

1 **PUBLIC UTILITIES AMENDMENTS**

2 2005 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Gregory S. Bell**

5

6 **LONG TITLE**

7 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ addresses prudence;
- 13 ▶ addresses certificates of convenience and necessity;
- 14 ▶ enacts the New Energy Resource Procurement Act;
- 15 ▶ defines terms;
- 16 ▶ establishes requirements for a solicitation process for a significant energy resource
17 of an affected electrical utility;
- 18 ▶ provides for the review of action plans under an affected electrical utility's
19 integrated resource plan;
- 20 ▶ provides for the approval of a significant energy resource decision;
- 21 ▶ provides for cost recovery of a prudent significant energy resource decision;
- 22 ▶ permits an energy utility to request approval of a resource decision;
- 23 ▶ provides for cost recovery of a prudent resource decision;
- 24 ▶ grants the commission rulemaking authority; and
- 25 ▶ makes technical changes.

26 **Monies Appropriated in this Bill:**

27 None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **54-4-4**, as last amended by Chapter 200, Laws of Utah 2003

33 **54-4-25**, as last amended by Chapter 286, Laws of Utah 2002

34 ENACTS:

35 **54-17-101**, Utah Code Annotated 1953

36 **54-17-102**, Utah Code Annotated 1953

37 **54-17-201**, Utah Code Annotated 1953

38 **54-17-202**, Utah Code Annotated 1953

39 **54-17-203**, Utah Code Annotated 1953

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

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

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

43 **54-17-401**, Utah Code Annotated 1953

44 **54-17-402**, Utah Code Annotated 1953

45 **54-17-403**, Utah Code Annotated 1953

46 **54-17-404**, Utah Code Annotated 1953



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

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

50 **54-4-4. Classification and fixing of rates after hearing.**

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

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

58 (A) unjust;

- 59 (B) unreasonable;
- 60 (C) discriminatory;
- 61 (D) preferential; or
- 62 (E) otherwise in violation of any provisions of law; or
- 63 (ii) the rates, fares, tolls, rentals, charges, or classifications described in Subsection
- 64 (1)(a)(i) are insufficient.
- 65 (b) If the commission makes a finding described in Subsection (1)(a), the commission
- 66 shall:
- 67 (i) determine the just, reasonable, or sufficient rates, fares, tolls, rentals, charges,
- 68 classifications, rules, regulations, practices, or contracts to be thereafter observed and in force;
- 69 and
- 70 (ii) fix the determination described in Subsection (1)(b)(i) by order as provided in this
- 71 section.
- 72 (2) The commission may:
- 73 (a) investigate:
- 74 (i) one or more rates, fares, tolls, rentals, charges, classifications, rules, regulations,
- 75 contracts, or practices of any public utility; or
- 76 (ii) one or more schedules of rates, fares, tolls, rentals, charges, classifications, rules,
- 77 regulations, contracts, or practices of any public utility; and
- 78 (b) establish, after hearing, new rates, fares, tolls, rentals, charges, classifications, rules,
- 79 regulations, contracts, practices, or schedules in lieu of them.
- 80 (3) (a) If in the commission's determination of just and reasonable rates the
- 81 commission uses a test period, the commission shall select a test period that, on the basis of
- 82 evidence, the commission finds best reflects the conditions that a public utility will encounter
- 83 during the period when the rates determined by the commission will be in effect.
- 84 (b) In establishing the test period determined in Subsection (3)(a), the commission may
- 85 use:
- 86 (i) a future test period that is determined on the basis of projected data not exceeding
- 87 20 months from the date a proposed rate increase or decrease is filed with the commission
- 88 under Section 54-7-12;
- 89 (ii) a test period that is:

