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ENERGY INDEPENDENCE AMENDMENTS
2024 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Scott D. Sandall
House Sponsor: Carl R. Albrecht

LONG TITLE

General Description:

This bill modifies provisions related to planning and cost recovery for certain energy resource decisions and allows a large-scale electric utility to establish a Utah fire fund.

Highlighted Provisions:

This bill:

- modifies the factors the Public Service Commission (commission) must consider when evaluating certain proposed energy resource decisions;
- establishes parameters for an affected electrical utility's recovery of costs associated with proven dispatchable generation resources located within the state;
- encourages the commission to evaluate the purchase of excess proven dispatchable generation capacity;
- allows a large-scale electric utility to create a Utah fire fund to supplement other insurance for making certain fire damage payments;
- establishes requirements for administration, funding, and access to a Utah fire fund; and
- enacts provisions related to filing and resolving claims against an electrical corporation for damages caused by wildfire.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 54-17-102**, as last amended by Laws of Utah 2008, Chapter 382
- 54-17-201**, as last amended by Laws of Utah 2008, Chapters 374, 382

28 **54-17-302**, as last amended by Laws of Utah 2008, Chapters 374, 382

29 **54-17-303**, as last amended by Laws of Utah 2008, Chapter 374

30 **54-17-402**, as last amended by Laws of Utah 2018, Chapter 449

31 **54-17-403**, as last amended by Laws of Utah 2018, Chapter 449

32 ENACTS:

33 **54-17-1001**, Utah Code Annotated 1953

34 **54-17-1002**, Utah Code Annotated 1953

35 **54-24-301**, Utah Code Annotated 1953

36 **54-24-302**, Utah Code Annotated 1953

37 **54-24-303**, Utah Code Annotated 1953

38

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

40 Section 1. Section **54-17-102** is amended to read:

41 **54-17-102 . Definitions.**

42 As used in this chapter:

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

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

47 (a) could be constructed or owned by:

48 (i) an affected electrical utility; or

49 (ii) an affiliate of an affected electrical utility; or

50 (b) may be a purchase of:

51 (i) electricity;

52 (ii) electric generating capacity; or

53 (iii) electricity and electric generating capacity.

54 (3) "Dispatchability" means the extent to which an energy resource is dispatchable.

55 (4) "Dispatchable" means available for use on demand and generally available to be
56 delivered at a time and quantity of the operator's choosing.

57 [~~3~~] (5) "Integrated resource plan" means a plan that contains:

58 (a) the demand and energy forecast by the affected electrical utility for at least a ten-year
59 period;

60 (b) the affected electrical utility's options for meeting the requirements shown in [its] the
61 affected electrical utility's load and resource forecast in an economic and reliable

- 62 manner, including:
- 63 (i) demand-side and supply-side options; and
- 64 (ii) a brief description and summary cost-benefit analysis, if available, of each option
- 65 that was considered;
- 66 (c) the affected electrical utility's assumptions and conclusions with respect to the effect
- 67 of the plan on the cost and reliability of energy service;
- 68 (d) a description of the external environmental and economic consequences of the plan
- 69 to the extent practicable; and
- 70 (e) any other data and analyses as the commission may require.
- 71 (6) "Intermittent resource" means an energy resource that relies on a variable fuel source
- 72 that interrupts energy generation, resulting in periods of non-production or reduced
- 73 production.
- 74 (7) "Proven dispatchable generation resource" means a significant energy resource that has
- 75 demonstrated the capability to provide dispatchable energy.
- 76 (8) (a) "Risk" means the probability that an energy resource will produce negative
- 77 consequences that outweigh anticipated positive results and undermine the public
- 78 interest.
- 79 (b) "Risk" includes the probability that:
- 80 (i) overreliance on intermittent resources will create instability or inadequacy in
- 81 meeting electricity demand;
- 82 (ii) the energy resource will be unable to provide a consistent and resilient supply of
- 83 electricity to consumers; and
- 84 (iii) electricity costs will become unsustainable for consumers.
- 85 [(4)] (9) "Significant energy resource" for an affected electrical utility means a resource that
- 86 consists of:
- 87 (a) a total of 100 megawatts or more of new generating capacity that has a dependable
- 88 life of 10 or more years;
- 89 (b) a purchase of the following if the contract is for a term of 10 or more years and not
- 90 less than 100 megawatts:
- 91 (i) electricity;
- 92 (ii) electric generating capacity; or
- 93 (iii) electricity and electrical generating capacity;
- 94 (c) the purchase or lease by an affected electrical utility from an affiliated company of:
- 95 (i) a generating facility;

- 96 (ii) electricity;
- 97 (iii) electrical generating capacity; or
- 98 (iv) electricity and electrical generating capacity;
- 99 (d) a contract with an option for the affected electrical utility or an affiliate to purchase a
- 100 resource that consists of not less than 100 megawatts or more of new generating
- 101 capacity that has a remaining dependable life of 10 or more years; or
- 102 (e) a type of resource designated by the commission as a significant energy resource in
- 103 rules made by the commission in accordance with Title 63G, Chapter 3, Utah
- 104 Administrative Rulemaking Act, after considering the affected electrical utility's
- 105 integrated resource plan and action plan.

