

PUBLIC UTILITIES AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Gregory S. Bell

LONG TITLE

General Description:

This bill modifies the Public Utilities Title to address public utility issues including enacting the Energy Resource Procurement Act.

Highlighted Provisions:

This bill:

- ▶ addresses prudence;
- ▶ addresses certificates of convenience and necessity;
- ▶ enacts the Energy Resource Procurement Act;
- ▶ defines terms;
- ▶ grants the commission rulemaking authority;
- ▶ establishes requirements for a solicitation process for a significant energy resource of an affected electrical utility;
- ▶ provides for the review of action plans under an affected electrical utility's integrated resource plan;
- ▶ provides for the approval of a significant energy resource decision;
- ▶ provides for cost recovery of an approved significant energy resource decision;
- ▶ addresses orders to proceed implementing a significant energy resource decision;
- ▶ permits an energy utility to request approval of a resource decision;
- ▶ provides for cost recovery of an approved resource decision;
- ▶ addresses orders to proceed implementing a resource decision; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

54-4-4, as last amended by Chapter 200, Laws of Utah 2003

54-4-25, as last amended by Chapter 286, Laws of Utah 2002

ENACTS:

54-17-101, Utah Code Annotated 1953

54-17-102, Utah Code Annotated 1953

54-17-103, Utah Code Annotated 1953

54-17-201, Utah Code Annotated 1953

54-17-202, Utah Code Annotated 1953

54-17-203, Utah Code Annotated 1953

54-17-301, Utah Code Annotated 1953

54-17-302, Utah Code Annotated 1953

54-17-303, Utah Code Annotated 1953

54-17-304, Utah Code Annotated 1953

54-17-401, Utah Code Annotated 1953

54-17-402, Utah Code Annotated 1953

54-17-403, Utah Code Annotated 1953

54-17-404, Utah Code Annotated 1953

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

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

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

(1) (a) The commission shall take an action described in Subsection (1)(b), if the commission finds after a hearing that:

(i) the rates, fares, tolls, rentals, charges, or classifications demanded, observed, charged, or collected by any public utility for, or in connection with, any service, product, or commodity, including the rates or fares for excursion or commutation tickets, or that the rules, regulations, practices, or contracts affecting the rates, fares, tolls, rentals, charges, or classifications are:

- (A) unjust;
- (B) unreasonable;
- (C) discriminatory;
- (D) preferential; or
- (E) otherwise in violation of any provisions of law; or

(ii) the rates, fares, tolls, rentals, charges, or classifications described in Subsection (1)(a)(i) are insufficient.

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

(i) determine the just, reasonable, or sufficient rates, fares, tolls, rentals, charges, classifications, rules, regulations, practices, or contracts to be thereafter observed and in force; and

(ii) fix the determination described in Subsection (1)(b)(i) by order as provided in this section.

(2) The commission may:

(a) investigate:

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

(ii) one or more schedules of rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts, or practices of any public utility; and

(b) establish, after hearing, new rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts, practices, or schedules in lieu of them.

(3) (a) If in the commission's determination of just and reasonable rates the commission uses a test period, the commission shall select a test period that, on the basis of evidence, the

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

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

(i) a future test period that is determined on the basis of projected data not exceeding 20 months from the date a proposed rate increase or decrease is filed with the commission under Section 54-7-12;

(ii) a test period that is:

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

(B) adjusted for known and measurable changes; or

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

(A) future projections; and

(B) historic data.

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

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

(ii) are known in nature; and

(iii) are measurable in amount.

(4) (a) If, in the commission's determination of just, reasonable, or sufficient rates, the commission considers the prudence of an action taken by a public utility or an expense incurred by a public utility, the commission shall apply the following standards in making its prudence determination:

(i) ensure just and reasonable rates for the retail ratepayers of the public utility in this state;

(ii) focus on the reasonableness of the expense resulting from the action of the public utility judged as of the time the action was taken;

(iii) determine whether a reasonable utility, knowing what the utility knew or reasonably

should have known at the time of the action, would reasonably have incurred all or some portion of the expense, in taking the same or some other prudent action; and

(iv) apply other factors determined by the commission to be relevant, consistent with the standards specified in this section.

