
- 44 **54-5a-2**, Utah Code Annotated 1953
- 45 **54-5a-3**, Utah Code Annotated 1953
- 46 **54-5a-4**, Utah Code Annotated 1953
- 47 **54-7-11.5**, Utah Code Annotated 1953
- 48 **54-10a-1**, Utah Code Annotated 1953
- 49 **54-10a-2**, Utah Code Annotated 1953
- 50 **54-10a-3**, Utah Code Annotated 1953
- 51 **54-10a-4**, Utah Code Annotated 1953
- 52 **54-10a-5**, Utah Code Annotated 1953
- 53 **54-10a-6**, Utah Code Annotated 1953
- 54 **54-10a-7**, Utah Code Annotated 1953
- 55 **54-10a-8**, Utah Code Annotated 1953

56 REPEALS:

- 57 **54-4-1.5**, as enacted by Chapter 246, Laws of Utah 1983
- 58 **54-4a-1**, as last amended by Chapter 225, Laws of Utah 1989
- 59 **54-4a-2**, as last amended by Chapter 225, Laws of Utah 1989
- 60 **54-4a-3**, as last amended by Chapter 122, Laws of Utah 1988
- 61 **54-4a-4**, as enacted by Chapter 246, Laws of Utah 1983
- 62 **54-4a-5**, as enacted by Chapter 246, Laws of Utah 1983
- 63 **54-4a-6**, as enacted by Chapter 246, Laws of Utah 1983
- 64 **54-5-1.5**, as last amended by Chapter 170, Laws of Utah 1996
- 65 **54-5-2**, as last amended by Chapter 214, Laws of Utah 1993
- 66 **54-5-3**, as last amended by Chapter 214, Laws of Utah 1993
- 67 **54-5-4**, Utah Code Annotated 1953
- 68 **54-8b-12**, as last amended by Chapter 122, Laws of Utah 1997
- 69 **54-10-1**, as enacted by Chapter 54, Laws of Utah 1977
- 70 **54-10-2**, as last amended by Chapter 243, Laws of Utah 1996
- 71 **54-10-3**, as last amended by Chapter 243, Laws of Utah 1996
- 72 **54-10-4**, as enacted by Chapter 54, Laws of Utah 1977
- 73 **54-10-4.5**, as enacted by Chapter 216, Laws of Utah 1981
- 74 **54-10-5**, as last amended by Chapters 20 and 215, Laws of Utah 1995
- 75 **54-10-6**, as enacted by Chapter 54, Laws of Utah 1977
- 76 **54-10-7**, as last amended by Chapter 20, Laws of Utah 1995

77 This act enacts uncodified material.

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

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

80 **13-1-2. Creation and functions of department -- Divisions created -- Fees.**

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

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

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

85 (a) the Division of Occupational and Professional Licensing;

86 (b) the Division of Real Estate;

87 (c) the Division of Securities;

88 (d) the ~~[Division of Public Utilities]~~ Office of the Public Advocate;

89 (e) the Division of Consumer Protection; and

90 (f) the Division of Corporations and Commercial Code.

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

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

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

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

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

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

104 **54-1-1. Establishment of commission -- Functions.**

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

109 (2) In the discharge of its duties under this title, the commission shall balance the interests
110 of consumers of public utility services in the state and public utilities providing service in the state
111 by considering factors **AS REQUIRED BY LAW** including:

112 (a) consumers obtaining safe, efficient, and reliable utility service at a fair price **BASED**
112a **ON THE UTILITY'S COST OF PROVIDING SERVICE** ; and

113 (b) reasonable opportunities for a public utility to achieve earnings that are sufficient to:

114 (i) assure confidence in the financial integrity and well-being of the public utility; and

115 (ii) yield returns to equity holders commensurate with returns on investments in other
116 business enterprises having corresponding risks and uncertainties.

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

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

119 nonadversarial manner; and

120 (b) may consider the following:

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

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

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

126 (A) acceptable to the public;

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

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

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

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

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

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

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

137 (ix) encouraging conservation of resources and energy;

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

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

140 (xii) the well-being of the state.

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

144 (5) If any provision relating to the balancing of interests in this section, Subsection
145 54-1-6(5), Subsection 54-1-6.5(2), Subsection 54-3-1(4), or Section 54-10a-6 conflicts with Title
146 54, Chapter 8b, Public Telecommunications Law, then the provisions in Title 54, Chapter 8b,
147 Public Telecommunications Law, shall control.

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

149 **54-1-3. Transaction of business by commissioners -- Quorum -- Proceedings by less**

150 **than majority or administrative law judge -- Effect of actions.**

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

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

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

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

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

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

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

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

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

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

167 (b) If a commission proceeding requiring a majority has commenced and the unavoidable
168 absence of one or more commissioners results in less than a majority being available to continue
169 the proceeding, the proceeding may continue before a single commissioner or specified
170 administrative law judge only upon agreement of the involved public utility and, if it is a party, the
171 ~~[Division of Public Utilities]~~ Office of the Public Advocate.

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

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

178 (b) the findings, orders, and decisions made by less than a majority of the commission or
179 by an administrative law judge, when approved and confirmed by the commission and filed in its
180 office, shall be ~~[deemed]~~ considered findings, orders, and decisions of the commission and shall

181 have the same effect as if originally made by the commission.

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

183 **54-1-6. Employment of staff -- Status and compensation -- Employees not to be**
184 **parties or witnesses and may not appeal commission decisions.**

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

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

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

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

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

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

196 [~~(b)~~] (c) The commission may provide for funds in the annual budget to acquire suitable
197 electronic recording equipment to maintain a verbatim record of [~~proceedings~~] hearings before the
198 commission, any commissioner, or any administrative law judge.