106 ~~[(5)]~~ (10) "Solicitation" means a request for proposals or other invitation for persons to

107 submit a bid or proposal through an open bid process for construction or acquisition of a

108 significant energy resource.

109 Section 2. Section **54-17-201** is amended to read:

110 **54-17-201 . Solicitation process required -- Exception.**

- 111 (1) (a) An affected electrical utility shall comply with this chapter to acquire or construct
- 112 a significant energy resource after February 25, 2005.
- 113 (b) Notwithstanding Subsection (1)(a), this chapter does not apply to a significant
- 114 energy resource for which the affected electrical utility has issued a solicitation
- 115 before February 25, 2005.
- 116 (2) (a) Except as provided in Subsection (3), to acquire or construct a significant energy
- 117 resource, an affected electrical utility shall conduct a solicitation process that is
- 118 approved by the commission.
- 119 (b) To obtain the approval of the commission of a solicitation process, the affected
- 120 electrical utility shall file with the commission a request for approval that includes:
- 121 (i) a description of the solicitation process the affected electrical utility will use;
- 122 (ii) a complete proposed solicitation; and
- 123 (iii) any other information the commission requires by rule made in accordance with
- 124 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 125 (c) In ruling on the request for approval of a solicitation process, the commission shall
- 126 determine whether the solicitation process:
- 127 (i) complies with this chapter and rules made in accordance with Title 63G, Chapter
- 128 3, Utah Administrative Rulemaking Act; and
- 129 (ii) is in the public interest, taking into consideration:

- 130 (A) the dispatchability of the significant energy resource;
131 (B) the state's desire to have proven dispatchable generation resources operating
132 within the state to ensure adequate resources to reliably meet the state's energy
133 needs;
134 (C) whether the proposal is consistent with the state energy policy described in
135 Section 79-6-301;
136 (D) whether it will most likely result in the acquisition, production, and delivery
137 of electricity at the lowest reasonable cost to the retail customers of an affected
138 electrical utility located in this state, including any lowered costs resulting
139 from the ability to sell excess energy generated in an interstate energy market;
140 [~~B~~] (E) long-term and short-term impacts;
141 [~~C~~] (F) risk;
142 [~~D~~] (G) reliability;
143 [~~E~~] (H) financial impacts on the affected electrical utility; and
144 [~~F~~] (I) other factors determined by the commission to be relevant.
- 145 (d) Before approving a solicitation process under this section the commission:
146 (i) may hold a public hearing; and
147 (ii) shall provide an opportunity for public comment.
- 148 (e) As part of [its] the commission's review of a solicitation process, the commission may
149 provide the affected electrical utility guidance on any additions or changes to [its] the
150 commission's proposed solicitation process.
- 151 (f) Unless the commission determines that additional time to analyze a solicitation
152 process is warranted and is in the public interest, within 60 days of the day on which
153 the affected electrical utility files a request for approval of the solicitation process,
154 the commission shall:
155 (i) approve a proposed solicitation process;
156 (ii) suggest modifications to a proposed solicitation process; or
157 (iii) reject a proposed solicitation process.
- 158 (3) Notwithstanding Subsection (2), an affected electrical utility may acquire or construct a
159 significant energy resource without conducting a solicitation process if it obtains a
160 waiver of the solicitation requirement in accordance with Section 54-17-501.
- 161 (4) In accordance with the commission's authority under Subsection 54-12-2(2), the
162 commission shall determine:
163 (a) whether this chapter or another competitive bidding procedure shall apply to a

164 purchase of a significant energy resource by an affected electrical utility from a small
165 power producer or cogenerator; and

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

169 Section 3. Section **54-17-302** is amended to read:

170 **54-17-302 . Approval of a significant energy resource decision required.**

171 (1) If pursuant to Part 2, Solicitation Process, an affected electrical utility is required to
172 conduct a solicitation for a significant energy resource or obtains a waiver of the
173 requirement to conduct a solicitation under Section 54-17-501, but does not obtain a
174 waiver of the requirement to obtain approval of the significant energy resource decision
175 under Section 54-17-501, the affected electrical utility shall obtain approval of [its] the
176 affected electrical utility's significant energy resource decision:

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

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

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

183 (b) The request for approval required by this section shall include any information
184 required by the commission by rule made in accordance with Title 63G, Chapter 3,
185 Utah Administrative Rulemaking Act.