- 90 (A) determined on the basis of historic data; and
- 91 (B) adjusted for known and measurable changes; or
- 92 (iii) a test period that is determined on the basis of a combination of:
 - 93 (A) future projections; and
 - 94 (B) historic data.
- 95 (c) If pursuant to this Subsection (3), the commission establishes a test period that is
- 96 not determined exclusively on the basis of future projections, in determining just and
- 97 reasonable rates the commission shall consider changes outside the test period that:
 - 98 (i) occur during a time period that is close in time to the test period;
 - 99 (ii) are known in nature; and
 - 100 (iii) are measurable in amount.
- 101 (4) (a) The commission shall make a prudence determination on the basis of the factors
- 102 listed in Subsection (4)(b):
 - 103 (i) if, in the commission's determination of just, reasonable, or sufficient rates, the
 - 104 commission considers the prudence of an action taken by a public utility; or
 - 105 (ii) when the commission makes a prudence determination in connection with:
 - 106 (A) a significant energy resource decision under Chapter 17, Part 3, Resource Plans
 - 107 and Significant Energy Resource Approval; or
 - 108 (B) a resource decision under Chapter 17, Part 4, Voluntary Request for Prudence
 - 109 Review.
 - 110 (b) In making a prudence determination described in Subsection (4)(a), the commission
 - 111 shall make its prudence determination on the basis of:
 - 112 (i) focusing on the reasonableness of the expense resulting from the action of the
 - 113 public utility judged as of the time it was taken, or is proposed to be taken;
 - 114 (ii) determining whether a reasonable utility, knowing what the utility knew or
 - 115 reasonably should know at the time of the action, reasonably incurred, or should reasonably
 - 116 incur, all or some portion of the expense, in taking the same or some other action;
 - 117 (iii) finding that the public utility action taken, or proposed to be taken is consistent
 - 118 with providing utility services at the lowest reasonable cost to the retail consumers of a public
 - 119 utility located in this state considering:
 - 120 (A) long-term and short-term impacts;

121 (B) risk;
122 (C) reliability;
123 (D) the confidence in the financial integrity of the public utility; and
124 (E) the public interest; and
125 (iv) any other factors determined by the commission to be relevant, consistent with this
126 section.

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

128 **54-4-25. Certificate of convenience and necessity prerequisite to construction and**
129 **operation -- Electrical suppliers.**

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

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

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

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

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

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

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

152 municipal, or other public authority.

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

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

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

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

164 (c) The commission may, after a hearing:

165 (i) issue the certificate as requested;

166 (ii) refuse to issue the certificate; or

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

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

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

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

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

180 (5) (a) Any supplier of electricity which is brought under the jurisdiction and regulation
181 of the Public Service Commission by this [act] title may file with the commission an
182 application for a certificate of convenience and necessity, giving the applicant the exclusive

183 right to serve the customers it is serving in the area in which it is serving at the time of this
184 filing, subject to the existing right of any other electrical corporation to likewise serve its
185 customers in existence in the area at the time.

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

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

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

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

201 (7) The commission shall consolidate an action filed under Chapter 17, Part 3 or 4,
202 with a proceeding under this section if:

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

205 (b) the public utility has filed an action under Chapter 17, Part 3 or 4.

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

207 **CHAPTER 17. ENERGY RESOURCE PROCUREMENT ACT**

208 **Part 1. General Provisions**

209 **54-17-101. Title.**

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

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

212 **54-17-102. Definitions.**

213 As used in this chapter:

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

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

218 (a) could be constructed or owned by:

219 (i) an affected electrical utility; or

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

221 (b) may be a purchase of:

222 (i) electricity;

223 (ii) electric generating capacity; or

224 (iii) electricity and electric generating capacity.