(b) The commission may find an expense fully or partially prudent, up to the level that a reasonable utility would reasonably have incurred.

Section 2. Section **54-4-25** is amended to read:

54-4-25. Certificate of convenience and necessity prerequisite to construction and operation -- Electrical suppliers.

(1) Except as provided in Section 11-13-304, a gas corporation, electric corporation, telephone corporation, telegraph corporation, heat corporation, water corporation, or sewerage corporation may not establish, or begin construction or operation of a line, route, plant, or system or of any extension of a line, route, plant, or system, without having first obtained from the commission a certificate that present or future public convenience and necessity does or will require the construction.

(2) This section may not be construed to require any corporation to secure a certificate for an extension:

(a) within any city or town within which it has lawfully commenced operations;

(b) into territory, either within or without a city or town, contiguous to its line, plant, or system that is not served by a public utility of like character; or

(c) within or to territory already served by it, necessary in the ordinary course of its business.

(3) If any public utility in constructing or extending its line, plant, or system interferes or may interfere with the operation of the line, plant, or system of any other public utility already constructed, the commission, on complaint of the public utility claiming to be injuriously affected, may, after a hearing, make an order and prescribe the terms and conditions for the location of the lines, plants, or systems affected as the commission determines are just and reasonable.

(4) (a) (i) Each applicant for a certificate shall file in the office of the commission evidence as required by the commission to show that the applicant has received or is in the process of obtaining the required consent, franchise, or permit of the proper county, city, municipal, or other public authority.

(ii) If the applicant is in the process of obtaining the required consent, franchise, or permit, a certificate shall be conditioned upon:

(A) receipt of the consent, franchise, or permit within the time period the commission may direct; and

(B) the filing of such evidence of the receipt of the consent, franchise, or permit as the commission may require.

(b) Each applicant, except an interlocal entity defined in Section 11-13-103, shall also file in the office of the commission a statement that any proposed line, plant, or system will not conflict with or adversely affect the operations of any existing certificated fixed public utility which supplies the same product or service to the public and that it will not constitute an extension into the territory certificated to the existing fixed public utility.

(c) The commission may, after a hearing:

(i) issue the certificate as requested;

(ii) refuse to issue the certificate; or

(iii) issue the certificate for the construction of a portion only of the contemplated line, plant, or system, or extension thereof, or for the partial exercise only of the right or privilege.

(d) The commission may attach to the exercise of the rights granted by the certificate the terms and conditions as in its judgment public convenience and necessity may require.

(e) (i) If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing but which has not yet been granted to it, the public utility may apply to the commission for an order preliminary to the issue of the certificate.

(ii) The commission may make an order declaring that it will upon application, under rules and regulations as it may prescribe, issue the desired certificate upon terms and conditions as it may designate after the public utility has obtained the contemplated franchise or permit.

(iii) Upon presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue the certificate.

(5) (a) Any supplier of electricity which is brought under the jurisdiction and regulation of the Public Service Commission by this ~~act~~ title may file with the commission an application for a certificate of convenience and necessity, giving the applicant the exclusive right to serve the customers it is serving in the area in which it is serving at the time of this filing, subject to the existing right of any other electrical corporation to likewise serve its customers in existence in the area at the time.

(b) The application shall be prima facie evidence of the applicant's rights to a certificate, and the certificate shall be issued within 30 days after the filing, pending which, however, the applicant shall have the right to continue its operations.

(c) Upon good cause shown to the commission by anyone protesting the issuance of such a certificate, or upon the commission's own motion, a public hearing may be held to determine if the applicant has sufficient finances, equipment, and plant to continue its existing service. The commission shall issue its order within 45 days after the hearing according to the proof submitted at the hearing.

