

1 **PUBLIC UTILITIES AMENDMENTS**

2 2007 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gregory S. Bell**

5 House Sponsor: Sheryl L. Allen

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7 **LONG TITLE**

8 **General Description:**

9 This bill makes changes to Title 54, Chapter 17, Energy Resource Procurement Act,  
10 allowing a waiver of requirements for solicitation and approval of acquisition or  
11 construction of a significant energy resource.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ eliminates existing language concerning a waiver of the requirement for solicitation  
15 of significant energy resource acquisition;

16 ▶ provides a process for obtaining a waiver of requirements for solicitation and  
17 approval of acquisition or construction of a significant energy resource, including  
18 providing for:

- 19 • participation by any interested person; and
- 20 • protection of confidential information disclosed in the waiver application; and

21 ▶ makes technical changes.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 This bill provides an immediate effective date.

26 **Utah Code Sections Affected:**

27 AMENDS:



28 54-17-201, as enacted by Chapter 11, Laws of Utah 2005

29 54-17-302, as enacted by Chapter 11, Laws of Utah 2005

30 ENACTS:

31 54-17-501, Utah Code Annotated 1953

31a **§→ Uncodified Material Affected:**

31b **ENACTS UNCODIFIED MATERIAL ←§**



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

34 Section 1. Section 54-17-201 is amended to read:

35 **54-17-201. Solicitation process required -- Exception.**

36 (1) (a) An affected electrical utility shall comply with this chapter to acquire or  
37 construct a significant energy resource after February 25, 2005.

38 (b) Notwithstanding Subsection (1)(a), this chapter does not apply to a significant  
39 energy resource for which the affected electrical utility has issued a solicitation before February  
40 25, 2005.

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

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

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

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

- 52 (i) complies with this chapter and rules made in accordance with Title 63, Chapter 46a,  
53 Utah Administrative Rulemaking Act; and
- 54 (ii) is in the public interest taking into consideration:

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

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

- 59 (C) risk;
- 60 (D) reliability;
- 61 (E) financial impacts on the affected electrical utility; and
- 62 (F) other factors determined by the commission to be relevant.
- 63 (d) Before approving a solicitation process under this section the commission:
- 64 (i) may hold a public hearing; and
- 65 (ii) shall provide an opportunity for public comment.
- 66 (e) As part of its review of a solicitation process, the commission may provide the
- 67 affected electrical utility guidance on any additions or changes to its proposed solicitation
- 68 process.
- 69 (f) Unless the commission determines that additional time to analyze a solicitation
- 70 process is warranted and is in the public interest, within 90 days of the day on which the
- 71 affected electrical utility files a request for approval of the solicitation process, the commission
- 72 shall:
- 73 (i) approve a proposed solicitation process;
- 74 (ii) suggest modifications to a proposed solicitation process; or
- 75 (iii) reject a proposed solicitation process.
- 76 (3) ~~[(a)]~~ Notwithstanding Subsection (2), an affected electrical utility may acquire or
- 77 construct a significant energy resource without conducting a solicitation process if ~~[the~~
- 78 ~~commission finds that waiving the requirement of a solicitation process is in the public interest~~
- 79 ~~because:]~~ it obtains a waiver of the solicitation requirement in accordance with Section
- 80 54-17-501.
- 81 ~~[(i) there exists:]~~
- 82 ~~[(A) a clear emergency; or]~~
- 83 ~~[(B) a time-limited commercial or technical opportunity that provides value to the~~
- 84 ~~customers of the affected electrical utility; or]~~
- 85 ~~[(ii) there exists a factor not described in Subsection (3)(a)(i) that makes waiving the~~
- 86 ~~requirement of conducting a solicitation in the public interest.]~~
- 87 ~~[(b) To obtain a finding from the commission under Subsection (3)(a), the affected~~
- 88 ~~electrical utility shall file with the commission the information required by the commission by~~
- 89 ~~rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.]~~

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

94 ~~[(i) approve the waiver;]~~

95 ~~[(ii) approve the waiver subject to conditions imposed by the commission; or]~~

