

1 **UTILITY REGULATORY REFORM**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: James R. Gowans**

5

LONG TITLE

6 **General Description:**

7 This bill makes changes to the regulation of public utilities.

8 **Highlighted Provisions:**

9 This bill:

- 10
- 11 ▶ defines terms;
 - 12 ▶ eliminates the Division of Public Utilities and deletes references to the division;
 - 13 ▶ eliminates the Committee of Consumer Services and deletes references to the

14 committee;

- 15 ▶ requires the Public Service Commission to maintain advocacy staff;

- 16 ▶ establishes the Office of the Ratepayer Advocate in the attorney general's office,

17 including:

- 18 • describing the powers of the ratepayer advocate;
- 19 • describing the duties of the ratepayer advocate;
- 20 • providing for the appointment of an attorney to represent the ratepayer advocate;
- 21 • establishing conflict-of-interest rules for personnel within the Office of the

22 Ratepayer Advocate;

- 23 • providing for the establishment of ratepayer committees consisting of class

24 advocates;

- 25 ▶ requires the agreement of the ratepayer advocate if it is a party to the action to allow
- 26 commenced proceedings to continue in the absence of a quorum of the Public
- 27 Service Commission;



- 28 ▶ allows advocacy staff of the Public Service Commission to be witnesses in
29 commission proceedings;
- 30 ▶ prohibits a public utility from soliciting, requesting, or recommending a person for
31 appointment to the Office of the Ratepayer Advocate;
- 32 ▶ changes the proper entity to which certain filings of rate schedules shall be made
33 from the Division of Public Utilities to the commission;
- 34 ▶ gives the commission certain powers formerly belonging to the Division of Public
35 Utilities;
- 36 ▶ allows the ratepayer advocate to seek injunctive relief for violations of certain
37 provisions;
- 38 ▶ removes power to determine a special regulation fee from the executive director of
39 the Department of Commerce and empowers the attorney general to set the special
40 fee for the ratepayer advocate;
- 41 ▶ provides that the costs of the administration, support, and maintenance of the Office
42 of the Ratepayer Advocate be borne by the public utilities;
- 43 ▶ directs the commission to notify a public utility of the special fee;
- 44 ▶ changes the maximum percentage of a public utility's gross operating revenues that
45 may be used to set a special regulation fee from .3% to .4%;
- 46 ▶ makes changes to the appointment of a supplemental levy committee;
- 47 ▶ provides that charges to the commission for regulation of a utility are credited
48 according to the procedures of Title 63, Chapter 38, Budgetary Procedures Act;
- 49 ▶ provides a method for the commission to determine gross operating revenues if a
50 public utility fails to file a gross revenue report;
- 51 ▶ provides for the collection of a special regulation fee by the ratepayer advocate if a
52 public utility defaults in the payment of the fee;
- 53 ▶ requires an electrical corporation proposing certain tariffs to seek input from the
54 ratepayer advocate before submitting the proposal to the commission;
- 55 ▶ allows the commission to award reimbursement to certain groups of intervenors;
- 56 ▶ outlines procedures for awarding reimbursement to eligible intervenor groups;
- 57 ▶ allows a public utility to recover amounts paid for reimbursement to eligible
58 intervenor groups in the public utility's retail rates;

- 59 ▶ makes technical changes and conforming amendments; and
- 60 ▶ provides for the transfer of personnel, equipment, and property from the Division of
- 61 Public Utilities to the commission.

62 **Monies Appropriated in this Bill:**

63 None

64 **Other Special Clauses:**

65 This bill takes effect on July 1, 2005.

66 **Utah Code Sections Affected:**

67 AMENDS:

- 68 **13-1-2**, as last amended by Chapter 352, Laws of Utah 2000
- 69 **54-1-3**, as last amended by Chapter 246, Laws of Utah 1983
- 70 **54-1-6**, as last amended by Chapters 101 and 122, Laws of Utah 1988
- 71 **54-1-10**, as last amended by Chapter 246, Laws of Utah 1983
- 72 **54-1-11**, as enacted by Chapter 246, Laws of Utah 1983
- 73 **54-2-1**, as last amended by Chapter 212, Laws of Utah 2001
- 74 **54-4-1.1**, as enacted by Chapter 50, Laws of Utah 1984
- 75 **54-4-1.5**, as enacted by Chapter 246, Laws of Utah 1983
- 76 **54-4-37**, as last amended by Chapter 139, Laws of Utah 2001
- 77 **54-5-1.5**, as last amended by Chapter 212, Laws of Utah 2001
- 78 **54-5-2**, as last amended by Chapter 214, Laws of Utah 1993
- 79 **54-5-3**, as last amended by Chapter 214, Laws of Utah 1993
- 80 **54-7-12.8**, as enacted by Chapter 319, Laws of Utah 2002
- 81 **54-8b-2**, as last amended by Chapter 320, Laws of Utah 2002
- 82 **54-8b-2.3**, as last amended by Chapter 291, Laws of Utah 2000
- 83 **54-8b-2.5**, as last amended by Chapter 279, Laws of Utah 2004
- 84 **54-8b-13**, as enacted by Chapter 141, Laws of Utah 1990
- 85 **54-8b-17**, as enacted by Chapter 96, Laws of Utah 1998
- 86 **54-8b-18**, as enacted by Chapter 113, Laws of Utah 1999
- 87 **72-7-109**, as last amended by Chapter 176, Laws of Utah 2002

88 ENACTS:

- 89 **54-10-101**, Utah Code Annotated 1953

- 90 **54-10-102**, Utah Code Annotated 1953
- 91 **54-10-103**, Utah Code Annotated 1953
- 92 **54-10-104**, Utah Code Annotated 1953
- 93 **54-10-201**, Utah Code Annotated 1953
- 94 **54-10-202**, Utah Code Annotated 1953
- 95 **54-10-203**, Utah Code Annotated 1953
- 96 **54-10-204**, Utah Code Annotated 1953
- 97 **54-10-205**, Utah Code Annotated 1953
- 98 **54-18-101**, Utah Code Annotated 1953
- 99 **54-18-102**, Utah Code Annotated 1953
- 100 **54-18-201**, Utah Code Annotated 1953
- 101 **54-18-202**, Utah Code Annotated 1953
- 102 **54-18-203**, Utah Code Annotated 1953
- 103 **54-18-204**, Utah Code Annotated 1953
- 104 **54-18-205**, Utah Code Annotated 1953
- 105 **REPEALS:**
- 106 **54-4a-1**, as last amended by Chapter 225, Laws of Utah 1989
- 107 **54-4a-2**, as last amended by Chapter 225, Laws of Utah 1989
- 108 **54-4a-3**, as last amended by Chapter 122, Laws of Utah 1988
- 109 **54-4a-4**, as enacted by Chapter 246, Laws of Utah 1983
- 110 **54-4a-5**, as enacted by Chapter 246, Laws of Utah 1983
- 111 **54-4a-6**, as enacted by Chapter 246, Laws of Utah 1983
- 112 **54-10-1**, as enacted by Chapter 54, Laws of Utah 1977
- 113 **54-10-2**, as last amended by Chapter 176, Laws of Utah 2002
- 114 **54-10-3**, as last amended by Chapter 243, Laws of Utah 1996
- 115 **54-10-4**, as enacted by Chapter 54, Laws of Utah 1977
- 116 **54-10-4.5**, as enacted by Chapter 216, Laws of Utah 1981
- 117 **54-10-5**, as last amended by Chapters 20 and 215, Laws of Utah 1995
- 118 **54-10-6**, as enacted by Chapter 54, Laws of Utah 1977
- 119 **54-10-7**, as last amended by Chapter 20, Laws of Utah 1995
- 120 **Uncodified Material Affected:**

121 ENACTS UNCODIFIED MATERIAL

122

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

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

125 **13-1-2. Creation and functions of department -- Divisions created -- Fees.**

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

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

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

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

131 (b) the Division of Real Estate;

132 (c) the Division of Securities;

133 [~~(d) the Division of Public Utilities;~~]

134 [~~(e)~~] (d) the Division of Consumer Protection; and

135 [~~(f)~~] (e) the Division of Corporations and Commercial Code.

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

139 (b) The department shall submit each fee established in [~~this~~] the manner provided in
140 Subsection (3)(a) to the Legislature for its approval as part of the department's annual
141 appropriations request.

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

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

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

149 Section 2. Section **54-1-3** is amended to read:

150 **54-1-3. Transaction of business by commissioners -- Quorum -- Proceedings by**
151 **less than majority or administrative law judge -- Effect of actions.**

152 (1) (a) A majority of the commissioners shall constitute a quorum for the;
153 (i) transaction of any business~~[-for the];~~
154 (ii) performance of any duty; or ~~[for the]~~
155 (iii) exercise of any power of the commission.
156 (b) Any action taken by a majority of the commission ~~[shall be deemed the]~~ is an
157 action of the commission.
158 (c) Any vacancy in the commission ~~[shall]~~ does not impair the right of the remaining
159 commissioners to exercise all the powers of the commission ~~[so long as]~~ if a majority of the
160 commission remains.
161 (d) The commission may hold hearings at any time or place within or without the state.
162 (2) (a) The following proceedings shall be heard by at least a majority of the
163 commissioners:
164 ~~[(a)]~~ (i) ~~[General]~~ a general rate ~~[proceedings]~~ proceeding to establish rates for public
165 utilities ~~[which]~~ that have annual revenues generated from Utah utility service in excess of
166 \$200,000,000; or
167 ~~[(b)]~~ (ii) ~~[Any]~~ any proceeding ~~[which]~~ that the commission determines involves an
168 issue of significant public interest.
169 (b) If a commission proceeding requiring a majority ~~[has commenced]~~ commences and
170 the unavoidable absence of one or more commissioners results in less than a majority of
171 commissioners being available to continue the proceeding, the proceeding may continue before
172 a single commissioner or specified administrative law judge only upon agreement of:
173 (i) the involved public utility; and~~[-]~~
174 (ii) if it is a party, the ~~[Division of Public Utilities]~~ ratepayer advocate.
175 (3) Any ~~[other]~~ investigation, inquiry, hearing, or proceeding ~~[which]~~ not included in
176 Subsection (2) that the commission has power to undertake may be conducted before:
177 (a) less than a majority of the commission; or ~~[before]~~
178 (b) an administrative law judge appointed by the commission.
179 (4) All proceedings conducted before less than a majority of the commission or before
180 an administrative law judge ~~[shall be deemed]~~ are considered proceedings of the commission
181 and the findings, orders, and decisions made by less than a majority of the commission or by an
182 administrative law judge, when approved and confirmed by the commission and filed in its

183 office[, ~~shall be deemed~~];

184 (a) are considered findings, orders, and decisions of the commission; and [~~staff~~]

185 (b) have the same effect as if originally made by the commission.

186 Section 3. Section **54-1-6** is amended to read:

187 **54-1-6. Employment of staff -- Status and compensation -- Employees as parties**
 188 **or witnesses -- Advocacy staff.**

189 (1) The annual budget of the [~~Public Service Commission~~] commission shall provide
 190 sufficient funds for the commission to hire, develop, and organize [~~an~~] advisory and advocacy
 191 staff to assist the commission in performing the powers, duties, and functions committed to it
 192 by statute.

193 (a) The commission may hire:

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

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

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

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

201 (b) The commission may provide for funds in the annual budget to acquire suitable
 202 electronic recording equipment to maintain a verbatim record of proceedings before:

203 (i) the commission[;];

204 (ii) any commissioner[;]; or

205 (iii) any administrative law judge.

206 (2) (a) [~~With the exception of~~] Except for clerical workers in nonconfidential positions,
 207 all staff of the [~~Public Service Commission~~] commission:

208 (i) are exempt employees under [~~the~~] Title 67, Chapter 19, Utah State Personnel
 209 Management Act; and

210 (ii) serve at the pleasure of the commission.

211 (b) Administrative law judges are exempt employees under [~~the~~] Title 67, Chapter 19,
 212 Utah State Personnel Management Act, and may only be removed from office;

213 (i) upon due notice; and

214 (ii) by a unanimous vote of the commission.

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

217 (ii) The Department of Human Resource Management [~~may~~] shall make its
218 compensation determinations [~~based upon~~] after considering compensation practices common
219 to utility companies throughout the United States.

220 (3) (a) A member of advocacy staff appointed by the commission for a particular
221 matter may appear as a witness in any proceeding related to that particular matter before the
222 commission.