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

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

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

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

210 (3) (a) [~~The staff or other employees of the commission may not~~] Except as otherwise
211 provided in this title, no member of the commission's staff or other commission employee may

212 appear as ~~[parties]~~ a party or ~~[witnesses]~~ witness in any proceeding before the commission, any
213 commissioner, or any administrative law judge.

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

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

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

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

221 (c) conduct research, studies, and investigations;

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

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

224 (5) In performing its duties, the commission staff shall balance the interests of consumers
225 and public utilities in the same manner as the commission is directed in Section 54-1-1.

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

227 **54-1-6.5. Executive staff director -- Appointment -- Functions.**

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

229 (a) serve at the pleasure of the commission ~~[and shall]~~;

230 (b) supervise and coordinate staff functions[;];

231 (c) assist the ~~[chairman of the commission]~~ chair with administrative duties[;]; and

232 (d) perform any other duties the commission may direct.

233 (2) In performing his or her duties, the executive staff director shall balance the interests
234 of consumers and public utilities in the same manner as the commission is directed in Section
235 54-1-1.

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

237 **54-1-6.7. Investigations, audits -- Notice -- Adjudicative proceeding.**

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

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

243 discovery by commission staff.

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

245 **54-1-7. Secretary of commission -- Appointment -- Functions.**

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

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

249 (a) the adjudicative proceedings of the commission [~~and of all~~];

250 (b) determinations, rulings, and orders made by the commission, or by any of the
251 commissioners[;]; and [~~of~~]

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

254 (3) The secretary shall:

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

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

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

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

262 (a) superintend its clerical business[;];

263 (b) conduct its correspondence[;];

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

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

266 (e) perform other duties the commission may prescribe.

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

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

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

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

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

275 **54-1-10. Conservation planning -- Annual reports.**

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

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

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

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

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

287 **54-1-11. Prohibited interests, relationships, and actions by commissioners and**
288 **employees.**

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

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

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

297 (c) accept any gift, gratuity, emolument, or employment in violation of Title 67, Chapter
298 16, Utah Public Officers' and Employees' Ethics Act, from any public utility or other entity subject
299 to the jurisdiction of the commission or from any other officer, agent, or employee thereof; or

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

303 (2) No officer, agent, attorney, or employee of any public utility ~~in~~ h [~~or other entity subject to~~
304 ~~the jurisdiction of the commission~~] shall [f] **directly or indirectly solicit, request, or recommend**
304a **to the h**

305 ~~h~~ governor, any state senator, the commission, or the ~~h~~ ~~[Division of Public Utilities]~~ OFFICE OF
 305a THE PUBLIC ADVOCATE ~~h~~ the appointment
 306 of any person as a commissioner or as executive director of the commission, or the
 306a appointment
 307 of any person to any commission staff position [] ~~[offer to any member of the commission or its~~
 308 ~~personnel, any gift, gratuity, emolument, or employment that the member of the commission or~~
 309 ~~its personnel are prohibited from accepting under Title 67, Chapter 16, Utah Public Officers' and~~
 310 ~~Employees' Ethics Act]~~ ~~h~~ .

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

312 **54-3-1. Charges must be just, service adequate, rules reasonable.**

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

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

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

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

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

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

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

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

334 **54-3-21. Commission to be furnished information and copies of records --**
 335 **Adjudicative hearings before commission to be public -- Privilege.**

336 (1) ~~Every~~ Each public utility shall:

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

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

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

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

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

350 (i) in its possession ~~or~~;

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

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

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

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

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

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

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

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

367 **54-4-1.1. Wholesale electrical cooperative exempt from rate regulation --**
 368 **Requirements for rate increase.**

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

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

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

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

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

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

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

386 **54-4-4. Classification and fixing of rates after hearing.**

387 (1) [~~Whenever~~] If the commission [~~shall find~~] finds after a hearing that the rates, fares,
 388 tolls, rentals, charges₂ or classifications[~~, or any of them,~~] demanded, observed, charged₂ or
 389 collected by any public utility for, or in connection with, any service [~~or~~]₂ product₂ or commodity,
 390 [~~or in connection therewith,~~] including the rates or fares for excursion or commutation tickets, or
 391 that the rules, regulations, practices₂ or contracts[~~, or any of them,~~] affecting [~~such~~] the rates, fares,
 392 tolls, rentals, charges₂ or classifications[~~, or any of them,~~] are unjust, unreasonable, discriminatory
 393 [~~or~~]₂ preferential, or [~~in anywise~~] otherwise in violation of any provisions of law, or that [~~such~~] the
 394 rates, fares, tolls, rentals, charges₂ or classifications are insufficient, the commission shall
 395 determine the just, reasonable₂ or sufficient rates, fares, tolls, rentals, charges, classifications, rules,
 396 regulations, practices₂ or contracts to be thereafter observed and in force, and shall fix the same
 397 by order as [~~hereinafter~~] provided in this section.

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

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

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

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

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

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

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

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

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

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

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

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

425 **54-4-37. Transactions with utility affiliates -- Presumptions.**

426 (1) A public utility's transactions with an affiliate do not carry any presumption of
427 unreasonableness. **h THE BURDEN OF PROOF IN ANY PROCEEDING IS NOT AFFECTED BY THIS**
427a **PROVISION. h**

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

429 under:

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

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

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

433 **CHAPTER 5a. PUBLIC UTILITY REGULATION TAX**

434 **54-5a-1. Regulation tax.**

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

437 (2) The tax shall be the greater of:

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

440 or

441 (b) \$50.

