

1 **INDUSTRIAL ELECTRIC INFRASTRUCTURE**

2 **ACT**

3 2002 FOURTH SPECIAL SESSION

4 STATE OF UTAH

5 **Sponsor: Curtis S. Bramble**

6 John L. Valentine

 Ed P. Mayne

7 **This act modifies the Public Utilities title to enact the Industrial Electric Infrastructure Act**
8 **including the definition of terms. The act establishes what is a covered expense of an**
9 **electrical corporation for new industrial electric infrastructure and how customers become**
10 **eligible to participate in infrastructure agreements. The act provides the requirements for**
11 **infrastructure agreements. The act provides that covered expenses will be recovered by the**
12 **electrical corporation from its customers in Utah. The act provides for the accounting**
13 **treatment of covered expenses. This act provides direction regarding how recovery of**
14 **covered expenses are to be apportioned amongst customers should an eligible customer fail**
15 **to pay amounts owed under an infrastructure agreement. The act has an immediate effective**
16 **date.**

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

18 ENACTS:

19 **54-16-101**, Utah Code Annotated 1953

20 **54-16-102**, Utah Code Annotated 1953

21 **54-16-201**, Utah Code Annotated 1953

22 **54-16-202**, Utah Code Annotated 1953

23 **54-16-203**, Utah Code Annotated 1953

24 **54-16-301**, Utah Code Annotated 1953

25 **54-16-302**, Utah Code Annotated 1953

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

27 Section 1. Section **54-16-101** is enacted to read:



CHAPTER 15. INDUSTRIAL ELECTRIC INFRASTRUCTURE ACT

Part 1. General Provisions

54-16-101. Title.

This chapter is known as the "Industrial Electric Infrastructure Act."

Section 2. Section **54-16-102** is enacted to read:

54-16-102. Definitions.

As used in this chapter:

(1) "Covered expense" means an expense classified as a covered expense in accordance with Section 54-16-201.

(2) "Eligible customer" means a person that is an eligible customer under Section 54-16-202.

(3) "Expense" means an expense incurred by an electrical corporation in connection with new industrial electric infrastructure, including:

(a) design and engineering;

(b) acquisition of rights-of-way;

(c) purchase of new industrial electric infrastructure;

(d) construction of new industrial electric infrastructure;

(e) capital overhead charges, such as labor and other charges, that:

(i) have been identified as capital; and

(ii) are general in nature and not directly related to the new industrial electric infrastructure; and

(f) an expense similar to an expense listed in Subsections (3)(a) through (e).

(4) "Infrastructure agreement" means an agreement that:

(a) is required by Section 54-16-201; and

(b) complies with Subsections 54-16-203(1) through (3).

(5) (a) "New industrial electric infrastructure" means a facility or equipment that is:

(i) constructed, expanded, installed, or upgraded:

(A) under an infrastructure agreement; and

(B) after the day on which the infrastructure agreement is executed; and

(ii) reasonably necessary or appropriate to provide electric service to a new industrial facility.

59 (b) "New industrial electric infrastructure" includes any of the following that meet the
 60 conditions listed in Subsection (5)(a):

61 (i) the construction, expansion, or upgrading of:

62 (A) an electric substation;

63 (B) an electric transformer;

64 (C) a switching gear;

65 (D) a facility related to a facility described in Subsections (5)(b)(i)(A) through (C); or

66 (E) from an electric substation to a new industrial facility;

67 (I) a transmission or distribution line;

68 (II) a transmission or distribution pole; or

69 (III) a facility related to a facility described in Subsections (5)(b)(i)(E)(I) or (II); or

70 (ii) any necessary or appropriate upgrading of an electric line or facility affected by the

71 construction, expansion, installation, or upgrading of other industrial electric infrastructure.

72 (6) "New industrial facility" means one or more buildings, machinery, equipment, or other
 73 facilities that:

74 (a) in the aggregate will be used:

75 (i) in a manufacturing process within the state; or

76 (ii) for activities related to the manufacturing process described in Subsection (6)(a)(i); and

77 (b) the construction or acquisition of which will require capital investment by the eligible

78 customer:

79 (i) after the day on which a statement of eligibility is filed under Section 54-16-202; and

80 (ii) in an amount equal to or in excess of the capital costs required by Subsection

81 54-16-202(2).

