

**NUCLEAR POWER GENERATION AND
DISTRIBUTION**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: F. Jay Seegmiller

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Public Service Commission's (PSC) powers to regulate a nuclear power corporation and the state energy policy.

Highlighted Provisions:

This bill:

- ▶ requires a nuclear power corporation to obtain from the PSC a certificate of convenience and necessity before constructing or operating a nuclear power plant;
- ▶ authorizes the PSC to issue a certificate of convenience and necessity to a nuclear power corporation only if:
 - there is a federally licensed facility in the United States with adequate capacity to dispose of the nuclear power plant's high-level nuclear waste; and
 - the proposed nuclear power plant is economically advantageous to ratepayers;
- ▶ amends the state energy policy to promote the responsible development of nuclear power generation; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



Utah Code Sections Affected:

AMENDS:

54-4-25, as last amended by Laws of Utah 2005, Chapter 11

63M-4-301, as renumbered and amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section **54-4-25** is amended to read:

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

(1) As used in this section:

(a) "Nuclear power corporation" means a corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing a nuclear power plant for public service or for the selling or furnishing of nuclear power to a consumer for domestic, commercial, or industrial use.

(b) "Nuclear power plant" means a nuclear-fired electric generating facility designed for nominal operation at a capacity of 100 megawatts or more.

(c) "Public utility corporation" means:

(i) a public utility as defined in Section 54-2-1; and

(ii) a nuclear power corporation.

~~[(1)]~~ (2) Except as provided in Section 11-13-304, a gas corporation, electric corporation, telephone corporation, telegraph corporation, heat corporation, water corporation, nuclear power corporation, or sewerage corporation may not establish, or begin construction or operation of a line, route, plant, or system or of any extension of a line, route, plant, or system, without having first obtained from the commission a certificate that present or future public convenience and necessity does or will require the construction.

~~[(2)]~~ (3) This section may not be construed to require any public utility corporation to secure a certificate for an extension:

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

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

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

59 business.

60 ~~[(3)]~~ (4) If any public utility corporation in constructing or extending its line, plant, or
61 system interferes or may interfere with the operation of the line, plant, or system of any other
62 public utility corporation already constructed, the commission, on complaint of the public
63 utility corporation claiming to be injuriously affected, may, after a hearing, make an order and
64 prescribe the terms and conditions for the location of the lines, plants, or systems affected as
65 the commission determines are just and reasonable.

66 ~~[(4)]~~ (5) (a) (i) Each applicant for a certificate shall file in the office of the commission
67 evidence as required by the commission to show that the applicant has received or is in the
68 process of obtaining the required consent, franchise, or permit of the proper county, city,
69 municipal, or other public authority.

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

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

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

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

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

83 (i) issue the certificate as requested;

84 (ii) refuse to issue the certificate; or

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

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

89 (e) (i) If a public utility corporation desires to exercise a right or privilege under a

franchise or permit which it contemplates securing but which has not yet been granted to it, the public utility corporation may apply to the commission for an order preliminary to the issue of the certificate.

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

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

(6) Subject to the provisions of this section, the commission may not certify a nuclear power corporation unless the commission finds that:

(a) there is a federally licensed facility in the United States with adequate capacity to dispose of high-level nuclear waste, as defined in Section 19-3-102, from the nuclear power plant; and

(b) the proposed nuclear power plant is economically advantageous to ratepayers based upon:

(i) a comparison to other feasible power alternatives;

(ii) the existence of a reliable and adequate nuclear fuel supply;

(iii) the costs for construction, operation, and decommissioning of the nuclear power plant and nuclear waste disposal; and

(iv) facts relevant to the economic viability of the nuclear power plant.

~~[(5)]~~ (7) (a) Any supplier of electricity which is brought under the jurisdiction and regulation of the Public Service Commission by this title may file with the commission an application for a certificate of convenience and necessity, giving the applicant the exclusive right to serve the customers it is serving in the area in which it is serving at the time of this filing, subject to the existing right of any other electrical corporation to likewise serve its customers in existence in the area at the time.

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

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

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

~~[(6)]~~ (8) Nothing in this section affects the existing rights of municipalities.

~~[(7)]~~ (9) The commission shall consolidate an action filed under Chapter 17, Part 3, Resource Plans and Significant Energy Resource Approval or Part 4, Voluntary Request for Resource Decision Review, with a proceeding under this section if:

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

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

Section 2. Section **63M-4-301** is amended to read:

63M-4-301. State energy policy.

(1) It is the policy of the state that:

(a) Utah have adequate, reliable, affordable, sustainable, and clean energy resources;

(b) Utah will promote the development of:

(i) nonrenewable energy resources, including natural gas, coal, oil, oil shale, and tar sands; and

(ii) renewable energy resources, including geothermal, solar, wind, biomass, biodiesel, hydroelectric, and ethanol;

(c) Utah will promote the study and responsible development of nuclear power generation;

(d) Utah will promote the development of resources and infrastructure sufficient to meet the state's growing demand, while contributing to the regional and national energy supply, thus reducing dependence on international energy sources;

(e) Utah will allow market forces to drive prudent use of energy resources, although incentives and other methods may be used to ensure the state's optimal development and use of energy resources in the short- and long-term;

(f) Utah will pursue energy conservation, energy efficiency, and environmental quality;

(g) (i) state regulatory processes should be streamlined to balance economic costs with the level of review necessary to ensure protection of the state's various interests; and

(ii) where federal action is required, Utah will encourage expedited federal action and will collaborate with federal agencies to expedite review;

(h) Utah will maintain an environment that provides for stable consumer prices that are as low as possible while providing producers and suppliers a fair return on investment, recognizing that:

(i) economic prosperity is linked to the availability, reliability, and affordability of consumer energy supplies; and

(ii) investment will occur only when adequate financial returns can be realized; and

(i) Utah will promote training and education programs focused on developing a comprehensive understanding of energy, including programs addressing:

(i) energy conservation;

(ii) energy efficiency;

(iii) supply and demand; and

(iv) energy related workforce development.

(2) State agencies are encouraged to conduct agency activities consistent with Subsection (1).

(3) A person may not file suit to challenge a state agency's action that is inconsistent with Subsection (1).

Legislative Review Note

as of 2-10-09 7:23 AM

Office of Legislative Research and General Counsel

H.B. 440 - Nuclear Power Generation and Distribution

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