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

443 (a) revenue derived from interstate business; and

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

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

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

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

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

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

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

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

457 **54-5a-2. Basis of the tax.**

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

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

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

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

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

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

468 (ii) assess the tax against the public utility.

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

470 **54-5a-3. Default in payment of tax -- Procedure to collect -- Penalties.**

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

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

477 (b) The executive director of the Department of Commerce shall transmit the name of the
478 utility to the Public Service Commission, which may immediately enter an order suspending the
479 operating rights of the utility.

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

481 **54-5a-4. Penalties.**

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

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

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

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

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

490 **54-7-1. Settlement -- Limitation of issues.**

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

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

495 (b) enhance administrative efficiency; and

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

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

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

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

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

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

514 (i) each party's rationale for supporting the settlement; or

515 (ii) each party's position regarding the individual components or aspects of the case or
516 settlement.

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

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

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

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

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

526 **54-7-1.5. Communications between commission personnel and parties restricted.**

527 ~~h [(1) For purposes of this section, "ex parte communications" do not include:~~

528 ~~—— (a) discussions with the commission and its staff during initial settlement conferences~~
 529 ~~established under Section 54-7-11.5; or~~

530 ~~—— (b) communications between parties or their counsel and the commission regarding:~~

531 ~~—— (i) the form and content of draft orders; or~~

532 ~~—— (ii) findings of fact or conclusions of law made by the commission.] h~~

533 ~~h [(2) (1) h~~ No member of the [Public Service] commission, administrative law judge, or
 534 commission employee who is or may reasonably be expected to be involved in the
 535 decision-making process, shall make or knowingly cause to be made to any party any
 536 communication relevant to the merits of any matter under [adjudication] adjudicative proceedings,
 537 unless notice and an opportunity to be heard are afforded to all parties.

538 ~~h [(3) (2) h~~ (a) No party shall make or knowingly cause to be made to any member of the
 539 commission, administrative law judge, or commission employee who is or may reasonably be
 540 expected to be involved in the decision-making process, an ex parte communication relevant to
 541 the merits of any matter under [adjudication] adjudicative proceedings.

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

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

546 **54-7-11.5. Initial conferences.**

547 (1) (a) Before filing a request for agency action, a potential party or parties are encouraged
 548 to confer with the commission and its staff concerning a contemplated request. The commission
 549 shall hold an initial conference with the potential party or parties requesting the conference. For
 550 any subsequent conferences, the commission shall invite to participate the Office of the Public
 551 Advocate and other potential parties with a substantial interest in the contemplated request and
 552 may invite other potential parties to participate.

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

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

555 (ii) do not require notice of the conferences.

556 (c) The commission ~~h~~ **[and staff] OR A DESIGNATED ADMINISTRATIVE LAW JUDGE, AND**

556a **SUCH STAFF AS THE COMMISSION OR ADMINISTRATIVE LAW JUDGE SHALL DETERMINE, h shall**

556b offer advice and assistance and, in accordance with

557 Section 63-46b-1, seek to:

558 (i) encourage settlement;

559 (ii) clarify the issues;

560 (iii) simplify the evidence;

561 (iv) facilitate discovery; and

562 (v) expedite the proceedings.

563 (2) During the conferences described in Subsection (1), the commission ~~h~~ **OR THE**

563a **ADMINISTRATIVE LAW JUDGE h and staff are**

564 encouraged to seek resolution of the issues presented. If a resolution requiring commission action

565 is achieved, the commission shall:

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

567 (b) initiate an adjudicative proceeding in accordance with Subsection 63-46b-3(1)(a) to

568 implement the resolution.

569 (3) Nothing in this section precludes the initiation of an adjudicative proceeding by any

570 party requesting a conference before the commission issues an initial order.

571 (4) (a) When an adjudicative proceeding is commenced by anyone other than the Office

572 of the Public Advocate, the Office of the Public Advocate shall, except as provided in Subsections

573 (4)(c) and (d), before intervening in the proceeding:

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

575 (ii) if the adjudicative proceeding is commenced by the commission, make a bonafide

576 effort to confer with the commission and any public utility directly affected by the commission

577 action.

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

579 (i) encourage settlement;

580 (ii) clarify the issues;

581 (iii) simplify the evidence;

582 (iv) facilitate discovery; and

583 (v) expedite the proceedings.

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

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

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

594 **54-7-12. Rate increase or decrease -- Procedure -- Effective dates -- Electrical or**
595 **telephone cooperative.**

596 (1) As used in this section:

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

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

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

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

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

612 (3) (a) ~~[The following rules apply]~~ This Subsection (3) applies to the implementation of
613 any proposed rate increase or decrease filed by a utility or proposed by any other party, or the
614 commission in an initial order under Section 54-7-11.5, and to the implementation of any other

615 increase or decrease in lieu of that proposed by a utility ~~[or]~~, other party ~~[that is determined to be~~
616 ~~just and reasonable by]~~, or the commission~~[?]~~.

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

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

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

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

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

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

643 ~~[(d)]~~ (e) (i) ~~[When]~~ If a public utility files a proposed rate increase based upon an increased
644 cost to the utility for fuel ~~[or]~~, energy, or services related to the production or transportation of fuel
645 or energy, other than transportation by the public utility on its local distribution system, and the

646 fuel, energy, or services are purchased or obtained from [independent contractors, other
 647 independent suppliers, or any supplier whose prices are regulated by a governmental agency, the
 648 commission shall issue a tentative order with respect to the proposed increase within ten days after
 649 the proposal is filed, unless it issues a final order with respect to the rate increase within 20 days
 650 after the proposal is filed] an independent contractor or independent source of supply or any
 651 supplier whose prices are regulated by a governmental agency, the requested increase shall take
 652 effect 20 days after the filing of the request with the commission or at any earlier time after the
 653 filing of the request as the commission may by order permit.