82 Section 3. Section **54-16-201** is enacted to read:

83 **Part 2. Determining Covered Expenses**

84 **54-16-201. Classifying an expense as a covered expense.**

85 For purposes of this chapter, an electrical corporation may classify an expense incurred by
 86 the electrical corporation as a covered expense if:

87 (1) prior to the expense being incurred:

88 (a) the electrical corporation executes:

89 (i) an infrastructure agreement that complies with Subsections 54-16-203(1) through (3);

90 and

91 (ii) a contract for electric services as provided in Subsection 54-16-203(4); and

92 (b) the eligible customer has secured financing for the construction of the new industrial
93 facility; and

94 (2) the expense is:

95 (a) reasonable; and

96 (b) directly related to the new industrial electric infrastructure specified in the
97 infrastructure agreement required by Subsection (1)(a).

98 Section 4. Section **54-16-202** is enacted to read:

99 **54-16-202. Eligible customer.**

100 (1) A person becomes an eligible customer:

101 (a) 15 days after the day on which the person files with the commission a statement of
102 eligibility that complies with Subsection (2) if no request for findings is filed in accordance with
103 Subsection (3); or

104 (b) the day on which the commission makes a finding in accordance with Subsection (3)
105 that the person is an eligible customer if:

106 (i) the person files with the commission a statement of eligibility that complies with
107 Subsection (2); and

108 (ii) a request for findings on the statement of eligibility is filed in accordance with
109 Subsection (3).

110 (2) A statement of eligibility filed under this section shall certify that:

111 (a) the person filing the statement is a customer of the electrical corporation on the day on
112 which the statement of eligibility is filed;

113 (b) the person filing the statement of eligibility reasonably believes that within five years
114 from the day on which the statement of eligibility is filed the person will begin operating a new
115 industrial facility:

116 (i) that requires new industrial electric infrastructure;

117 (ii) operation of which will require peak electric loads that exceed the person's peak
118 electric loads during the calendar year in which the person files the statement of eligibility by at
119 least 50 megawatts;

120 (iii) for which during the five year period beginning on the day on which the person files

121 the statement of eligibility the person will have capital costs that equal or exceed \$50,000,000; and
122 (iv) operation of which will require the creation or retention of at least 500 jobs:
123 (A) within the state; and
124 (B) that are:
125 (I) related to the operation of the new industrial facility;
126 (II) full-time positions; and
127 (III) anticipated to be filled for not less than one year; and
128 (c) the person filing the statement of eligibility reasonably believes that the new industrial
129 electric infrastructure described in Subsection (2)(b)(i):
130 (i) will have a cost to the electrical corporation equal to or in excess of \$20,000,000; and
131 (ii) but for the operation of the new industrial facility:
132 (A) would not be built by the electrical corporation; or
133 (B) would be built by the electrical corporation at a time that would unreasonably delay
134 the construction or operation of the new industrial facility.
135 (3) (a) Within 15 days of the day on which a person files a statement of eligibility under
136 this section, a person may file a request for findings by the commission if that person believes that
137 there is clear and convincing evidence that:
138 (i) the person filing the statement of eligibility is not a customer of the electrical
139 corporation on the day on which the statement of eligibility is filed; or
140 (ii) one or more of the reasonable beliefs included in the statement of eligibility is not
141 supportable.
142 (b) If a request for findings is filed in accordance with Subsection (3)(a), the commission
143 shall:
144 (i) issue an order stating the commission's findings no later than 45 days from the day on
145 which the statement of eligibility is filed with the commission; and
146 (ii) find that the person is an eligible customer unless the commission finds that there is
147 clear and convincing evidence that:
148 (A) the person filing the statement of eligibility is not a customer of the electrical
149 corporation on the day on which the statement of eligibility is filed; or
150 (B) one or more of the reasonable beliefs included in the statement of eligibility is not
151 supportable.

152 Section 5. Section **54-16-203** is enacted to read:

153 **54-16-203. Infrastructure agreement -- Electric services agreement.**

154 (1) An infrastructure agreement required by Section 54-16-201 shall:

155 (a) specify the new industrial facility that requires new industrial electric infrastructure;

156 (b) specify the new industrial electric infrastructure that under the infrastructure agreement
157 the electrical corporation will provide the new industrial facility;

158 (c) subject to Subsection (2), state the amount the eligible customer shall pay the electrical
159 corporation for the portion of the new industrial electric infrastructure that is attributable to electric
160 services to be provided to the new industrial facility;

161 (d) subject to Subsection (3), state the time period during which the eligible customer is
162 required to pay the amount described in Subsection (1)(c); and

163 (e) be subject to approval by the commission in accordance with this title.