223 [~~(3)(a)~~] (b) [~~The~~] Except as provided in Subsection (3)(a), staff or other employees of
224 the commission may not appear as parties or witnesses in any proceeding before:

225 (i) the commission[;];

226 (ii) any commissioner[;]; or

227 (iii) any administrative law judge.

228 [~~(b)~~] (c) The staff or other employees of the commission, other than advocacy staff,
229 may not appeal any finding, order, or decision of the commission.

230 (4) (a) In connection with any particular matter, the commission shall keep the
231 functions and activities of the commission's advocacy staff separate from the functions and
232 activities of the commission's advisory staff to the extent practicable.

233 (b) The commission shall make rules pursuant to Title 63, Chapter 46a, Utah
234 Administrative Rulemaking Act, to comply with Subsection (4)(a).

235 (5) The commission's advocacy staff may not communicate with other commission
236 staff concerning matters the advocacy staff brings, or may bring, before the commission, except
237 for communications required to be made in the course of proceedings before the commission.

238 Section 4. Section **54-1-10** is amended to read:

239 **54-1-10. Conservation planning -- Annual reports.**

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

243 (2) The commission shall make and submit to the governor and the Legislature an
244 annual report containing:

245 (a) a full and complete account of the transactions of its office~~[-, together with]; and~~

246 (b) any facts, suggestions and recommendations it may ~~[deem]~~ consider necessary.

247 ~~[The Division of Public Utilities shall provide any assistance the commission may require in~~
248 ~~the preparation of the annual report.]~~

249 (3) The report required by Subsection (2) shall be:

250 (a) made and submitted by October 1 of each year, or as soon after as may be feasible;

251 and ~~[shall be]~~

252 (b) published as are the reports of other departments of the state.

253 Section 5. Section **54-1-11** is amended to read:

254 **54-1-11. Prohibited interests, relationships, and actions by commissioners and**
255 **employees.**

256 (1) ~~[No]~~ A person employed as a commissioner or as personnel of the commission

257 ~~[shall]~~ may not, while so employed:

258 (a) ~~[Have]~~ have any pecuniary interest, whether as the holder of stock or other

259 securities, or otherwise have any conflict of interest with any public utility or other entity

260 subject to the jurisdiction of the commission;

261 (b) ~~[Have]~~ have any office, position or relationship, or be engaged in any business or

262 avocation ~~[which]~~ that interferes or is incompatible with the effective and objective fulfillment

263 of the duties of office or employment with the commission;

264 (c) ~~[Accept]~~ accept any gift, gratuity, emolument or employment from:

265 (i) any public utility or other entity subject to the jurisdiction of the commission; or

266 (ii) from any other officer, agent, or employee ~~[thereof]~~ of a public utility or other

267 entity subject to the jurisdiction of the commission; or

268 (d) ~~[Solicit]~~ solicit, suggest, request, or recommend, directly or indirectly, the

269 appointment of any person or entity to any office or employment with any public utility or

270 other entity subject to the jurisdiction of the ~~[Public Service Commission]~~ commission.

271 (2) ~~[No]~~ Any officer, agent, attorney, or employee of any public utility ~~[shall]~~ may not

272 directly or indirectly solicit, request, or recommend to the governor, any state senator, the

273 commission, or the ~~[Division of Public Utilities]~~ ratepayer advocate the appointment of any

274 person as:

275 (a) a commissioner ~~[or as];~~

- 276 (b) executive director of the commission[~~;~~or];
- 277 (c) the appointment of any person to any commission staff position; or
- 278 (d) ratepayer advocate.

279 Section 6. Section **54-2-1** is amended to read:

280 **54-2-1. Definitions.**

281 As used in this title:

282 (1) "Avoided costs" means the incremental costs to an electrical corporation of electric
283 energy or capacity or both [~~which~~] that, due to the purchase of electric energy or capacity or
284 both from small power production or cogeneration facilities, the electrical corporation would
285 not have to generate itself or purchase from another electrical corporation.

286 (2) "Cogeneration facility":

287 (a) means a facility [~~which~~] that produces:

288 (i) electric energy; and

289 (ii) steam or forms of useful energy, including heat, [~~which~~] that are used for industrial,
290 commercial, heating, or cooling purposes; and

291 (b) is a qualifying cogeneration facility under federal law.

292 (3) "Commission" means the Public Service Commission of Utah.

293 (4) "Commissioner" means a member of the commission.

294 (5) (a) "Corporation" includes an association, and a joint stock company having any
295 powers or privileges not possessed by individuals or partnerships.

296 (b) "Corporation" does not include towns, cities, counties, conservancy districts,
297 improvement districts, or other governmental units created or organized under any general or
298 special law of this state.

299 (6) "Distribution electrical cooperative" includes an electrical corporation that:

300 (a) is a cooperative;

301 (b) conducts a business that includes the retail distribution of electricity the cooperative
302 purchases or generates for the cooperative's members; and

303 (c) is required to allocate or distribute savings in excess of additions to reserves and
304 surplus on the basis of patronage to the cooperative's:

305 (i) members; or

306 (ii) patrons.

307 (7) "Electrical corporation" includes every corporation, cooperative association, and
308 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any
309 electric plant, or in any way furnishing electric power for public service or to its consumers or
310 members for domestic, commercial, or industrial use, within this state, except independent
311 energy producers, and except where electricity is generated on or distributed by the producer
312 solely for the producer's own use, or the use of the producer's tenants, or for the use of
313 members of an association of unit owners formed under Title 57, Chapter 8, Condominium
314 Ownership Act, and not for sale to the public generally.

315 (8) "Electric plant" includes all real estate, fixtures, and personal property owned,
316 controlled, operated, or managed in connection with or to facilitate the production, generation,
317 transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits,
318 ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying
319 conductors used or to be used for the transmission of electricity for light, heat, or power.

320 (9) "Gas corporation" includes every corporation and person, their lessees, trustees, and
321 receivers, owning, controlling, operating, or managing any gas plant for public service within
322 this state or for the selling or furnishing of natural gas to any consumer or consumers within the
323 state for domestic, commercial, or industrial use, except in the situation that:

324 (a) gas is made or produced on, and distributed by the maker or producer through,
325 private property:

326 (i) solely for the maker's or producer's own use or the use of the maker's or producer's
327 tenants; and

328 (ii) not for sale to others;

329 (b) gas is compressed on private property solely for the owner's own use or the use of
330 the owner's employees as a motor vehicle fuel; or

331 (c) gas is compressed by a retailer of motor vehicle fuel on the retailer's property solely
332 for sale as a motor vehicle fuel.

333 (10) "Gas plant" includes all real estate, fixtures, and personal property owned,
334 controlled, operated, or managed in connection with or to facilitate the production, generation,
335 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

336 (11) "Heat corporation" includes every corporation and person, their lessees, trustees,
337 and receivers, owning, controlling, operating, or managing any heating plant for public service

338 within this state.

339 (12) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances, and
340 personal property controlled, operated, or managed in connection with or to facilitate the
341 production, generation, transmission, delivery, or furnishing of artificial heat.

342 (b) "Heating plant" does not include either small power production facilities or
343 cogeneration facilities.

344 (13) "Independent energy producer" means every electrical corporation, person,
345 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,
346 control, or manage a small power production or cogeneration facility.

347 (14) "Private telecommunications system" includes all facilities for the transmission of
348 signs, signals, writing, images, sounds, messages, data, or other information of any nature by
349 wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio facilities, that
350 are owned, controlled, operated, or managed by a corporation or person, including their lessees,
351 trustees, receivers, or trustees appointed by any court, for the use of that corporation or person
352 and not for the shared use with or resale to any other corporation or person on a regular basis.

353 (15) (a) "Public utility" includes every railroad corporation, gas corporation, electrical
354 corporation, distribution electrical cooperative, wholesale electrical cooperative, telephone
355 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
356 and independent energy producer not described in Subsection (15)(d), where the service is
357 performed for, or the commodity delivered to, the public generally, or in the case of a gas
358 corporation or electrical corporation where the gas or electricity is sold or furnished to any
359 member or consumers within the state for domestic, commercial, or industrial use.

360 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone
361 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
362 or independent energy producer not described in Subsection (15)(d), performs a service for or
363 delivers a commodity to the public, it is considered to be a public utility, subject to the
364 jurisdiction and regulation of the commission and this title.

365 (ii) If a gas corporation, independent energy producer not described in Subsection
366 (15)(d), or electrical corporation sells or furnishes gas or electricity to any member or
367 consumers within the state, for domestic, commercial, or industrial use, for which any
368 compensation or payment is received, it is considered to be a public utility, subject to the

369 jurisdiction and regulation of the commission and this title.

370 (c) Any corporation or person not engaged in business exclusively as a public utility as
371 defined in this section is governed by this title in respect only to the public utility owned,
372 controlled, operated, or managed by the corporation or person, and not in respect to any other
373 business or pursuit.

374 (d) An independent energy producer is exempt from the jurisdiction and regulations of
375 the commission if it meets the requirements of Subsection (15)(d)(i), (ii), or (iii), or any
376 combination of these:

377 (i) the commodity or service is produced or delivered, or both, by an independent
378 energy producer solely for the uses exempted in Subsection (7) or for the use of state-owned
379 facilities;

380 (ii) the commodity or service is sold by an independent energy producer to an electrical
381 corporation; or

382 (iii) (A) the commodity or service delivered by the independent energy producer is
383 delivered to an entity [~~which~~] that controls, is controlled by, or affiliated with the independent
384 energy producer or to a user located on real property managed by the independent energy
385 producer; and

386 (B) the real property on which the service or commodity is used is contiguous to real
387 property which is owned or controlled by the independent energy producer. Parcels of real
388 property separated solely by public roads or easements for public roads shall be considered as
389 contiguous for purposes of this Subsection (15).

390 (e) Any person or corporation defined as an electrical corporation or public utility
391 under this section may continue to serve its existing customers subject to any order or future
392 determination of the commission in reference to the right to serve those customers.

393 (f) (i) "Public utility" does not include any person that is otherwise considered a public
394 utility under this Subsection (15) solely because of that person's ownership of an interest in an
395 electric plant, cogeneration facility, or small power production facility in this state if all of the
396 following conditions are met:

397 (A) the ownership interest in the electric plant, cogeneration facility, or small power
398 production facility is leased to:

399 (I) a public utility, and that lease has been approved by the commission;

400 (II) a person or government entity that is exempt from commission regulation as a
401 public utility; or

402 (III) a combination of Subsections (15)(f)(i)(A)(I) and (II);

403 (B) the lessor of the ownership interest identified in Subsection (15)(f)(i)(A) is:

404 (I) primarily engaged in a business other than the business of a public utility; or

405 (II) a person whose total equity or beneficial ownership is held directly or indirectly by
406 another person engaged in a business other than the business of a public utility; and

407 (C) the rent reserved under the lease does not include any amount based on or
408 determined by revenues or income of the lessee.

409 (ii) (A) Any person that is exempt from classification as a public utility under
410 Subsection (15)(f)(i) shall continue to be so exempt from classification following termination
411 of the lessee's right to possession or use of the electric plant for so long as the former lessor
412 does not operate the electric plant or sell electricity from the electric plant.

413 (B) If the former lessor operates the electric plant or sells electricity, the former lessor
414 shall continue to be so exempt for a period of 90 days following termination, or for a longer
415 period that is ordered by the commission. [~~This~~]

416 (C) The period described in Subsection (15)(f)(ii)(B) may not exceed one year.

417 (D) A change in rates that would otherwise require commission approval may not be
418 effective during the 90-day or extended period without commission approval.

419 (g) (i) "Public utility" does not include any person that provides financing for, but has
420 no ownership interest in an electric plant, small power production facility, or cogeneration
421 facility.

422 (ii) In the event of a foreclosure in which an ownership interest in an electric plant,
423 small power production facility, or cogeneration facility is transferred to a third-party financier
424 of an electric plant, small power production facility, or cogeneration facility, [~~then~~] that
425 third-party financier is exempt from classification as a public utility for 90 days following the
426 foreclosure, or for a longer period that is ordered by the commission. [~~This~~]

427 (iii) The period described in Subsection (15)(g)(i) may not exceed one year.

428 (h) (i) The distribution or transportation of natural gas for use as a motor vehicle fuel
429 does not cause the distributor or transporter to be a "public utility," unless the commission,
430 after notice and a public hearing, determines by rule that it is in the public interest to regulate

431 the distributors or transporters, but the retail sale alone of compressed natural gas as a motor
432 vehicle fuel may not cause the seller to be a "public utility."