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

658 (iii) If the commission issues an interim order under Subsection (3)(e)(ii), the commission
 659 shall complete the hearing and issue a final order before the expiration of 240 days after the
 660 utility's proposed rate increase is filed. If the commission fails to enter its final order within the
 661 240 days, the interim order becomes a final order and the commission may not refund any amount
 662 already collected by the utility under the interim order.

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

664 ~~h [(v)] (A) h~~ The commission is not precluded from otherwise using mechanisms, such as a
 665 pass-through account or energy-balancing account, h [for the recovery by a public utility of an
 666 increased cost for fuel or energy purchased, or other cost or expense items,] h but the procedural
 667 mechanisms for expedited orders described in Subsections (3)(e)(i) h [through (v)] AND (ii) h do not
 667a apply.

667b h (B) WHENEVER THE COMMISSION CHANGES THE METHOD OF RECOVERY OF EXPENSES
 667c BY REMOVING THEM FROM MECHANISMS SUCH AS THE PASS-THROUGH OR ENERGY
 667d ACCOUNT, SUCH CHANGE SHALL OPERATE PROSPECTIVELY AFTER THE UTILITY IS AFFORDED
A

667e REASONABLE OPPORTUNITY TO HAVE ITS PRUDENTLY-INCURRED EXPENSES THAT WERE
 667f PREVIOUSLY RECOVERED IN SUCH MECHANISMS RECOVERED BY SOME OTHER MEANS. h

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

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

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

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

685 ~~[(b) (i) Notwithstanding any other provision of this title, whenever a public utility files~~
686 ~~with the commission a request for an increase in rates, fares, tolls, rentals, or charges based solely~~
687 ~~upon cost increases to the public utility of fuel supplied by an independent contractor or~~
688 ~~independent source of supply, the requested increase shall take effect ten days after the filing of~~
689 ~~the request with the commission or at any earlier time after the filing of the request as the~~
690 ~~commission may by order permit.]~~

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

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

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

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

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

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

705 ~~[(6)]~~ (8) (a) This section does not apply to any rate changes of an electrical or telephone
706 cooperative that meets [all of] the [following] requirements[?] of Subsections (8)(b) through (e).

707 ~~[(a)]~~ (b) The cooperative is organized for the purpose of either distributing electricity or

708 providing telecommunication services to its members and the public at cost. "At cost" includes
709 interest costs and a reasonable rate of return as determined by the cooperative's board of directors.

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

713 ~~[(c)]~~ (d) Before implementing any rate increases, the cooperative has held a public meeting
714 for all its customers and members. The cooperative shall mail a notice of the meeting to all of
715 the cooperative's customers and members not less than ten days prior to the date that the meeting
716 is held.

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

719 ~~[(7)]~~ (9) Procedures for the implementation of a proposed rate increase by a telephone
720 corporation having less than 5,000 subscriber access lines are as follows:

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

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

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

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

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

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

736 **54-7-15. Review or rehearing by commission -- Application -- Procedure --**
737 **Prerequisite to court action -- Effect of commission decisions.**

738 (1) Before seeking judicial review of the commission's action, any party, stockholder,

739 bondholder, or other person pecuniarily interested in the public utility who is dissatisfied with an
740 order of the commission shall meet the requirements of this section.

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

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

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

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

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

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

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

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

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

768 **54-8b-13. Rules governing operator assisted services.**

769 (1) The commission shall make rules to implement the following requirements pertaining

770 to the provision of operator assisted services:

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

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

776 (c) Any contract between an operator service provider and an aggregator shall contain
777 language which assures that any person making a telephone call on any telephone owned or
778 controlled by the aggregator or operator service provider can access:

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

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

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

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

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

794 (i) specifies the violation;

795 (ii) alleges the facts constituting the violation; and

796 (iii) specifies the corrective action to be taken.

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

801 (3) (a) Any person who violates any rule made under this section or fails to comply with
802 any order issued pursuant to this section is subject to a penalty not to exceed \$2,000 per violation.

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

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

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

808 **54-8b-17. Procedures for enforcement of interconnection service quality -- Penalties**
809 **for violation -- Funds collected.**

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

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

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

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

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

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

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

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

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

831 (2) The commission shall have the enforcement powers listed in Subsection (3) if, in the

832 proceeding, the commission finds that:

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

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

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

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

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

842 (a) order the telecommunications corporation to:

843 (i) remedy the violation; and

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

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

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

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

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

858 (A) if the commission finds that the violation was willful or intentional, the penalty may
859 be in an amount of up to \$5,000 per day and the period for which the penalty is levied shall
860 commence on the date the commission finds the violation to have first occurred through and
861 including the date the violation is corrected; or

862 (B) if the commission finds that the violation was not willful or intentional, the penalty

863 may be in an amount prescribed by Section 54-7-25 and the period for which the penalty is levied
864 shall commence on the day after the deadline for compliance in the commission's order.

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

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

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

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

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

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

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

878 (ii) the gravity of the violation;

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

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

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

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

885 (6) All funds collected under this section shall go into the Universal Public
886 Telecommunications Service Support Fund established under Section 54-8b-15, and shall be in
887 addition to any contributions required of a telecommunications corporation under that section.