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

188 (a) is reached in compliance with this chapter and rules made in accordance with Title
189 63G, Chapter 3, Utah Administrative Rulemaking Act;

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

192 (ii) is reached after the waiver of the solicitation process as provided in Subsection
193 54-17-201(3); and

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

195 (i) the dispatchability of the significant energy resource;

196 (ii) the state's desire to have proven dispatchable generation resources operating
197 within the state to ensure adequate resources to reliably meet the state's energy

- 198 needs;
- 199 (iii) whether the proposal is consistent with the state energy policy described in
- 200 Section 79-6-301;
- 201 (iv) whether it will most likely result in the acquisition, production, and delivery of
- 202 electricity at the lowest reasonable cost to the retail customers of an affected
- 203 electrical utility located in this state, including any lowered costs resulting from
- 204 the ability to sell excess energy generated in an interstate energy market;
- 205 ~~[(iii)]~~ (v) long-term and short-term impacts;
- 206 ~~[(iii)]~~ (vi) risk;
- 207 ~~[(iv)]~~ (vii) reliability;
- 208 ~~[(v)]~~ (viii) financial impacts on the affected electrical utility; and
- 209 ~~[(vi)]~~ (ix) other factors determined by the commission to be relevant.
- 210 (4) The commission may not approve a significant energy resource decision under this
- 211 section before holding a public hearing.
- 212 (5) Unless the commission determines that additional time to analyze a significant energy
- 213 resource decision is warranted and is in the public interest, within 120 days of the day on
- 214 which the affected electrical utility files a request for approval, the commission shall:
- 215 (a) approve the significant energy resource decision;
- 216 (b) approve the significant energy resource decision subject to conditions imposed by
- 217 the commission; or
- 218 (c) disapprove the significant energy resource decision.
- 219 (6) The commission shall include in ~~[its]~~ the commission's order under this section:
- 220 (a) findings as to the total projected costs for construction or acquisition of an approved
- 221 significant energy resource; and
- 222 (b) the basis upon which the findings described in Subsection (6)(a) are made.
- 223 (7) Notwithstanding any other provision of this part, an affected electrical utility may
- 224 acquire a significant energy resource without obtaining approval pursuant to this section
- 225 if it obtains a waiver of the requirement for approval in accordance with Section
- 226 54-17-501.
- 227 (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 228 commission shall make rules regarding the process for approval of a significant energy
- 229 resource decision under this section.
- 230 Section 4. Section **54-17-303** is amended to read:
- 231 **54-17-303 . Cost recovery.**

- 232 (1) (a) Except as otherwise provided in this section, and excluding cost recovery for
233 costs associated with proven dispatchable generation resources, which is governed by
234 Section 54-17-1002, if the commission approves a significant energy resource
235 decision under Section 54-17-302, the commission shall, in a general rate case or
236 other appropriate commission proceeding, include in the affected electrical utility's
237 retail electric rates the state's share of costs:
- 238 (i) relevant to the proceeding;
 - 239 (ii) incurred by the affected electrical utility in constructing or acquiring the approved
240 significant energy resource; and
 - 241 (iii) up to the projected costs specified in the commission's order issued under Section
242 54-17-302.
- 243 (b) (i) The commission shall, in a general rate case or other appropriate commission
244 proceeding, include in the affected electrical utility's retail electric rates the state's
245 share of the incremental cost relevant to the proceeding that were prudently
246 incurred by the affected electrical utility to identify, evaluate, and submit a
247 reasonable benchmark option, whether or not the benchmark option is selected or
248 becomes operational.
- 249 (ii) A recoverable cost under Subsection (1)(b)(i) shall be included in the affected
250 electrical utility's project costs for the purpose of evaluating the project's
251 cost-effectiveness.
 - 252 (iii) A recoverable cost under Subsection (1)(b)(i) may not be added to the cost or
253 otherwise considered in the evaluation of a project proposed by any person other
254 than the affected electrical utility for the purpose of evaluating that person's
255 proposal.
- 256 (c) Except to the extent that the commission enters an order under Section 54-17-304, an
257 increase from the projected costs specified in the commission's order issued under
258 Section 54-17-302 shall be subject to review by the commission as part of a rate
259 hearing under Section 54-7-12.
- 260 (2) (a) Subsequent to the commission issuing an order described in Subsection (2)(a)(i)
261 or (ii), the commission may disallow some or all costs incurred in connection with
262 an approved significant energy resource decision if the commission finds that an
263 affected electrical utility's actions in implementing an approved significant energy
264 resource decision are not prudent because of new information or changed
265 circumstances that occur after:

- 266 (i) the commission's approval of the significant energy resource decisions under
267 Section 54-17-302; or
- 268 (ii) a commission order to proceed under Section 54-17-304.
- 269 (b) In making a determination of prudence under Subsection (2)(a), the commission
270 shall use the standards identified in Section 54-4-4.
- 271 (3) Notwithstanding any other provision of this chapter, the commission may disallow some
272 or all of the costs incurred by an affected electrical utility in connection with an
273 approved significant energy resource decision upon a finding by the commission that the
274 affected electrical utility is responsible for a material misrepresentation or concealment
275 in connection with an approval process under this chapter.
- 276 Section 5. Section **54-17-402** is amended to read:
- 277 **54-17-402 . Request for review of resource decision.**
- 278 (1) Beginning on February 25, 2005, before implementing a resource decision, an energy
279 utility may request that the commission approve all or part of a resource decision in
280 accordance with this part.
- 281 (2) (a) To obtain the approval permitted by Subsection (1), the energy utility shall file a
282 request for approval with the commission.
- 283 (b) The request for approval required by this section shall include any information
284 required by the commission by rule made in accordance with Title 63G, Chapter 3,
285 Utah Administrative Rulemaking Act.
- 286 (c) A request for approval of natural gas infrastructure development shall include:
- 287 (i) a description of the proposed rural gas infrastructure development project;
- 288 (ii) an explanation of projected benefits from the proposed rural gas infrastructure
289 development project;
- 290 (iii) the estimated costs of the rural gas infrastructure development project; and
- 291 (iv) any other information the commission requires.
- 292 (3) In ruling on a request for approval of a resource decision, the commission shall
293 determine whether the decision:
- 294 (a) is reached in compliance with this chapter and rules made in accordance with Title
295 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- 296 (b) is in the public interest, taking into consideration:
- 297 (i) (A) the dispatchability of the energy resource;
- 298 (B) the state's desire to have proven dispatchable generation resources operating
299 within the state to ensure adequate resources to reliably meet the state's energy

- 300 needs and to make needed dispatchable generation from proven dispatchable
 301 energy generation resources available to the bulk electric system to support
 302 reliability;
- 303 (C) whether the proposal is consistent with the state energy policy described in
 304 Section 79-6-301;
- 305 (D) whether it will most likely result in the acquisition, production, and delivery
 306 of utility services at the lowest reasonable cost to the retail customers of an
 307 energy utility located in this state, including any lowered costs resulting from
 308 the ability to sell excess energy generated in an interstate energy market;
- 309 [~~B~~] (E) long-term and short-term impacts;
- 310 [~~C~~] (F) risk;
- 311 [~~D~~] (G) reliability;
- 312 [~~E~~] (H) financial impacts on the energy utility; and
- 313 [~~F~~] (I) other factors determined by the commission to be relevant; or
- 314 (ii) for a request for approval of rural gas infrastructure development:
- 315 (A) the potential benefits to previously unserved rural areas;
- 316 (B) the potential number of new customers;
- 317 (C) natural gas consumption; and
- 318 (D) revenues, costs, and other factors determined by the commission to be
- 319 relevant.
- 320 (4) In a decision relating to a request for approval of rural gas infrastructure development,
 321 the commission may determine that spreading all or a portion of the costs of the rural
 322 gas infrastructure development to the larger customer base is in the public interest.
- 323 (5) (a) If the commission approves a proposed resource decision only in part, the
 324 commission shall explain in the order issued under this section why the commission
 325 does not approve the resource decision in total.
- 326 (b) Recovery of expenses incurred in connection with parts of a resource decision that
 327 are not approved is subject to the review of the commission as part of a rate hearing
 328 under Section 54-7-12.
- 329 (6) The commission may not approve a resource decision in whole or in part under this
 330 section before holding a public hearing.
- 331 (7) Unless the commission determines that additional time to analyze a resource decision is
 332 warranted and is in the public interest, within 180 days of the day on which the energy
 333 utility files a request for approval, the commission shall:

- 334 (a) approve all or part of the resource decision;
- 335 (b) approve all or part of the resource decision subject to conditions imposed by the
- 336 commission; or
- 337 (c) disapprove all or part of the resource decision.
- 338 (8) The commission shall include in [its] the commission's order under this section:
- 339 (a) findings as to the approved projected costs of a resource decision; and
- 340 (b) the basis upon which the findings described in Subsection (8)(a) are made.
- 341 (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 342 commission shall make rules regarding the process for approval of a resource decision
- 343 under this section.