96 ~~[(iii) reject the waiver.]~~

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

99 ~~[(i) a clear emergency; or]~~

100 ~~[(ii) a time-limited commercial or technical opportunity.]~~

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

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

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

109 Section 2. Section **54-17-302** is amended to read:

110 **54-17-302. Approval of a significant energy resource decision required.**

111 (1) If pursuant to Part 2, Solicitation Process, an affected electrical utility is required to  
112 conduct a solicitation for a significant energy resource or ~~[is exempt from conducting a~~  
113 ~~solicitation under Subsection 54-17-201(3)]~~ obtains a waiver of the requirement to conduct a  
114 solicitation under Section 54-17-501, but does not obtain a waiver of the requirement to obtain  
115 approval of the significant energy resource decision under Section 54-17-501, the affected  
116 electrical utility shall obtain approval of its significant energy resource decision:

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

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

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

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

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

128 (a) is reached in compliance with this chapter and rules made in accordance with Title  
129 63, Chapter 46a, Utah Administrative Rulemaking Act;

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

132 (ii) is reached after the waiver of the solicitation process as provided in Subsection  
133 54-17-201(3); and

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

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

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

139 (iii) risk;

140 (iv) reliability;

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

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

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

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

148 (a) approve the significant energy resource decision;

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

151 (c) disapprove the significant energy resource decision.

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

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

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

156 (7) Notwithstanding any other provision of this part, an affected electrical utility may  
157 acquire a significant energy resource without obtaining approval pursuant to this section if it  
158 obtains a waiver of the requirement for approval in accordance with Section 54-17-501.

159 ~~[(7)]~~ (8) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking  
160 Act, the commission shall make rules regarding the process for approval of a significant energy  
161 resource decision under this section.

162 Section 3. Section **54-17-501** is enacted to read:

163 **Part 5. Waiver of Energy Resource Procurement Requirements**

164 **54-17-501. Waiver of requirement for solicitation or approval.**

165 (1) An affected electrical utility may obtain a waiver of the requirement that it conduct  
166 a solicitation process under Part 2, Solicitation Process, or the requirement that it obtain  
167 approval of a significant energy resource decision under Part 3, Resource Plans and Significant  
168 Energy Resource Approval, if the commission determines that waiving the requirement is in  
169 the public interest because there exists:

170 (a) a clear emergency;

171 (b) a time-limited commercial or technical opportunity that provides value to the  
172 customers of the affected electrical utility; or

173 (c) any other factor that makes waiving the requirement in the public interest.

174 (2) To obtain a finding from the commission under Subsection (1), the affected  
175 electrical utility shall, as soon as practicable after learning of the existence of a circumstance  
176 specified in Subsection (1):

177 (a) file a verified application with the commission; and

178 (b) serve an electronic and paper copy of the verified application, including all  
179 associated exhibits and attachments, on each person reflected on a list to be maintained and  
180 published by the commission on its Internet website that has requested service of waiver  
181 requests and has signed a generic protective order issued by the commission limiting the use of  
182 information contained in or attached to a waiver request.

- 183 (3) A verified application filed pursuant to Subsection (2) shall:  
184 (a) identify any waiver requested;  
185 (b) explain the basis for each waiver requested;  
186 (c) specify any time sensitivity associated with the verified application;  
187 (d) explain why the waiver requested is in the public interest; and  
188 (e) contain other information required by the commission by rule made in accordance  
189 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.
- 190 (4) Upon receipt of a verified application filed under Subsection (2), the commission  
191 shall, before the end of the next business day, provide public notice of a technical conference to  
192 be held no sooner than three business days and no later than seven calendar days following the  
193 day on which the verified application is filed and served.
- 194 (5) (a) At the technical conference held under Subsection (4), the affected electrical  
195 utility shall provide adequate support for its verified application and shall respond to questions  
196 of the commission, an independent evaluator if one is participating, and any other interested  
197 person.
- 198 (b) The commission shall prepare and retain a transcript of the technical conference.
- 199 (6) No less than three business days and no more than seven calendar days following  
200 the technical conference, the independent evaluator and any interested person may file and  
201 serve comments concerning the verified application.
- 202 (7) The commission shall issue a written decision either granting, granting with  
203 conditions, or denying each waiver requested no later than seven calendar days following the  
204 deadline for the independent evaluator and any interested person to file comments under  
205 Subsection (6).
- 206 (8) (a) If confidential or trade secret information is provided or used in the verified  
207 application, in the technical conference, in comments filed on the verified application or  
208 otherwise in the process, that information shall be clearly identified by the providing person as  
209 confidential and shall be provided on a confidential basis subject to the terms of a protective  
210 order issued by the commission.
- 211 (b) (i) The commission shall issue a generic protective order to govern access to and  
212 use of confidential information in connection with a request for waiver under this part.
- 213 (ii) Upon request by the affected electrical utility or any interested person, the