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

889 **54-8b-18. Definitions -- Unauthorized change of telecommunications provider --**

890 **Unauthorized charges -- Procedures for verification -- Penalties -- Authority of commission.**

891 (1) For purposes of this section:

892 (a) "Agents" includes any person, firm, or corporation representing a telecommunications
893 corporation for purposes of requesting a change in a subscriber's telecommunications provider, but

894 does not include a local service provider when executing a request submitted by another service
895 provider or its agents.

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

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

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

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

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

914 (b) Notwithstanding Section 13-26-4, changes in provider of telecommunication service
915 accomplished through telephone solicitation shall comply with the Telephone Fraud Prevention
916 Act, Sections 13-26-2, 13-26-8, 13-26-10, and 13-26-11.

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

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

925 commission.

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

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

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

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

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

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

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

943 (c) confirm that the subscriber has the authority to select the provider as the provider of
944 that service.

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

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

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

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

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

954 (c) operate from facilities physically separated from:

955 (i) those of the telecommunications corporation or its agents that seek to provide the

956 subscriber's telecommunications service; or

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

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

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

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

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

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

970 (c) Any intentional unauthorized release of the information in Subsection (7)(b) is grounds
971 for penalties or other action by the commission or remedies provided by law to the aggrieved
972 subscriber against the telecommunications corporation, third-party verifier, their agents, or their
973 employees who are responsible for the violation.

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

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

978 (10) The commission may promulgate rules:

979 (a) necessary to implement this section;

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

981 and

982 (c) in a nondiscriminatory and competitively neutral manner.

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

986 (b) Once a subscriber has elected the freeze option under Subsection (11)(a), the

987 telecommunications corporation providing the subscriber's local exchange service may not process
988 a request to change the subscriber to another provider of telecommunications services without
989 prior authorization directly from the subscriber.

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

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

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

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

999 (13) Any bill shall identify each telecommunications service provider of
1000 telecommunication service for which billing is rendered.

1001 (14) (a) Any person or provider of telecommunications service inadvertently or knowingly
1002 designating or changing the subscriber's telecommunications service provider in violation of this
1003 section shall refund to the subscriber any amounts required by the rules of the Federal
1004 Communications Commission and the commission.

1005 (b) The unauthorized provider in Subsection (14)(a) additionally shall:

1006 (i) bear all costs of restoring the customer to the service of the subscriber's original service
1007 provider; and

1008 (ii) pay to any other telecommunications provider any fees set by the commission for the
1009 designation or change.

1010 (15) Proceedings for violations of this section may be commenced by request for agency
1011 action filed with the commission by a subscriber, a telecommunications corporation, the ~~[Division~~
1012 ~~of Public Utilities]~~ Office of the Public Advocate, or by the commission on its own motion.

1013 (16) Any telecommunications corporation, its agents, or a third-party verifier who violates
1014 this section or rules adopted to implement this section shall be subject to the provisions of Sections
1015 54-7-23 through 54-7-29.

1016 (17) The commission is granted authority to enforce provisions relating to an unauthorized
1017 telecommunication service provider change in interstate and intrastate telecommunication service

1018 involving telecommunications corporations operating in the state.

1019 Section 27. Section **54-10a-1** is enacted to read:

1020 **CHAPTER 10a. OFFICE OF THE PUBLIC ADVOCATE**

1021 **54-10a-1. Establishment of Office of the Public Advocate -- Functions.**

1022 (1) There is established within the Department of Commerce the Office of the Public
1023 Advocate which may:

1024 (a) initiate and participate in initial conferences pursuant to Section 54-7-11.5, commence
1025 original proceedings, file complaints, appear as a party, present factual information and evidence,
1026 examine witnesses, advocate policy recommendations, commence appeals, otherwise participate
1027 in proceedings before the commission, and engage in all other activities consistent with its
1028 statutory responsibilities;

1029 (b) commence original proceedings, file complaints, appear as a party, appeal, and
1030 otherwise represent the public interest in matters and proceedings involving regulation of a public
1031 utility pending before any officer, department, board, agency, commission, governmental authority,
1032 or court of Utah, of another state, or of the United States, and may intervene in, protest, resist, or
1033 advocate the granting, denial, or modification of any petition, application, complaint, or other
1034 proceeding, or any decision or order of any of those governmental authorities;

1035 (c) investigate or study, upon complaint, upon order of the commission, or upon its own
1036 initiative, any matter within the jurisdiction of the commission;

1037 (d) conduct audits and inspections, or take enforcement actions regarding any matter
1038 within the jurisdiction of the commission in order to insure compliance with decisions, orders, and
1039 policies of the commission, either upon order of the commission or upon its own initiative;

1040 (e) require any person or entity subject to the jurisdiction of the commission to:

1041 (i) provide information, reports, and other data compilations relevant to matters within the
1042 jurisdiction of the commission;

1043 (ii) provide access to inspect and copy records and other data compilations relevant to
1044 matters within the jurisdiction of the commission;

1045 (iii) permit inspection of properties and tangible things used in providing public utility
1046 service; and

1047 (iv) engage in other methods of discovery authorized by the commission;

1048 (f) review applications filed with the commission and present recommendations to the

1049 commission on the disposition of those applications;

1050 (g) make recommendations regarding public utility regulatory policy and long-range

1051 planning on matters within the jurisdiction of the commission;

1052 (h) after balancing the ^h ~~[interest]~~ **INTERESTS OF CONSUMERS AND THE PUBLIC UTILITY**

1052a **AS OUTLINED** ^h in Section 54-1-1, take a position in a matter before the

1053 commission, but may not specifically appear on behalf of any individual, organization, or entity;

1054 (i) assess the impact of utility rate changes and other regulatory actions;

1055 (j) assist residential consumers, agricultural consumers, and those engaged in small

1056 commercial enterprises in appearing before the commission; and

1057 (k) engage in settlement negotiations and make stipulations or agreements regarding

1058 matters within the jurisdiction of the commission.