344 Section 6. Section **54-17-403** is amended to read:

345 **54-17-403 . Cost recovery.**

- 346 (1) (a) Except as otherwise provided in this section, and excluding cost recovery for
- 347 costs associated with proven dispatchable generation resources, which is governed by
- 348 Section 54-17-1002, if the commission approves any portion of an energy utility's
- 349 resource decision under Section 54-17-402, the commission shall, in a general rate
- 350 case or other appropriate commission proceeding, include in the energy utility's retail
- 351 rates the state's share of costs:
- 352 (i) relevant to that proceeding;
- 353 (ii) incurred by the energy utility in implementing the approved resource decision; and
- 354 (iii) up to the projected costs specified in the commission's order issued under Section
- 355 54-17-402.
- 356 (b) Except to the extent that the commission issues an order under Section 54-17-404,
- 357 any increase from the projected costs specified in the commission's order issued
- 358 under Section 54-17-402 shall be subject to review by the commission as part of a
- 359 rate hearing under Section 54-7-12.
- 360 (c) If the commission approves a request for approval of rural gas infrastructure
- 361 development under Section 54-17-402, the commission may approve the inclusion of
- 362 rural gas infrastructure development costs within the gas corporation's base rates if:
- 363 (i) the inclusion of those costs will not increase the base distribution non-gas revenue
- 364 requirement by more than 2% in any three-year period;
- 365 (ii) the distribution non-gas revenue requirement increase related to the infrastructure
- 366 development costs under Subsection (1)(c)(i) does not exceed 5% in the
- 367 aggregate; and

368 (iii) the applicable distribution non-gas revenue requirement is the annual revenue
369 requirement determined in the gas corporation's most recent rate case.

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

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

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

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

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

384 Section 7. Section **54-17-1001** is enacted to read:

385 **54-17-1001 . Acquiring excess proven dispatchable generation capacity.**

386 (1) As used in this section:

387 (a) "Allocation agreement" means a multi-state agreement that allocates the costs and
388 benefits from energy resources serving multiple states to each participating state.

389 (b) "Division" means the Division of Public Utilities established in Section 54-4a-1.

390 (c) "Excess proven dispatchable generation capacity" means electric generation capacity
391 from a proven dispatchable generating resource located in the state that is subject to
392 an allocation agreement, where excess capacity becomes available as another state
393 transitions away from the use of proven dispatchable generation resources.

394 (d) "Office" means the Office of Energy Development created in Section 79-6-401.

395 (2) If the affected electrical utility becomes aware that the affected electrical utility will
396 have excess proven dispatchable generation capacity at an in-state proven dispatchable
397 generation resource, the affected electrical utility shall provide notice to:

398 (a) the commission;

399 (b) the division;

400 (c) the office;

401 (d) the president of the Senate; and

- 402 (e) the speaker of the House of Representatives.
- 403 (3) An affected electrical utility that becomes aware of excess proven dispatchable
404 generation capacity shall provide the notice described in Subsection (2):
- 405 (a) by July 1, 2024, for any excess capacity the utility is aware of on or before May 1,
406 2024; or
- 407 (b) within 60 days after the day the utility becomes aware of the excess capacity, for any
408 excess capacity the utility becomes aware of after May 1, 2024.
- 409 (4) An affected electrical utility may not offer excess proven dispatchable generation
410 capacity for sale outside of the state unless the affected electrical utility has complied
411 with Subsection (2).
- 412 (5) (a) After receiving the notice described in Subsection (2), the division shall
413 immediately begin negotiations through an allocation agreement process for excess
414 proven dispatchable generation capacity.
- 415 (b) The division shall provide regular updates on the status of negotiations under
416 Subsection (5)(a) to the president of the Senate, the speaker of the House of
417 Representatives, and other relevant stakeholders as determined by the commission.
- 418 (6) When reviewing an affected electrical utility's application seeking approval of an
419 agreement to allocate another state's existing share of excess proven dispatchable
420 generation capacity, the commission shall consider:
- 421 (a) the state energy policy described in Section 79-6-301;
- 422 (b) recommendations made by the president of the Senate, the speaker of the House of
423 Representatives, and the office;
- 424 (c) current and forecasted electricity needs within the state and the region;
- 425 (d) the potential impact on long-term electricity costs for ratepayers in the state;
- 426 (e) the potential to resell excess electricity on interstate energy markets to lower costs
427 for state ratepayers;
- 428 (f) the additional operating costs borne by the state as the sole purchaser of capacity or
429 energy from the proven dispatchable generation resource;
- 430 (g) opportunities to coordinate with neighboring states with similar energy policies and
431 goals;
- 432 (h) that any excess capacity allocated and approved in rates under an agreement
433 described in Subsection (5) shall be operated in a manner that prioritizes the interests
434 of ratepayers in the state;
- 435 (i) that all revenues from the sale of excess capacity that is allocated and approved in

436 rates under an agreement described in Subsection (5) shall be credited to ratepayers
437 in the state; and

438 (j) any other factors the commission determines relevant.

439 Section 8. Section **54-17-1002** is enacted to read:

440 **54-17-1002 . Cost recovery for proven dispatchable generation assets.**

441 (1) Notwithstanding any other provision of law, the recovery of costs associated with the
442 acquisition, expansion, maintenance, retrofitting, fueling, or operation of a proven
443 dispatchable generation resource, as well as the reasonable legal fees and costs
444 associated with efforts to preserve the continued operation of a proven dispatchable
445 generation resource, is governed by this section.

