

1 **ELECTRIC GENERATION COMPETITIVE BID**

2 **AMENDMENTS**

3 2004 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Curtis S. Bramble**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Public Utilities Code to enact the Electric Reliability and
10 Transparency Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ enacts provisions related to the filing and approval of a resource plan and
15 procurement plan by an affected utility;
- 16 ▶ establishes requirements and guidelines related to a competitive bidding process by
17 an affected utility;
- 18 ▶ requires an independent evaluator to oversee a competitive bidding process under
19 certain circumstances;
- 20 ▶ establishes an advisory panel to evaluate and make recommendations regarding a
21 competitive bidding process;
- 22 ▶ enacts requirements related to the filing and approval of avoided cost methodology
23 and data by an affected utility;
- 24 ▶ enacts provisions governing the effect of this bill on other functions of the Public
25 Service Commission;
- 26 ▶ establishes confidentiality requirements; and
- 27 ▶ grants rulemaking authority to the Public Service Commission.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 ENACTS:

34 **54-17-101**, Utah Code Annotated 1953

35 **54-17-102**, Utah Code Annotated 1953

36 **54-17-201**, Utah Code Annotated 1953

37 **54-17-202**, Utah Code Annotated 1953

38 **54-17-203**, Utah Code Annotated 1953

39 **54-17-204**, Utah Code Annotated 1953

40 **54-17-301**, Utah Code Annotated 1953

41 **54-17-302**, Utah Code Annotated 1953

42 **54-17-303**, Utah Code Annotated 1953

43 **54-17-304**, Utah Code Annotated 1953

44 **54-17-401**, Utah Code Annotated 1953

45 **54-17-402**, Utah Code Annotated 1953

46 **54-17-403**, Utah Code Annotated 1953

47 **54-17-404**, Utah Code Annotated 1953

48 **54-17-501**, Utah Code Annotated 1953

49 **54-17-502**, Utah Code Annotated 1953

50 **54-17-503**, Utah Code Annotated 1953

51 **54-17-504**, Utah Code Annotated 1953

52 **54-17-601**, Utah Code Annotated 1953

53 **54-17-602**, Utah Code Annotated 1953

54 **54-17-603**, Utah Code Annotated 1953

55 **54-17-604**, Utah Code Annotated 1953

56 **54-17-605**, Utah Code Annotated 1953

57 **54-17-701**, Utah Code Annotated 1953

58 **54-17-801**, Utah Code Annotated 1953

59 54-17-901, Utah Code Annotated 1953



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

62 Section 1. Section 54-17-101 is enacted to read:

63 **CHAPTER 17. ELECTRIC RELIABILITY AND TRANSPARENCY ACT**

64 **Part 1. General Provisions**

65 **54-17-101. Title.**

66 This chapter is known as the "Electric Reliability and Transparency Act."

67 Section 2. Section 54-17-102 is enacted to read:

68 **54-17-102. Definitions.**

69 As used in this chapter:

70 (1) "Advisory panel" means a panel of volunteers appointed by the commission:

71 (a) pursuant to Section 54-17-504; and

72 (b) to oversee a competitive bidding process.

73 (2) "Affected utility" means an investor-owned electrical corporation that provides
74 retail electric service to at least 200,000 consumers in Utah.

75 (3) "Avoided cost data" means sufficient data to permit the calculation of an affected
76 utility's avoided costs:

77 (a) using the avoided cost methodology; and

78 (b) based on cost and operating data for a proxy resource, consistent with the
79 requirements of Part 6, Avoided Cost Methodology and Data.

80 (4) "Avoided cost methodology" means a methodology for calculating an affected
81 utility's avoided costs:

82 (a) utilizing a proxy resource; and

83 (b) consistent with Section 54-17-602.

84 (5) "Binding commitment" means a statement:

85 (a) in a form and meeting the requirements set by the commission by rule under
86 Section 54-17-901; and

87 (b) that an independent producer intends legally to obligate itself to the delivery:

88 (i) of:

89 (A) electricity;

90 (B) electrical generating capacity; or

91 (C) electricity and electrical generating capacity;

92 (ii) at rates that reflect an affected utility's full avoided costs as determined in

93 accordance with Part 6, Avoided Cost Methodology and Data; and

94 (iii) upon reasonable terms and conditions determined or approved by the commission
95 under Section 54-17-901.

96 (6) "Competitive bidding procedure" means a procedure approved by the commission
97 to govern a competitive bidding process.

98 (7) "Competitive bidding process" means an open, competitive process:

99 (a) for the acquisition of a significant generation resource; and

100 (b) that meets the requirements of Part 4, Competitive Bidding Process.