1059 (2) (a) Any investigations, studies, audits, inspections, enforcement actions, or requests

1060 for discovery of information pursuant to Subsection (1)(c), (d), or (e), shall be preceded by

1061 reasonable advance notice to the person or entity against whom investigation, study, audit,

1062 inspection, enforcement, or discovery is sought.

1063 (b) The targeted person or entity may require that a complaint or an adjudicative

1064 proceeding be instituted with the commission prior to the commencement of the investigation,

1065 study, audit, inspection, enforcement, or discovery by the Office of the Public Advocate pursuant

1066 to Subsection (1)(c), (d), or (e).

1067 Section 28. Section **54-10a-2** is enacted to read:

1068 **54-10a-2. Director of Office of the Public Advocate -- Appointment -- Authority and**
1069 **responsibility.**

1070 (1) The director of the Office of the Public Advocate shall be appointed by the executive
1071 director of the Department of Commerce and shall serve at the pleasure of the executive director.

1072 (2) The director of the Office of the Public Advocate is subject to the administrative
1073 authority of the executive director of the Department of Commerce and is responsible for the
1074 administration and supervision of the division.

1075 (3) The director of the Office of the Public Advocate shall have authority to adopt internal
1076 organizational measures to effectuate efficiency and economy in the management and operation
1077 of the Office of the Public Advocate.

1078 Section 29. Section **54-10a-3** is enacted to read:

1079 **54-10a-3. Budget of Office of the Public Advocate -- Employment of personnel.**

1080 (1) The annual budget of the Office of the Public Advocate shall provide sufficient funds
 1081 for the Office of the Public Advocate to hire, develop, and organize a technical and professional
 1082 staff to perform the duties, powers, and responsibilities committed to it by statute.

1083 (2) The director of the Office of the Public Advocate may:

1084 (a) hire economists, accountants, engineers, inspectors, statisticians, and other technical
 1085 and professional experts as may be required;

1086 (b) retain additional experts as required for a particular matter, but only to the extent that
 1087 it is necessary to supplement staff of the Office of the Public Advocate in order to fulfill its duties;

1088 and

1089 (c) employ necessary administrative and support staff.

1090 (3) (a) The Department of Human Resource Management shall determine pay schedules
 1091 using standard techniques for determining compensation.

1092 (b) The Department of Human Resource Management may make its compensation
 1093 determinations based upon compensation common to utility companies throughout the United
 1094 States.

1095 Section 30. Section **54-10a-4** is enacted to read:

1096 **54-10a-4. Legal counsel.**

1097 ~~h [The attorney general shall appoint legal counsel to the Office of the Public Advocate upon~~
 1098 ~~request.] THE ATTORNEY GENERAL SHALL APPOINT SUFFICIENT FULL TIME LEGAL COUNSEL TO~~
 1098a ~~ASSIST, ADVISE, AND REPRESENT THE OFFICE OF THE PUBLIC ADVOCATE AND ITS STAFF IN~~
 1098b ~~THE~~
 1098c ~~DISCHARGE OF ITS DUTIES AND IN ALL PROCEEDINGS BEFORE THE PUBLIC SERVICE~~
 1098c ~~COMMISSION, AND IN ALL OTHER PROCEEDINGS. h~~

1099 Section 31. Section **54-10a-5** is enacted to read:

1100 **54-10a-5. Interests, relationships, and actions by employees prohibited.**

1101 No employee of the Office of the Public Advocate shall, while so employed:

1102 (1) have any direct pecuniary interest, whether as the holder of stock or other securities,
 1103 or otherwise have any conflict of interest with any public utility or other entity subject to the
 1104 jurisdiction of the commission;

1105 (2) have any office, position, or relationship, or be engaged in any business or avocation
 1106 which interferes or is incompatible with the effective and objective fulfillment of the duties of
 1107 office or employment with the Office of the Public Advocate;

1108 (3) accept any gift, gratuity, emolument, or employment in violation of Title 67, Chapter
 1109 16, Utah Public Officers' and Employees' Ethics Act, from any public utility or any other entity
 1110 subject to the jurisdiction of the commission or from any officer, agent, or employee thereof; or

1111 (4) solicit, suggest, request, or recommend, directly or indirectly, the appointment of any
 1112 person or entity to any office or employment with any public utility or other entity subject to the
 1113 jurisdiction of the commission.

1114 Section 32. Section **54-10a-6** is enacted to read:

1115 **54-10a-6. Objectives.**

1116 h (1) h After balancing the interests of consumers and the public utility as outlined in Section
 1117 54-1-1, the Office of the Public Advocate:

1118 h [(1)] (a) h shall, in the performance of its duties, powers, and responsibilities under this
 1118a title,

1119 provide the commission with objective and comprehensive information, evidence, and
 1120 recommendations; and

1121 h [(2)] (b) h may take a position which it determines to be:

1122 h [(a)] (i) h in the interest of consumers, including residential, agricultural, industrial, and
 1123 commercial consumers;

1124 h [(b)] (ii) h in the interest of the utility; or

1125 h [(c)] (iii) h a reasonable compromise of the interests in Subsections h [(2)(a) and (b)] (b)(i)