446 (2) To recover costs described in Subsections (3) and (5), an affected electrical utility is
447 required to demonstrate, to the commission's satisfaction:

448 (a) the amount sought to be recovered that is attributable to the state;

449 (b) a detailed description of the actions taken by the affected electrical utility resulting in
450 the costs sought to be recovered;

451 (c) that the actions taken by the affected electrical utility resulting in the costs sought to
452 be recovered were:

453 (i) reasonable when considering available dispatchable resources; and

454 (ii) necessary to acquire, operate, and maintain dispatchable resources; and

455 (d) that the recovery of costs for the actions taken by the affected electrical utility is in
456 the public interest.

457 (3) Subject to requirements of Subsection (2), the commission shall allow an affected
458 electrical utility to recover through the affected electrical utility's rates, as established in
459 a general rate case or other appropriate commission proceeding, the reasonable costs
460 associated with:

461 (a) any commission approved significant energy resource decision relating to a proven
462 dispatchable generation resource within the state;

463 (b) any commission approved voluntary resource decision relating to a proven
464 dispatchable generation resource within the state;

465 (c) costs necessary to acquire, expand, retrofit, or maintain proven dispatchable
466 generation resources located within the state to comply with federal law or ensure the
467 efficient operation of those resources;

468 (d) costs to obtain needed generation due to a federal decision or mandate requiring the
469 closure, retirement, or decommission of a proven dispatchable generation resource

- 470 within the state until permanent replacement generation can be obtained or
471 constructed;
- 472 (e) stranded costs due to any federal decision or mandate to close, retire, or
473 decommission proven dispatchable generation resources located within the state; and
- 474 (f) reasonable legal fees and costs arising out of efforts to preserve the continued
475 operation of proven dispatchable generation resources that are either located within
476 the state or that provide generation to the state.
- 477 (4) An affected electrical utility may recover fuel-related costs associated with acquiring
478 and transporting fuel necessary for operating a proven dispatchable generation resource
479 located within the state if the affected electrical utility demonstrates to the commission's
480 satisfaction that:
- 481 (a) any fuel purchase for the proven dispatchable generation resource is at a cost less
482 than or equal to the lower of:
- 483 (i) the current market price for that fuel in the general geographic area from which
484 the resource is extracted; or
- 485 (ii) the cost to purchase that fuel from an affiliate company of the affected electrical
486 utility;
- 487 (b) any fuel transportation costs are reasonable in comparison to current fuel
488 transportation market rates;
- 489 (c) the term of collective fuel supply contracts entered into by the affected electrical
490 utility is reasonable to ensure necessary fuel supply for the affected electrical utility;
491 and
- 492 (d) that the cost for the affected electrical utility to maintain a reasonable stockpile of
493 fuel for up to one year for the proven dispatchable generation resource is reasonable
494 according to prudent utility practice.
- 495 (5) (a) An affected electrical utility:
- 496 (i) may recover reasonable ongoing operating costs incurred in connection with the
497 operation of a proven dispatchable generation resource located within the state;
498 and
- 499 (ii) has a presumption that the ongoing operating costs described in Subsection
500 (5)(a)(i) are reasonable as determined by the commission in a general rate case or
501 other appropriate commission proceeding.
- 502 (b) A party may submit evidence in a commission proceeding to challenge the
503 reasonableness of the affected electrical utility's operating costs.

- 504 (c) If an affected electrical utility's operating costs are unchallenged or the commission
 505 determines after a commission proceeding that a challenging party has failed to
 506 demonstrate that the affected electrical utility's operating costs are not reasonable, the
 507 affected electrical utility is entitled to recover operating costs associated with a
 508 proven dispatchable generation resource in rates.
- 509 (d) If the commission determines, after hearing evidence from a challenging party, that
 510 the affected electrical utility's operating costs are not reasonable, the commission
 511 shall establish reasonable rates that allow the affected electrical utility to recover only
 512 reasonable operating costs associated with a proven dispatchable generation resource.
- 513 (6) (a) Upon filing of a request for recovery under this section from an affected electrical
 514 utility that is expected to result in a rate increase, the commission shall provide a
 515 written notice of the request to the Executive Appropriations Committee and the
 516 Public Utilities, Energy, and Technology Interim Committee.
- 517 (b) Upon receiving the notice described in Subsection (6)(a), the Executive
 518 Appropriations Committee may review the affected utility's request for cost recovery
 519 and determine whether to direct committee staff, or an otherwise qualified third party
 520 to intervene and advocate on behalf of the Legislature.
- 521 Section 9. Section **54-24-301** is enacted to read:

Part 3. Utah Fire Fund

523 **54-24-301 . Utah fire funds -- Creation -- Sources of funding.**

- 524 (1) As used in this part:
- 525 (a) (i) "Eligible payment" means an amount owed by a large-scale electric utility to a
 526 third party in the state that exceeds the large-scale electric utility's applicable
 527 insurance coverage, including self-insurance.
- 528 (ii) "Eligible payment" includes amounts owed as a result of:
- 529 (A) a settlement agreement resolving economic damages arising out of a fire
 530 claim; or
- 531 (B) economic damages awarded in a finally adjudicated fire claim.
- 532 (iii) "Eligible payment" does not include an amount for damages to infrastructure
 533 owned by a large-scale electric utility caused by a fire event.
- 534 (b) "Fire event" means any unplanned or uncontrolled fire in the state alleged to have
 535 been caused by an electrical corporation.
- 536 (c) "Fire claim" means any claim, whether based on negligence, nuisance, trespass, or

- 537 any other claim for relief, brought by a non-governmental person against an electrical
538 corporation in any civil action to recover for damage resulting from a fire event.
- 539 (d) "Inflation" means the seasonally adjusted Consumer Price Index for all urban
540 consumers as published by the Bureau of Labor Statistics of the United States
541 Department of Labor.
- 542 (e) "Utah fire fund" means a fund that may be created under this section by a large-scale
543 electric utility to serve as a resource to supplement other forms of insurance to make
544 eligible payments.
- 545 (2) (a) A large-scale electric utility may create a Utah fire fund by filing notice with the
546 commission.
- 547 (b) The creation of a Utah fire fund under this section does not:
- 548 (i) establish an exclusive fund for payment of eligible claims; or
549 (ii) prohibit a large-scale electric utility from proposing, or the commission from
550 approving, other mechanisms for third party liability coverage that are in the
551 public interest.
- 552 (3) A Utah fire fund shall consist of:
- 553 (a) a reasonable and prudent fire surcharge that a large-scale electric utility may charge
554 to the large-scale electric utility customers, as approved by the commission in a rate
555 case, to be collected over a 10-year period from the date of the commission's
556 approval of the Utah fire fund;
- 557 (b) investment income from money in the fund; and
- 558 (c) other amounts deposited into the fund as otherwise required by law.
- 559 (4) The commission shall approve a large-scale electric utility's request to create a Utah fire
560 fund for a large-scale electric utility if the large-scale electric utility demonstrates to the
561 commission's satisfaction:
- 562 (a) that the fund:
- 563 (i) is in the public interest;
- 564 (ii) supports the financial health of the large-scale electric utility; and
- 565 (iii) maintains or improves the large-scale electric utility's ability to deliver safe and
566 reliable services;
- 567 (b) that the fire surcharge does not result in an increase over current rates:
- 568 (i) for all customers, more than 4.95%; and
- 569 (ii) for an average residential customer more than \$3.70 a month.
- 570 (5) Notwithstanding any other provision of law, a Utah fire fund created under this part

571 may not be used for payments related to any fire or property damage claim originating
572 or occurring outside of the state.

573 Section 10. Section **54-24-302** is enacted to read:

574 **54-24-302 . Utah fire fund administration.**

575 (1) Upon creation of a Utah fire fund under Section 54-24-301, a large-scale electric utility
576 shall:

577 (a) open a separate investment account designated as the Utah fire fund to hold all assets
578 as described in Subsection 54-24-301(3) and designate the chief executive officer,
579 chief financial officer, and other appropriate representatives as authorized by the
580 board of directors of the utility as the account signatories;

581 (b) invest Utah fire fund assets collected under Subsection 54-24-301(3) only in
582 accordance with Title 51, Chapter 7, State Money Management Act, with all
583 investment returns remaining in the Utah fire fund and not allocated to other accounts
584 of the large-scale electric utility;

585 (c) record all customer funds received into the large-scale electric utility's Utah fire fund
586 account in a separate ledger account that reflects deposits, disbursements, assets,
587 liabilities, equity, income, and expenditures related to the fund;

588 (d) report all Utah fire fund account activity, including investment statements and ledger
589 account reconciliations, to the commission annually, unless otherwise directed by
590 commission order or regulation;

591 (e) identify the Utah fire fund investment account as restricted in the large-scale electric
592 utility's financial statements, with an offsetting regulatory liability owed back to
593 customers in the event the funds are not fully utilized; and

594 (f) maintain records of the assets, liabilities, equity, income, and expenditures of the
595 large-scale electric utility's Utah fire fund.

596 (2) (a) For all fire claims arising out of fire events that occurred in a calendar year, a
597 large-scale electric utility may not receive disbursement of funds from a Utah fire
598 fund until the large-scale electric utility has first paid \$10,000,000 towards eligible
599 payments from the large-scale electric utility's own funds, not included in its
600 regulated revenue requirement.

601 (b) Subject to Subsection (2)(a), a large-scale electric utility may disburse funds from
602 the large-scale electric utility's Utah fire fund to pay eligible payments.

