

28 subject to this section if:

29 (i) the board of directors of the electrical cooperative approve any contract for the
30 construction or acquisition of the significant electrical generating resource; and

31 (ii) before a contract described in Subsection (2)(b)(i) is approved by the board of
32 directors, the cooperative holds any public hearings required by the governing documents of
33 the electrical cooperative.

34 (c) An independent energy producer that is not affiliated with an electrical corporation
35 that is constructing or acquiring a significant electrical generating resource is not subject to this
36 section.

37 (3) (a) By no later than January 1, 2004, in accordance with Title 63, Chapter 46a, Utah
38 Administrative Rulemaking Act, the commission shall make rules establishing an open bid
39 process for the construction or acquisition of a significant electrical generating resource.

40 (b) The rules required by this section shall create an open bid process that:

41 (i) the commission finds is:

42 (A) fair;

43 (B) reasonable; and

44 (C) consistent with the public interest;

45 (ii) subject to Subsection (4), provides access to books, records, models, data, or other
46 information that is appropriate or necessary to facilitate an open bid process that is competitive;

47 (iii) includes development, review, and analysis of the following by persons other than
48 the electrical corporation:

49 (A) bid procedures followed by the electrical corporation;

50 (B) bid documents received by the electrical corporation;

51 (C) bid evaluations by the electrical corporation; and

52 (D) contracts entered into by the electrical corporation as a result of an open bid
53 process;

54 (iv) includes protections against unfair business practices as defined by the commission
55 including:

56 (A) the electrical corporation giving preference to resources developed by:

57 (I) an affiliate; or

58 (II) the electrical corporation; or

- 59 (B) abuse of confidentiality requirements;
60 (v) provides sufficient time for reasonable investigation of the open bid process;
61 (vi) permits an electrical corporation to make decisions regarding the electrical
62 corporation's operations or assets on a reasonably timely basis;
63 (vii) accommodates emergency circumstances that the electrical corporation
64 demonstrates:
65 (A) are beyond the reasonable control of the electrical corporation; and
66 (B) are not a means for the electrical corporation to create a preference or benefit for:
67 (I) the electrical corporation; or
68 (II) an affiliate of the electrical corporation;
69 (viii) provides an opportunity for appeal by a bid participant to the commission prior to
70 the execution of a contract entered into by the electrical corporation as a result of the open bid
71 process; and
72 (ix) is designed so that the expenses incurred by an electrical corporation for a
73 significant energy resource owned by itself or an affiliate of the electrical corporation should
74 not exceed the expenses that would be incurred if the significant energy resources were
75 constructed or acquired through a person that is not affiliated with the electrical corporation.
76 (4) In providing access to the books, records, models, data, or other information
77 described in Subsection (3)(b)(ii), the commission shall establish rules that:
78 (a) provide how the information that the commission determines should be treated as
79 confidential is to be treated as part of the open bid process; and
80 (b) protects against:
81 (i) an electrical corporation using a claim of confidentiality to impede the fairness of:
82 (A) the open bid process; or
83 (B) the commission's review of the open bid process; or
84 (ii) any person disclosing information that the commission determines is confidential.
- 85 Section 2. Section **54-4-39** is enacted to read:
86 **54-4-39. Affiliate transactions.**
87 (1) For purposes of this section:
88 (a) "Affiliate" is as defined by rule by the commission.
89 (b) "Affiliate contract" means a contract between:

- 90 (i) a public utility; and
- 91 (ii) an affiliate of the public utility.
- 92 (c) "Significant affiliate contract" means an affiliate contract that:
- 93 (i) involves the construction, acquisition, or disposal of assets of a public utility if:
- 94 (A) the value of those assets exceed \$5,000,000; or
- 95 (B) the commission considers the public utility's expenditures related to those assets to
- 96 be capital expenditures for purposes of a rate proceeding under this title; or
- 97 (ii) requires a public utility to make annual expenditures in excess of \$1,000,000 that
- 98 for purposes of a rate proceeding under this title the commission would consider operating
- 99 expenses.
- 100 (2) (a) Before the day on which a public utility executes a significant affiliate contract,
- 101 the public utility shall obtain commission approval of the significant affiliate contract in
- 102 accordance with the procedures established by the commission by rule.
- 103 (b) Before the day on which a public utility executes an affiliate contract that is not a
- 104 significant affiliate contract, the public utility may request that the commission approve the
- 105 contract in accordance with the procedures established by the commission by rule.
- 106 (3) (a) The commission may approve an affiliate contract if the commission finds that
- 107 the affiliate contract is:
- 108 (i) fair;
- 109 (ii) reasonable; and
- 110 (iii) consistent with the public interest.
- 111 (b) In approving an affiliate contract under this Subsection (3), the commission:
- 112 (i) is not required to make a determination as to all financial or other issues that are
- 113 considered in a rate proceeding under this title; and
- 114 (ii) may address financial or other issues related to an affiliate contract in a rate
- 115 proceeding held subsequent to the day on which the commission approves an affiliate contract
- 116 under this Subsection (3).
- 117 (c) When the commission considers whether or not to approve an affiliate contract in
- 118 accordance with this section, the public utility has the burden to show that the affiliate contract
- 119 meets the standards of Subsection (3)(a).
- 120 (4) In a rate proceeding under this title:

121 (a) there is no presumption of unreasonableness or reasonableness of an affiliate
122 contract; and

123 (b) the commission shall review an affiliate contract on the same basis that the
124 commission would review a contract between the public utility and a person who is not an
125 affiliate.

126 (5) Notwithstanding Subsection (3)(a), if the affiliate contract is a significant affiliate
127 contract for the acquisition of generating resources, the commission may not approve the
128 significant affiliate contract unless the public utility complies with Section 54-5-8.5.

129 (6) (a) A public utility shall provide the commission and parties to a proceeding for the
130 approval of an affiliate contract access to all books, records, models, data, and other
131 information necessary for the commission to make the determination described in Subsection
132 (3).

133 (b) In providing access under this Subsection (6) to the books, records, models, data, or
134 other information, the commission shall establish rules that:

135 (i) provide how the information that the commission determines should be treated
136 confidential is to be treated as confidential as part of the review of the affiliate contract; and

137 (ii) protects against:

138 (A) a public utility using a claim of confidentiality to impede the fairness of the
139 commission's review of the affiliate contract; and

140 (B) any person disclosing information that the commission determines is confidential.

141 (7) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
142 the commission shall make rules to establish a procedure consistent with this section for:

143 (i) the investigation of an affiliate contract; and

144 (ii) the approval of an affiliate contract.

145 (b) The procedure described in Subsection (7)(a) shall be designed to:

146 (i) provide sufficient time for reasonable investigation of an affiliate contract;

147 (ii) permit a public utility to make decisions regarding the public utility's operations or
148 assets on a reasonably timely basis; and

149 (iii) accommodate emergency circumstances that the public utility demonstrates:

150 (A) are beyond the reasonable control of the public utility; and

151 (B) are not a means for the public utility to create a preference or benefit for:

- 152 (I) the public utility; or
- 153 (II) an affiliate of the public utility.
- 154 (8) Nothing in this section shall affect the obligations of a telecommunications
- 155 corporation under:
- 156 (a) the Communications Act of 1934; or
- 157 (b) Chapter 8b, Public Telecommunications Law.

Legislative Review Note
as of 2-7-03 4:06 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0251

Amendments Related to Public Utilities

12-Feb-03

4:49 PM

State Impact

No fiscal impact.

Individual and Business Impact

This should reduce consumer prices in the long term. The effect would be small but no estimate is given.

Office of the Legislative Fiscal Analyst