1125a **AND (b)(ii) h .**

1125b **h (2)(a) AS USED IN THIS SUBSECTION 54-10a-6(2), "SMALL COMMERCIAL CONSUMER"**

1125c **MEANS A PERSON OR ENTITY CONDUCTING A BUSINESS, AGRICULTURAL, OR OTHER**

1125d **ENTERPRISE IN THE STATE HAVING LESS THAN 25 EMPLOYEES OR A GROSS INCOME LESS**
THAN

1125e **\$1,000,000 ANNUALLY.**

1125f **(b) NOTWITHSTANDING THE REQUIREMENT OF SUBSECTION (1) TO BALANCE THE**
 1125g **INTERESTS OF CONSUMERS AND THE PUBLIC UTILITY, THE DIRECTOR OF THE OFFICE OF THE**
 1125h **PUBLIC ADVOCATE:**

1125i **(i) SHALL DESIGNATE ONE OR MORE MEMBERS OF THE STAFF OF THE OFFICE OF THE**
 1125j **PUBLIC ADVOCATE TO TAKE POSITIONS AND TESTIFY FOR THE INTERESTS OF RESIDENTIAL OR**
 1125k **SMALL COMMERCIAL CONSUMERS IN:**

1125l **(A) ANY CONFERENCE IN WHICH THE OFFICE OF THE PUBLIC ADVOCATE PARTICIPATES**
 1125m **PURSUANT TO SECTION 54-7-11.5, IF THE CONFERENCE IS ON A MATTER IN WHICH RESIDENTIAL**
 1125n **OR SMALL COMMERCIAL CONSUMERS HAVE A SUBSTANTIAL INTEREST; AND**

1125o **(B) EACH ADJUDICATORY PROCEEDING IN WHICH RESIDENTIAL OR SMALL COMMERCIAL**
 1125p **CONSUMERS HAVE A SUBSTANTIAL INTEREST; AND**

1125q **(ii) h [MAY] SHALL h PROVIDE h ADEQUATE h RESOURCES DESCRIBED IN**
 1125q1 **SUBSECTIONS 54-10a-3(2)(a) AND (b) AND**

1125r **SECTION 54-10a-4 TO MEMBERS OF THE STAFF OF THE OFFICE OF THE PUBLIC ADVOCATE TO**
 1125s **PERFORM THEIR DUTIES UNDER THIS SUBSECTION (2). h**

1126 Section 33. Section **54-10a-7** is enacted to read:

1127 **54-10a-7. Notice by commission.**

1128 The commission shall automatically provide notice to the Office of the Public Advocate
1129 of all requests for agency action or notices of agency action.

1130 Section 34. Section **54-10a-8** is enacted to read:

1131 **54-10a-8. Establishment of advisory board.**

1132 (1) There is established an advisory board for the Office of the Public Advocate.

1133 (2) (a) The advisory board shall consist of ~~h [seven]~~ **EIGHT** ~~h~~ members, six of which shall
1133a be appointed

1134 by the governor to represent the following interests, as follows:

1135 (i) large industrial users of public utility services;

1136 (ii) small industrial or commercial users of public utility services;

1137 (iii) agricultural users of public utility services;

1138 (iv) residential public utility consumers;

1139 (v) low-income residents; and

1140 (vi) retired persons.

1141 ~~h [(b) The seventh member shall be the executive director of the Department of Commerce] h~~

1142 ~~h [who shall serve as chair of the advisory board.]~~

1142a **(b) THE REMAINING MEMBERS OF THE BOARD SHALL BE:**

1142b **(i) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF COMMERCE; AND**

1142c **(ii) THE DIRECTOR OF THE OFFICE OF THE PUBLIC ADVOCATE.** h

1143 (c) All members of the advisory board shall maintain their principal abode within Utah.

1143a ~~h (d) IN SERVING AS A MEMBER OF THE ADVISORY BOARD, THE DIRECTOR OF THE OFFICE~~

1143b ~~OF THE PUBLIC ADVOCATE:~~

1143c ~~(i) MAY NOT VOTE; AND~~

1143d ~~(ii) SHALL REPORT ON THE ACTIVITIES OF THE OFFICE OF THE PUBLIC ADVOCATE.~~

1143e ~~(e) THE ADVISORY BOARD SHALL ANNUALLY SELECT A MEMBER TO SERVE AS CHAIR.~~ h

1144 (3) (a) Except as required by Subsection (3)(b), as terms of current advisory board

1145 members expire, the governor shall appoint each new member or reappointed member to a

1146 four-year term.

1147 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time

1148 of appointment or reappointment, adjust the length of terms to ensure that the terms of advisory

1149 board members are staggered so that approximately half of the advisory board is appointed every

1150 two years.

1151 (c) When a vacancy occurs in the membership for any reason, the replacement shall be

1152 appointed for the unexpired term.

1153 (4) No more than four members of the advisory board shall be from the same political

1154 party.

1155 (5) (a) Members of the advisory board shall receive no compensation or benefits for their

1156 services, but may receive per diem and expenses incurred in the performance of the member's

1157 official duties at the rates established by the Division of Finance under Sections 63A-3-106 and

1158 63A-3-107.

1159 (b) Members may decline to receive per diem and expenses for their service.

1160 (6) The advisory board may:

1161 ~~h [(a) hold meetings at the request of the chair or any four members; and]~~

1161a **(a) SET AGENDAS AND HOLD MONTHLY MEETINGS, AND MAY HOLD OTHER MEETINGS, AT**

1161b **THE TIMES AND PLACES AS THE CHAIR OR A MAJORITY OF THE ADVISORY BOARD MAY**

1161c **DETERMINE; AND** h

1162 (b) advise the office in the performance of the office's duties, powers, and responsibilities

1163 ~~h [consistent with Subsection 54-1-1(2)]~~ h .