(d) Every electrical corporation, save and except those applying for a certificate to serve only the customers served by applicant on May 11, 1965, applying for a certificate shall have established a ratio of debt capital to equity capital or will within a reasonable period of time establish a ratio of debt capital to equity capital which the commission shall find renders the electrical corporation financially stable and which financing shall be found to be in the public interest.

(6) Nothing in this section affects the existing rights of municipalities.

(7) The commission shall consolidate an action filed under Chapter 17, Part 3, Resource Plans and Significant Energy Resource Approval or Part 4, Voluntary Request for Resource Decision Review with a proceeding under this section if:

(a) a public utility is required to obtain a certificate of convenience and necessity pursuant to this section; and

(b) the public utility files an action under Chapter 17, Part 3, Resource Plans and Significant Energy Resource Approval or Part 4, Voluntary Request for Resource Decision Review.

Section 3. Section **54-17-101** is enacted to read:

CHAPTER 17. ENERGY RESOURCE PROCUREMENT ACT

Part 1. General Provisions

54-17-101. Title.

This chapter is known as the "Energy Resource Procurement Act."

Section 4. Section **54-17-102** is enacted to read:

54-17-102. Definitions.

As used in this chapter:

(1) "Affected electrical utility" means an electrical corporation with at least 200,000 retail customers in the state.

(2) "Benchmark option" means an energy resource against which bids in an open bid process may be evaluated that:

(a) could be constructed or owned by:

(i) an affected electrical utility; or

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

(b) may be a purchase of:

(i) electricity;

(ii) electric generating capacity; or

(iii) electricity and electric generating capacity.

(3) "Integrated resource plan" means a plan that contains:

(a) the demand and energy forecast by the affected electrical utility for at least a ten-year period;

(b) the affected electrical utility's options for meeting the requirements shown in its load and resource forecast in an economic and reliable manner, including:

(i) demand-side and supply-side options; and

(ii) a brief description and summary cost-benefit analysis, if available, of each option that was considered;

(c) the affected electrical utility's assumptions and conclusions with respect to the effect of the plan on the cost and reliability of energy service;

(d) a description of the external environmental and economic consequences of the plan to the extent practicable; and

(e) any other data and analyses as the commission may require.

(4) "Significant energy resource" for an affected electrical utility means a resource that consists of:

(a) a total of 100 megawatts or more of new generating capacity that has a dependable life of ten or more years;

(b) a purchase of the following if the contract is for a term of ten or more years and not less than 100 megawatts:

(i) electricity;

(ii) electric generating capacity; or

(iii) electricity and electrical generating capacity;

(c) the purchase or lease by an affected electrical utility from an affiliated company of:

(i) a generating facility;

(ii) electricity;

(iii) electrical generating capacity; or

(iv) electricity and electrical generating capacity;

(d) a contract with an option for the affected electrical utility or an affiliate to purchase a resource that consists of not less than 100 megawatts or more of new generating capacity that has a remaining dependable life of ten or more years; or

(e) a type of resource designated by the commission as a significant energy resource in rules made by the commission in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, after considering the affected electrical utility's integrated resource plan and action plan.

(5) "Solicitation" means a request for proposals or other invitation for persons to submit a bid or proposal through an open bid process for construction or acquisition of a significant energy resource.

Section 5. Section **54-17-103** is enacted to read:

54-17-103. Rulemaking.

(1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission:

(a) shall make rules when required by this chapter; and
(b) in addition to the rules required under Subsection (1)(a), may make rules necessary for the implementation of this chapter.

(2) Notwithstanding a requirement that the commission make rules, the commission may take action under this chapter before the commission makes a required rule including:

(a) approving a solicitation process under Part 2, Solicitation Process;
(b) approving a significant energy resource under Section 54-17-302;
(c) issuing an order under Section 54-17-304 regarding whether an affected electrical utility should proceed with implementing a significant energy resource decision;
(d) approving an energy resource under Section 54-17-402; or
(e) issuing an order under Section 54-17-404 regarding whether an energy utility should proceed with implementing a resource decision.