101 (8) "Electric infrastructure" means facilities and equipment reasonably necessary or
102 appropriate for an affected utility to deliver reliable electric service to its retail customers in
103 Utah.

104 (9) "Incentive mechanism" means a regulatory mechanism that permits an affected
105 utility to share a portion of the savings to its retail ratepayers in Utah if the affected utility
106 demonstrates that the savings, when compared to the most reasonable and economical utility
107 self-build option, result from the selection in a competitive bidding process of a resource to be
108 constructed and owned by someone other than:

109 (a) the affected utility; or

110 (b) an affiliate of the affected utility.

111 (10) "Independent evaluator" means an independent person or entity selected by the
112 commission to:

113 (a) oversee a competitive bidding process; and

114 (b) evaluate bids pursuant to Part 5, Independent Evaluator.

115 (11) "Independent producer" means a person or entity that would have qualified as an
116 independent energy producer under laws in effect on May 3, 2004.

117 (12) "Procurement plan" means a plan for the acquisition of a significant generation
118 resource that meets the requirements of Part 3, Procurement Plan.

119 (13) "Proxy resource" means:

120 (a) the next significant generation resource to be acquired or constructed by an affected

121 utility under the affected utility's procurement plan that has been approved by the commission
122 under Section 54-17-303; or

123 (b) if there is no significant generation resource that meets the requirements of
124 Subsection (13)(a), the most recent significant generation resource constructed, acquired, or
125 committed to by an affected utility.

126 (14) "Procurement expenditures" means expenditures reasonably incurred by an
127 affected utility in procuring approved resources in conformity with:

128 (a) an approved resource plan;

129 (b) an approved procurement plan; and

130 (c) approved competitive bidding procedures.

131 (15) "Request for avoided cost pricing" means a request from an existing or potential
132 independent producer:

133 (a) for access to an affected utility's:

134 (i) avoided cost methodology; and

135 (ii) avoided cost data;

136 (b) to determine avoided costs for a facility of any size and configuration; and

137 (c) in a form and containing the information and requirements determined by the
138 commission under Section 54-17-901.

139 (16) "Resource plan" means a plan:

140 (a) developed in a public resource planning process; and

141 (b) that meets the requirements of Part 2, Resources Planning.

142 (17) "Significant generation resource" means any of the following that will have a cost
143 to an affected utility equal to or greater than \$10,000,000:

144 (a) a contract with a term greater than one year for the acquisition of:

145 (i) electricity;

146 (ii) electric generating capacity; or

147 (iii) electricity and electrical generating capacity; or

148 (b) an electric generation plant owned or operated by an affected utility.

149 (18) "Solicitation" means a request for proposals or other invitation for persons or
150 entities to submit a bid or proposal in connection with a competitive bidding process.

151 (19) "Utility self-build option" means a resource against which bids in a competitive

152 bidding process may be evaluated:

153 (a) that is the most reasonable and economical comparable resource that could be

154 constructed or owned by:

155 (i) an affected utility; or

156 (ii) an affiliate of an affected utility; or

157 (b) in which an affected utility or an affiliate of an affected utility may receive an

158 option to acquire an ownership interest at any time within 20 years after the commencement of

159 deliveries to the affected utility.

160 Section 3. Section **54-17-201** is enacted to read:

161 **Part 2. Resources Planning**

162 **54-17-201. Priority of utility investment for electric infrastructure.**

163 (1) An affected utility shall take all reasonably necessary actions and make all
164 reasonably necessary investments in electric infrastructure to provide reliable electric service to
165 its customers in Utah.

166 (2) An affected utility shall give its highest investment priority to expenditures
167 reasonably necessary to assure reliability of its electric infrastructure.

168 Section 4. Section **54-17-202** is enacted to read:

169 **54-17-202. Affected utility to develop resource plan.**

170 On or before December 31, 2004, and annually thereafter, an affected utility shall file
171 with the commission a proposed resource plan.

172 Section 5. Section **54-17-203** is enacted to read:

173 **54-17-203. Requirements of a resource plan.**

174 A resource plan shall:

175 (1) be developed in a public process that solicits input from customers of the affected
176 utility in Utah and other interested parties on relevant issues, including:

177 (a) cost considerations;

178 (b) reliability;

179 (c) price volatility;

180 (d) fuel and resource diversification;

181 (e) ownership diversification;

182 (f) externalities;

- 183 (g) risk; and
- 184 (h) other issues and impacts;
- 185 (2) include, for at least the following ten years:
- 186 (a) load and resource projections; and
- 187 (b) detailed explanation of the load and resource projections;
- 188 (3) include an avoided cost methodology and avoided cost data meeting the
- 189 requirements of Part 6, Avoided Cost Methodology and Data; and
- 190 (4) comply with rules made by the commission under Section 54-17-901 relating to
- 191 resource planning.