1164 Section 35. Section **67-1-13** is amended to read:

1165 **67-1-13. Rural Telecommunications Task Force -- Creation -- Membership --**

1166 **Quorum -- Compensation -- Staff -- Duties -- Reports and recommendations.**

1167 (1) There is created within the governor's office the Rural Telecommunications Task Force
1168 consisting of the following 11 members:

1169 (a) one representative from state government appointed by the governor who shall serve
1170 as chair;

1171 (b) one member of the Senate appointed by the president of the Senate;

1172 (c) one member of the House of Representatives appointed by the speaker of the House

1173 of Representatives;

1174 (d) the chair of the Public Service Commission or the chair's designee;

1175 ~~[(e) the administrative secretary of the Committee of Consumer Services or the~~

1176 ~~administrative secretary's designee;]~~

1177 ~~[(f) the director]~~ (e) two members of the ~~[Division of Public Utilities or the director's~~

1178 ~~designee]~~ Office of the Public Advocate, one of which shall be the director;

1179 ~~[(g)]~~ (f) two representatives from a local government organization in rural Utah, one

1180 representing cities and one representing counties, appointed by the governor; and

1181 ~~[(h)]~~ (g) three representatives from telecommunications providers in rural Utah to be

1182 appointed by the governor.

1183 (2) A majority of the members of the task force constitute a quorum. The action of a

1184 majority of a quorum constitutes the action of the task force.

1185 (3) (a) Salaries and expenses of the members of the task force who are legislators shall be

1186 paid in accordance with Section 36-2-2 and Legislative Joint Rule 15.03.

1187 (b) Members of the task force who are not legislators may not receive compensation for

1188 their work associated with the task force, but may receive per diem and expenses incurred as a

1189 member of the task force at the rates established by the Division of Finance under Sections

1190 63A-3-106 and 63A-3-107.

1191 (4) The governor's office shall provide staff support to the task force.

1192 (5) The task force shall review and make recommendations on the following issues:

1193 (a) identify appropriate eligibility criteria for Universal Service Fund Support for capital

1194 investment in broadband data services in rural areas of the state so that:

1195 (i) such support is limited to areas lacking those services;

1196 (ii) an appropriate fund balance is maintained;

1197 (iii) such support begins January 1, 2000; and

1198 (iv) increases in surcharges to support the fund are minimal;

1199 (b) identify areas of the state where state government should assume liability for the costs

1200 of relocating facilities in the case of right-of-way realignments in order to encourage deployment

1201 of digital infrastructure to those areas; and

1202 (c) other possible solutions to aid in the deployment of advanced telecommunications

1203 services in rural areas of the state.

- 1204 (6) The task force shall provide:
- 1205 (a) recommendations on rule changes to the Public Service Commission by October 1,
- 1206 1999; and
- 1207 (b) a report, including any proposed legislation, to the Public Utilities and Technology
- 1208 Interim Committee before November 30, 1999.
- 1209 Section 36. **Repealer.**
- 1210 This act repeals:
- 1211 Section **54-4-1.5, Investigations, providing information, audits and recommendations**
- 1212 **by director.**
- 1213 Section **54-4a-1, Establishment of division -- Functions.**
- 1214 Section **54-4a-2, Director of division -- Appointment -- Authority and responsibility.**
- 1215 Section **54-4a-3, Budget of division -- Employment of personnel.**
- 1216 Section **54-4a-4, Legal counsel.**
- 1217 Section **54-4a-5, Interests, relationships and actions by employees prohibited.**
- 1218 Section **54-4a-6, Objectives.**
- 1219 Section **54-5-1.5, Special regulation fee -- Supplemental Levy Committee --**
- 1220 **Supplemental fee.**
- 1221 Section **54-5-2, How gross operating revenue is determined.**
- 1222 Section **54-5-3, Default in payment of fee -- Procedure to collect -- Penalties.**
- 1223 Section **54-5-4, Penalties.**
- 1224 Section **54-8b-12, Trust fund established -- Requirements -- Expiration -- Transfer of**
- 1225 **balance.**
- 1226 Section **54-10-1, Definitions.**
- 1227 Section **54-10-2, Committee of Consumer Services created -- Members -- Terms --**
- 1228 **Qualifications -- Appointment -- Organization.**
- 1229 Section **54-10-3, Per diem and expenses of members -- Meetings.**
- 1230 Section **54-10-4, Duties and responsibilities of committee.**
- 1231 Section **54-10-4.5, Representation of electric power utility by committee prohibited.**
- 1232 Section **54-10-5, Residential and small commercial representative -- Duties.**
- 1233 Section **54-10-6, Review of public utility accounting procedures and expenditures.**
- 1234 Section **54-10-7, Attorney from attorney general's office to represent committee.**

1235 Section 37. **Effective date.**

1236 This act takes effect on July 1, ~~h [2000]~~ 2001 h .

1237 Section 38. **Transition clause.**

1238 (1) Effective July 1, ~~h [2000]~~ 2001 h , the Office of the Public Advocate shall assume all
1238a rights, duties,

1239 and powers of the former Division of Public Utilities and the Committee of Consumer Services
1240 with respect to actions filed prior to July 1, ~~h [2000]~~ 2001 h .

1241 (2) In order to avoid a conflict with its duties under Section 54-1-1, in proceedings
1242 commenced prior to July ~~h [2000]~~ 2001 h , the Office of the Public Advocate shall retain the
1242a services of any
1243 person or entity to represent the public interests in those actions until completed.