

Representative Chad E. Bennion proposes the following substitute bill:

PUBLIC UTILITY RELATED AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: John L. Valentine

This act modifies the Public Utility title to clarify use of a test period in determining just and reasonable rates, to address settlements, and to address the affect of decisions of the Public Service Commission. This act modifies the Public Utilities Title to provide for open bidding for significant electric generating resources and to address affiliate contracts of electrical corporations. This act makes technical changes.

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

AMENDS:

54-4-4, as last amended by Chapter 166, Laws of Utah 1975

54-7-1, as last amended by Chapter 161, Laws of Utah 1987

54-7-15, as last amended by Chapter 161, Laws of Utah 1987

ENACTS:

54-4-8.5, Utah Code Annotated 1953

54-4-39, Utah Code Annotated 1953

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

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

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

(1) ~~Whenever~~ (a) The commission shall take an action described in Subsection

(1)(b), if the commission [shall find] finds after a hearing that:

(i) the rates, fares, tolls, rentals, charges, or classifications ~~[, or any of them]~~ demanded, observed, charged, or collected by any public utility for, or in connection with, any service ~~[or]~~, product, or commodity, ~~[or in connection therewith,]~~ including the rates or fares for excursion



26 or commutation tickets, or that the rules, regulations, practices₂ or contracts~~[, or any of them,]~~
 27 affecting ~~[such]~~ the rates, fares, tolls, rentals, charges₂ or classifications~~[, or any of them,]~~ are:

28 (A) unjust~~[-]~~;

29 (B) unreasonable~~[-]~~;

30 (C) discriminatory ~~[or]~~;

31 (D) preferential~~[-]~~; or ~~[in anywise]~~

32 (E) otherwise in violation of any provisions of law~~[, or that such,]~~; or

33 (ii) the rates, fares, tolls, rentals, charges₂ or classifications described in Subsection

34 (1)(a)(i) are insufficient~~[-]~~;

35 (b) If the commission makes a finding described in Subsection (1)(a), the commission
 36 shall:

37 (i) determine the just, reasonable₂ or sufficient rates, fares, tolls, rentals, charges,
 38 classifications, rules, regulations, practices₂ or contracts to be thereafter observed and in
 39 force~~[-]~~; and ~~[shall]~~

40 (ii) fix the ~~[same]~~ determination described in Subsection (1)(b)(i) by order as
 41 ~~[hereinafter]~~ provided in this section.

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

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

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

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

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

52 (3) (a) ~~[The commission, in its]~~ If in the commission's determination of just and
 53 reasonable rates~~[, may consider recent changes in the utility's financial condition or changes~~
 54 ~~reasonably expected, but not speculative, in the utility's revenues, expenses or investments and~~
 55 ~~may adopt an appropriate future test period, not exceeding twelve]~~ the commission uses a test
 56 period, the commission shall select a test period that, on the basis of evidence, the commission

57 finds best reflects the conditions that a public utility will encounter during the period when the
58 rates determined by the commission will be in effect.

59 (b) In establishing the test period determined in Subsection (3)(a), the commission may
60 use:

61 (i) a future test period that is determined on the basis of projected data not exceeding
62 20 months from the date [of filing, including projections or projections together with a period
63 of actual operations in determining the utility's test year for rate-making purposes:] a proposed
64 rate increase or decrease is filed with the commission under Section 54-7-12;

65 (ii) a test period that is:

66 (A) determined on the basis of historic data; and

67 (B) adjusted for known and measurable changes; or

68 (iii) a test period that is determined on the basis of a combination of:

69 (A) future projections; and

70 (B) historic data.

71 (c) If pursuant to this Subsection (3), the commission establishes a test period that is
72 not determined exclusively on the basis of future projections, in determining just and
73 reasonable rates the commission shall consider changes outside the test period that:

74 (i) occur during a time period that is close in time to the test period;

75 (ii) are known in nature; and

76 (iii) are measurable in amount.