214 commission may issue a supplemental protective order in connection with any verified  
 215 application.

216 (c) (i) The generic protective order and any supplemental protective order restrict use  
 217 of confidential information to the proceeding on the verified application ~~§~~→ , **however, use of the**  
 217a **confidential information in the proceeding is not considered a competitive purpose under**  
 217b **Subsection (8)(c)(ii)** ←~~§~~ .

218 (ii) The generic protective order and any supplemental protective order shall forbid the  
 219 use of confidential information for competitive purposes.

220 (d) An interested person may gain access to and use confidential information in  
 221 accordance with the terms of a protective order issued by the commission.

222 (9) Notwithstanding the time frames in Subsections (4), (6), and (7), the commission:

223 (a) shall take action or schedule proceedings as soon as reasonably practicable in light  
 224 of the circumstances and urgency demonstrated by the verified application and any subsequent  
 225 information provided during the process; and

226 (b) may shorten or lengthen the time frames if the commission determines that  
 227 changing them is warranted and in the public interest, except that a time frame may not be  
 228 lengthened solely because an independent evaluator is not available to participate or to  
 229 complete a recommendation.

230 (10) If an affected electrical utility is granted a waiver to acquire or construct a  
 231 significant energy resource in accordance with this section ~~§~~→ [3] :

231a (a) ←~~§~~ the provisions of Sections

232 54-17-303 and 54-17-304 do not apply to the significant energy resource decision ~~§~~→ [and] ;

232a (b) ←~~§~~ any cost

233 recovery that an affected electrical utility seeks in connection with that significant energy

234 resource is subject to a future prudence review by the commission under Subsection 54-4-4(4) ~~§~~→ ;  
 234a **and**

234b **(c) the waiver grant does not create any presumption that the affected electrical utility's**  
 234c **action in acquiring or constructing a significant energy resource was prudent** ←~~§~~ .

235 (11) (a) Subject to Subsection (11)(b), the commission shall use reasonable efforts to  
 236 have an independent evaluator available to participate in any application for a waiver under this  
 237 part.

238 (b) The commission may decline to use an independent evaluator in the consideration  
 239 of a waiver application if the commission determines the use of an independent evaluator is:

240 (i) not appropriate under the circumstances;



- 241           (ii) not available under terms or conditions the commission considers reasonable; or
- 242           (iii) not available to participate or complete a recommendation within any time frame
- 243 established under Subsection (4), (6), (7), or (9).
- 244           (c) The validity of an order entered under this part is not affected by:

245 (i) the unavailability of an independent evaluator; or  
 246 (ii) the failure of an independent evaluator to participate or complete a  
 247 recommendation within any time frame established under Subsection (4), (6), (7), or (9).

248 (12) ~~§~~ ~~[By June 1, 2007, the]~~ ~~The~~ ~~←~~ ~~§~~ commission shall issue a generic protective order as  
 248a provided  
 249 in Subsections (2)(b) and (8)(b).

249a **§→ (13) By September 1, 2007, the commission shall, in accordance with Title 63, Chapter 46a,**  
 249b **Utah Administrative Rulemaking Act, make rules concerning the process for obtaining a**  
 249c **waiver of the solicitation or approval process consistent with this section.**

249d **Section 4. Commission issuance of protective order.**  
 249e **Within 30 days after the effective date of this bill, the commission shall issue the generic**  
 249f **protective order described in Subsection 54-17-501(12). ←****§**

250 Section **§→ [4] 5 ←****§** . Effective date.

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

**Legislative Review Note**  
 as of 2-5-07 4:58 PM

**Office of Legislative Research and General Counsel**