Section 6. Section **54-17-201** is enacted to read:

Part 2. Solicitation Process

54-17-201. Solicitation process required -- Exception.

(1) (a) An affected electrical utility shall comply with this chapter to acquire or construct a significant energy resource after the effective date of this bill.

(b) Notwithstanding Subsection (1)(a), this chapter does not apply to a significant energy resource for which the affected electrical utility has issued a solicitation before the effective date of this bill.

(2) (a) Except as provided in Subsection (3), to acquire or construct a significant energy

resource, an affected electrical utility shall conduct a solicitation process that is approved by the commission.

(b) To obtain the approval of the commission of a solicitation process, the affected electrical utility shall file with the commission a request for approval that includes:

- (i) a description of the solicitation process the affected electrical utility will use;
- (ii) a complete proposed solicitation; and
- (iii) any other information the commission requires by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(c) In ruling on the request for approval of a solicitation process, the commission shall determine whether the solicitation process:

(i) complies with this chapter and rules made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

(ii) is in the public interest taking into consideration:

(A) whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of an affected electrical utility located in this state;

(B) long-term and short-term impacts;

(C) risk;

(D) reliability;

(E) financial impacts on the affected electrical utility; and

(F) other factors determined by the commission to be relevant.

(d) Before approving a solicitation process under this section the commission:

(i) may hold a public hearing; and

(ii) shall provide an opportunity for public comment.

(e) As part of its review of a solicitation process, the commission may provide the affected electrical utility guidance on any additions or changes to its proposed solicitation process.

(f) Unless the commission determines that additional time to analyze a solicitation

process is warranted and is in the public interest, within 90 days of the day on which the affected electrical utility files a request for approval of the solicitation process, the commission shall:

- (i) approve a proposed solicitation process;
- (ii) suggest modifications to a proposed solicitation process; or
- (iii) reject a proposed solicitation process.

(3) (a) Notwithstanding Subsection (2), an affected electrical utility may acquire or construct a significant energy resource without conducting a solicitation process if the commission finds that waiving the requirement of a solicitation process is in the public interest because:

- (i) there exists:
 - (A) a clear emergency; or
 - (B) a time-limited commercial or technical opportunity that provides value to the customers of the affected electrical utility; or
- (ii) there exists a factor not described in Subsection (3)(a)(i) that makes waiving the requirement of conducting a solicitation in the public interest.

(b) To obtain a finding from the commission under Subsection (3)(a), the affected electrical utility shall file with the commission the information required by the commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(c) Unless the commission determines that additional time to analyze a request for waiver of a solicitation process is warranted and is in the public interest, within 30 days of the day on which the affected electrical utility files a request for waiver of the solicitation process, the commission shall:

- (i) approve the waiver;
- (ii) approve the waiver subject to conditions imposed by the commission; or
- (iii) reject the waiver.

(d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may define what constitutes:

- (i) a clear emergency; or

(ii) a time-limited commercial or technical opportunity.

(4) In accordance with the commission's authority under Subsection 54-12-2(2), the commission shall determine:

(a) whether this chapter or another competitive bidding procedure shall apply to a purchase of a significant energy resource by an affected electrical utility from a small power producer or cogenerator; and

(b) if this chapter applies as provided in Subsection (4)(a), the manner in which this chapter applies to a purchase of a significant energy resource by an affected electrical utility from a small power producer or cogenerator.

Section 7. Section **54-17-202** is enacted to read:

54-17-202. Requirements for solicitation.

(1) The commission shall make rules, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, outlining the requirements for a solicitation process. The rules required by this Subsection (1) shall include:

(a) the type of screening criteria an affected electrical utility may use in a solicitation process including the risks an affected electrical utility may consider;

(b) the required disclosures by an affected electrical utility if a solicitation includes a benchmark option;

(c) the required disclosures by an affected electrical utility related to the methodology the affected electrical utility uses to evaluate bids; and

(d) the participation of an independent evaluator in a manner consistent with Section 54-17-203.