603 (3) A surcharge described in Section 54-24-301 that funds a large-scale electric utility's
604 Utah fire fund shall terminate on the earliest of the following dates:

- 605 (a) the date that is 10 years after the effective date of the commission approved
606 surcharge that established the large-scale electric utility's Utah fire fund;
- 607 (b) the date on which the assets in the large-scale electric utility's Utah fire fund reach an
608 amount equal to 50% of the large-scale electric utility's Utah revenue requirement
609 established in the large-scale electric utility's most recently approved general rate
610 case; or
- 611 (c) the date on which the commission determines, on the commission's own motion, that
612 the surcharge should terminate, regardless of the current balance in the Utah fire fund.
- 613 (4) (a) In a rate case or other appropriate proceeding, any party may challenge the
614 amount of the disbursement from the large-scale electric utility's Utah fire fund used
615 for the settlement of a fire claim.
- 616 (b) If an expenditure is challenged under Subsection (5)(a):
- 617 (i) the commission may require that the large-scale electric utility replenish the
618 large-scale electric utility's Utah fire fund for any amount that the commission
619 determines was imprudent; and
- 620 (ii) the burden is on the challenging party to prove imprudence.
- 621 (c) The use of a Utah fire fund to pay a judgment relating to a fire claim is considered
622 prudent and is not subject to challenge.
- 623 (5) If the commission orders a large-scale electric utility to reimburse a Utah fire fund due
624 to imprudence under this Subsection (5), the large-scale electric utility's total
625 reimbursement obligation may not exceed 10% of the large-scale electric utility's
626 distribution equity rate base assigned to this state for the calendar year in which the
627 calculation is performed.

628 Section 11. Section **54-24-303** is enacted to read:

629 **54-24-303 . Fire claims against an electrical corporation.**

- 630 (1) A fire claim shall be brought within two years from the date of the ignition of the fire.
- 631 (2) Subject to the limitations described in this section and Section 65A-3-4, an injured
632 plaintiff may recover for a fire claim:
- 633 (a) economic losses to compensate for damage to property; and
- 634 (b) noneconomic losses to compensate for pain, suffering, and inconvenience.
- 635 (3) Subject to Subsection (6), the amount of damages recoverable under Subsection (2)(a)
636 for economic loss to property shall be calculated as the lesser of:
- 637 (a) the cost to restore the property to the property's pre-fire condition; or
- 638 (b) the difference between:

- 639 (i) the fair market value of the property immediately before the fire; and
640 (ii) the fair market value of the property after the fire.
- 641 (4) (a) Subject to Subsections (4)(b) and (6), the amount of damages recoverable under
642 Subsection (2)(b) for noneconomic loss may not exceed:
- 643 (i) for a person who is not physically injured as a result of the fire, \$100,000; or
644 (ii) for a person who is physically injured as a result of the fire, \$450,000.
- 645 (b) The limitation described in Subsection (4)(a)(ii) does not apply in a wrongful death
646 action.
- 647 (5) (a) Beginning on July 1, 2025, and on July 1 of each year thereafter until July 1,
648 2031, the commission shall adjust the limitation on recoverable damages described in
649 Subsection (4) for inflation.
- 650 (b) By July 15 of each year described in Subsection (5)(a), the commission shall:
- 651 (i) certify the inflation-adjusted limitation on recoverable damages calculated under
652 this subsection; and
- 653 (ii) inform the Administrative Office of the Courts of the adjusted limitation on
654 recoverable damages.
- 655 (6) The limitations on an electrical corporation's liability for recoverable damages described
656 in Subsections (3) and (4) apply unless:
- 657 (a) the electrical corporation did not have a wildland fire protection plan approved by the
658 electrical corporation's own governing authority in place before the occurrence of the
659 fire event; or
- 660 (b) the public service commission determines, in an action brought under Subsection (7),
661 that the electrical corporation was in material noncompliance with the electrical
662 corporation's wildland fire protection plan in the area of the fire event at the time the
663 fire event occurred.
- 664 (7) (a) A party may bring a request for agency action under Title 63G, Chapter 4,
665 Administrative Procedures Act, requesting the commission to determine whether an
666 electrical corporation was in material noncompliance with the electrical corporation's
667 wildland fire protection plan in the area of a specific fire event.
- 668 (b) The commission's determination for an action brought under Subsection (7)(a) is
669 binding on all fire claims arising out of the specific fire event.
- 670 (c) A party shall bring or join an action described in Subsection (7)(a) within 180 days
671 of a fire event.
- 672 (d) Unless the commission determines additional time to complete the analysis required

673 to make a determination under (7)(a) is in the public interest, the commission shall
674 make a determination within 120 days from the date a party files a request for a
675 determination.

676 Section 12. **Effective date.**

677 This bill takes effect on May 1, 2024.