192 Section 6. Section **54-17-204** is enacted to read:

193 **54-17-204. Approval of resource plan.**

194 After holding public hearings, the commission shall approve a resource plan for the

195 affected utility if the commission finds the resource plan to be:

- 196 (1) consistent with this chapter; and
- 197 (2) in the public interest.

198 Section 7. Section **54-17-301** is enacted to read:

199 **Part 3. Procurement Plan**

200 **54-17-301. Affected utility to develop procurement plan.**

201 If a proposed resource plan filed by an affected utility for commission approval

202 identifies a need for a significant generation resource, the affected utility shall file with its

203 proposed resource plan a proposed procurement plan.

204 Section 8. Section **54-17-302** is enacted to read:

205 **54-17-302. Requirements of a procurement plan.**

206 A procurement plan shall:

- 207 (1) be filed with the commission sufficiently in advance of the time when a new
- 208 significant generation resource will be needed to permit full and adequate commission review,
- 209 including appropriate revisions or improvements;
- 210 (2) include a detailed discussion of alternative procurement options, including:
- 211 (a) options proposed by the affected utility;
- 212 (b) potential purchases from independent producers; and
- 213 (c) other reasonable options;

- 214 (3) provide a thorough evaluation of the costs, risks, and potential impacts of resource
- 215 options;
- 216 (4) discuss appropriate balancing of:
- 217 (a) cost;
- 218 (b) reliability;
- 219 (c) price stability;
- 220 (d) risk; and
- 221 (e) other relevant factors;
- 222 (5) provide a detailed description of a potential utility self-build option;
- 223 (6) demonstrate whether the utility has:
- 224 (a) satisfied its investment priority for electric infrastructure as required by Section
- 225 54-17-201; and
- 226 (b) access to sufficient additional capital to construct or acquire a utility self-build
- 227 option;
- 228 (7) develop a framework for evaluating resource options, including a utility self-build
- 229 option, on a fair and comparable basis;
- 230 (8) offer an assessment of price risks associated with the affected utility's existing
- 231 resource portfolio and its proposed resource additions;
- 232 (9) provide an explanation of the affected utility's risk management policies, strategies
- 233 and practices, including specific measures designed to enhance price stability;
- 234 (10) discuss appropriate means of moderating price and reliability risks associated with
- 235 servicing retail customers in Utah;
- 236 (11) encourage reasonable diversity of:
- 237 (a) fuel supply; and
- 238 (b) ownership of generation resources;
- 239 (12) provide sufficient advance planning and time to permit a significant generation
- 240 resource to be acquired:
- 241 (a) through a competitive bidding process; and
- 242 (b) with the participation of an independent evaluator;
- 243 (13) include proposed competitive bidding procedures;
- 244 (14) provide a detailed description of any incentive mechanism the affected utility may

245 propose for adoption, including:

246 (a) appropriate benchmarks for the measurement of savings;

247 (b) means for determining an appropriate sharing of risks and benefits; and

248 (c) means for ensuring that the affected utility's return on equity will not exceed a

249 lawful and reasonable return, as determined by the commission; and

250 (15) comply with rules made by the commission under Section 54-17-901 relating to

251 resource procurement.

252 Section 9. Section **54-17-303** is enacted to read:

253 **54-17-303. Approval of procurement plan.**

254 After holding public hearings, the commission shall approve a procurement plan for the

255 affected utility if the commission finds the procurement plan to be:

256 (1) consistent with this chapter; and

257 (2) in the public interest.

258 Section 10. Section **54-17-304** is enacted to read:

259 **54-17-304. Approval of incentive mechanism.**

260 In approving a procurement plan, the commission may approve an incentive mechanism

261 to the extent the commission determines the incentive mechanism to be in the public interest.

262 Section 11. Section **54-17-401** is enacted to read:

263 **Part 4. Competitive Bidding Process**

264 **54-17-401. Affected utility to utilize competitive bidding process.**

265 (1) Except as provided in Subsection (3), an affected utility shall utilize a competitive

266 bidding process to acquire any significant generation resource after May 3, 2004.

267 (2) If a proposed procurement plan filed by an affected utility for commission approval

268 identifies a need for a significant generation resource, the affected utility shall file with its

269 proposed procurement plan proposed competitive bidding procedures.