(2) If an affected electrical utility is subject to regulation in more than one state regarding the acquisition, construction, or cost recovery of a significant energy resource, in making the rules required by Subsection (1), the commission may consider the impact of the multistate regulation including requirements imposed by other states as to:

(a) the solicitation process;

(b) cost recovery of resources; and

(c) methods by which the affected electrical utility may be able to mitigate the potential for cost disallowances.

Section 8. Section **54-17-203** is enacted to read:

54-17-203. Independent evaluator.

(1) (a) The commission shall:

(i) appoint an independent evaluator to monitor any solicitation conducted by an affected electrical utility under this chapter; and

(ii) oversee or direct the division to oversee the independent evaluator in monitoring any solicitation conducted by an affected electrical utility under this chapter.

(b) The commission, in accordance with Title 63, Chapter 46a, Utah Administrative Procedures Act, shall make rules setting the qualifications of an independent evaluator.

(2) The commission shall determine the method used to pay the fees and expenses for the independent evaluator which may include:

(a) the payment of a bid fee by bidders to a solicitation; or

(b) (i) requiring the affected electrical utility to pay the fees and expenses; and

(ii) permitting an affected electrical utility to recover the amounts paid under this

Subsection (2)(b).

(3) (a) The independent evaluator may not make the decision as to which bid should be awarded under the solicitation.

(b) The independent evaluator shall:

(i) actively monitor the solicitation process for fairness and compliance with commission rules;

(ii) report regularly to:

(A) the commission; and

(B) others as directed by the commission;

(iii) develop one or more reports addressing:

(A) the solicitation process;

(B) any concerns of the independent evaluator related to the solicitation process; and

(C) the ultimate results of the solicitation process, including the opinions and conclusions of the independent evaluator;

(iv) provide ongoing input regarding issues, concerns, and improvements in the solicitation process with the objective of correcting ongoing deficiencies in the solicitation process to the following:

(A) the commission;

(B) the affected electrical utility; and

(C) others as directed by the commission;

(v) render an opinion as to whether:

(A) the solicitation process is:

(I) fair; and

(II) in compliance with this part; and

(B) any modeling used by the affected electrical utility to evaluate bids is sufficient;

(vi) testify in any proceeding under Section 54-17-302; and

(vii) perform other functions and provide other input and reports as the commission may direct, including periodic presentations to interested parties regarding the solicitation process.

Section 9. Section **54-17-301** is enacted to read:

Part 3. Resource Plans and Significant Energy Resource Approval

54-17-301. Review of integrated resource plan action plans.

(1) An affected electrical utility shall file with the commission any action plan developed as part of the affected electrical utility's integrated resource plan to enable the commission to review and provide guidance to the affected electrical utility.

(2) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules providing a process for its review of an action plan.

(b) The rules required under Subsection (2)(a) shall provide sufficient flexibility to permit changes in an action plan between the periodic filings of the affected electrical utility's integrated resource plan.

Section 10. Section **54-17-302** is enacted to read:

54-17-302. Approval of a significant energy resource decision required.

(1) If pursuant to Part 2, Solicitation Process, an affected electrical utility is required to conduct a solicitation for a significant energy resource or is exempt from conducting a solicitation under Subsection 54-17-201(3), the affected electrical utility shall obtain approval of its significant energy resource decision:

(a) after the completion of the solicitation process, if the affected electrical utility is required to conduct a solicitation; and

(b) before an affected electrical utility may construct or enter into a binding agreement to acquire the significant energy resource.

(2) (a) To obtain the approval required by Subsection (1), the affected electrical utility shall file a request for approval with the commission.