433 (ii) In determining whether it is in the public interest to regulate the distributors or
434 transporters, the commission shall consider, among other things, the impact of the regulation
435 on the availability and price of natural gas for use as a motor fuel.

436 (16) "Purchasing utility" means any electrical corporation that is required to purchase
437 electricity from small power production or cogeneration facilities pursuant to the Public Utility
438 Regulatory Policies Act, 16 U.S.C. Section 824a-3.

439 (17) "Railroad" includes every commercial, interurban, and other railway, other than a
440 street railway, and each branch or extension of a railway, by any power operated, together with
441 all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots, union depots,
442 yards, grounds, terminals, terminal facilities, structures, and equipment, and all other real
443 estate, fixtures, and personal property of every kind used in connection with a railway owned,
444 controlled, operated, or managed for public service in the transportation of persons or property.

445 (18) "Railroad corporation" includes every corporation and person, their lessees,
446 trustees, and receivers, owning, controlling, operating, or managing any railroad for public
447 service within this state.

448 (19) "Ratepayer advocate" means the ratepayer advocate appointed under Section
449 54-10-201.

450 ~~[(19)]~~ (20) (a) "Sewerage corporation" includes every corporation and person, their
451 lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage
452 system for public service within this state.

453 (b) "Sewerage corporation" does not include private sewerage companies engaged in
454 disposing of sewage only for their stockholders, or towns, cities, counties, conservancy
455 districts, improvement districts, or other governmental units created or organized under any
456 general or special law of this state.

457 ~~[(20)]~~ (21) "Small power production facility" means a facility ~~[which]~~ that:

458 (a) produces electric energy solely by the use, as a primary energy source, of biomass,
459 waste, renewable resources, geothermal resources, or any combination of them;

460 (b) has a power production capacity that, together with any other facilities located at
461 the same site, is not greater than 80 megawatts; and

462 (c) is a qualifying small power production facility under federal law.

463 [~~(21)~~] (22) "Telegraph corporation" includes every corporation and person, their
464 lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line
465 for public service within this state.

466 [~~(22)~~] (23) "Telegraph line" includes all conduits, ducts, poles, wires, cables,
467 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
468 controlled, operated, or managed in connection with or to facilitate communication by
469 telegraph, whether that communication be had with or without the use of transmission wires.

470 [~~(23)~~] (24) (a) "Telephone corporation" means any corporation or person, and their
471 lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates,
472 manages, or resells a public telecommunications service as defined in Section 54-8b-2.

473 (b) "Telephone corporation" does not mean a corporation, partnership, or firm
474 providing:

475 (i) intrastate telephone service offered by a provider of cellular, personal
476 communication systems (PCS), or other commercial mobile radio service as defined in 47
477 U.S.C. Sec. 332 that has been issued a covering license by the Federal Communications
478 Commission;

479 (ii) Internet service; or

480 (iii) resold intrastate toll service.

481 [~~(24)~~] (25) "Telephone line" includes all conduits, ducts, poles, wires, cables,
482 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
483 controlled, operated, or managed in connection with or to facilitate communication by
484 telephone whether that communication is had with or without the use of transmission wires.

485 [~~(25)~~] (26) "Transportation of persons" includes every service in connection with or
486 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
487 carriage, and delivery of that person and that person's baggage.

488 [~~(26)~~] (27) "Transportation of property" includes every service in connection with or
489 incidental to the transportation of property, including in particular its receipt, delivery,
490 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and
491 hauling, and the transmission of credit by express companies.

492 [~~(27)~~] (28) (a) "Water corporation" includes every corporation and person, their

493 lessees, trustees, and receivers, owning, controlling, operating, or managing any water system
 494 for public service within this state. [H]

495 (b) "Water corporation" does not include private irrigation companies engaged in
 496 distributing water only to their stockholders, or towns, cities, counties, water conservancy
 497 districts, improvement districts, or other governmental units created or organized under any
 498 general or special law of this state.

499 [(28)] (29) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
 500 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,
 501 and personal property owned, controlled, operated, or managed in connection with or to
 502 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,
 503 appointment, apportionment, or measurement of water for power, fire protection, irrigation,
 504 reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

505 (b) "Water system" does not include private irrigation companies engaged in
 506 distributing water only to their stockholders.

507 [(29)] (30) "Wholesale electrical cooperative" includes every electrical corporation that
 508 is:

509 (a) in the business of the wholesale distribution of electricity it has purchased or
 510 generated to its members and the public; and

511 (b) required to distribute or allocate savings in excess of additions to reserves and
 512 surplus to members or patrons on the basis of patronage.

513 Section 7. Section **54-4-1.1** is amended to read:

514 **54-4-1.1. Wholesale electrical cooperative exempt from rate regulation --**

515 **Requirements for rate increase.**

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

519 (2) A wholesale electrical cooperative [~~shall~~] may not vary its charges within any type
 520 or classification of service to any member or the public, one from the other, or from schedules
 521 of rates, fares, tolls, or charges, which schedules shall be filed at least annually with the
 522 [~~Division of Public Utilities~~] commission for informational purposes only. [~~The prohibition of~~
 523 ~~this~~]

524 (3) This section applies only to the rates, fares, tolls, or charges and does not exempt
525 wholesale electrical cooperatives from other areas of regulation under this title including~~[-but~~
526 ~~not limited to,]~~ regulation having an indirect effect on rates, fares, tolls, or charges [~~but which~~
527 ~~that~~ does not constitute an approval or establishment of them.

528 (4) A wholesale electrical cooperative [~~must~~] shall, [~~prior to~~] before the
529 implementation of any rate increase after January 1, 1984, hold a public meeting for all [~~its~~] the
530 wholesale electrical cooperative's customers and members.

531 (5) Notice [~~must~~] of a public meeting under Subsection (4) shall be mailed at least ten
532 days prior to the meeting. [~~In addition, any~~]

533 (6) Any schedule of new rates or other change that results in new rates [~~must~~] shall be
534 approved by the board of directors of the wholesale electrical cooperative before the new rates
535 may take effect.

536 Section 8. Section **54-4-1.5** is amended to read:

537 **54-4-1.5. Investigations, providing information, audits, and recommendations.**

538 In addition to [~~its~~] the commission's other powers and duties provided by law, the
539 [~~Public Service Commission~~] commission may~~[- with respect to any matter within its~~
540 ~~jurisdiction, order the director of the Division of Public Utilities to]~~:

541 (1) conduct research, studies, and investigations;

542 (2) provide information, documents or records in compliance with the provisions
543 regarding ex parte communications set forth in Section 54-7-1.5;

544 (3) conduct audits and inspections or take other enforcement actions to assure
545 compliance with commission decisions and state and federal laws; and

546 (4) make recommendations regarding public utility regulations.

547 Section 9. Section **54-4-37** is amended to read:

548 **54-4-37. Definitions -- Unauthorized charge to account -- Penalties -- Procedures**
549 **for verification -- Authority of commission and ratepayer advocate.**

550 (1) For purposes of this section:

551 (a) "Agents" includes any person representing a public utility for [~~purposes~~] the
552 purpose of billing for a service or merchandise from a third-party supplier.

553 (b) "Billing aggregator" means any person that:

554 (i) initiates charges;

- 555 (ii) combines or aggregates charges from third-party suppliers of services or
556 merchandise; or
- 557 (iii) (A) creates bills for account holders; and
558 (B) passes these bills for the billing of account holders to:
559 (I) another billing aggregator; or
560 (II) a public utility.
- 561 (c) (i) "Public utility" is as defined in Section 54-2-1.
562 (ii) "Public utility" does not include a telecommunications corporation providing only
563 mobile wireless service or Internet access.
- 564 (d) "Subscriber" means a person or government, or a person acting legally on behalf of
565 a person or government who authorizes a charge from a third-party provider of service or
566 merchandise.
- 567 (e) (i) "Third party" means any person other than the account holder and the public
568 utility.
- 569 (ii) "Third party" includes:
570 (A) a billing aggregator;
571 (B) a public utility;
572 (C) a nonpublic utility provider of services and merchandise;
573 (D) ~~[those persons]~~ a person billing for services or merchandise; and
574 (E) ~~[those persons]~~ a person verifying a subscriber's authorization.
- 575 (iii) "Third party" does not include:
576 (A) an affiliated or subsidiary company of a public utility whose charges the
577 commission determines by rule would be reasonably associated by a subscriber with the type of
578 charges that would appear on that particular public utility's bill; and
579 (B) a presubscribed local or long distance telecommunications corporation or its
580 affiliated or subsidiary company as to charges for local or long distance telephone, data, or
581 wireless services.
- 582 (2) This section does not apply to:
583 (a) telecommunications services that are used, initiated, or requested by the customer,
584 including dial-around services such as:
585 (i) 10-10-XXX;

586 (ii) 1-900 numbers;
587 (iii) directory assistance;
588 (iv) operator-assisted calls;
589 (v) acceptance of collect calls; and
590 (vi) other casual calling by the customer;
591 (b) changes in telecommunications providers regulated by Section 54-8b-18;
592 (c) the provision of any charges for financing by an affiliated or subsidiary company of
593 a public utility in connection with the purchase of services or merchandise if there is a written
594 agreement for the financing between the customer and the affiliated or subsidiary company; or
595 (d) except for Subsections (5) and (6), services provided by any of the following that
596 are billed through a public utility:
597 (i) a city;
598 (ii) a town; or
599 (iii) a county.
600 (3) Pursuant to this section, a public utility may not charge an account holder for
601 services the account holder never:
602 (a) ordered; or
603 (b) knowingly authorized.
604 (4) A public utility shall ensure that its account holders receive:
605 (a) identification of a third-party provider of services or merchandise;
606 (b) upon subscriber request, toll-free numbers to enable a subscriber to contact the
607 third party to resolve disputes;
608 (c) a clear, concise description of services or merchandise being billed;
609 (d) highlight or identification of each service or merchandise different from prior
610 billing cycle services or merchandise;
611 (e) clear identification of the payment amount needed for each service or merchandise
612 to ensure that any public utility service will continue;
613 (f) prompt and courteous treatment of all disputed charges; and
614 (g) information about the provisions in Subsections (5) and (6).
615 (5) (a) Unless specifically instructed by the account holder, each public utility shall
616 first apply all payments received to the account holder's bill for the public utility's own tariffed

617 utility services.

618 (b) Any remaining credit after the application of payment under Subsection (5)(a) shall
619 be allocated proportionally to other charges, unless otherwise specified by the account holder.

620 (6) A public utility may not disconnect or threaten disconnection of any account
621 holder's basic utility service for failure to pay third-party charges.

622 (7) Accounts receivable purchased by a public utility from third parties may not be
623 treated as public utility charges regardless of the service or product upon which the account
624 receivable is based.

625 (8) (a) If an account holder informs the public utility that a third-party service or
626 merchandise charge is neither knowingly used nor authorized, or the charge in whole or part is
627 disputed, the public utility shall:

628 (i) (A) immediately credit the account holder's account for the disputed amount; and

629 (B) refer the matter back to the third party for collection; or

630 (ii) suspend the account holder's obligation of payment of the disputed amount until it
631 is determined whether the charge was either knowingly used or authorized.

632 (b) The public utility may not request the account holder to contact the third party to
633 resolve the dispute prior to applying the credit under Subsection (8)(a).

634 (c) ~~[The]~~ A disputed charge under this Subsection (8) shall be removed from the public
635 utility's bill to the account holder no later than two billing cycles following the billing cycle
636 during which the complaint or dispute is registered unless it is later determined that the charge
637 was authorized and the account holder is required to pay the charge.

638 (d) Immediately upon the account holder's first complaint or inquiry, the public utility
639 shall inform the account holder of:

640 (i) the process provided in this Subsection (8); and

641 (ii) the account holder's options.

642 (e) Except as provided in Subsection (8)(c), once the charges have been removed from
643 the account holder's utility bill:

644 (i) the third party may not use the utility bill to:

645 (A) rebill the charges; or

646 (B) further attempt to collect the charge; and

647 (ii) the public utility may not allow any further collection attempts by the third party to

648 involve the utility bill.

649 (9) (a) If requested by [~~the~~] an account holder, a public utility shall provide the account
650 holder with toll-free numbers supplied by the provider of the service or merchandise, [~~so~~]
651 enabling the account holder [~~may~~] to contact the third-party supplier of the services or
652 merchandise billed.