270 (3) A competitive bidding process is not required for purchases approved by the

271 commission that are:

272 (a) purchases of capacity or energy from an independent producer;

273 (b) other purchases of capacity or energy that are required by law;

274 (c) bona fide emergency acquisitions;

275 (d) necessary purchases in instances when a competitive bidding process is not feasible

276 because the need for a significant generation resource could not reasonably have been foreseen;

277 (e) purchases resulting from unexpected opportunities that arise for below-market

278 acquisitions; or

279 (f) capacity upgrades of less than 10% to an existing generation plant.

280 Section 12. Section **54-17-402** is enacted to read:

281 **54-17-402. Requirements of competitive bidding procedures.**

282 (1) Competitive bidding procedures shall:

283 (a) be reasonably designed to ensure that all aspects of the competitive bidding process

284 are:

285 (i) fair;

286 (ii) commercially reasonable; and

287 (iii) applied equally to:

288 (A) the affected utility; and

289 (B) all other participants in the competitive bidding process;

290 (b) include requirements for participation in a competitive bidding process that are:

291 (i) fair and reasonable;

292 (ii) clear and unambiguous; and

293 (iii) not unduly onerous;

294 (c) include credit requirements, liquidated damage provisions, and other similar

295 requirements that are:

296 (i) fair and reasonable;

297 (ii) clear and unambiguous;

298 (iii) not designed to discourage legitimate bidders from participating in the process;

299 (iv) not more onerous than are typical for long-term contracts; and

300 (v) uniformly applied to:

301 (A) the affected utility;

302 (B) an affiliate of the affected utility; and

303 (C) other companies with whom the affected utility does business;

304 (d) be sufficiently flexible to:

305 (i) permit a bidder to customize its proposal in a way that enhances value to the

306 affected utility's customers; and

- 307 (ii) allow negotiation with bidders to achieve the best possible outcome;
308 (e) require that a solicitation include clear and adequate descriptions of:
309 (i) qualification requirements for bidders;
310 (ii) bid and selection formats and procedures;
311 (iii) pertinent transmission limitations and issues;
312 (iv) applicable price and non-price factors and weights;
313 (v) the size and nature of a utility self-build option against which bids will be
314 evaluated; and
315 (vi) other information reasonably necessary to facilitate a successful and reasonable
316 competitive bidding process;
317 (f) include a pre-issuance bidders' conference in Utah:
318 (i) with both in-person and conference call participation; and
319 (ii) available not later than 15 calendar days before issuance of a solicitation;
320 (g) include a pre-bid conference in Utah:
321 (i) with both in-person and conference call participation; and
322 (ii) available at least 30 days before the deadline to submit responsive bids;
323 (h) require that a solicitation include a detailed description of any utility self-build
324 option against which bids may be evaluated;
325 (i) ensure that bids for resources to be constructed and owned by third parties will be
326 treated and evaluated in all respects on a fair and comparable basis with a utility self-build
327 option;
328 (j) require that bidders timely receive:
329 (i) all data and information needed to facilitate a fair and reasonable competitive
330 bidding process;
331 (ii) all information relating to the process made available to:
332 (A) employees of the affected utility working on a utility-bid option; or
333 (B) affiliates of the affected utility; and
334 (iii) all reasonable information requested by bidders;
335 (k) include procedures for the commission to timely resolve any disputes that may arise
336 relating to a competitive bidding process;
337 (l) ensure that a person may not participate in the solicitation, preparation or evaluation

338 of bids, or have any contact regarding the competitive bidding process with any person
339 assisting in the competitive bidding process, except on the same terms as any other bidder, if
340 the person:

341 (i) works for:

342 (A) the affected utility; or

343 (B) an affiliate of the affected utility; and

344 (ii) is or may be involved in the sale or marketing of resources from generation or
345 transmission assets owned by:

346 (A) the affected utility; or

347 (B) an affiliate of the affected utility; and

348 (m) comply with rules made by the commission under Section 54-17-901.

349 (2) In a competitive bidding process involving an independent evaluator:

350 (a) at least 30 calendar days before the proposed solicitation is made public, an affected
351 utility shall provide to the independent evaluator and the advisory panel a draft of:

352 (i) the proposed solicitation; and

353 (ii) all data and information relevant to the proposed solicitation;

354 (b) (i) at least ten calendar days before the draft solicitation is made public, the

355 independent evaluator and the advisory panel shall provide input to the affected utility on the
356 proposed solicitation; and

357 (ii) the affected utility, advisory panel, and independent evaluator shall thoroughly
358 document all discussions, correspondence, and revisions;

359 (c) (i) the affected utility shall revise the solicitation as appropriate in response to input
360 received from the:

361 (A) independent evaluator; or

362 (B) advisory panel; and

363 (ii) a dispute shall be presented to the commission for resolution; and

364 (d) the solicitation shall:

365 (i) identify and describe the role of the independent evaluator; and

366 (ii) invite bidders to communicate with the independent evaluator.