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

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

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

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

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

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

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

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

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

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

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

244 (i) electricity;

- 245 (ii) electric generating capacity; or
 246 (iii) electricity and electrical generating capacity;
 247 (c) the purchase or lease by an electrical utility from an affiliated company of:
 248 (i) a generating facility;
 249 (ii) electricity;
 250 (iii) electrical generating capacity; or
 251 (iv) electricity and electrical generating capacity;
 252 (d) a contract with an option for the affected electrical utility or an affiliate to purchase
 253 a resource that consists of not less than 100 megawatts or more of new generating capacity that
 254 has a remaining dependable life of ten or more years; or
 255 (e) a type of resource designated by the commission as a significant energy resource in
 256 rules made by the commission in accordance with Title 63, Chapter 46a, Utah Administrative
 257 Rulemaking Act, if the commission determines that a new type of resource is appropriate and
 258 consistent with changes to the resource types outlined in the affected electrical utility's
 259 integrated resource plan.
- 260 (5) "Solicitation" means a request for proposals or other invitation for persons to
 261 submit a bid or proposal through an open bid process to select for construction or acquisition of
 262 a significant energy resource.

263 Section 5. Section **54-17-201** is enacted to read:

264 **Part 2. Solicitation Process**

265 **54-17-201. Solicitation process required -- Exception.**

- 266 (1) (a) An affected electrical utility shall comply with this chapter to acquire or
 267 construct a significant energy resource after May 2, 2005.
- 268 (b) This chapter does not apply to a significant energy resource for which the affected
 269 electrical utility has issued a solicitation before January 1, 2005.
- 270 (2) (a) Except as provided in Subsection (3), to acquire or construct a significant
 271 energy resource, an affected electrical utility shall conduct a solicitation process that is
 272 approved by the commission.
- 273 (b) To obtain the approval of the commission of a solicitation process, the affected
 274 electrical utility shall file with the commission a request for approval that includes:
 275 (i) a description of the solicitation process the affected electrical utility will use;

276 (ii) a complete proposed solicitation; and
277 (iii) any other information the commission requires by rule made in accordance with
278 Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

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

- 281 (i) complies with this chapter;
- 282 (ii) is in the public interest; and
- 283 (iii) will most likely result in the acquisition or production of electricity and electric
284 services at the lowest reasonable cost to the retail customers of an affected electrical utility
285 located in this state after taking into consideration:

- 286 (A) long-term and short-term impacts;
- 287 (B) risk;
- 288 (C) reliability;
- 289 (D) the confidence in the financial integrity of the affected electrical utility; and
- 290 (E) other factors determined by the commission to be relevant.
- 291 (d) The commission shall hold a public hearing before approving a solicitation process
292 under this section.

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

295 (3) (a) Notwithstanding Subsection (2), an affected electrical utility may acquire or
296 construct a significant energy resource without conducting a solicitation process if the
297 commission finds that:

- 298 (i) there exists:
 - 299 (A) a clear emergency; or
 - 300 (B) a time-limited commercial or technical opportunity that:
 - 301 (I) provides value to the customers of the affected electrical utility; or
 - 302 (II) is in the public interest; and
 - 303 (ii) waiving the requirement of conducting a solicitation is in the public interest.

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

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

309 (i) a clear emergency; or

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

311 Section 6. Section **54-17-202** is enacted to read:

312 **54-17-202. Requirements for solicitation.**

313 (1) The commission shall make rules, in accordance with Title 63, Chapter 46a, Utah
314 Administrative Rulemaking Act, that outline the requirements for a solicitation process
315 approved under this part.

316 (2) The rules required by Subsection (1) shall include:

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

319 (b) the required disclosures by an affected electrical utility if a solicitation includes a
320 benchmark option which disclosures shall be sufficient to allow an industry experienced bidder
321 to make its best initial offer;

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

324 (d) the participation of an independent evaluator in a manner consistent with Section
325 54-17-203.

326 (3) If an affected electrical utility is subject to regulation in more than one state
327 regarding the acquisition or construction of a significant energy resource, in making the rules
328 required by Subsection (1), the commission shall consider the impact of the multistate
329 regulation including requirements imposed by other states as to the solicitation process and cost
330 recovery of resources.