653 (b) The public utility responsibility prescribed by Subsection (9)(a) applies through all
654 layers of third parties, including:

- 655 (i) public utilities;
- 656 (ii) service providers;
- 657 (iii) merchandise providers;
- 658 (iv) affiliate billing companies; or
- 659 (v) billing aggregators.

660 (c) A public utility shall perform due diligence to acquire the information required
661 under this Subsection (9) from any provider for whom it bills.

662 (10) A third-party provider of services or merchandise may not request a public utility
663 to bill its charges unless and until it:

664 (a) has provided to the public utility valid toll-free numbers to enable a subscriber to
665 contact the third-party to resolve any disputed charges;

666 (b) has provided updated toll-free numbers to the public utility upon any change in the
667 numbers described in Subsection (10)(a); and

668 (c) has received authorization from the subscriber for the service or merchandise
669 [~~through~~] by:

- 670 (i) obtaining the subscriber's written authorization;
- 671 (ii) having the subscriber's oral authorization verified by an independent verifier; or
- 672 (iii) any means provided by rule of the commission.

673 (11) If the subscriber is not an individual, an authorization [~~shall be~~] is valid only if
674 given by an authorized representative of the subscriber.

675 (12) The written authorization for the service or merchandise described in Subsection
676 (10) shall:

- 677 (a) be signed by the subscriber; and
- 678 (b) contain a clear, conspicuous, and unequivocal request by the subscriber for the

679 service or merchandise.

680 (13) The confirmation by a verifier shall, at a minimum:

681 (a) (i) confirm the subscriber's identity with information unique to the customer; or

682 (ii) if the customer refuses to provide identifying information, note the fact that the

683 customer would not provide the identifying information;

684 (b) confirm that the subscriber requests the service or merchandise be provided by the

685 third party; and

686 (c) confirm that the subscriber has the authority to request the service or merchandise

687 be provided by the third party.

688 (14) A verifier shall meet each of the following:

689 (a) any criteria set for verifiers by the commission;

690 (b) not be directly or indirectly managed, controlled, directed, or owned wholly or in

691 part by:

692 (i) the public utility on whose bill the charge will appear;

693 (ii) a third-party provider;

694 (iii) an agent of a public utility or third-party provider that seeks to provide the service

695 or merchandise;

696 (iv) a person who directly owns or indirectly manages, controls, directs, or owns more

697 than 5% of the public utility or third-party provider described in Subsection (14)(b)(i) or (ii);

698 (v) the marketing entity that seeks to market the third-party provider's service or

699 merchandise; or

700 (vi) any person who directly or indirectly manages, controls, or owns more than 5% of

701 the marketing entity described in Subsection (14)(b)(v);

702 (c) operate from facilities physically separated from those facilities of:

703 (i) the public utility on whose bill the charge will appear;

704 (ii) the third party or its agents that seek to provide the service or merchandise to the

705 subscriber; or

706 (iii) the marketing entity that seeks to market the third-party provider's service or

707 merchandise to the subscriber; and

708 (d) not derive commissions or compensation based upon the number of authorizations

709 verified.

710 (15) A verifier that obtains the subscriber's oral verification regarding the change shall
711 record that verification by obtaining the appropriate verification data.

712 (16) (a) The record verifying a subscriber's request for a third-party to provide services
713 or merchandise shall be available to the subscriber upon request.

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

716 (c) Any intentional unauthorized release of the information in violation of Subsection
717 (16)(b) is grounds for:

718 (i) penalties or other action by the commission; or

719 (ii) remedies provided by law to the aggrieved subscriber against any of the following
720 who is responsible for the violation:

721 (A) the third-party provider;

722 (B) the verifier; or

723 (C) an agent or employee of the third-party provider or verifier.

724 (17) The verification shall occur in the same language as that in which the request was
725 solicited.

726 (18) Each public utility shall allow account holders to prohibit the public utility from
727 billing for all or selected third parties for services or merchandise.

728 (19) (a) Each public utility shall maintain monthly records of the number of complaints
729 about unauthorized charges that appear on a public utility bill.

730 (b) The records described in Subsection (19)(a) shall be available to the commission
731 upon request.

732 (20) (a) Proceedings for violations of this section may be commenced by request for
733 agency action filed with the commission by:

734 (i) an account holder;

735 (ii) a public utility;

736 (iii) the ~~[Division of Public Utilities]~~ ratepayer advocate; or

737 (iv) the commission on the ~~[commissioner's]~~ commission's own motion.

738 (b) The remedies provided by this chapter are not exclusive and are in addition to all
739 other causes of action, remedies, and penalties provided by law.

740 (21) Any public utility, its agents, or a third-party provider of goods or services who

741 violates this section or rules adopted to implement this section [~~shall be~~] is subject to Sections
742 54-7-23 through 54-7-29.

743 (22) The [~~Division of Public Utilities shall have power to~~] ratepayer advocate may seek
744 injunctive relief to stop repeated unauthorized violations of this section by a public utility or a
745 third-party provider of service or merchandise.

746 (23) The commission [~~is granted authority to~~] may:

747 (a) enforce this section; and

748 (b) implement rules to carry out the requirements of the section.

749 Section 10. Section **54-5-1.5** is amended to read:

750 **54-5-1.5. Special fee -- Supplemental Levy Committee -- Supplemental fee -- Fee**
751 **for electrical cooperatives.**

752 (1) (a) A special fee to defray the cost of regulation is imposed upon all public utilities
753 subject to the jurisdiction of the [~~Public Service Commission~~] commission.

754 (b) The special fee is in addition to any other charge [~~now~~] assessed, levied, or required
755 by law.

756 (c) The special fee is the sum of the fees determined under Subsections (2)(a) and (b).

757 (2) (a) The [~~executive director of the Department of Commerce~~] attorney general shall
758 determine the special fee for the [~~Department of Commerce~~] ratepayer advocate.

759 (b) The chair of the [~~Public Service Commission~~] commission shall determine the
760 special fee for the [~~Public Service Commission~~] commission.

761 (c) (i) The fee shall be assessed as a uniform percentage of the gross operating revenue
762 for the preceding calendar year derived from each public utility's business and operations
763 during that period within this state, excluding income derived from interstate business.

764 (ii) Gross operating revenue [~~shall~~] may not include income to a wholesale electric
765 cooperative derived from the sale of power to a rural electric cooperative [~~which~~] that resells
766 that power within the state.

767 (3) (a) The [~~executive director of the Department of Commerce~~] commission shall
768 notify each public utility subject to [~~the provisions of~~] this chapter of the amount of the fee.

769 (b) The fee is due and payable on or before July 1 of each year.

770 (4) (a) It is the intent of the Legislature that the public utilities provide all of the funds
771 for the administration, support, and maintenance of:

- 772 (i) the ~~[Public Service Commission]~~ commission;
- 773 (ii) ~~[state agencies within the Department of Commerce involved in the regulation of~~
774 ~~public utilities]~~ the ratepayer advocate; and
- 775 (iii) other expenditures by the attorney general for utility regulation.
- 776 (b) Notwithstanding Subsection (4)(a), the fee imposed by Subsection (1) ~~[shall]~~ may
777 not exceed the greater of:
- 778 (i) (A) for a public utility other than an electrical cooperative, ~~[-3%]~~ .4% of the public
779 utility's gross operating revenues for the preceding calendar year; or
- 780 (B) for an electrical cooperative, ~~[-15%]~~ .2% of the electrical cooperative's gross
781 operating revenues for the preceding calendar year; or
- 782 (ii) \$50.
- 783 (5) (a) There is created a Supplemental Levy Committee to levy additional assessments
784 on public utilities when unanticipated costs of regulation occur in any fiscal year.
- 785 (b) The Supplemental Levy Committee shall consist of:
- 786 (i) one member selected by the ~~[executive director of the Department of Commerce]~~
787 attorney general;
- 788 (ii) one member selected by the ~~[chairman]~~ chair of the ~~[Public Service Commission]~~
789 commission;
- 790 (iii) two members selected by the three public utilities that paid the largest percent of
791 the current regulatory fee; and
- 792 (iv) one member selected by the other four appointed members of the Supplemental
793 Levy Committee.
- 794 (c) (i) The members of the Supplemental Levy Committee shall be selected within ten
795 working days after the ~~[executive director of the Department of Commerce]~~ commission gives
796 ~~[written notice to the Public Service Commission and]~~ the public utilities written notice that a
797 supplemental levy committee is needed.
- 798 (ii) If the members of the Supplemental Levy Committee ~~[have]~~ are not ~~[been]~~
799 appointed within the time prescribed in Subsection (5)(c)(i), the governor shall appoint the
800 members of the Supplemental Levy Committee.
- 801 (d) (i) During any state fiscal year, the Supplemental Levy Committee, by a majority
802 vote and subject to audit by the state auditor, may impose a supplemental fee on the regulated

803 utilities for the purpose of defraying any increased cost of regulation.

804 (ii) The supplemental fee imposed upon the utilities shall equal a percentage of their
805 gross operating revenue for the preceding calendar year.

806 (iii) The aggregate of all fees, including any supplemental fees assessed, ~~shall~~ may
807 not exceed ~~[.3%]~~ .4% of the gross operating revenue of the utilities assessed for the preceding
808 calendar year.

809 (iv) Payment of the supplemental fee is due within 30 days after receipt of the
810 assessment.

811 (v) The utility may, within ten days after receipt of assessment, request a hearing
812 before the ~~[Public Service Commission]~~ commission if it questions the need for, or the
813 reasonableness of, the supplemental fee.

814 (e) (i) Any supplemental fee collected to defray the cost of regulation shall be
815 transferred to the state treasurer as a departmental collection according to ~~[the provisions of]~~
816 Section 63-38-9.

817 (ii) Supplemental fees are excess collections, credited according to the procedures of
818 Section 63-38-9.

819 (iii) Charges billed to the ~~[Department of Commerce]~~ commission by any other state
820 department, institution, or agency for services rendered in connection with regulation of a
821 utility shall be credited by the state treasurer from the special or supplemental fees collected to
822 the appropriations account of the entity providing that service according to the procedures
823 provided in Title 63, Chapter 38, Budgetary Procedures Act.

824 (6) (a) For purposes of this section, "electrical cooperative" means:

825 (i) a distribution electrical cooperative; or

826 (ii) a wholesale electrical cooperative.

827 (b) Subject to Subsection (6)(c), if the regulation of one or more electrical cooperatives
828 causes unanticipated costs of regulation in a fiscal year, the commission may impose a
829 supplemental fee on the one or more electrical cooperatives in this state responsible for the
830 increased cost of regulation.

831 (c) The aggregate of all fees imposed under this section on an electrical cooperative in
832 a calendar year shall not exceed the greater of:

833 (i) ~~[.3%]~~ .4% of the electrical cooperative's gross operating revenues for the preceding

834 calendar year; or

835 (ii) \$50.

836 Section 11. Section **54-5-2** is amended to read:

837 **54-5-2. How gross operating revenue is determined.**

838 (1) Gross operating revenues of public utilities shall be determined by the [~~executive~~
839 ~~director of the Department of Commerce~~] commission from:

840 (a) the annual gross revenue reports filed with the [~~Public Service Commission~~]
841 commission; and

842 (b) other sources of information as the [~~Public Service Commission~~] commission may
843 by rule prescribe.

844 (2) If any public utility liable for the payment of the fee assessed under Section
845 54-5-1.5 fails to file a report showing its gross operating revenue from business derived from
846 its operations within the state for the preceding calendar year on or before April 15th, the
847 [~~executive director of the Department of Commerce~~] commission shall:

848 (a) compute or make an estimate of the amount of the fee to be paid by the utility from
849 available information, records, and data; and

850 (b) assess the fee against the utility.

851 Section 12. Section **54-5-3** is amended to read:

852 **54-5-3. Default in payment of fee -- Procedure to collect -- Penalties.**

853 (1) If the public utility fee is due and the payment is in default, a lien in the amount of
854 the fee may be filed against the property of the utility and may be foreclosed in an action
855 brought by the [~~executive director of the Department of Commerce~~] ratepayer advocate in the
856 district court of any county in which property of the delinquent utility is located.

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

859 (b) The [~~executive director of the Department of Commerce shall transmit the name of~~
860 ~~the utility to the Public Service Commission, which~~] commission may immediately enter an
861 order suspending the operating rights of the utility.

862 Section 13. Section **54-7-12.8** is amended to read:

863 **54-7-12.8. Electric energy efficiency and conservation tariff.**

864 (1) As used in this section, "demand side management" means activities or programs

865 that promote electric:

866 (a) energy efficiency [~~or~~];

867 (b) conservation; or

868 (c) more efficient management of electric energy loads.