(b) The request for approval required by this section shall include any information required by the commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(3) In ruling on a request for approval of a significant energy resource decision, the commission shall determine whether the significant energy resource decision:

(a) is reached in compliance with this chapter and rules made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(b) (i) is reached in compliance with the solicitation process approved by the commission in accordance with Part 2, Solicitation Process; or

(ii) is reached after the waiver of the solicitation process as provided in Subsection 54-17-201(3); and

(c) is in the public interest, taking into consideration:

(i) whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of an affected electrical utility located in this state;

(ii) long-term and short-term impacts;

(iii) risk;

(iv) reliability;

(v) financial impacts on the affected electrical utility; and

(vi) other factors determined by the commission to be relevant.

(4) The commission may not approve a significant energy resource decision under this section before holding a public hearing.

(5) Unless the commission determines that additional time to analyze a significant energy resource decision is warranted and is in the public interest, within 180 days of the day on which the affected electrical utility files a request for approval, the commission shall:

(a) approve the significant energy resource decision;

(b) approve the significant energy resource decision subject to conditions imposed by the commission; or

(c) disapprove the significant energy resource decision.

(6) The commission shall include in its order under this section:

(a) findings as to the total projected costs for construction or acquisition of an approved significant energy resource; and

(b) the basis upon which the findings described in Subsection (6)(a) are made.

(7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules regarding the process for approval of a significant energy resource decision under this section.

Section 11. Section **54-17-303** is enacted to read:

54-17-303. Cost recovery.

(1) (a) Except as otherwise provided in this section, if the commission approves a significant energy resource decision under Section 54-17-302, the commission shall, in a general rate case or other appropriate commission proceeding, include in the affected electrical utility's retail electric rates the state's share of costs:

(i) relevant to the proceeding;

(ii) incurred by the affected electrical utility in constructing or acquiring the approved significant energy resource; and

(iii) up to the projected costs specified in the commission's order issued under Section 54-17-302.

(b) Except to the extent that the commission enters an order under Section 54-17-304, an increase from the projected costs specified in the commission's order issued under Section 54-17-302 shall be subject to review by the commission as part of a rate hearing under Section 54-7-12.

(2) (a) Subsequent to the commission issuing an order described in Subsection (2)(a)(i) or (ii), the commission may disallow some or all costs incurred in connection with an approved significant energy resource decision if the commission finds that an affected electrical utility's actions in implementing an approved significant energy resource decision are not prudent because of new information or changed circumstances that occur after:

(i) the commission's approval of the significant energy resource decisions under Section 54-17-302; or

(ii) a commission order to proceed under Section 54-17-304.

(b) In making a determination of prudence under Subsection (2)(a), the commission shall use the standards identified in Section 54-4-4.

(3) Notwithstanding any other provision of this chapter, the commission may disallow some or all of the costs incurred by an affected electrical utility in connection with an approved significant energy resource decision upon a finding by the commission that the affected electrical utility is responsible for a material misrepresentation or concealment in connection with an approval process under this chapter.

Section 12. Section **54-17-304** is enacted to read:

54-17-304. Order to proceed.

(1) (a) In the event of a change in circumstances or projected costs, an affected electrical utility may seek a commission review and determination of whether the affected electrical utility should proceed with the implementation of an approved significant energy resource decision.

(b) In making a determination under this Subsection (1), the commission shall use the standards identified in Subsection 54-17-302(3)(c).

(c) Before making a determination under this Subsection (1) the commission:

(i) may hold a public hearing; and

(ii) shall provide an opportunity for public comment.

(2) Unless the commission determines that additional time is warranted and is in the public interest, within 60 days of the day on which the affected electrical utility files a request for commission review and determination under this section, the commission shall:

(a) issue an order:

(i) determining that the affected electrical utility should proceed with the implementation of the significant energy resource decision;

(ii) making findings as to the total projected costs for construction or acquisition of the approved significant energy resource; and

(iii) stating the basis upon which the findings described in Subsection (2)(a)(ii) are made;

or

(b) issue an order determining that the affected electrical utility should not proceed with the implementation of the significant energy resource decision.

