

Senator Gregory S. Bell proposes the following substitute bill:

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;



- 26 ▶ addresses orders to proceed implementing a resource decision; and
- 27 ▶ makes technical changes.

28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill provides an immediate effective date.

32 This bill provides revisor instructions.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **54-4-4**, as last amended by Chapter 200, Laws of Utah 2003

36 **54-4-25**, as last amended by Chapter 286, Laws of Utah 2002

37 ENACTS:

38 **54-17-101**, Utah Code Annotated 1953

39 **54-17-102**, Utah Code Annotated 1953

40 **54-17-103**, Utah Code Annotated 1953

41 **54-17-201**, Utah Code Annotated 1953

42 **54-17-202**, Utah Code Annotated 1953

43 **54-17-203**, Utah Code Annotated 1953

44 **54-17-301**, Utah Code Annotated 1953

45 **54-17-302**, Utah Code Annotated 1953

46 **54-17-303**, Utah Code Annotated 1953

47 **54-17-304**, Utah Code Annotated 1953

48 **54-17-401**, Utah Code Annotated 1953

49 **54-17-402**, Utah Code Annotated 1953

50 **54-17-403**, Utah Code Annotated 1953

51 **54-17-404**, Utah Code Annotated 1953



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

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

55 **54-4-4. Classification and fixing of rates after hearing.**

56 (1) (a) The commission shall take an action described in Subsection (1)(b), if the

57 commission finds after a hearing that:

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

63 (A) unjust;

64 (B) unreasonable;

65 (C) discriminatory;

66 (D) preferential; or

67 (E) otherwise in violation of any provisions of law; or

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

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

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

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

77 (2) The commission may:

78 (a) investigate:

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

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

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

85 (3) (a) If in the commission's determination of just and reasonable rates the
86 commission uses a test period, the commission shall select a test period that, on the basis of
87 evidence, the commission finds best reflects the conditions that a public utility will encounter

88 during the period when the rates determined by the commission will be in effect.

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

91 (i) a future test period that is determined on the basis of projected data not exceeding
92 20 months from the date a proposed rate increase or decrease is filed with the commission
93 under Section 54-7-12;

94 (ii) a test period that is:

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

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

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

98 (A) future projections; and

99 (B) historic data.

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

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

104 (ii) are known in nature; and

105 (iii) are measurable in amount.

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

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

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

114 (iii) determine whether a reasonable utility, knowing what the utility knew or
115 reasonably should have known at the time of the action, would reasonably have incurred all or
116 some portion of the expense, in taking the same or some other prudent action; and

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

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

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

122 **54-4-25. Certificate of convenience and necessity prerequisite to construction and**
123 **operation -- Electrical suppliers.**

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

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

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

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

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

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

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

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

149 (A) receipt of the consent, franchise, or permit within the time period the commission

150 may direct; and

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

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

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

159 (i) issue the certificate as requested;

160 (ii) refuse to issue the certificate; or

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

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

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

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

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

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

180 (b) The application shall be prima facie evidence of the applicant's rights to a

181 certificate, and the certificate shall be issued within 30 days after the filing, pending which,
182 however, the applicant shall have the right to continue its operations.

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

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

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

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

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

199 (b) the public utility files an action under Chapter 17, Part 3 or 4.

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

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

202 **Part 1. General Provisions**

203 **54-17-101. Title.**

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

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

206 **54-17-102. Definitions.**

207 As used in this chapter:

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

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

- 212 (a) could be constructed or owned by:
213 (i) an affected electrical utility; or
214 (ii) an affiliate of an affected electrical utility; or
215 (b) may be a purchase of:
216 (i) electricity;
217 (ii) electric generating capacity; or
218 (iii) electricity and electric generating capacity.
219 (3) "Integrated resource plan" means a plan that contains:
220 (a) the demand and energy forecast by the affected electrical utility for at least a
221 ten-year period;
222 (b) the affected electrical utility's options for meeting the requirements shown in its
223 load and resource forecast in an economic and reliable manner, including:
224 (i) demand-side and supply-side options; and
225 (ii) a brief description and summary cost-benefit analysis, if available, of each option
226 that was considered;
227 (c) the affected electrical utility's assumptions and conclusions with respect to the
228 effect of the plan on the cost and reliability of energy service;
229 (d) a description of the external environmental and economic consequences of the plan
230 to the extent practicable; and
231 (e) any other data and analyses as the commission may require.
232 (4) "Significant energy resource" for an affected electrical utility means a resource that
233 consists of:
234 (a) a total of 100 megawatts or more of new generating capacity that has a dependable
235 life of ten or more years;
236 (b) a purchase of the following if the contract is for a term of ten or more years and not
237 less than 100 megawatts:
238 (i) electricity;
239 (ii) electric generating capacity; or
240 (iii) electricity and electrical generating capacity;
241 (c) the purchase or lease by an affected electrical utility from an affiliated company of:
242 (i) a generating facility;