77 Section 2. Section **54-4-8.5** is enacted to read:

78 **54-4-8.5. Open bidding requirement for certain electrical generating resources.**

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

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

82 (i) electricity;

83 (ii) electrical generating capacity; or

84 (iii) electricity and electrical generating capacity; or

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

87 (2) (a) Beginning July 1, 2004, except as provided in Subsections (2)(b) and (2)(c), an

88 electrical corporation shall conduct an open bid process established by rule by the commission
89 before entering into any contract for the construction or acquisition of a significant electrical
90 generating resource.

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

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

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

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

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

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

105 (i) the commission finds is:

106 (A) fair;

107 (B) reasonable; and

108 (C) consistent with the public interest;

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

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

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

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

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

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

118 (iv) includes protections against unfair business practices as defined by the commission

119 including:
120 (A) the electrical corporation giving preference to resources developed by:
121 (I) an affiliate; or
122 (II) the electrical corporation; or
123 (B) abuse of confidentiality requirements;
124 (v) provides sufficient time for reasonable investigation of the open bid process;
125 (vi) permits an electrical corporation to make decisions regarding the electrical
126 corporation's operations or assets on a reasonably timely basis;
127 (vii) accommodates emergency circumstances that the electrical corporation
128 demonstrates:
129 (A) are beyond the reasonable control of the electrical corporation; and
130 (B) are not a means for the electrical corporation to create a preference or benefit for:
131 (I) the electrical corporation; or
132 (II) an affiliate of the electrical corporation;
133 (viii) provides an opportunity for appeal by a bid participant to the commission prior to
134 the execution of a contract entered into by the electrical corporation as a result of the open bid
135 process; and
136 (ix) is designed so that the expenses incurred by an electrical corporation for a
137 significant energy resource owned by itself or an affiliate of the electrical corporation should
138 not exceed the expenses that would be incurred if the significant energy resources were
139 constructed or acquired through a person that is not affiliated with the electrical corporation.
140 (4) In providing access to the books, records, models, data, or other information
141 described in Subsection (3)(b)(ii), the commission shall establish rules that:
142 (a) provide how the information that the commission determines should be treated as
143 confidential is to be treated as part of the open bid process; and
144 (b) protects against:
145 (i) an electrical corporation using a claim of confidentiality to impede the fairness of:
146 (A) the open bid process; or
147 (B) the commission's review of the open bid process; or
148 (ii) any person disclosing information that the commission determines is confidential.
149 Section 3. Section **54-4-39** is enacted to read:
150 **54-4-39. Affiliate transactions.**

151 (1) For purposes of this section:
152 (a) "Affiliate" is as defined by rule by the commission.
153 (b) "Affiliate contract" means a contract between:
154 (i) an electrical corporation; and
155 (ii) an affiliate of the electrical corporation.
156 (c) "Significant affiliate contract" means an affiliate contract that:
157 (i) involves the construction, acquisition, or disposal of assets of an electrical
158 corporation if:
159 (A) the value of those assets exceed \$5,000,000; or
160 (B) the commission considers the electrical corporation's expenditures related to those
161 assets to be capital expenditures for purposes of a rate proceeding under this title; or
162 (ii) requires an electrical corporation to make annual expenditures in excess of
163 \$1,000,000 that for purposes of a rate proceeding under this title the commission would
164 consider operating expenses.
165 (2) (a) Before the day on which an electrical corporation executes a significant affiliate
166 contract, the electrical corporation shall obtain commission approval of the significant affiliate
167 contract in accordance with the procedures established by the commission by rule.
168 (b) Before the day on which an electrical corporation executes an affiliate contract that
169 is not a significant affiliate contract, the electrical corporation may request that the commission
170 approve the contract in accordance with the procedures established by the commission by rule.
171 (3) (a) The commission may approve an affiliate contract if the commission finds that
172 the affiliate contract is:
173 (i) fair;
174 (ii) reasonable; and
175 (iii) consistent with the public interest.
176 (b) In approving an affiliate contract under this Subsection (3), the commission:
177 (i) is not required to make a determination as to all financial or other issues that are
178 considered in a rate proceeding under this title; and
179 (ii) may address financial or other issues related to an affiliate contract in a rate
180 proceeding held subsequent to the day on which the commission approves an affiliate contract
181 under this Subsection (3).

182 (c) When the commission considers whether or not to approve an affiliate contract in
183 accordance with this section, the electrical corporation has the burden to show that the affiliate
184 contract meets the standards of Subsection (3)(a).