869 (2) As provided in this section, the commission may approve a tariff under which an
870 electrical corporation includes a line item charge on its customers' bills to recover costs
871 incurred by the electrical corporation for demand side management.

872 (3) Each electrical corporation proposing a tariff under this section shall, before
873 submitting the tariff to the commission for approval, seek and receive input from:

874 [~~(a) the Division of Public Utilities;~~]

875 [~~(b) the Committee of Consumer Services; and~~]

876 (a) the ratepayer advocate; and

877 [~~(c)~~] (b) other interested parties.

878 (4) Before approving a tariff under this section, the commission shall hold a hearing if:

879 (a) requested in writing by:

880 (i) the electrical corporation[;];

881 (ii) a customer of the electrical corporation[;]; or

882 (iii) any other interested party within 15 days after the tariff filing; or

883 (b) the commission determines that a hearing is appropriate.

884 (5) The commission may approve a tariff under this section either with or without a
885 provision allowing an end-use customer to receive a credit against the charges imposed under
886 the tariff for electric energy efficiency measures that:

887 (a) the customer implements or has implemented at the customer's expense; and

888 (b) qualify for the credit under criteria established by the [~~Utah Public Service~~
889 ~~Commission~~] commission.

890 (6) In approving a tariff under this section, the commission may impose whatever
891 conditions or limits it considers appropriate, including a maximum annual cost.

892 (7) Unless otherwise ordered by the commission, each tariff under this section
893 approved by the commission shall take effect no sooner than 30 days after the electrical
894 corporation files the tariff with the commission.

895 Section 14. Section **54-8b-2** is amended to read:

896 **54-8b-2. Definitions.**

897 As used in this chapter:

898 (1) (a) "Aggregator" means any person or entity that:

899 (i) is not a telecommunications corporation;

900 (ii) in the ordinary course of its business makes operator assisted services available to
901 the public or to customers and transient users of its business or property through an operator
902 service provider; and903 (iii) receives from an operator service provider by contract, tariff, or otherwise,
904 commissions or compensation for calls delivered from the aggregator's location to the operator
905 service provider.906 (b) "Aggregator" may include any hotel, motel, hospital, educational institution,
907 government agency, or coin or coinless telephone service provider so long as that entity
908 qualifies under Subsection (1)(a).909 (2) "Certificate" means a certificate of public convenience and necessity issued by the
910 commission authorizing a telecommunications corporation to provide specified public
911 telecommunications services within a defined geographic service territory in the state.912 [~~(3)~~] "~~Division~~" means the ~~Division of Public Utilities established in Section 54-4a-1.~~]913 [~~(4)~~] (3) "Essential facility or service" means any portion, component, or function of
914 the network or service offered by a provider of local exchange services:

915 (a) that is necessary for a competitor to provide a public telecommunications service;

916 (b) that cannot be reasonably duplicated; and

917 (c) for which there is no adequate economic alternative to the competitor in terms of
918 quality, quantity, and price.919 [~~(5)~~] (4) "Federal Telecommunications Act" means the Federal Telecommunications
920 Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.921 [~~(6)~~] (5) "Incumbent telephone corporation" means a telephone corporation, its
922 successors or assigns, [~~which~~] that, as of May 1, 1995, held a certificate to provide local
923 exchange services in a defined geographic service territory in the state.924 [~~(7)~~] (6) "Intrastate telecommunications service" means any public telecommunications
925 service in which the information transmitted originates and terminates within the boundaries of
926 this state.

927 ~~[(8)]~~ (7) "Local exchange service" means the provision of telephone lines to customers
928 with the associated transmission of two-way interactive, switched voice communication within
929 the geographic area encompassing one or more local communities as described in maps, tariffs,
930 or rate schedules filed with and approved by the commission.

931 ~~[(9)]~~ (8) "Mobile telecommunications service" means a mobile telecommunications
932 service:

933 (a) that is defined as a mobile telecommunications service in the Mobile
934 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124; and

935 (b) in which the information transmitted originates and terminates in one state.

936 ~~[(10)]~~ (9) (a) "New public telecommunications service" means a service offered by a
937 telecommunications corporation ~~[which]~~ that that corporation has never offered before.

938 (b) "New public telecommunications service" does not include:

939 (i) a tariff, price list, or competitive contract that involves a new method of pricing any
940 existing public telecommunications service;

941 (ii) a package of public telecommunications services that includes an existing public
942 telecommunications service; or

943 (iii) a public telecommunications service that is a direct replacement for:

944 (A) a fully regulated service;

945 (B) an existing service offered pursuant to a tariff, price list, or competitive contract; or

946 (C) an essential facility or an essential service.

947 ~~[(11)]~~ (10) "Operator assisted services" means services ~~[which]~~ that assist callers in the
948 placement or charging of a telephone call, ~~[either]~~ through:

949 (a) live intervention; or

950 (b) automated intervention.

951 ~~[(12)]~~ (11) "Operator service provider" means any person or entity that provides, for a
952 fee to a caller, operator assisted services.

953 ~~[(13)]~~ (12) "Price-regulated service" means any public telecommunications service
954 governed by Section 54-8b-2.3.

955 ~~[(14)]~~ (13) "Public telecommunications service" means the two-way transmission of
956 signs, signals, writing, images, sounds, messages, data, or other information of any nature by
957 wire, radio, lightwaves, or other electromagnetic means offered to the public generally.

958 ~~[(15)]~~ (14) "Same or substitutable" with reference to a public telecommunications
959 service means that the service is comparable to another service in terms of function, price, and
960 quality to an end user customer.

961 ~~[(16)]~~ (15) "Substantial compliance" with reference to a rule or order of the
962 commission means satisfaction of all material obligations in a manner consistent with the rule
963 or order.

964 ~~[(17)]~~ (16) "Telecommunications corporation" means any corporation or person, and
965 their lessees, trustees, receivers, or trustees appointed by any court, owning, controlling,
966 operating, managing, or reselling a public telecommunications service.

967 ~~[(18)]~~ (17) (a) "Total service long-run incremental cost" means the forward-looking
968 incremental cost to a telecommunications corporation caused by providing the entire quantity
969 of a public telecommunications service, network function, or group of public
970 telecommunications services or network functions, by using forward-looking technology,
971 reasonably available, without assuming relocation of existing plant and equipment.

972 (b) The "long-run" means a period of time long enough so that cost estimates are based
973 on the assumption that all inputs are variable.

974 Section 15. Section **54-8b-2.3** is amended to read:

975 **54-8b-2.3. Pricing flexibility.**

976 (1) (a) A telecommunications corporation that obtains a certificate to compete with the
977 incumbent telephone corporation in a defined geographic area pursuant to Section 54-8b-2.1
978 may price any public telecommunications services it is authorized to offer, or any new public
979 telecommunications service, by means of a price list or competitive contract.

980 (b) Before the telecommunications corporation begins providing any authorized public
981 telecommunications service, it shall notify the commission of its intent to begin providing the
982 service and the defined geographic area in which it will provide the service.

983 (2) (a) Notwithstanding other requirements of this chapter relating to pricing flexibility,
984 an incumbent telephone corporation may offer retail end user public telecommunications
985 services by means of a price list or competitive contract as provided in Subsections (2)(b) and
986 (c).

987 (b) (i) An incumbent telephone corporation may petition the commission for pricing
988 flexibility in:

989 (A) any proceeding in which another telecommunications corporation has petitioned
990 the commission for a certificate to provide specified public telecommunications services in a
991 defined geographic area that is within the incumbent telephone corporation's service territory;
992 or

993 (B) an independent proceeding after the other telecommunications corporation has
994 been certificated to provide specified public telecommunications services in a defined
995 geographic area that is within the incumbent telephone corporation's service territory.

996 (ii) In the proceeding, the commission shall, by order, grant pricing flexibility to the
997 incumbent telephone corporation for the same or substitutable public telecommunications
998 services in the same defined geographic area.

999 (iii) Pricing flexibility for any public telecommunications service shall become
1000 effective in accordance with the procedure in Subsection (2)(b)(iv) when the following
1001 conditions are met:

1002 (A) the commission has issued a certificate to the competing telecommunications
1003 corporation;

1004 (B) the competing telecommunications corporation has begun providing the authorized
1005 public telecommunications service in the defined geographic area;

1006 (C) the incumbent telephone corporation, by written agreement, stipulation, or pursuant
1007 to an order of the commission, has allowed the competing telecommunications corporation to
1008 interconnect with the essential facilities and to purchase essential services of the incumbent
1009 telephone corporation; and

1010 (D) the incumbent telephone corporation is in substantial compliance with the rules
1011 and orders of the commission adopted or issued under Section 54-8b-2.2.

1012 (iv) (A) The commission shall enter its final order either granting or denying a petition
1013 for pricing flexibility under this Subsection (2)(b) within 90 days of the date the incumbent
1014 telephone corporation files its petition seeking pricing flexibility.

1015 (B) If the commission has not entered an order within 90 days of the date the petition is
1016 filed, the petition shall be considered granted.

1017 (C) Pricing flexibility shall be effective 45 days following the granting of a petition for
1018 pricing flexibility under this Subsection (2)(b) unless the commission orders an earlier effective
1019 date.

1020 (c) An incumbent telephone corporation may price any new public telecommunications
1021 service by means of a price list or competitive contract.

1022 (3) The commission may review any new public telecommunications service offered
1023 by an incumbent telephone corporation after the applicable tariff, price list, or competitive
1024 contract has taken effect.

1025 (4) Each price list shall:

1026 (a) be filed with the commission;

1027 (b) describe the public telecommunications service;

1028 (c) set forth the basic terms and conditions upon which the public telecommunications
1029 service is offered; and

1030 (d) list the prices to be charged for the public telecommunications service or the basis
1031 on which the services will be priced.

1032 (5) Prices, terms, and conditions offered under price lists or competitive contracts that
1033 are different from tariff prices, terms, and conditions for the same services are not considered
1034 discriminatory under Section 54-3-8 and Subsection 54-8b-3.3(2).

1035 (6) A price list filed with the commission under this section shall take effect five days
1036 after it is filed with the commission.

1037 (7) The prices, terms, and conditions of a public telecommunications service offered by
1038 a telecommunications corporation pursuant to a competitive contract with a retail customer
1039 shall be filed with the commission.

1040 (8) The commission may, as determined necessary to protect the public interest, set an
1041 upper limit on the price that may be charged by telecommunications corporations for public
1042 telecommunications services that may be priced by means of a price list or competitive
1043 contract.

1044 (9) (a) The commission may revoke the authority of a telecommunications corporation
1045 to offer a public telecommunications service pursuant to a price list or competitive contract if
1046 the commission finds:

1047 (i) (A) the telecommunications corporation has violated statutes or rules applicable to
1048 the specific service;

1049 (B) there has been a material and substantial change in the level of competition; or

1050 (C) competition has not developed; and

1051 (ii) revocation is in the public interest.
1052 (b) The party asserting that revocation should occur shall bear the burden of proof.
1053 (10) The commission shall establish rules or procedures to protect confidential,
1054 proprietary, and competitively sensitive information provided to the ratepayer advocate or the
1055 commission [~~or the division pursuant to~~], including advocacy staff under this section.

1056 Section 16. Section **54-8b-2.5** is amended to read:

1057 **54-8b-2.5. Report to governor and Legislature.**

1058 (1) Beginning October 15, 1998, and annually thereafter, the commission shall:

1059 (a) submit a report to the governor, Legislature, and the Public Utilities and
1060 Technology Interim Committee on the state of the telecommunications industry; and
1061 (b) make recommendations for any regulatory changes necessary to achieve the policy
1062 of the state as set forth in Section 54-8b-1.1.

1063 (2) The commission shall determine criteria to be used to evaluate the performance of
1064 price regulation and the information necessary to conduct the evaluation.

1065 (3) The cost of the report required by this section shall be paid by the [~~Committee of~~
1066 ~~Consumer Services, created by Section 54-10-2, within the Division of Public Utilities of the~~
1067 ~~Department of Commerce~~] commission.

1068 Section 17. Section **54-8b-13** is amended to read:

1069 **54-8b-13. Rules governing operator assisted services.**

1070 (1) The commission shall make rules to implement the [~~following~~] requirements under
1071 this Subsection (1) pertaining to the provision of operator assisted services[~~:-~~].