367 Section 13. Section **54-17-403** is enacted to read:

368 **54-17-403. Approval of competitive bidding procedures.**

369 After holding public hearings, the commission shall approve competitive bidding
370 procedures for an affected utility if the commission finds the competitive bidding procedures to
371 be:

372 (1) consistent with this chapter; and

373 (2) in the public interest.

374 Section 14. Section **54-17-404** is enacted to read:

375 **54-17-404. Approval of resource acquisition.**

376 Following completion of a competitive bidding process, and after holding public
377 hearings and considering the input of the affected utility, other interested parties, the advisory
378 panel, and the independent evaluator, the commission shall approve specific resources to be
379 acquired or constructed by an affected utility if the commission finds the resource acquisition
380 to be:

381 (1) consistent with this chapter; and

382 (2) in the public interest.

383 Section 15. Section **54-17-501** is enacted to read:

384 **Part 5. Independent Evaluator**

385 **54-17-501. Commission to appoint independent evaluator.**

386 (1) The commission shall:

387 (a) appoint or designate a state agency to appoint an independent evaluator to oversee
388 any competitive bidding process in which bids may be evaluated against a utility self-build
389 option;

390 (b) oversee a public request for proposals to identify and select a qualified independent
391 person or entity to serve as an independent evaluator;

392 (c) consider comments and recommendations offered with respect to the selection of an
393 independent evaluator by utility regulatory authorities from other states where an affected
394 utility provides regulated retail service; and

395 (d) select or approve an independent evaluator after considering recommendations and
396 comments from:

397 (i) the advisory panel; and

398 (ii) other interested parties.

399 (2) (a) The affected utility shall pay fees and expenses for an independent evaluator

400 after the fees and expenses have been:

401 (i) approved by:

402 (A) the commission; or

403 (B) a state agency designated by the commission; and

404 (ii) submitted by the commission or state agency to the affected utility for payment.

405 (b) The affected utility may include any fees and expenses paid under this Subsection

406 (2) as regulatory expenses when retail rates are set in a general rate case.

407 Section 16. Section **54-17-502** is enacted to read:

408 **54-17-502. Affected utility to cooperate with independent evaluator and advisory**
409 **panel.**

410 (1) An affected utility shall cooperate fully with the:

411 (a) independent evaluator; and

412 (b) advisory panel.

413 (2) An affected utility shall involve the independent evaluator in all aspects of a

414 competitive bidding process.

415 (3) Subject to Part 8, Confidentiality, and rules made by the commission under Section

416 54-17-901, an affected utility shall provide the independent evaluator full, timely, and

417 unfettered access to all relevant materials used in or relating to a competitive bidding process,

418 including:

419 (a) data;

420 (b) resources;

421 (c) models;

422 (d) confidential or proprietary information;

423 (e) pricing information; and

424 (f) information used by the affected utility in developing or in connection with:

425 (i) the competitive bidding process;

426 (ii) a utility self-build option; or

427 (iii) the evaluation of bids.

428 (4) An affected utility shall provide the independent evaluator and the advisory panel

429 with reasonable and adequate access to requested personnel of the affected utility.

430 Section 17. Section **54-17-503** is enacted to read:

- 431 **54-17-503. Duties of independent evaluator.**
- 432 (1) An independent evaluator shall:
- 433 (a) monitor and facilitate communications, questions, comments, and complaints
- 434 regarding a competitive bidding process by and among the:
- 435 (i) affected utility;
- 436 (ii) advisory panel; and
- 437 (iii) bidders;
- 438 (b) facilitate delivery of reasonably requested clarifications, documents, or information
- 439 from:
- 440 (i) bidders; or
- 441 (ii) the advisory panel;
- 442 (c) validate the consistency and reasonableness of the utility self-build option
- 443 assumptions and calculations, including:
- 444 (i) technical feasibility;
- 445 (ii) consistency with the solicitation; and
- 446 (iii) treatment of a utility self-build option in comparison to other bid responses;
- 447 (d) confirm that a utility self-build option includes all resource-related information
- 448 reasonably requested of bidders;
- 449 (e) ensure that a solicitation includes:
- 450 (i) sufficient information regarding a utility self-build option; and
- 451 (ii) the manner in which bids will be evaluated against a utility self-build option;
- 452 (f) (i) receive bid responses; and
- 453 (ii) remove from bid responses any information that would identify a bidder;
- 454 (g) confirm that all bids are identified, categorized, analyzed, and treated:
- 455 (i) on an accurate, fair, and comparable basis; and
- 456 (ii) in compliance with all applicable requirements and criteria;
- 457 (h) participate in and offer feedback on all aspects of the competitive bidding process,
- 458 including:
- 459 (i) evaluation and ranking of responses;
- 460 (ii) selection of short list candidates;
- 461 (iii) the implications and advisability of making adjustments to the:

- 462 (A) bid process; or
- 463 (B) scope or nature of requested resources in light of bid responses;
- 464 (iv) post-bid discussions, negotiations, and evaluations; and
- 465 (v) negotiation of potential contracts;
- 466 (i) advise the affected utility, the advisory panel, and the commission at all stages of
- 467 the competitive bidding process of any unresolved disputes, issues, or concerns that might
- 468 affect the integrity or outcome of the competitive bidding process;
- 469 (j) provide reasonable input and cooperation to the advisory panel overseeing the
- 470 competitive bidding process;
- 471 (k) prepare:
- 472 (i) process reports for the commission, the affected utility, and the advisory panel as
- 473 early as practical during the competitive bidding process; and
- 474 (ii) a detailed final report as soon as is practical following completion of the
- 475 competitive bidding process, including at least:
- 476 (A) a process report detailing validation of the utility self-build option;
- 477 (B) a process report detailing the screening evaluation of bids;
- 478 (C) a detailed final report regarding:
- 479 (I) all aspects of the competitive bidding process; and
- 480 (II) the independent evaluator's involvement, observations, conclusions, and
- 481 recommendations;
- 482 (l) (i) attempt to mediate disputes that may arise during the competitive bidding
- 483 process; and
- 484 (ii) present recommendations for resolution of unresolved disputes to the commission;
- 485 (m) provide regulatory feedback as requested, including:
- 486 (i) responding to questions or requests for information; and
- 487 (ii) testifying in regulatory proceedings regarding a competitive bidding process; and
- 488 (n) comply with directions or requests from the commission.
- 489 (2) In evaluating and preparing reports on a competitive bidding process, the
- 490 independent evaluator shall analyze whether, and the extent to which:
- 491 (a) a utility self-build option was considered and evaluated along with all other bids in
- 492 a fair and comparable manner;

493 (b) environmental screening factors and weights were applied consistently and in a fair
494 manner to:

495 (i) all bid responses; and

496 (ii) a utility self-build option;

497 (c) credit requirements, liquidated damage provisions, warranties, and other similar
498 requirements affected:

499 (i) the bid evaluations; and

500 (ii) the outcome of the competitive bidding process;

501 (d) all relevant and reasonably available data and information were provided to
502 bidders;

503 (e) all data, information, and models relevant to the competitive bidding process were
504 made available to the independent evaluator to permit full and timely testing and verification of
505 assumptions, models, inputs, outputs, and results;

506 (f) confidentiality claims and issues were resolved in a manner that:

507 (i) preserved confidentiality as necessary; and

508 (ii) permitted dissemination and consideration of all information reasonably necessary
509 for a competitive bidding process to be conducted in a fair manner;

510 (g) the reasons and bases for evaluating, ranking, and selecting or not selecting bids
511 were:

512 (i) fully identified and documented; and

513 (ii) detailed in the independent evaluator's report; and

514 (h) the competitive bidding process satisfied the requirements of:

515 (i) this chapter; and

516 (ii) rules made by the commission under Section 54-17-901.

517 Section 18. Section **54-17-504** is enacted to read:

518 **54-17-504. Formation and duties of advisory panel.**

519 (1) The commission shall appoint a volunteer advisory panel comprised of
520 representatives of:

521 (a) the Division of Public Utilities;

522 (b) the Committee of Consumer Services;

523 (c) industrial ratepayer groups;

- 524 (d) commercial ratepayer groups;
- 525 (e) residential ratepayer groups;
- 526 (f) environmental groups;
- 527 (g) public interest groups; and
- 528 (h) other stakeholders as determined by the commission under Section 54-17-901.
- 529 (2) The advisory panel shall:
- 530 (a) oversee and evaluate a competitive bidding process;
- 531 (b) provide advice and input to the commission on the selection of an independent
- 532 evaluator;
- 533 (c) provide advice and input to the commission, an affected utility, and an independent
- 534 evaluator with respect to:
- 535 (i) a competitive bidding process; and
- 536 (ii) any issues or concerns that may arise with respect to a competitive bidding process;
- 537 (d) evaluate and provide input to the commission on reports filed by an independent
- 538 evaluator;
- 539 (e) make suggestions for improvements to a competitive bidding process; and
- 540 (f) maintain appropriate confidentiality as required by a confidentiality order entered by
- 541 the commission.