(3) If the commission determines that the affected electrical utility should proceed with the implementation of the approved significant energy resource decision, the commission shall, in a general rate case or other appropriate commission proceeding, include in the affected electrical utility's retail electric rates the state's share of costs:

(a) relevant to that proceeding;

(b) incurred by the affected electrical utility in constructing or acquiring the approved significant energy resource; and

(c) up to the projected costs as specified in the commission's order issued under Subsection (2)(a).

(4) If the commission determines that the affected electrical utility should not proceed with the implementation of the approved significant energy resource decision, the commission shall, in a general rate case or other appropriate commission proceeding, include in the affected electrical utility's retail electric rates the state's share of costs:

(a) relevant to that proceeding; and

(b) incurred by the affected electrical utility in constructing or acquiring the approved significant energy resource before issuance of a determination not to proceed, including any prudently incurred costs of terminating the approved significant energy resource decision.

(5) A commission order under this section not to proceed with the implementation of a significant energy resource may not prejudice:

(a) the right of an affected electrical utility to:

(i) continue to implement the significant energy resource decision; and

(ii) seek recovery of costs incurred after a determination not to proceed in a future rate proceeding; or

(b) the right of any other party to support or oppose recovery of costs sought under Subsection (5)(a)(ii).

(6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules regarding the process for the commission's review and determination on a request for an order to proceed under this section.

Section 13. Section **54-17-401** is enacted to read:

Part 4. Voluntary Request for Resource Decision Review

54-17-401. Definitions.

As used in this part:

(1) "Energy utility" means one of the following with 200,000 retail customers in the state:

(a) an electrical corporation; or

(b) a gas corporation.

(2) (a) "Resource decision" means a decision, other than a decision to construct or acquire a significant energy resource, involving:

(i) an energy utility's acquisition, management, or operation of energy production, processing, transmission, or distribution facilities or processes including:

(A) a facility or process for the efficient, reliable, or safe provision of energy to retail

customers; or

(B) an energy efficiency and conservation program; or

(ii) a decision determined by the commission to be appropriate for review under this part.

(b) The commission may adopt rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to specify the nature of resource decisions subject to approval under Section 54-17-402.

Section 14. Section **54-17-402** is enacted to read:

54-17-402. Request for review of resource decision.

(1) Beginning on the effective date of this bill, before implementing a resource decision, an energy utility may request that the commission approve all or part of a resource decision in accordance with this part.

(2) (a) To obtain the approval permitted by Subsection (1), the energy utility shall file a request for approval with the commission.

(b) The request for approval required by this section shall include any information required by the commission by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(3) In ruling on a request for approval of a resource decision, the commission shall determine whether the decision:

(a) is reached in compliance with this chapter and rules made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

(b) is in the public interest, taking into consideration:

(i) whether it will most likely result in the acquisition, production, and delivery of utility services at the lowest reasonable cost to the retail customers of an energy utility located in this state;

(ii) long-term and short-term impacts;

(iii) risk;

(iv) reliability;

(v) financial impacts on the energy utility; and

(vi) other factors determined by the commission to be relevant.

(4) (a) If the commission approves a proposed resource decision only in part, the commission shall explain in the order issued under this section why the commission does not approve the resource decision in total.

(b) Recovery of expenses incurred in connection with parts of a resource decision that are not approved is subject to the review of the commission as part of a rate hearing under Section 54-7-12.

(5) The commission may not approve a resource decision in whole or in part under this section before holding a public hearing.

(6) Unless the commission determines that additional time to analyze a resource decision is warranted and is in the public interest, within 180 days of the day on which the energy utility files a request for approval, the commission shall:

(a) approve all or part of the resource decision;

(b) approve all or part of the resource decision subject to conditions imposed by the commission; or

(c) disapprove all or part of the resource decision.

(7) The commission shall include in its order under this section:

(a) findings as to the approved projected costs of a resource decision; and

(b) the basis upon which the findings described in Subsection (7)(a) are made.

(8) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules regarding the process for approval of a resource decision under this section.

Section 15. Section **54-17-403** is enacted to read:

54-17-403. Cost recovery.