1072 (a) Rates, surcharges, terms, or conditions for operator assisted services shall be
1073 provided to customers upon request without charge.

1074 (b) A customer shall be made aware, [~~prior to~~] before incurring any charges, of the
1075 identity of the operator service provider handling the operator assisted call by a form of signage
1076 placed on or near the telephone or by verbal identification by the operator service provider.

1077 (c) Any contract between an operator service provider and an aggregator shall contain
1078 language [~~which~~] that assures that any person making a telephone call on any telephone owned
1079 or controlled by the aggregator or operator service provider can access:

1080 (i) where technically feasible, any other operator service provider operating in the
1081 relevant geographic area; and

1082 (ii) the public safety emergency telephone numbers for the jurisdiction where the
1083 aggregator's telephone service is geographically located.

1084 (d) (i) ~~[No]~~ An operator service provider ~~[shall]~~ may not transfer a call to another
1085 operator service provider unless that transfer is accomplished at, and billed from, the call's
1086 place of origin.

1087 (ii) If ~~[such]~~ a transfer under Subsection (1)(d)(i) is not technically possible, the
1088 operator service provider shall inform the caller that the call cannot be transferred as requested
1089 and that the caller should hang up and attempt to reach another operator service provider
1090 through the means provided by that other operator service provider.

1091 (2) (a) The ~~[Division of Public Utilities shall be]~~ commission is responsible for
1092 enforcing any rule adopted by the commission under this section.

1093 (b) If the ~~[Division of Public Utilities]~~ commission's advocacy staff determines that any
1094 person, or any officer or employee of any person, is violating any rule adopted under this
1095 section, the ~~[division]~~ advocacy staff shall serve written notice upon the alleged violator
1096 ~~[which]~~ that:

1097 (i) specifies the violation;

1098 (ii) alleges the facts constituting the violation; and

1099 (iii) specifies the corrective action to be taken.

1100 (c) (i) After serving notice as required in Subsection (2)(b), the ~~[division]~~ commission
1101 may ~~[request the commission to]~~ issue an order to show cause.

1102 (ii) After a hearing, the commission may:

1103 (A) impose penalties; and~~[, if necessary, may]~~

1104 (B) request the attorney general to enforce the order in district court.

1105 (3) (a) Any person who violates any rule made under this section or fails to comply
1106 with any order issued ~~[pursuant to]~~ under this section is subject to a penalty not to exceed
1107 \$2,000 per violation.

1108 (b) In the case of a continuing violation, each day that the violation continues
1109 constitutes a separate and distinct offense.

1110 (4) A penalty assessment under this section does not relieve the person assessed from
1111 civil liability for claims arising out of any act ~~[which]~~ that was a violation of any rule under this
1112 section.

1113 Section 18. Section **54-8b-17** is amended to read:

1114 **54-8b-17. Procedures for enforcement of interconnection service quality --**

1115 **Penalties for violation -- Funds collected.**

1116 (1) Proceedings under Subsection 54-8b-2.2(1)(e) shall be conducted in accordance
1117 with the ~~[following]~~ procedure~~[-]~~ described in this Subsection (1).

1118 (a) (i) The complaint shall be served upon the defendant telecommunications
1119 corporation and filed with the commission.

1120 (ii) A copy of the complaint shall also be served upon the ~~[Division of Public Utilities]~~
1121 ratepayer advocate.

1122 (b) (i) An answer or other responsive pleading to the complaint shall be filed with the
1123 commission not more than ten days after receipt of service of the complaint.

1124 (ii) Copies of the answer or responsive pleading shall be served on:

1125 (A) the complainant; and

1126 (B) the ~~[Division of Public Utilities]~~ ratepayer advocate.

1127 (c) A prehearing conference shall be held not later than ten days after the complaint is
1128 filed.

1129 (d) (i) The commission shall commence a hearing on the complaint not later than 25
1130 days after the complaint is filed, unless the commission finds that extraordinary conditions
1131 exist that warrant postponing the hearing date, in which case the commission shall commence
1132 the hearing as soon as practicable.

1133 (ii) Parties ~~[shall be entitled to]~~ may present evidence as provided by the commission's
1134 rules.

1135 (e) The commission shall take final action on a complaint not more than 45 days after
1136 the complaint is filed unless:

1137 (i) the commission finds that extraordinary conditions exist that warrant extending
1138 final action, in which case the commission shall take final action as soon as practicable; or

1139 (ii) the parties agree to an extension of final action by the commission.

1140 (2) The commission ~~[shall have]~~ has the enforcement powers listed in Subsection (3)
1141 if, in the proceeding, the commission finds that:

1142 (a) the telecommunications corporation has violated the terms of the commission's
1143 interconnection service quality rules;

- 1144 (b) the telecommunications corporation has breached its obligations under the
- 1145 provisions of the Federal Telecommunications Act;
- 1146 (c) either party to an approved interconnection agreement has violated the terms of the
- 1147 agreement; or
- 1148 (d) either party has violated the terms of a statement of generally available terms.
- 1149 (3) If the commission makes any of the findings described in Subsection (2), the
- 1150 commission shall:
 - 1151 (a) order the telecommunications corporation to:
 - 1152 (i) remedy the violation; and
 - 1153 (ii) comply, as applicable, with the terms of:
 - 1154 (A) the commission's interconnection service quality rules[?];
 - 1155 (B) the interconnection agreement[?]; or
 - 1156 (C) statement of generally available terms;
 - 1157 (b) if considered appropriate by the commission, prescribe the specific actions that the
 - 1158 telecommunications corporation must take to remedy its violation, including:
 - 1159 (i) a time frame for compliance; and
 - 1160 (ii) the submission of a plan to prevent future violations; and
 - 1161 (c) if considered appropriate by the commission, impose a penalty on the defendant
 - 1162 telecommunications corporation subject to the following:
 - 1163 (i) if the violation is of the duties imposed under Section 54-8b-2.2 or 54-8b-16, the
 - 1164 commission may impose a penalty for such violation as provided in Section 54-7-25; or
 - 1165 (ii) if the violating telecommunications corporation is other than an incumbent
 - 1166 telephone corporation with fewer than 50,000 access lines in this state, and the violation is of a
 - 1167 duty imposed under an interconnection agreement, a statement of generally available terms, or
 - 1168 the obligations of Section 251 of the Federal Telecommunications Act, the commission may
 - 1169 impose a penalty subject to the following:
 - 1170 (A) if the commission finds that the violation was willful or intentional, the penalty
 - 1171 may be in an amount of up to \$5,000 per day and the period for which the penalty is levied
 - 1172 shall commence on the date the commission finds the violation to have first occurred through
 - 1173 and including the date the violation is corrected; or
 - 1174 (B) if the commission finds that the violation was not willful or intentional, the penalty

1175 may be in an amount prescribed by Section 54-7-25 and the period for which the penalty is
 1176 levied shall commence on the day after the deadline for compliance in the commission's order.

1177 (4) (a) The commission [~~shall have the authority~~] may, on its own or at the request of
 1178 the injured telecommunications corporation, [~~to~~] investigate a party's compliance with the
 1179 commission's order under Subsection (3)(c)(ii).

1180 (b) If corrective or remedial action acceptable to the commission is not completed:

1181 (i) 45 days after the deadline set by the commission, the commission may increase the
 1182 penalty up to \$10,000 per violation per day for a willful or intentional violation; or

1183 (ii) 90 days after the deadline set by the commission, the commission may increase the
 1184 penalty up to \$4,000 per violation per day for a violation that is not willful or intentional.

1185 (5) (a) The penalty under Subsection (3)(c) [~~shall be~~] is in addition to [~~, and not in lieu~~
 1186 ~~of;~~] civil damages or other remedies that may be available to the injured party.

1187 (b) In determining the amount of the penalty or the amount agreed to in compromise,
 1188 the commission shall consider:

1189 (i) the appropriateness of the penalty to the size of the violating party;

1190 (ii) the gravity of the violation;

1191 (iii) the good faith of the defendant telecommunications corporation in attempting to
 1192 achieve compliance after notification of the violation;

1193 (iv) the impact of the violation to the establishment of competition; and

1194 (v) the actual economic harm incurred by the plaintiff telecommunications corporation.

1195 (c) Each day of a continuing violation or a failure to comply is a separate offense for
 1196 purposes of levying a penalty under this section.

1197 (6) All funds collected under this section shall go into the Universal Public
 1198 Telecommunications Service Support Fund established under Section 54-8b-15, and [~~shall be~~]
 1199 are in addition to any contributions required of a telecommunications corporation under [~~that~~
 1200 ~~section~~] Section 54-8b-15.

1201 Section 19. Section **54-8b-18** is amended to read:

1202 **54-8b-18. Definitions -- Unauthorized change of telecommunications provider --**
 1203 **Unauthorized charges -- Procedures for verification -- Penalties -- Authority of**
 1204 **commission.**

1205 (1) For purposes of this section:

1206 (a) "Agents" includes any person, firm, or corporation representing a
1207 telecommunications corporation for purposes of requesting a change in a subscriber's
1208 telecommunications provider, but does not include a local service provider when executing a
1209 request submitted by another service provider or its agents.

1210 (b) "Freeze" means a directive from a subscriber to retain the provider of public
1211 telecommunications services selected by the subscriber until the subscriber provides
1212 authorization for a change to another provider of public telecommunications services through
1213 any means by which a freeze is implemented.

1214 (c) "Small commercial subscriber" is a person or entity conducting a business,
1215 agriculture, or other enterprise in the state having less than five telecommunications lines.

1216 (d) "Subscriber" means a corporation, person, or government, or a person acting legally
1217 on behalf of a corporation, person, or government who ~~[has purchased]~~ purchases public
1218 telecommunications services from a telecommunications corporation.

1219 (2) ~~(a)~~ (a) ~~[No]~~ A telecommunications corporation or its agents ~~[shall]~~ may not make any
1220 change or authorize a different telecommunications corporation to make any change in the
1221 provider of any public telecommunications service to a subscriber unless it complies, at a
1222 minimum, with Subsections (2)~~(a)~~ (c) through ~~(e)~~ (g).

1223 (b) This Subsection (2) does not apply to a telecommunications corporation that
1224 effectuates a change in service provider pursuant to a change authorization submitted or
1225 requested by another telecommunications corporation.

1226 ~~(a)~~ (c) The telecommunications corporation or its agents shall, at a minimum, inform
1227 the subscriber of the nature, extent, and rates of the service being offered and any charges
1228 associated with the change.

1229 ~~(b)~~ (d) Notwithstanding Section 13-26-4, changes in provider of telecommunication
1230 service accomplished through telephone solicitation shall comply with ~~[the Telephone Fraud~~
1231 ~~Prevention Act,]~~ Sections 13-26-2, 13-26-8, 13-26-10, and 13-26-11.

1232 ~~(e)~~ (e) (i) For sales of residential service or small commercial subscriber service, the
1233 telecommunications corporation or its agents shall confirm that the subscriber is aware of any
1234 charges that the subscriber must pay associated with the change and that the subscriber
1235 authorizes the change of provider.

1236 (ii) The subscriber's authorization to change the provider shall be confirmed by any one

1237 of the following methods:

1238 ~~[(†)]~~ (A) obtaining the subscriber's written authorization;

1239 ~~[(†)]~~ (B) having the subscriber's oral authorization verified by an independent third
1240 party; or

1241 ~~[(††)]~~ (C) any means provided by rule of the Federal Communications Commission or
1242 the commission.

1243 ~~[(††)]~~ (f) If the subscriber is not an individual, an authorization shall be valid only if
1244 given by an authorized representative of the subscriber.

1245 ~~[(††)]~~ (g) (i) The written authorization to change the provider shall:

1246 (A) be signed by the subscriber; and ~~[shall]~~

1247 (B) contain a clear, conspicuous, and unequivocal request by the subscriber for a
1248 change of telecommunications provider.

1249 (ii) A written authorization is not valid if it is presented to the subscriber for signature
1250 in connection with a sweepstakes, game of chance, or any other means prohibited by
1251 commission rule.

1252 (iii) Nothing in this section shall be construed to prohibit any person from offering a
1253 premium, incentive, or a thing of value to another as consideration for authorizing a change of
1254 telecommunications service provider, provided that no element of chance or skill is associated
1255 with the offer of the premium, incentive, or thing of value or its receipt.

1256 (3) The confirmation by a third-party verifier shall, at a minimum:

1257 (a) confirm the subscriber's identity with information unique to the customer, unless
1258 the customer refuses to provide identifying information, then that fact shall be noted;

1259 (b) confirm that the subscriber agrees to the requested change in telecommunications
1260 service providers; and

1261 (c) confirm that the subscriber has the authority to select the provider as the provider of
1262 that service.