542 (3) An affected utility shall provide the advisory panel with all information and
 543 assistance necessary for the advisory panel to perform its duties under this chapter.

544 Section 19. Section **54-17-601** is enacted to read:

Part 6. Avoided Cost Methodology and Data

54-17-601. Affected utility to file avoided cost methodology and data.

An affected utility shall file with each annual resource plan an updated:

- 548 (1) avoided cost methodology; and
- 549 (2) avoided cost data.

550 Section 20. Section **54-17-602** is enacted to read:

54-17-602. Requirements of avoided cost methodology and data.

(1) An avoided cost methodology filed by an affected utility shall propose a reasonable
 553 avoided cost methodology:

- 554 (a) to determine the affected utility's avoided costs to be paid to an independent

555 producer of any size or characteristics; and

556 (b) utilizing avoided cost data filed with the commission.

557 (2) Avoided cost data filed by an affected utility shall include, in both hard copy and

558 electronic formats, sufficient data to permit the calculation of an affected utility's avoided costs

559 utilizing the avoided cost methodology, including:

560 (a) capacity and energy costs;

561 (b) operating characteristics;

562 (c) fuel and market price projections;

563 (d) models; and

564 (e) other information necessary to satisfy the requirements of this Subsection (2).

565 (3) An affected utility shall file with the commission instructions, operating manuals,

566 and other information necessary or convenient to permit meaningful use and operation of the

567 affected utility's proposed:

568 (a) avoided cost methodology; and

569 (b) avoided cost data.

570 Section 21. Section **54-17-603** is enacted to read:

571 **54-17-603. Affected utility's obligation to purchase.**

572 (1) Consistent with Subsection (2), an affected utility shall pay its full avoided costs

573 for:

574 (a) electricity;

575 (b) electric generating capacity; or

576 (c) electricity and electric generating capacity.

577 (2) An affected utility shall pay the avoided costs described in Subsection (1) to an

578 independent producer:

579 (a) upon terms and conditions approved by the commission;

580 (b) with rates calculated:

581 (i) based upon the avoided cost methodology approved by the commission when an

582 independent producer makes a binding commitment; and

583 (ii) utilizing the avoided cost data approved by the commission when an independent

584 producer makes a binding commitment.

585 Section 22. Section **54-17-604** is enacted to read:

586 **54-17-604. Availability of avoided cost methodology and data to independent**
587 **producer.**

588 (1) If the requirements of Subsection 63-2-304(1) or (2) and Section 63-2-308 are
589 satisfied, the following records provided to the commission are protected:

590 (a) avoided cost methodology; and

591 (b) avoided cost data.

592 (2) Notwithstanding Subsection (1), the commission shall comply with Subsection (3)
593 upon:

594 (a) receipt from an existing or potential independent producer of a request for:

595 (i) avoided cost methodology; or

596 (ii) avoided cost data; and

597 (b) execution of an agreement containing appropriate confidentiality requirements and
598 other requirements established by the commission under Section 54-17-901.

599 (3) If the requirements of Subsection (2) are met, the commission shall promptly
600 provide an existing or potential independent producer with access to an affected utility's:

601 (a) avoided cost methodology; and

602 (b) avoided cost data.

603 Section 23. Section **54-17-605** is enacted to read:

604 **54-17-605. Approval of avoided cost methodology and data.**

605 After holding public hearings, the commission shall approve an avoided cost
606 methodology and avoided cost data for an affected utility if the commission finds the avoided
607 cost methodology and avoided cost data to be:

608 (1) consistent with this chapter; and

609 (2) in the public interest.

610 Section 24. Section **54-17-701** is enacted to read:

611 **Part 7. Regulatory Functions**

612 **54-17-701. Prudence of expenditures and ratemaking treatment.**

613 (1) Procurement expenditures shall bear a presumption of prudence in a regulatory
614 proceeding to set retail rates in Utah.

615 (2) An affected utility may recover a proportionate share of prudently incurred
616 procurement expenditures in its rates charged to retail customers in Utah.