- 243 (ii) electricity;
244 (iii) electrical generating capacity; or
245 (iv) electricity and electrical generating capacity;
246 (d) a contract with an option for the affected electrical utility or an affiliate to purchase
247 a resource that consists of not less than 100 megawatts or more of new generating capacity that
248 has a remaining dependable life of ten or more years; or
249 (e) a type of resource designated by the commission as a significant energy resource in
250 rules made by the commission in accordance with Title 63, Chapter 46a, Utah Administrative
251 Rulemaking Act, after considering the affected electrical utility's integrated resource plan and
252 action plan.

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

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

257 **54-17-103. Rulemaking.**

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

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

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

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

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

273 **Part 2. Solicitation Process**

274 **54-17-201. Solicitation process required -- Exception.**

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

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

280 (2) (a) Except as provided in Subsection (3), to acquire or construct a significant
281 energy resource, an affected electrical utility shall conduct a solicitation process that is
282 approved by the commission.

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

285 (i) a description of the solicitation process the affected electrical utility will use;

286 (ii) a complete proposed solicitation; and

287 (iii) any other information the commission requires by rule made in accordance with
288 Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

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

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

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

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

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

298 (C) risk;

299 (D) reliability;

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

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

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

303 (i) may hold a public hearing; and

304 (ii) shall provide an opportunity for public comment.

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

308 (f) Unless the commission determines that additional time to analyze a solicitation
309 process is warranted and is in the public interest, within 90 days of the day on which the
310 affected electrical utility files a request for approval of the solicitation process, the commission
311 shall:

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

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

- 319 (i) there exists:
320 (A) a clear emergency; or
321 (B) a time-limited commercial or technical opportunity that provides value to the
322 customers of the affected electrical utility; or

323 (ii) there exists a factor not described in Subsection (3)(a)(i) that makes waiving the
324 requirement of conducting a solicitation in the public interest.

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

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

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

335 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

336 commission may define what constitutes:

337 (i) a clear emergency; or

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

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

340 commission shall determine:

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

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

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

348 **54-17-202. Requirements for solicitation.**

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

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

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

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

358 (d) the participation of an independent evaluator in a manner consistent with Section
359 54-17-203.

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

364 (a) the solicitation process;

365 (b) cost recovery of resources; and

366 (c) methods by which the affected electrical utility may be able to mitigate the potential

367 for cost disallowances.

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

369 **54-17-203. Independent evaluator.**

370 (1) (a) The commission shall:

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

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

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

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

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

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

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

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

385 (b) The independent evaluator shall:

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

388 (ii) report regularly to:

389 (A) the commission; and

390 (B) others as directed by the commission;

391 (iii) develop one or more reports addressing:

392 (A) the solicitation process;

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

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

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

398 process to the following:

399 (A) the commission;

400 (B) the affected electrical utility; and

401 (C) others as directed by the commission;

402 (v) render an opinion as to whether:

403 (A) the solicitation process is:

404 (I) fair; and

405 (II) in compliance with this part; and

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

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

408 (vii) perform other functions and provide other input and reports as the commission

409 may direct, including periodic presentations to interested parties regarding the solicitation

410 process.

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

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

413 **54-17-301. Review of integrated resource plan action plans.**

414 (1) An affected electrical utility shall file with the commission any action plan

415 developed as part of the affected electrical utility's integrated resource plan to enable the

416 commission to review and provide guidance to the affected electrical utility.

417 (2) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

418 the commission shall make rules providing a process for its review of an action plan.

419 (b) The rules required under Subsection (2)(a) shall provide sufficient flexibility to

420 permit changes in an action plan between the periodic filings of the affected electrical utility's

421 integrated resource plan.

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

423 **54-17-302. Approval of a significant energy resource decision required.**

424 (1) If pursuant to Part 2, Solicitation Process, an affected electrical utility is required to

425 conduct a solicitation for a significant energy resource or is exempt from conducting a

426 solicitation under Subsection 54-17-201(3), the affected electrical utility shall obtain approval

427 of its significant energy resource decision:

428 (a) after the completion of the solicitation process, if the affected electrical utility is

429 required to conduct a solicitation; and

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

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

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

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

439 (a) is reached in compliance with this chapter and rules made in accordance with Title
440 63, Chapter 46a, Utah Administrative Rulemaking Act;

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

443 (ii) is reached after the waiver of the solicitation process as provided in Subsection
444 54-17-201(3); and

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

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

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

450 (iii) risk;

451 (iv) reliability;

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

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

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

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

459 (a) approve the significant energy resource decision;

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

462 (c) disapprove the significant energy resource decision.

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

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

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

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

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

471 **54-17-303. Cost recovery.**

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

476 (i) relevant to the proceeding;

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

479 (iii) up to the projected costs specified in the commission's order issued under Section
480 54-17-302.

481 (b) Except to the extent that the commission enters an order under Section 54-17-304,
482 an increase from the projected costs specified in the commission's order issued under Section
483 54-17-302 shall be subject to review by the commission as part of a rate hearing under Section
484 54-7-12.

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

490 (i) the commission's approval of the significant energy resource decisions under

491 Section 54-17-302; or

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

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

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

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

501 **54-17-304. Order to proceed.**

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

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

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

509 (i) may hold a public hearing; and

510 (ii) shall provide an opportunity for public comment.

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

514 (a) issue an order:

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

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

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

521 (b) issue an order determining that the affected electrical utility should not proceed

522 with the implementation of the significant energy resource decision.

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

527 (a) relevant to that proceeding;

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

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

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

536 (a) relevant to that proceeding; and

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

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

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

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

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

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

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

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

552 **Part 4. Voluntary Request for Resource Decision Review**

553 **54-17-401. Definitions.**

554 As used in this part:

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

557 (a) an electrical corporation; or

558 (b) a gas corporation.

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

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

563 (i) a facility or process for the efficient, reliable, or safe provision of energy to retail
564 customers; or

565 (ii) an energy efficiency and conservation program; or

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

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

569 **54-17-402. Request for review of resource decision.**

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

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

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

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

580 (a) is reached in compliance with this chapter and rules made in accordance with Title
581 63, Chapter 46a, Utah Administrative Rulemaking Act; and

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

583 (i) whether it will most likely result in the acquisition, production, and delivery of

584 utility services at the lowest reasonable cost to the retail customers of an energy utility located
585 in this state;

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

587 (iii) risk;

588 (iv) reliability;

589 (v) financial impacts on the energy utility; and

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

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

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

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

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

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

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

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

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

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

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

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

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

613 **54-17-403. Cost recovery.**

614 (1) (a) Except as otherwise provided in this section, if the commission approves any

615 portion of an energy utility's resource decision under Section 54-17-402, the commission shall,
616 in a general rate case or other appropriate commission proceeding, include in the energy
617 utility's retail rates the state's share of costs:

618 (i) relevant to that proceeding;

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

620 (iii) up to the projected costs specified in the commission's order issued under Section
621 54-17-402.

622 (b) Except to the extent that the commission issues an order under Section 54-17-404,
623 any increase from the projected costs specified in the commission's order issued under Section
624 54-17-402 shall be subject to review by the commission as part of a rate hearing under Section
625 54-7-12.

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

631 (i) the commission approves the resource decision under Section 54-17-402; or

632 (ii) the commission issues an order to proceed under Section 54-17-404.

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

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

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

640 **54-17-404. Order to proceed.**

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

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

646 (c) Before making a determination under this Subsection (1) the commission:
647 (i) may hold a public hearing; and
648 (ii) shall provide an opportunity for public comment.
649 (2) Unless the commission determines that additional time is warranted and is in the
650 public interest, within 60 days of the day on which the energy utility files a request for
651 commission review and determination under this section, the commission shall:
652 (a) issue an order:
653 (i) determining that the energy utility should proceed with the implementation of the
654 resource decision;
655 (ii) making findings as to the total projected costs of the approved resource decision;
656 and
657 (iii) stating the basis upon which the findings described in Subsection (2)(a)(ii) are
658 made; or
659 (b) issue an order determining that the energy utility should not proceed with the
660 implementation of the resource decision.
661 (3) If the commission determines that the energy utility should proceed with the
662 implementation of the approved resource decision, the commission shall, in a general rate case
663 or other appropriate commission proceeding, include in the energy utility's retail rates the
664 state's share of costs:
665 (a) relevant to that proceeding;
666 (b) incurred by the energy utility in implementing the approved resource decision; and
667 (c) up to the projected costs as specified in the commission's order issued under
668 Subsection (2)(a).
669 (4) If the commission determines that the energy utility should not proceed with the
670 implementation of the approved resource decision, the commission shall, in a general rate case
671 or other appropriate commission proceeding, include in the energy utility's retail rates the
672 state's share of costs:
673 (a) relevant to that proceeding; and
674 (b) incurred by the energy utility in implementing the approved resource decision
675 before issuance of a determination not to proceed, including any prudently incurred costs of
676 terminating the approved resource decision.

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

679 (a) the right of an energy utility to:

680 (i) continue to implement the resource decision; and

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

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

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

688 **Section 17. Effective date.**

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

693 **Section 18. Revisor instructions.**

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

Fiscal Note
Bill Number SB0026S01

Public Utilities Amendments

28-Jan-05

10:58 AM

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