

PUBLIC UTILITY RELATED AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: John L. Valentine

This act modifies the Public Utility title to clarify use of a test period in determining just and reasonable rates, to address settlements, and to address the affect of decisions of the Public Service Commission. This act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

54-4-4, as last amended by Chapter 166, Laws of Utah 1975

54-7-1, as last amended by Chapter 161, Laws of Utah 1987

54-7-15, as last amended by Chapter 161, Laws of Utah 1987

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

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

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

(1) [~~Whenever~~] (a) The commission shall take an action described in Subsection (1)(b), if the commission [shall find] finds after a hearing that:

(i) the rates, fares, tolls, rentals, charges, or classifications [~~, or any of them~~] demanded, observed, charged, or collected by any public utility for, or in connection with, any service [or], product, or commodity, [~~or in connection therewith,~~] including the rates or fares for excursion or commutation tickets, or that the rules, regulations, practices, or contracts [~~, or any of them,~~] affecting [~~such~~] the rates, fares, tolls, rentals, charges, or classifications [~~, or any of them,~~] are:

(A) unjust[;];

(B) unreasonable[;];

(C) discriminatory [or];

(D) preferential[;]; or [~~in anywise~~]

(E) otherwise in violation of any provisions of law [~~, or that such~~]; or

(i) the rates, fares, tolls, rentals, charges, or classifications described in Subsection (1)(a)(i) are insufficient[;].

(b) If the commission makes a finding described in Subsection (1)(a), the commission shall;

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

(ii) fix the ~~same~~ determination described in Subsection (1)(b)(i) by order as ~~hereinafter~~ provided in this section.

(2) The commission ~~shall have power to~~ may:

(a) investigate ~~[a single rate, fare, toll, rental, charge, classification, rule, regulation, contract or practice, or any number thereof, or the entire schedule or];~~

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

(ii) one or more schedules of rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts ~~[and], or practices[, or any number thereof,]~~ of any public utility~~[, and to];~~ and

(b) establish, after hearing, new rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts ~~[or], practices, or [schedule or] schedules in lieu [thereof] of them.~~

(3) (a) [The commission, in its] If in the commission's determination of just and reasonable rates~~[, may consider recent changes in the utility's financial condition or changes reasonably expected, but not speculative, in the utility's revenues, expenses or investments and may adopt an appropriate future test period, not exceeding twelve]~~ the commission uses a test period, the commission shall select a test period that, on the basis of evidence, the commission finds best reflects the conditions that a public utility will encounter during the period when the rates determined by the commission will be in effect.

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

(i) a future test period that is determined on the basis of projected data not exceeding 20 months from the date ~~[of filing, including projections or projections together with a period of~~

actual operations in determining the utility's test year for rate-making purposes.] a proposed rate increase or decrease is filed with the commission under Section 54-7-12;

(ii) a test period that is:

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

(B) adjusted for known and measurable changes; or

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

(A) future projections; and

(B) historic data.

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

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

(ii) are known in nature; and

(iii) are measurable in amount.

Section 2. Section **54-7-1** is amended to read:

54-7-1. Settlement -- Limitation of issues.

(1) Informal resolution, by agreement of the parties, of matters before the commission is encouraged[?] as a means to:

(a) resolve disputes while minimizing the time and expense that is expended by:

(i) public utilities;

(ii) the state; and

(iii) consumers;

(b) enhance administrative efficiency; or

(c) enhance the regulatory process by allowing the commission to concentrate on those issues that adverse parties cannot otherwise resolve.

(2) (a) The commission may approve any agreement after considering the interests of the public and other affected persons to use a settlement proposal to resolve a disputed matter.

(b) The commission shall reserve to the parties the right to maintain appropriate

confidentiality in the negotiation process even when the commission uses a settlement proposal to resolve a disputed matter.

(3) (a) At any time before or during [~~a hearing or~~] an adjudicative proceeding before the commission, the parties, between themselves or with the commission or a commissioner, may engage in settlement conferences and negotiations.

(b) [~~The~~] In accordance with this Subsection (3), the commission may adopt any settlement proposal entered into by two or more of the parties [and may enter an order based upon the proposal:] to an adjudicative proceeding.

(c) The commission shall notify all parties to an adjudicative proceeding of the terms of any settlement proposal related to the adjudicative proceeding.

(d) (i) The commission may adopt a settlement proposal if:

(A) the commission finds that the settlement proposal is just and reasonable in result; and

(B) the evidence, contained in the record, supports a finding that the settlement proposal is just and reasonable in result.

(ii) When considering whether to adopt a settlement proposal, the commission shall consider the significant and material facts related to the case.

(e) (i) The commission may adopt a settlement proposal related to an adjudicative proceeding at any stage of the adjudicative procedure.

(ii) The commission shall conduct a hearing before adopting a settlement proposal if requested by:

(A) any party initiating the adjudicative proceeding;

(B) any party against whom the adjudicative proceeding is initiated; or

(C) an intervening party to the adjudicative proceeding.

(f) The commission shall accept or reject a settlement proposal within a reasonable time.

(4) In cases or procedures involving rate increases as defined in Section 54-7-12, the commission may limit the factors and issues to be considered in its determination of just and reasonable rates.

Section 3. Section **54-7-15** is amended to read:

54-7-15. Review or rehearing by commission -- Application -- Procedure -- Prerequisite to court action -- Effect of commission decisions.

(1) Before seeking judicial review of the commission's action, any party, stockholder, bondholder, or other person pecuniarily interested in the public utility who is dissatisfied with an order of the commission shall meet the requirements of this section.

(2) (a) After any order or decision has been made by the commission, any party to the action or proceeding, ~~any~~ stockholder ~~or~~, bondholder, or other party pecuniarily interested in the public utility affected may apply for rehearing of any matters determined in the action or proceeding.

(b) ~~No~~ An applicant may not urge or rely on any ground not set forth in the application in an appeal to any court.

(c) Any application for rehearing not granted by the commission within 20 days is denied.

(d) (i) If the commission grants any application for rehearing without suspending the order involved, the commission shall issue its decision on rehearing within 20 days after final submission.

(ii) If the commission fails to render its decision on rehearing within 20 days, the order involved is affirmed.

(e) Unless an order of the commission directs that an order is stayed or postponed, an application for review or rehearing does not excuse any corporation or person from complying with and obeying any order or decision of the commission.

(3) Any order or decision on rehearing that abrogates, changes, or modifies an original order or decision has the same force and effect as an original order or decision, but does not affect any right, or the enforcement of any right, arising from the original order or decision unless so ordered by the commission.

(4) An order of the commission, including a decision on rehearing:

(a) shall have binding force and effect only with respect to a public utility that is an actual party to the proceeding in which the order is rendered; and

(b) does not determine any right, privilege, obligation, duty, constraint, burden, or responsibility with respect to a public utility that is not a party to the proceeding in which the order is rendered unless, in accordance with Subsection 63-46a-3(6), the commission makes a rule that incorporates the one or more principles of law that:

- (i) are established by the order;
- (ii) are not in commission rules at the time of the order; and
- (iii) affect the right, privilege, obligation, duty, constraint, burden, or responsibility with respect to the public utility.