1263 (4) A third-party verifier shall meet each of the following criteria:

1264 (a) any criteria for third-party verifiers set by the Federal Communications
1265 Commission;

1266 (b) not be directly or indirectly managed, controlled, directed, or owned wholly or in
1267 part:

- 1268 (i) by the telecommunications corporation or its agents that seek to provide the
1269 telecommunications service or by any corporation, firm, or person who directly or indirectly
1270 manages, controls, directs, or owns more than 5% of the telecommunications corporation; or
1271 (ii) by the marketing entity that seeks to market the telecommunications service or by
1272 any corporation, firm, or person who directly or indirectly manages, controls, directs, or owns
1273 more than 5% of the marketing entity;
- 1274 (c) operate from facilities physically separated from:
- 1275 (i) those of the telecommunications corporation or its agents that seek to provide the
1276 subscriber's telecommunications service; or
1277 (ii) those of the marketing entity that seeks to market a telecommunications service to
1278 the subscriber; and
- 1279 (d) not derive commissions or compensation based upon the number of change
1280 authorizations verified.
- 1281 (5) A telecommunications corporation or its agents seeking to verify the change
1282 authorization shall connect the subscriber to the third-party verifier or arrange for the
1283 third-party verifier to call the subscriber to verify the change authorization.
- 1284 (6) A third-party verifier that obtains the subscriber's oral verification [~~regarding~~
1285 concerning the change shall record that verification by obtaining appropriate verification data.
- 1286 (7) (a) The record verifying a subscriber's change of provider shall be available to the
1287 subscriber upon request.
- 1288 (b) Information obtained from the subscriber through verification may not be used for
1289 any other purpose.
- 1290 (c) Any intentional unauthorized release of the information in Subsection (7)(b) is
1291 grounds for penalties or other action by the commission or remedies provided by law to the
1292 aggrieved subscriber against the telecommunications corporation, third-party verifier, their
1293 agents, or their employees who are responsible for the violation.
- 1294 (8) The third-party verification shall occur in the same language as that in which the
1295 change was solicited.
- 1296 (9) The verification requirements described in this section shall apply to all changes in
1297 the provider of any public telecommunications service.
- 1298 (10) The commission may promulgate rules:

- 1299 (a) necessary to implement this section;
- 1300 (b) consistent with any rules promulgated by the Federal Communications
1301 Commission; and
- 1302 (c) in a nondiscriminatory and competitively neutral manner.
- 1303 (11) (a) Each subscriber may elect to require the telecommunications corporation
1304 providing the subscriber's local exchange service to implement a freeze until the subscriber
1305 provides authorization for a change to another provider of public telecommunications services.
- 1306 (b) Once a subscriber has elected the freeze option under Subsection (11)(a), the
1307 telecommunications corporation providing the subscriber's local exchange service may not
1308 process a request to change the subscriber to another provider of telecommunications services
1309 without prior authorization directly from the subscriber.
- 1310 (12) (a) Whenever the subscriber's provider of a telecommunications service changes,
1311 the new provider shall:
- 1312 (i) retain a record of the verified change authorization consistent with requirements of
1313 the Federal Communications Commission or rules issued by the commission; and
- 1314 (ii) be responsible for providing a conspicuous notice of the change within 30 days of
1315 the effective date of the change of service.
- 1316 (b) At a minimum, the notice in Subsection (12)(a)(ii) shall:
- 1317 (i) identify the new provider[;];
- 1318 (ii) contain a general description of the service and price[;]; and
- 1319 (iii) provide information necessary for the subscriber to have questions answered or to
1320 rescind the change.
- 1321 (13) Any bill shall identify each telecommunications service provider of
1322 telecommunication service for which billing is rendered.
- 1323 (14) (a) Any person or provider of telecommunications service inadvertently or
1324 knowingly designating or changing the subscriber's telecommunications service provider in
1325 violation of this section shall refund to the subscriber any amounts required by the rules of the
1326 Federal Communications Commission and the commission.
- 1327 (b) The unauthorized provider in Subsection (14)(a) additionally shall:
- 1328 (i) bear all costs of restoring the customer to the service of the subscriber's original
1329 service provider; and

1330 (ii) pay to any other telecommunications provider any fees set by the commission for
1331 the designation or change.

1332 (15) Proceedings for violations of this section may be commenced by:

1333 (a) request for agency action filed with the commission by a subscriber[;];

1334 (b) a telecommunications corporation[~~the Division of Public Utilities;~~];

1335 (c) the ratepayer advocate; or [by]

1336 (d) the commission on its own motion.

1337 (16) Any telecommunications corporation, its agents, or a third-party verifier who
1338 violates this section or rules adopted to implement this section [~~shall be~~] is subject to the
1339 provisions of Sections 54-7-23 through 54-7-29.

1340 (17) The commission [~~is granted authority to~~] may enforce provisions relating to an
1341 unauthorized telecommunication service provider change in interstate and intrastate
1342 telecommunication service involving telecommunications corporations operating in the state.

1343 Section 20. Section **54-10-101** is enacted to read:

1344 **CHAPTER 10. RATEPAYER ADVOCATE ACT**

1345 **Part 1. General Provisions**

1346 **54-10-101. Title.**

1347 This chapter is known as the "Ratepayer Advocate Act."

1348 Section 21. Section **54-10-102** is enacted to read:

1349 **54-10-102. Definitions.**

1350 For the purpose of this chapter:

1351 (1) "Class advocate" means a class advocate appointed under Section 54-10-205.

1352 (2) "Customer group" means a group of individual end-use customers of a public utility
1353 served under common or similar tariffs or service schedules.

1354 (3) "Ratepayer committee" means a committee appointed by a class advocate under
1355 Section 54-10-205.

1356 Section 22. Section **54-10-103** is enacted to read:

1357 **54-10-103. Ratepayer advocate counsel.**

1358 (1) The attorney general shall assign one or more attorneys, as necessary, to represent
1359 the ratepayer advocate and any class advocate.

1360 (2) An attorney assigned under Subsection (1) shall represent the ratepayer advocate or

1361 a class advocate at all hearings or other proceedings affecting the services, rates, or charges of
1362 natural gas, electric, or telephone public utilities in the state.

1363 (3) An attorney assigned under Subsection (1) may prosecute any action that the
1364 ratepayer advocate considers necessary to enforce the rights of the retail utility customers of
1365 public utilities.

1366 Section 23. Section **54-10-104** is enacted to read:

1367 **54-10-104. Budget -- Employment of personnel.**

1368 (1) The annual budget of the Office of the Ratepayer Advocate shall provide sufficient
1369 funds for the ratepayer advocate to hire, develop, and organize technical and professional staff
1370 to perform the duties, powers, and responsibilities committed to it by statute.

1371 (2) The ratepayer advocate may:

1372 (a) hire staff to discharge its statutory obligations;

1373 (b) retain economists, accountants, engineers, inspectors, statisticians, and other
1374 technical and professional experts required for a particular matter;

1375 (c) hire class advocates; and

1376 (d) employ necessary administrative and support staff.

1377 (3) (a) The Department of Human Resource Management shall determine pay
1378 schedules using standard techniques for determining compensation.

1379 (b) The Department of Human Resource Management shall make compensation
1380 determinations after giving consideration to compensation practices common to utility
1381 companies throughout the United States.

1382 Section 24. Section **54-10-201** is enacted to read:

1383 **Part 2. Ratepayer Advocate's Powers and Duties**

1384 **54-10-201. Ratepayer advocate.**

1385 (1) There is created within the attorney general's office the Office of the Ratepayer
1386 Advocate.

1387 (2) (a) The chief administrative officer of the Office of the Ratepayer Advocate is the
1388 ratepayer advocate appointed by the governor with the consent of the Senate.

1389 (b) The ratepayer advocate shall be a qualified person in the field of public utilities.

1390 (3) The ratepayer advocate shall represent the interests of retail consumers of natural
1391 gas, electric, and telephone public utilities in this state.

1392 Section 25. Section **54-10-202** is enacted to read:

1393 **54-10-202. Duties and responsibilities of ratepayer advocate.**

1394 The ratepayer advocate shall:

1395 (1) assess the impact of utility rate changes and other regulatory actions on utility

1396 customers in this state;

1397 (2) assist utility customers appearing before the commission;

1398 (3) advocate on its own behalf and in its own name, positions most advantageous to

1399 utility customers in this state in any proceedings involving regulation of a public utility;

1400 (4) bring original actions in its own name before:

1401 (a) the commission; or

1402 (b) any court having appellate jurisdiction over orders or decisions of the commission;

1403 (5) present evidence in any matter in which the ratepayer advocate participates under

1404 Subsections (1) through (4);

1405 (6) appeal decisions in matters under Subsections (1) through (4); and

1406 (7) give notice to a person against whom the ratepayer advocate takes an act under

1407 Subsections (1) through (4) at least ten days before the act is taken that the ratepayer advocate

1408 intends to act.

1409 Section 26. Section **54-10-203** is enacted to read:

1410 **54-10-203. Representation of municipal electric power utility by ratepayer**

1411 **advocate prohibited.**

1412 The ratepayer advocate may not represent, assist, or be an advocate on behalf of any:

1413 (1) city or town; or

1414 (2) municipal electric power utility.

1415 Section 27. Section **54-10-204** is enacted to read:

1416 **54-10-204. Interests, relationships, and actions by employees prohibited.**

1417 An employee of the Office of the Ratepayer Advocate, while so employed, may not:

1418 (1) have a pecuniary interest, whether as the holder of stock or other securities, or

1419 otherwise have any conflict of interest with any public utility or other entity subject to the

1420 jurisdiction of the commission;

1421 (2) have any office, position, or relationship or be engaged in any business or avocation

1422 that interferes or is incompatible with the effective and objective fulfillment of the duties of

- 1423 office or employment with the ratepayer advocate;
- 1424 (3) accept any gift, gratuity, emolument, or employment from:
- 1425 (a) any public utility or other entity subject to the jurisdiction of the commission; or
- 1426 (b) any officer, agent, or employee of a public utility or other entity subject to the
- 1427 jurisdiction of the commission; or
- 1428 (4) solicit, suggest, request, or recommend, directly or indirectly, the appointment of
- 1429 any person or entity to any office or employment with any public utility or other entity subject
- 1430 to the jurisdiction of the commission.
- 1431 Section 28. Section **54-10-205** is enacted to read:
- 1432 **54-10-205. Class advocates -- Ratepayer committees.**
- 1433 (1) (a) Subject to Subsection (1)(b), the ratepayer advocate shall designate a separate
- 1434 class advocate for each distinct customer group determined by the ratepayer advocate.
- 1435 (b) At least four class advocates shall be assigned to represent the interests of the
- 1436 following customer groups:
- 1437 (i) residential customers;
- 1438 (ii) commercial customers;
- 1439 (iii) industrial customers; and
- 1440 (iv) other customers.
- 1441 (c) Each class advocate shall maintain the class advocate's principal residence within
- 1442 Utah.
- 1443 (2) A class advocate shall advocate on behalf of the best interests of the designated
- 1444 customer group.
- 1445 (3) (a) Each class advocate shall appoint a ratepayer committee made up of no more
- 1446 than five members or representatives of the represented customer group.
- 1447 (b) Each class advocate shall attempt to achieve a reasonable balance on the ratepayer
- 1448 committee of diverse interests within the represented customer groups.
- 1449 (c) A member of a ratepayer committee shall receive no compensation or benefits for
- 1450 the member's services, but may receive per diem and expenses incurred in the performance of
- 1451 the member's official duties at the rates established by the Division of Finance under Sections
- 1452 63A-3-106 and 63A-3-107.
- 1453 (d) A member may decline to receive per diem and expenses for the member's service.

1454 (e) Ratepayer committees may hold meetings at such times and places as the class
1455 advocate may determine.

1456 (f) Each class advocate shall coordinate and consult with its ratepayer committee in
1457 performing the functions of the class advocate.

1458 (g) Except as provided in Subsection (2)(h), a member of a ratepayer committee shall
1459 be appointed for a two-year term.

1460 (h) Notwithstanding Subsection (2)(g), the class advocate shall, at the time of
1461 appointment, adjust the length of terms to ensure that the terms of members of the ratepayer
1462 committee are staggered so that approximately half of the members of the ratepayer committee
1463 are appointed every year.