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

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

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

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

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

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

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

202 (ii) protects against:

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

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

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

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

209 (ii) the approval of an affiliate contract.

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

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

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

214 (iii) accommodate emergency circumstances that the electrical corporation

215 demonstrates:

216 (A) are beyond the reasonable control of the electrical corporation; and

217 (B) are not a means for the electrical corporation to create a preference or benefit for:

218 (I) the electrical corporation; or

219 (II) an affiliate of the electrical corporation.

220 Section 4. Section **54-7-1** is amended to read:

221 **54-7-1. Settlement -- Limitation of issues.**

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

224 (a) resolve disputes while minimizing the time and expense that is expended by:

225 (i) public utilities;

226 (ii) the state; and

227 (iii) consumers;

228 (b) enhance administrative efficiency; or

229 (c) enhance the regulatory process by allowing the commission to concentrate on those
230 issues that adverse parties cannot otherwise resolve.

231 (2) (a) The commission may approve any agreement after considering the interests of
232 the public and other affected persons to use a settlement proposal to resolve a disputed matter.

233 (b) The commission shall reserve to the parties the right to maintain appropriate
234 confidentiality in the negotiation process even when the commission uses a settlement proposal
235 to resolve a disputed matter.

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

239 (b) [~~The~~] In accordance with this Subsection (3), the commission may adopt any
240 settlement proposal entered into by two or more of the parties [and may enter an order based
241 upon the proposal:] to an adjudicative proceeding.

242 (c) The commission shall notify all parties to an adjudicative proceeding of the terms
243 of any settlement proposal related to the adjudicative proceeding.

244 (d) (i) The commission may adopt a settlement proposal if:

245 (A) the commission finds that the settlement proposal is just and reasonable in result;

246 and

247 (B) the evidence, contained in the record, supports a finding that the settlement
248 proposal is just and reasonable in result.

249 (ii) When considering whether to adopt a settlement proposal, the commission shall
250 consider the significant and material facts related to the case.

251 (e) (i) The commission may adopt a settlement proposal related to an adjudicative
252 proceeding at any stage of the adjudicative procedure.

253 (ii) The commission shall conduct a hearing before adopting a settlement proposal if
254 requested by:

255 (A) any party initiating the adjudicative proceeding;

256 (B) any party against whom the adjudicative proceeding is initiated; or

257 (C) an intervening party to the adjudicative proceeding.

258 (f) The commission shall accept or reject a settlement proposal within a reasonable
259 time.

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

263 Section 5. Section **54-7-15** is amended to read:

264 **54-7-15. Review or rehearing by commission -- Application -- Procedure --**
265 **Prerequisite to court action -- Effect of commission decisions.**

266 (1) Before seeking judicial review of the commission's action, any party, stockholder,
267 bondholder, or other person pecuniarily interested in the public utility who is dissatisfied with
268 an order of the commission shall meet the requirements of this section.

269 (2) (a) After any order or decision has been made by the commission, any party to the
270 action or proceeding, [~~or~~] any stockholder [~~or~~], bondholder, or other party pecuniarily
271 interested in the public utility affected may apply for rehearing of any matters determined in the
272 action or proceeding.

273 (b) [~~No~~] An applicant may not urge or rely on any ground not set forth in the
274 application in an appeal to any court.

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

277 (d) (i) If the commission grants any application for rehearing without suspending the

278 order involved, the commission shall issue its decision on rehearing within 20 days after final
279 submission.

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

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

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

289 (4) An order of the commission, including a decision on rehearing:

290 (a) shall have binding force and effect only with respect to a public utility that is an
291 actual party to the proceeding in which the order is rendered; and

292 (b) does not determine any right, privilege, obligation, duty, constraint, burden, or
293 responsibility with respect to a public utility that is not a party to the proceeding in which the
294 order is rendered unless, in accordance with Subsection 63-46a-3(6), the commission makes a
295 rule that incorporates the one or more principles of law that:

296 (i) are established by the order;

297 (ii) are not in commission rules at the time of the order; and

298 (iii) affect the right, privilege, obligation, duty, constraint, burden, or responsibility
299 with respect to the public utility.