(1) (a) Except as otherwise provided in this section, if the commission approves any portion of an energy utility's resource decision under Section 54-17-402, the commission shall, in a general rate case or other appropriate commission proceeding, include in the energy utility's retail rates the state's share of costs:

(i) relevant to that proceeding;
(ii) incurred by the energy utility in implementing the approved resource decision; and
(iii) up to the projected costs specified in the commission's order issued under Section 54-17-402.

(b) Except to the extent that the commission issues an order under Section 54-17-404, any increase from the projected costs specified in the commission's order issued under Section 54-17-402 shall be subject to review by the commission as part of a rate hearing under Section 54-7-12.

(2) (a) Subsequent to the commission issuing an order described in Subsection (2)(a)(i) or (ii), the commission may disallow some or all costs incurred in connection with an approved resource decision if the commission finds that an energy utility's actions in implementing an approved resource decision are not prudent because of new information or changed circumstances that occur after:

- (i) the commission approves the resource decision under Section 54-17-402; or
- (ii) the commission issues an order to proceed under Section 54-17-404.

(b) In making a determination of prudence under Subsection (2)(a), the commission shall use the standards identified in Section 54-4-4.

(3) Notwithstanding any other provision of this chapter, the commission may disallow some or all of the costs incurred by an energy utility in connection with an approved resource decision upon a finding by the commission that the energy utility is responsible for a material misrepresentation or concealment in connection with an approval process under this chapter.

Section 16. Section **54-17-404** is enacted to read:

54-17-404. Order to proceed.

(1) (a) In the event of a change in circumstances or projected costs, an energy utility may seek a commission review and determination of whether the energy utility should proceed with the implementation of an approved resource decision.

(b) In making a determination under this Subsection (1), the commission shall use the standards identified in Subsection 54-17-402(3)(b).

(c) Before making a determination under this Subsection (1) the commission:

(i) may hold a public hearing; and

(ii) shall provide an opportunity for public comment.

(2) Unless the commission determines that additional time is warranted and is in the public interest, within 60 days of the day on which the energy utility files a request for commission review and determination under this section, the commission shall:

(a) issue an order:

(i) determining that the energy utility should proceed with the implementation of the resource decision;

(ii) making findings as to the total projected costs of the approved resource decision; and

(iii) stating the basis upon which the findings described in Subsection (2)(a)(ii) are made;

or

(b) issue an order determining that the energy utility should not proceed with the implementation of the resource decision.

(3) If the commission determines that the energy utility should proceed with the implementation of the approved resource decision, the commission shall, in a general rate case or other appropriate commission proceeding, include in the energy utility's retail rates the state's share of costs:

(a) relevant to that proceeding;

(b) incurred by the energy utility in implementing the approved resource decision; and

(c) up to the projected costs as specified in the commission's order issued under Subsection (2)(a).

(4) If the commission determines that the energy utility should not proceed with the implementation of the approved resource decision, the commission shall, in a general rate case or other appropriate commission proceeding, include in the energy utility's retail rates the state's share of costs:

(a) relevant to that proceeding; and

(b) incurred by the energy utility in implementing the approved resource decision before

issuance of a determination not to proceed, including any prudently incurred costs of terminating the approved resource decision.

(5) A commission order under this section not to proceed with the implementation of a resource decision may not prejudice:

(a) the right of an energy utility to:

(i) continue to implement the resource decision; and

(ii) seek recovery of costs incurred after a determination not to proceed in a future rate proceeding; or

(b) the right of any other party to support or oppose the recovery sought under Subsection (5)(a)(ii).

(6) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules regarding the process for the commission's review and determination on a request for an order to proceed under this section.

Section 17. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Section 18. Revisor instructions.

It is the intent of the Legislature that the Office of Legislative Research and General Counsel in preparing the Utah Code database for publication replace the references to "the effective date of this bill" in Subsections 54-17-201(1) and 54-17-402(1) with the effective date of the bill.