331 Section 7. Section **54-17-203** is enacted to read:

332 **54-17-203. Independent evaluator.**

333 (1) (a) The commission shall:

334 (i) appoint an independent evaluator to oversee any solicitation conducted by an
335 affected electrical utility under this chapter; or

336 (ii) direct the division to appoint an independent evaluator to oversee any solicitation
337 conducted by an affected electrical utility under this chapter.

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

340 (ii) The division shall comply with commission rules in appointing an independent
341 evaluator.

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

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

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

346 (ii) permitting an affected electrical utility to recover the amounts paid under this
347 Subsection (2)(b).

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

350 (b) The independent evaluator shall:

351 (i) participate actively in the solicitation process;

352 (ii) monitor the solicitation process for fairness;

353 (iii) report regularly to:

354 (A) the commission;

355 (B) at the direction of the commission, to the division; or

356 (C) at the direction of the commission, to both the commission and the division;

357 (iv) develop one or more reports addressing:

358 (A) the solicitation process;

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

360 (C) the ultimate results of the solicitation process;

361 (v) provide ongoing input to the commission and the affected electrical utility
362 regarding issues, concerns, and improvements in the solicitation process with the objective of
363 correcting ongoing deficiencies in the solicitation process;

364 (vi) render an opinion as to whether:

365 (A) the solicitation process is:

366 (I) fair; and

367 (II) in compliance with this part; and

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

369 and

370 (vii) testify in any proceeding under Section 54-17-302.

371 Section 8. Section **54-17-301** is enacted to read:

372 **Part 3. Resource Plans and Significant Energy Resource Approval**

373 **54-17-301. Review of integrated resource plan action plans.**

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

377 (2) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
378 the commission shall make rules regarding its review of action plans under this section.

379 (b) Rules made under this section shall provide sufficient flexibility to permit changes
380 in an action plan between the periodic filings of the affected electrical utility's integrated
381 resource plan.

382 Section 9. Section **54-17-302** is enacted to read:

383 **54-17-302. Approval of a significant energy resource decision required.**

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

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

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

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

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

397 (3) (a) The commission shall approve an affected electrical utility's significant energy
398 resource decision if it finds that:

399 (i) the affected electrical utility:

400 (A) complied with the solicitation process approved by the commission in accordance
401 with Part 2, Solicitation Process; or

402 (B) is not required to use a solicitation process as provided in Subsection
403 54-17-201(3); and

404 (ii) all or part of the significant energy resource decision of the affected electrical
405 utility is prudent.

406 (b) If the commission finds that only part of the significant energy resource decision is
407 prudent:

408 (i) the commission may:

409 (A) find that part of the significant energy resource decision is not prudent; or

410 (B) postpone to a later time a finding as to whether a part of the significant energy
411 resource decision is prudent;

412 (ii) the commission shall explain in the order issued under this section why the
413 commission did not find that all of the significant energy resource decision is prudent; and

414 (iii) that portion for which the commission postponed a determination of whether it is
415 prudent is subject to the review of the commission as part of a rate hearing under Section
416 54-7-12.

417 (c) The commission may not take an action described in Subsection (3)(a) before
418 holding a public hearing related to taking an action under this Subsection (3).

419 Section 10. Section **54-17-303** is enacted to read:

420 **54-17-303. Cost recovery.**

421 (1) (a) Except as otherwise provided in this section, if the commission finds any
422 portion of an affected electrical utility's significant energy resource decision to be prudent
423 under Section 54-17-302, the affected electrical utility shall recover in rates the actual costs
424 related to the portion of the significant energy resource decision found to be prudent up to the
425 total costs:

426 (i) determined after an economic analysis of the approved significant energy resource
427 decision; and

428 (ii) approved by the commission.

429 (b) An affected electrical utility may recover any costs incurred in reliance on a finding
430 by the commission that all or any portion of an approved significant energy resource is prudent.