164 (2) The amount an eligible customer is required to pay under Subsection (1)(c) may not
165 be less than an amount calculated by:

166 (a) estimating as of the day on which the infrastructure agreement is executed the covered
167 expenses that the electrical corporation will incur for the new industrial electric infrastructure; and

168 (b) determining the portion of the covered expenses estimated under Subsection (2)(a) that
169 are properly the responsibility of the eligible customer under:

170 (i) applicable tariffs;

171 (ii) applicable rules of the commission; and

172 (iii) the standard practices of the electrical corporation on the day on which the
173 infrastructure agreement is executed.

174 (3) (a) The time period described in Subsection (1)(d) may not be longer than seven years
175 from the day on which the infrastructure agreement is executed.

176 (b) The time period described in Subsection (1)(d) may not affect the time period over
177 which the new industrial electric infrastructure is amortized.

178 (4) The contract for electric services required by Section 54-16-201 shall:

179 (a) require the eligible customer to purchase electric services:

180 (i) from the electrical corporation;

181 (ii) to be used by the eligible customer for operation of the new industrial facility; and

182 (iii) for a time period that may be shorter than the time period described in Subsection

183 (1)(d); and

184 (b) provide the rates, terms, and conditions under which the eligible customer shall
185 purchase the electric services described in Subsection (4)(a) subject to approval by the commission
186 in accordance with this title.

187 Section 6. Section **54-16-301** is enacted to read:

188 **Part 3. Recovery of Covered Expenses**

189 **54-16-301. Covered expenses to be recovered by customers in the state.**

190 (1) In accordance with this section an electrical corporation shall recover the entire amount
191 of a covered expense:

192 (a) in rates, except to the extent that the covered expense is paid for by an eligible
193 customer under an infrastructure agreement;

194 (b) solely from the electrical corporation's customers located within the state; and

195 (c) in the manner determined by the commission in accordance with this title.

196 (2) Subsection (1) applies whether or not:

197 (a) the covered expense is specifically identified as being paid by the eligible customer;

198 (b) the eligible customer:

199 (i) purchases electric services from the electrical corporation after the day on which the
200 infrastructure agreement is executed;

201 (ii) operates the new industrial facility; or

202 (iii) continues to engage in business in this state;

203 (c) once a person becomes an eligible customer under Section 54-16-201, the eligible
204 customer actually achieves one or more of the reasonable beliefs included in the eligible customer's
205 statement of eligibility filed under Section 54-16-202;

206 (d) the new industrial electric infrastructure includes transmission facilities;

207 (e) any portion of the new industrial electric infrastructure is used by a customer of the
208 electrical corporation other than an eligible customer; or

209 (f) the electric corporation takes any action to recover monies owed by an eligible
210 customer under an infrastructure agreement in the case of a breach of the infrastructure agreement.

211 (3) Notwithstanding the other provisions of this section, the commission may determine
212 whether for any purpose under this title an expense qualifies as a covered expense under Section
213 54-16-201.

214 Section 7. Section **54-16-302** is enacted to read:

215 **54-16-302. Accounting treatment of covered expenses.**

216 (1) An electrical corporation that has entered into an infrastructure agreement shall
217 maintain an account for covered expenses:

218 (a) that permits the electrical corporation to account for a covered expense at the time the
219 covered expense is incurred;

220 (b) that includes a carrying charge on the unamortized balance of the account at a rate
221 equal to the electrical corporation's weighted average cost of capital as approved by the
222 commission at the time the covered expense is incurred; and

223 (c) to which the electrical corporation will credit any payments from an eligible customer
224 received by the electrical corporation under the infrastructure agreement.

225 (2) In the first general rate case of the electrical corporation that begins on or after a
226 covered expense is incurred, the commission shall provide for the recovery by the electrical
227 corporation:

228 (a) of all amounts in the account described in Subsection (1), including accrued carrying
229 charges; and

230 (b) solely from the customers of the electrical corporation located in the state.

231 (3) (a) For purposes of this Subsection (3), "eligible customer's share that is in default"
232 means the portion of the amount in the account described in Subsection (1) that the commission
233 finds is attributable to the eligible customer failing to pay monies that:

234 (i) are owed by the eligible customer:

235 (A) under an infrastructure agreement; and

236 (B) at the time the general rate case described in Subsection (2) is filed; and

237 (ii) but for the eligible customer failing to pay the monies, would have been credited to the
238 account as provided in Subsection (1)(c).

239 (b) In the general rate case described in Subsection (2), the commission shall provide for
240 the apportionment of the eligible customer's share that is in default:

241 (i) to all customer classes; and

242 (ii) in a manner so that the rate impacts of the apportionment is reasonably equivalent for
243 each of the customer classes.

244 Section 8. **Effective date.**

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

Legislative Review Note
as of 5-22-02 6:12 PM

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

Office of Legislative Research and General Counsel