1464 (i) The class advocate shall select a chairperson of the ratepayer committee from
1465 among the members of the ratepayer committee.

1466 (j) The Office of the Ratepayer Advocate shall provide staff for a ratepayer committee.

1467 (k) A majority of the members of a ratepayer committee constitute a quorum for the
1468 conduct of business by the committee.

1469 Section 29. Section **54-18-101** is enacted to read:

1470 **CHAPTER 18. INTERVENOR REIMBURSEMENT ACT**

1471 **Part 1. General Provisions**

1472 **54-18-101. Title.**

1473 This chapter is known as the "Intervenor Reimbursement Act."

1474 Section 30. Section **54-18-102** is enacted to read:

1475 **54-18-102. Definitions.**

1476 As used in this chapter:

1477 (1) "Affected utility" means a public utility with at least 200,000 retail customers in the
1478 state.

1479 (2) "Award of reimbursement" means an order of the commission directing an affected
1480 utility to pay to an eligible intervenor group up to 50% of the intervention expense incurred by
1481 the eligible intervenor group.

1482 (3) (a) "Customer group" means a group of individual end-use customers of an affected
1483 utility served under common or similar tariffs or service schedules.

1484 (b) The commission may determine the characteristics necessary to constitute a

- 1485 customer group, including:
- 1486 (i) the minimum number or percentage of customers; or
- 1487 (ii) minimum combined usage of customers.
- 1488 (4) "Eligible intervenor group" means a customer group that is:
- 1489 (a) permitted to intervene in a proceeding to represent the interests of a customer
- 1490 group; and
- 1491 (b) is determined by the commission to be preliminarily eligible for an award of
- 1492 reimbursement under Section 54-18-201.
- 1493 (5) "Intervention expense" means:
- 1494 (a) attorney fees;
- 1495 (b) expert witness fees; and
- 1496 (c) other fees or expenses.
- 1497 (6) "Proceeding" means the following involving an affected utility:
- 1498 (a) an application;
- 1499 (b) a complaint;
- 1500 (c) an investigation;
- 1501 (d) a rulemaking proceeding;
- 1502 (e) an alternative dispute resolution process in lieu of formal proceedings sponsored or
- 1503 endorsed by the commission; or
- 1504 (f) other formal proceeding before the commission.
- 1505 Section 31. Section **54-18-201** is enacted to read:
- 1506 **Part 2. Intervenor Reimbursement**
- 1507 **54-18-201. Commission authority to order award of reimbursement.**
- 1508 (1) The commission may order an affected utility to pay an award of reimbursement to
- 1509 an eligible intervenor group at the conclusion of a proceeding if the commission determines, in
- 1510 its discretion, that the eligible intervenor group's participation or presentation in a proceeding:
- 1511 (a) provided substantial assistance to the commission in analyzing or resolving issues
- 1512 or in reaching the commission's decision; or
- 1513 (b) materially advanced the interests of customers.
- 1514 (2) An eligible intervenor group may not be required to enter into or join a settlement
- 1515 in order to receive an award of reimbursement for participation in a proceeding or in the

1516 settlement process.

1517 Section 32. Section **54-18-202** is enacted to read:

1518 **54-18-202. Determination of preliminary eligibility.**

1519 (1) (a) In seeking intervention in a proceeding, a customer group shall request a
1520 determination from the commission of whether the customer group is an eligible intervenor
1521 group.

1522 (b) A petition for intervention in a proceeding that seeks a determination that the
1523 customer group is an eligible intervenor group shall include the information the commission
1524 requires by rule made in accordance with Title 63, Chapter 46a, Utah Administrative
1525 Rulemaking Act.

1526 (2) The affected utility and others may file an objection, including reasons for the
1527 objection to any request for determination that the customer group is an eligible intervenor
1528 group.

1529 (3) (a) If granting intervention, the commission shall determine a customer group's
1530 preliminary eligibility to receive an award of reimbursement at the conclusion of the
1531 proceeding.

1532 (b) When determining eligibility under Subsection (3)(a), the commission may limit:

1533 (i) the issues for which a customer group is eligible for reimbursement; or

1534 (ii) the total amount or nature of reimbursement that may be awarded to that customer
1535 group or all customer groups combined.

1536 (4) An affected utility may not:

1537 (a) recover costs or reimbursement from any intervenor or customer group; and

1538 (b) recover more than 50% of its regulatory expenses from ratepayers, as provided in
1539 Section 54-18-205.

1540 Section 33. Section **54-18-203** is enacted to read:

1541 **54-18-203. Award of reimbursement.**

1542 (1) Each customer group receiving a preliminary determination that the customer group
1543 is an eligible intervenor group may file a request for an award of reimbursement at the end of
1544 the proceeding.

1545 (2) A request for an award of reimbursement shall include any information the
1546 commission may require by rule made in accordance with Title 63, Chapter 46a, Utah

1547 Administrative Rulemaking Act.

1548 (3) An award or reimbursement may be ordered for up to 50% of all of the eligible
1549 intervenor group's intervention expenses.

1550 (4) Any party may file an objection to a request for an award of reimbursement within
1551 a time frame established by the commission by rule that may not exceed 30 days after the day a
1552 request for reimbursement is filed with the commission.

1553 (5) Within a time frame established by the commission by rule that may not exceed 60
1554 days after the day of the deadline for filing a request for an award of reimbursement, the
1555 commission shall issue an order setting the amount of any awards of reimbursement.

1556 (6) (a) An affected utility involved in a proceeding shall pay an eligible intervenor
1557 group an award of reimbursement ordered by the commission within a time frame established
1558 by the commission by rule that may not exceed 30 days from the date of the commission
1559 award.

1560 (b) If an affected utility does not make timely payment under Subsection (6)(a), the
1561 eligible intervenor group may seek enforcement of the commission order by:

1562 (i) the commission; or

1563 (ii) in district court whether or not the eligible intervenor group first seeks enforcement
1564 by the commission.

1565 (c) In any action under Subsection (6)(b), the affected utility shall pay to the eligible
1566 intervenor group:

1567 (i) interest;

1568 (ii) reasonable attorney fees; and

1569 (iii) other expenses incurred by the eligible intervenor group in seeking enforcement.

1570 (d) Reasonable fees shall be based upon reasonable hourly rates, taking into account
1571 prevailing market rates for attorneys or experts of comparable skill, experience, and reputation.

1572 (7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
1573 commission may adopt rules to implement procedures and time frames for seeking intervenor
1574 reimbursement in a manner consistent with this chapter.

1575 Section 34. Section **54-18-204** is enacted to read:

1576 **54-18-204. Intervenor reimbursement as a regulatory expense.**

1577 An award of reimbursement ordered by the commission and paid by an affected utility

1578 pursuant to this chapter shall be:

1579 (1) accounted for as a regulatory expense of the affected public utility; and

1580 (2) assigned or allocated in the process of setting rates or tariffs to the customer groups
1581 represented or benefited by an eligible intervenor group, as determined by the commission.

1582 Section 35. Section **54-18-205** is enacted to read:

1583 **54-18-205. Recovery of regulatory expenses.**

1584 The commission may, in a general rate case or other appropriate commission
1585 proceeding, include in the affected utility's retail rates in this state:

1586 (1) 100% of relevant intervenor reimbursement expenses ordered by the commission
1587 and paid by an affected utility under this chapter; and

1588 (2) up to 50% of this state's share of other regulatory expenses relevant to that
1589 proceeding reasonably incurred by the affected utility.

1590 Section 36. Section **72-7-109** is amended to read:

1591 **72-7-109. Telecommunications Advisory Council -- Membership -- Duties.**

1592 (1) As used in this section:

1593 (a) "Council" means the Telecommunications Advisory Council created in this section.

1594 (b) "Statewide telecommunications purposes" has the same meaning provided in
1595 Section 72-7-108.

1596 (2) (a) There is created within the department the Telecommunication Advisory
1597 Council consisting of six members who represent:

1598 (i) the governor's chief advisor on telecommunications;

1599 (ii) the Public Service Commission;

1600 (iii) the department;

1601 (iv) the Utah Education Network;

1602 (v) the Division of Purchasing and General Services within the Department of
1603 Administrative Services; and

1604 (vi) the ~~[Division of Public Utilities within the Department of Commerce]~~ ratepayer
1605 advocate under Title 54, Chapter 10, Ratepayer Advocate Act.

1606 (b) The members shall be appointed by the governor with the consent of the Senate.

1607 (3) (a) The members shall annually elect a chair from its members.

1608 (b) The council shall meet as it determines necessary to accomplish its duties.

- 1609 (c) A majority of the council constitutes a quorum for the transaction of business.
- 1610 (d) Members shall receive no compensation or benefits for their services.
- 1611 (4) (a) The department shall provide staff support for the council.
- 1612 (b) The council may request assistance from other technical advisors as it determines
- 1613 necessary to accomplish its duties.
- 1614 (5) The council shall:
- 1615 (a) provide information, suggestions, strategic plans, priorities, and recommendations
- 1616 to assist the department in administering telecommunications access to interstate highway
- 1617 rights-of-way for statewide telecommunications purposes;
- 1618 (b) assist the department in valuing in-kind compensation in accordance with
- 1619 Subsection 72-7-108(3)(c);
- 1620 (c) seek input from telecommunications providers and the public;
- 1621 (d) coordinate and exchange information with other technology and
- 1622 telecommunications entities of the state and its political subdivisions; and
- 1623 (e) provide other assistance as requested by the department.
- 1624 **Section 37. Repealer.**
- 1625 This bill repeals:
- 1626 **Section 54-4a-1, Establishment of division -- Functions.**
- 1627 **Section 54-4a-2, Director of division -- Appointment -- Authority and**
- 1628 **responsibility.**
- 1629 **Section 54-4a-3, Budget of division -- Employment of personnel.**
- 1630 **Section 54-4a-4, Legal counsel.**
- 1631 **Section 54-4a-5, Interests, relationships and actions by employees prohibited.**
- 1632 **Section 54-4a-6, Objectives.**
- 1633 **Section 54-10-1, Definitions.**
- 1634 **Section 54-10-2, Committee of Consumer Services created -- Members -- Terms --**
- 1635 **Qualifications -- Appointment -- Organization.**
- 1636 **Section 54-10-3, Per diem and expenses of members -- Meetings.**
- 1637 **Section 54-10-4, Duties and responsibilities of committee.**
- 1638 **Section 54-10-4.5, Representation of electric power utility by committee**
- 1639 **prohibited.**

1640 Section **54-10-5, Residential and small commercial representative -- Duties.**
1641 Section **54-10-6, Review of public utility accounting procedures and expenditures.**
1642 Section **54-10-7, Attorney from attorney general's office to represent committee.**
1643 Section 38. **Transition.**
1644 (1) To the extent practicable, the Public Service Commission shall use the personnel,
1645 equipment, and property transferred from the Division of Public Utilities under this section.
1646 (2) The Division of Public Utilities shall transfer to the Public Service Commission
1647 each person employed by the Division of Public Utilities to the extent practicable.
1648 (3) The transfer of personnel under Subsection (2) shall be completed by July 1, 2005.
1649 (4) Effective July 1, 2005, the Division of Finance shall transfer all monies that have
1650 been appropriated to the Division of Public Utilities to the Public Service Commission.
1651 (5) The Division of Public Utilities shall inventory and transfer to the Public Service
1652 Commission all equipment and other tangible property in the possession of the Division of
1653 Public Utilities.
1654 (6) The rules of the Division of Public Utilities shall be rules of the Public Service
1655 Commission until such time as the Public Service Commission shall adopt rules governing its
1656 advocacy staff pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
1657 Section 39. **Effective date.**
1658 This bill takes effect on July 1, 2005.

Legislative Review Note
as of 2-16-05 1:44 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

Two additional attorneys and six other FTE for the new Ratepayer Advocate would cost an additional \$785,300 from Public Utility Regulatory Fee (PURF) to the Attorney General. The budgets of the Division of Public Utilities would need to be transferred to the Public Service Commission, and the Committee on Consumer Services would need to be transferred to the Attorney General. These would be accomplished at no net cost to the state.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
Restricted Funds	\$785,300	\$785,300	\$785,300	\$785,300
TOTAL	\$785,300	\$785,300	\$785,300	\$785,300

Individual and Business Impact

Raising the cap on Public Utility Regulatory Fee (PURF) would allow additional funding of \$2,300,000. The additional \$785,300 in PURF would be paid by utility companies.

Office of the Legislative Fiscal Analyst