431 (c) Any variance from the costs approved under this Subsection (1) shall be subject to
432 the review by the commission as part of a rate hearing under Section 54-7-12.

433 (2) Notwithstanding Subsection (1), an affected electrical utility may not recover costs
434 incurred because of imprudence in any future action or decision relating to the acquisition or
435 construction of an approved significant energy resource.

436 (3) An affected electrical utility may seek periodic confirmation of the ongoing
437 prudence of an approved significant energy resource decision.

438 (4) The commission is to determine the manner in which the costs of the portions of an
439 approved significant energy resource decision that are found prudent should be recovered.

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

441 **Part 4. Voluntary Request for Prudence Review**

442 **54-17-401. Definitions.**

443 As used in this part:

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

446 (a) an electrical corporation when making a decision to construct or acquire a resource
447 other than a significant energy resource; or

448 (b) a gas corporation.

449 (2) "Resource decision " means any decision affecting the business of an energy utility
450 subject to the jurisdiction of the commission.

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

452 **54-17-402. Request for prudence review of resource decision.**

453 (1) (a) Beginning July 1, 2005, before implementing a resource decision, an energy
454 utility may request that the commission find all or part of the resource decision prudent in
455 accordance with this part.

456 (b) If the commission finds that only part of the resource decision is prudent:

457 (i) the commission may:

458 (A) find that part of the resource decision is not prudent; or

459 (B) postpone to a later time a finding as to whether a part of the resource decision is
460 prudent;

461 (ii) the commission shall explain in the order issued under this section why the

462 commission did not find that all of the resource decision is prudent; and

463 (iii) that portion for which the commission postponed a determination of whether it is
464 prudent is subject to the review of the commission as part of a rate hearing under Section
465 54-7-12.

466 (c) The commission may not take an action described in Subsection (1)(a) before
467 holding a public hearing related to taking an action under this Subsection (1).

468 (2) To obtain a prudence review of a resource decision, the energy utility shall file a
469 request for a prudence review with the commission accompanied by the information required
470 by rule made by the commission in accordance with Title 63, Chapter 46a, Utah Administrative
471 Rulemaking Act.

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

473 **54-17-403. Cost recovery.**

474 (1) (a) Except as otherwise provided in this section, if the commission finds any
475 portion of an energy utility's resource decision to be prudent under Section 54-17-402, the
476 energy utility shall recover in rates the actual costs related to the portion of the resource
477 decision found to be prudent up to the total costs:

478 (i) determined after an economic analysis of the resource decision; and

479 (ii) approved by the commission.

480 (b) An energy utility may recover any costs incurred in reliance on a finding by the
481 commission that all or any portion of a energy resource is prudent.

482 (c) Any variance from the costs approved under this Subsection (1) shall be subject to
483 the review by the commission as part of a rate hearing under Section 54-7-12.

484 (2) Notwithstanding Subsection (1), an energy utility may not recover costs incurred
485 because of imprudence in any future action or decision relating to the resource decision.

486 (3) An energy utility may seek periodic confirmation of the ongoing prudence of a
487 resource decision.

488 (4) The commission is to determine the manner in which costs of the portions of a
489 resource decision that are found prudent should be recovered.

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

491 **54-17-404. Commission to make rules for prudence review.**

492 In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and

493 subject to the requirements of this part, the commission shall make rules providing a process by
494 which an energy utility may obtain an order of the commission:

495 (1) finding all or part of a resource decision to be prudent in accordance with Section
496 54-17-402; and

497 (2) addressing cost recovery in accordance with Section 54-17-403.

Legislative Review Note
as of 12-7-04 8:43 AM

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

Legislative Committee Note
as of 12-08-04 10:34 AM

The Energy Policy Task Force recommended this bill.

State Impact

Implementation costs can be handled within existing budgets.

Individual and Business Impact

Business implementation costs may be passed on to consumers. No reliable estimate is available of the net cost/benefit to consumers.

Office of the Legislative Fiscal Analyst