- 617 (3) An affected utility shall bear the burden of proof to establish:
618 (a) substantial compliance with the requirements of:
619 (i) this chapter; and
620 (ii) rules made by the commission; and
621 (b) the prudence of the affected utility's procurement expenditures.
622 (4) A party challenging the recovery by an affected utility of procurement expenditures
623 prudently incurred in compliance with the requirements of this chapter shall bear the burden of
624 proof to establish imprudence.
625 (5) This chapter does not alter, modify, or diminish the commission's existing
626 authority, including:
627 (a) oversight over affiliate transactions; and
628 (b) authority to disallow imprudently incurred costs.
629 (6) The commission may deny cost recovery by an affected utility in the event of any
630 imprudence in the procurement process, including:
631 (a) failure to comply with:
632 (i) (A) this chapter; or
633 (B) rules made by the commission under Section 54-17-901;
634 (ii) an approved resource plan;
635 (iii) an approved procurement plan; or
636 (iv) approved competitive bidding procedures; or
637 (b) failure to ensure a commercially reasonable competitive bidding process.
638 (7) An affected utility may not recover through regulated rates paid by ratepayers in
639 Utah any costs incurred by the affected utility in connection with a utility self-build option that:
640 (a) exceed the projected costs of a utility self-build option used to compare bids in a
641 competitive bidding process; or
642 (b) exceed the costs for a comparable resource:
643 (i) offered by a bidder; and
644 (ii) determined by the commission to be credible in a competitive bidding process.
645 (8) An affected utility shall continue to bear the risk of different interstate allocations
646 methodologies adopted by different jurisdictions in which an affected utility operates.
647 (9) At least annually the commission shall conduct an evaluation of the:

648 (a) competitive bidding process; and

649 (b) independent evaluator.

650 Section 25. Section **54-17-801** is enacted to read:

651 **Part 8. Confidentiality**

652 **54-17-801. Protection of confidential information.**

653 (1) (a) Except as provided in Subsection (1)(b), legitimate confidential or proprietary
654 information of the affected utility shall be protected from public disclosure.

655 (b) Notwithstanding Subsection (1)(a), an affected utility may not use claims of
656 confidentiality or proprietary information to prevent dissemination of all information
657 reasonably necessary for a fair and open competitive bidding process as required by:

658 (i) this chapter; or

659 (ii) rules made by the commission under Section 54-17-901.

660 (2) Notwithstanding any other provision of this chapter, the following shall be
661 provided full access to information described in Subsection 54-17-901(8):

662 (a) regulatory agencies and consumer groups that are not market participants; and

663 (b) representatives of market participants that are not involved in specific commercial
664 transactions where an unreasonable advantage could be obtained by knowledge of the
665 information allowed by this Subsection (2).

666 (3) An affected utility shall share with bidders any material or relevant information:

667 (a) in the possession of:

668 (i) the affected utility; or

669 (ii) an affiliate of the affected utility; and

670 (b) that would create:

671 (i) an unfair advantage for:

672 (A) the affected utility; or

673 (B) an affiliate of the affected utility; and

674 (ii) a disadvantage for bidders in the competitive bidding process.

675 (4) Competitive bidding procedures shall protect confidential information supplied by
676 bidders, subject to disclosure:

677 (a) to the independent evaluator; and

678 (b) as otherwise required by the commission by rule made under Section 54-17-901.

679 (5) (a) An affected utility shall comply with Subsection (5)(b) in developing or
680 contracting for the following if used in or relevant in any way to the competitive bidding
681 process or a utility self-build option:

682 (i) data;

683 (ii) information; or

684 (iii) models.

685 (b) An affected utility described in Subsection (5)(a) shall obtain consent for the
686 following to access and use the data, information, and models to permit thorough independent
687 testing and verification of assumptions, inputs, and results:

688 (i) an independent evaluator;

689 (ii) regulators; and

690 (iii) others determined by the commission by rule made under Section 54-17-901.

691 Section 26. Section **54-17-901** is enacted to read:

692 **Part 9. Rulemaking Authority**

693 **54-17-901. Rulemaking authority.**

694 In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
695 commission shall make rules to:

696 (1) establish requirements consistent with this chapter for a:

697 (a) resource plan; and

698 (b) procurement plan;

699 (2) determine the appropriate form, requirements, terms, and conditions for a binding
700 commitment;

701 (3) determine the necessary forms, information, and other requirements for a request
702 for avoided cost pricing;

703 (4) establish procedures and requirements for competitive bidding procedures that are
704 consistent with Section 54-17-402;

705 (5) establish guidelines for an independent evaluator consistent with Part 5,
706 Independent Evaluator;

707 (6) define the membership of the advisory panel consistent with Section 54-17-504;

708 (7) establish confidentiality and other requirements consistent with Section 54-17-604
709 related to the availability of avoided cost methodology and data; and

710 (8) adopt procedures consistent with Section 54-17-801 to ensure the confidentiality of
711 market sensitive information submitted in, resulting from, or related to a utility's procurement
712 plan, resource plan, or competitive bidding procedures, including:
713 (a) proposed or executed power purchase agreements; and
714 (b) responses to:
715 (i) data requests; and
716 (ii) reports of an independent evaluator.

Legislative Review Note
as of 2-3-04 8:05 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel