ENERGY PRODUCTION FINANCING AMENDMENTS

2020 GENERAL SESSION
STATE OF UTAH

LONG TITLE

General Description:
This bill enacts the Energy Production Finance Act.

Highlighted Provisions:
This bill:

- provides definitions;
- establishes procedures for an electrical corporation to retire or replace an existing electric generating facility through:
  - the issuance of rate recovery bonds to cover the costs of approved rate recovery costs; and
  - the imposition of rate recovery charges paid by certain electric utility customers;
- requires the Public Service Commission to:
  - review an electrical corporation's application for the determination of the amount of rate recovery costs; and
  - review an electrical corporation's application for the approval of a financing order that authorizes the issuance of rate recovery bonds, the imposition, charging, adjustment, and collection of rate recovery charges, and the creation of rate recovery property;
- grants the Public Service Commission rulemaking authority to implement the review and approval processes;
- specifies procedures for the Public Service Commission to review, approve, modify, or deny an application for the determination of the rate recovery costs and approval of a financing order;
- specifies reporting requirements for an electrical corporation that has issued rate recovery bonds and is imposing a rate recovery charge on its customers;
- specifies requirements for property that is approved as rate recovery property in a financing order approved by the Public Service Commission;
- provides that rate recovery bonds are not public debt and holders of rate recovery
bonds do not have a right to have taxes levied by the state or a political subdivision of the state for the payment of the principal or interest on rate recovery bonds; and
> specifies procedures and requirements for establishing and enforcing property rights and a security interest in rate recovery property.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

54-24-101, Utah Code Annotated 1953
54-24-102, Utah Code Annotated 1953
54-24-103, Utah Code Annotated 1953
54-24-104, Utah Code Annotated 1953
54-24-201, Utah Code Annotated 1953
54-24-202, Utah Code Annotated 1953
54-24-203, Utah Code Annotated 1953
54-24-301, Utah Code Annotated 1953
54-24-302, Utah Code Annotated 1953
54-24-303, Utah Code Annotated 1953
54-24-304, Utah Code Annotated 1953
54-24-305, Utah Code Annotated 1953
54-24-306, Utah Code Annotated 1953
54-24-307, Utah Code Annotated 1953
54-24-308, Utah Code Annotated 1953
54-24-309, Utah Code Annotated 1953
54-24-310, Utah Code Annotated 1953
54-24-401, Utah Code Annotated 1953
54-24-402, Utah Code Annotated 1953
54-24-403, Utah Code Annotated 1953
54-24-404, Utah Code Annotated 1953
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 54-24-101 is enacted to read:

CHAPTER 24. ENERGY PRODUCTION FINANCE ACT


54-24-101. Title.

This chapter is known as the "Energy Production Finance Act."

Section 2. Section 54-24-102 is enacted to read:

54-24-102. Definitions.

As used in this chapter:

(1) "Ancillary agreement" means a bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement that is:

(a) entered into in connection with issuance of rate recovery bonds; and

(b) designed to:

(i) promote the credit quality and marketability of rate recovery bonds; or

(ii) mitigate the risk of an increase in interest rates on rate recovery bonds.

(2) "Assignee" means any person to which an interest in rate recovery property is sold, assigned, transferred, or conveyed, other than as security, and any successor to or subsequent assigned of the person.

(3) "Bondholder" means any holder or owner of rate recovery bonds.

(4) "Customer" means any person that takes electric distribution or transmission service from an electrical corporation or its successors for consumption of electricity within a
qualifying service area of that electrical corporation in the state.

(5) "Division" means the Division of Public Utilities within the Department of
Commerce created in Section 54-4a-1.

(6) "Electrical corporation" has the meaning as that term is defined in Section 54-2-1.

(7) (a) "Financing costs" means costs approved by the commission in a financing order.

(b) "Financing costs" include costs to issue, service, repay, or refinance rate recovery
bonds, whether incurred or paid upon the issuance of rate recovery bonds or over the life of rate
recovery bonds, including:

(i) principal, interest, and any redemption premiums that are payable on rate recovery
bonds;

(ii) any payment required under an ancillary agreement and any amount required to
fund or replenish a reserve account or other accounts established under the terms of an
indenture, ancillary agreement, or other financing document pertaining to rate recovery bonds;

(iii) any other demonstrable costs related to issuing, supporting, repaying, or refunding
rate recovery bonds and servicing rate recovery bonds or rate recovery property, including:

(A) servicing fees;

(B) administration fees;

(C) accounting and auditing fees;

(D) trustee fees;

(E) legal fees;

(F) consulting fees;

(G) financial advisor fees;

(H) placement and underwriting fees;

(I) capitalized interest;

(J) rating agency fees;

(K) stock exchange listing and compliance fees;

(L) security registration fees;

(M) filing fees;

(N) information technology programming costs; and

(O) any other demonstrable costs necessary to ensure and guarantee the timely payment
of rate recovery bonds or other amounts payable in connection with rate recovery bonds;
(iv) any income taxes and license fees imposed on rate recovery revenues;
(v) any state and local taxes, including franchise, sales and use, and other taxes or
similar charges, including regulatory assessment fees, whether paid, payable, or accrued on rate
recovery revenues; and
(vi) any costs incurred by the commission pursuant to Section 54-24-303 to retain
specialized consulting.

(8) "Financing order" means an order of the commission which grants, in whole or in
part, an application that is filed under Part 3, Financing Orders, and that authorizes:
(a) the issuance of rate recovery bonds in one or more series;
(b) the imposition, charging, adjustment, and collection of rate recovery charges; and
(c) the creation of rate recovery property, which may include any conditions that are
necessary to promote the public interest.

(9) "Financing party" means a holder of rate recovery bonds and trustees, the issuer of
rate recovery bonds, collateral agents, any party under an ancillary agreement, and any other
person acting for the benefit of holders of rate recovery bonds.

(10) "Non-bypassable" means that the payment of rate recovery charges required to
repay rate recovery bonds and related costs shall be paid by either:

(a) if the financing order applies to rate recovery costs associated with replaced assets,
as defined in Subsection 54-17-902(15), then notwithstanding Section 54-17-905, all existing
and future participating customers in the qualifying service area receiving transmission or
distribution service from the electrical corporation or its successors or assignees, even if:

(i) a participating customer in the future is allowed and elects to cease participating in a
community renewable energy program; and

(ii) a participating customer in the future is allowed and elects to purchase electricity
from an electricity supplier other than the electrical corporation; or

(b) if the financing order does not apply to rate recovery costs associated with replaced
assets as defined in Subsection 54-17-902(15), all existing and future customers in the
qualifying service area receiving transmission or distribution service from the electrical
corporation or its successors or assignees, even if a customer in the future is allowed and elects
to purchase electricity from an electricity supplier other than the electrical corporation, as well
as any person located within the electrical corporation's qualifying service area that may
subsequently receive retail electricity transmission or distribution service from another electric
utility operating in the same qualifying service area.

(11) "Office" means the Office of Consumer Services created in Section 54-10a-201.
(12) "Participating customer" has the meaning as that term is defined in Section
54-17-902.
(13) "Qualifying service area" means the geographic area within which the electrical
corporation provides retail electricity distribution or transmission service as of the issue date of
the series of rate recovery bonds.
(14) "Rate recovery bonds" means bonds or other evidences of indebtedness or
ownership that are issued by an electrical corporation or an assignee pursuant to a financing
order, the proceeds of which are secured by or payable from rate recovery property and which
are non-recourse to the electrical corporation.
(15) "Rate recovery charge" means a non-bypassable charge paid by some or all
customers of an electrical corporation for the recovery of rate recovery costs and financing
costs pursuant to a financing order issued by the commission under Part 3, Financing Orders.
(16) "Rate recovery costs" means costs, approved by the commission in accordance
with Part 2, Rate Recovery Cost Determination, which costs may be recovered from customers
through the issuance of rate recovery bonds.
(17) "Rate recovery property" means all rights and interests of an electrical corporation,
or successor or assignee of an electrical corporation, under a financing order issued under Part
3, Financing Orders, to impose, bill, collect, and receive rate recovery charges in an amount
necessary to provide for full payment and recovery of all rate recovery costs identified in a
financing order, including all revenues or other proceeds arising from those rights and interests.
(18) "Rate recovery revenue" means all revenue, receipts, collections, payments,
money, claims, or other proceeds arising from rate recovery property.
(19) "Replacement resource" means an incremental electricity supply-side or
demand-side resource that, when included in an electrical corporation's generation or
transmission portfolio, produces the lowest-risk, least-cost among alternative resources,
considering both short-term and long-term costs and assessing the likelihood of changes in
future fuel prices and future environmental requirements, among other considerations, and
acquired in accordance with Title 54, Chapter 17, Energy Resource Procurement Act.
(20) "Retired electric generating facility costs" means costs that the electrical corporation has incurred, or will incur, and that are or will be included in the electrical corporation's rate base with respect to any electric generating facility which has been or will be retired prior to the date when the electrical corporation's rate base for that facility is scheduled to be recovered in full through depreciation or amortization allowances, including reasonable and prudent decommissioning and reclamation costs.

(21) (a) "Successor" means, with respect to any legal entity, another legal entity that succeeds by operation of law or by contract to the rights and obligations of that legal entity.

(b) "Successor" includes, in connection with an electrical corporation, any legal entity that succeeds to the rights and obligations of an electrical corporation to provide retail electricity distribution or transmission service in the qualifying service area, including succession:

(i) by consensual agreement;

(ii) by eminent domain;

(iii) through a bankruptcy, reorganization, restructuring, or other insolvency proceeding; or

(iv) through a merger, acquisition, consolidation, or sale or transfer of assets, regardless of whether the merger, acquisition, consolidation, or sales or transfer of assets occurs due to a restructuring of the electric power industry or otherwise.

(22) "System restoration costs" means reasonable and necessary costs the electrical corporation has prudently incurred or will prudently incur in connection with the restoration of service and infrastructure associated with electric power outages affecting customers of the electrical corporation as the result of an earthquake, tornado, ice or snow storm, flood, or other weather-related event or natural disaster that occurred on or after January 1, 2021, including:

(a) costs of mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, distribution, or general plant facilities;

(b) costs of an activity conducted by or on behalf of the electrical corporation in connection with the restoration of service or infrastructure associated with electric power outages; and

(c) carrying costs at the electrical corporation's weighted average cost of capital as last approved by the commission in a general rate proceeding from the date on which the system
restoration costs were incurred until the date that rate recovery bonds are issued or until system
restoration costs are otherwise recovered.

Section 3. Section 54-24-103 is enacted to read:

54-24-103. Purpose -- Commission responsibilities.

(1) The Legislature finds that it is in the interest of the state and its citizens to
courage and facilitate the use of rate recovery bonds as a method for enabling electrical
corporations to lower the cost of financing the retirement or replacement of electric generating
infrastructure or utilities.

(2) In accordance with the requirements of this chapter, the commission shall:

(a) review an electrical corporation's application for the determination of the amount of
rate recovery costs in accordance with the requirements of Part 2, Rate Recovery Cost
Determination; and

(b) review an electrical corporation's application for the approval of a financing order
in accordance with the requirements of Part 3, Financing Orders, that authorizes:

(i) the issuance of rate recovery bonds in one or more series;
(ii) the imposition, charging, adjustment, and collection of rate recovery charges; and
(iii) the creation of rate recovery property, which may include any conditions that are
necessary to promote the public interest.

Section 4. Section 54-24-104 is enacted to read:

54-24-104. Rulemaking.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
commission shall make rules necessary for the implementation of this chapter.

(2) The rules under Subsection (1) shall include:

(a) rules made in accordance with Section 53-24-202 establishing the application
requirements for a determination of the amount of rate recovery charges that an electrical
corporation may recover; and

(b) rules made in accordance with Section 53-24-302 establishing the application
requirements for a financing order.

(3) The commission may take action under this chapter before the commission makes a
rule, including:

(a) approving an amount of rate recovery costs consistent with the requirements of this
chapter:

(b) issuing a financing order consistent with the requirements of this chapter; or

c) establishing a methodology for calculating net present value customer savings from

the issuance of rate recovery bonds.

Section 5. Section 54-24-201 is enacted to read:

**Part 2. Rate Recovery Cost Determination**

**54-24-201. Definitions.**

As used in this part, "complete filing" means an application:

1. filed by an electrical corporation for a determination of the amount of rate recovery

costs that may be recovered from customers; and

2. that substantially complies with the minimum filing requirements established by the

commission under this part.

Section 6. Section 54-24-202 is enacted to read:

**54-24-202. Commission approval of rate recovery costs.**

1. Before submitting an application for a financing order issued under Part 3,

Financing Orders, an electrical corporation shall request, in accordance with the requirements

of this part, a commission determination of just and reasonable rate recovery costs that may be

recovered from customers through the issuance of rate recovery bonds pursuant to a financing

order.

2. (a) To request a determination described in Subsection (1), the electrical

corporation shall file an application with the commission for the determination of the amount

of rate recovery costs that may be recovered from customers.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

commission shall make rules establishing the minimum requirements to be met for an

application for a determination of the amount of rate recovery costs that may be recovered from

customers to be considered a complete filing.

3. Rate recovery costs may include:

(a) pretax retired electric generating facility costs, provided that if the costs are

estimates at the time of filing, the costs:

(i) will be subject to reconciliation after actual costs are known; and

(ii) may not exceed the maximum approved costs unless the electrical corporation
provides additional evidence that the incremental costs are prudent and in the public interest;

(b) pretax system restoration costs, provided that if the costs are estimates at the time of filing, the costs:

(i) will be subject to a reconciliation process after actual costs are known; and

(ii) may not exceed the maximum approved costs unless the electrical corporation provides additional evidence that the incremental costs are prudent and in the public interest;

(c) pretax costs the electrical corporation has incurred with respect to the buyout, buydown, restructuring, or renegotiation of power purchase obligations; and

(d) any reasonable and necessary administrative and operating costs as required by a financing order.

(4) Rate recovery costs may not include any monetary penalty, fine, or forfeiture assessed against an electrical corporation by a government agency or court under a federal or state environmental statute, rule, or regulation.

(5) (a) To the extent an electrical corporation receives insurance proceeds, governmental grants, or any other source of funding that compensates the electrical corporation for costs included in rate recovery costs, those amounts shall be used to reduce the electrical corporation's rate recovery costs.

(b) The commission shall take the following amounts into account in the electrical corporation's next general rate case, or any subsequent proceeding, other than a proceeding in which the commission adjusts rate recovery charges to reconcile the final actual rate recovery costs and financing costs with the projected rate recovery costs and financing costs approved by the financing order, if:

(i) the timing of an electrical corporation's receipt of the amounts described in Subsection (1) prevents their inclusion as a reduction to the amount of rate recovery costs that are financed by rate recovery bonds; or

(ii) the commission later determines, as a result of the reconciliation process for system restoration costs, that actual rate recovery costs incurred are less than approved rate recovery costs.

(6) To the extent the electrical corporation receives insurance proceeds, governmental grants, or any other source of funding that is used to reduce rate recovery costs, the commission shall impute interest on those amounts at the same cost of capital included in the electrical
corporation's system restoration costs until the date that those amounts are used to reduce the 
amount of rate recovery costs that are financed by rate recovery bonds or otherwise reflected in 
the rates of the electrical corporation.

(7) The commission may make a determination of rate recovery costs in a general rate 
case or in a separate proceeding.

(8) A final order of the commission approving rate recovery costs may be conditioned 
upon the rate recovery costs being financed by rate recovery bonds pursuant to a financing 
order issued under Part 3. Financing Orders.

Section 7. Section 54-24-203 is enacted to read:

54-24-203. Rate recovery cost order -- Request for review.

(1) An order approving, disapproving, or modifying rate recovery costs is a final order 
of the commission.

(2) A party aggrieved by the issuance of a rate recovery cost order shall comply with 
Section 54-7-15 before seeking judicial review.

(3) In a petition for judicial review of a rate recovery cost order, the court shall proceed 
to hear and determine the action as expeditiously as practicable and shall give the action 
precedence over other matters not accorded similar precedence by law.

Section 8. Section 54-24-301 is enacted to read:

Part 3. Financing Orders

54-24-301. Definitions.

As used in this part, "complete filing" means an application:

(1) filed by an electrical corporation for a financing order issued under this part; and

(2) that substantially complies with minimum filing requirements established by the 
commission under this part.

Section 9. Section 54-24-302 is enacted to read:

54-24-302. Application for a financing order.

(1) After the commission has adopted a final order approving an amount of rate 
recovery costs pursuant to Part 2, Rate Recovery Cost Determination, for an electrical 
corporation, the electrical corporation may apply to the commission for a financing order with 
respect to some or all of the rate recovery costs.

(2) The commission may require the electrical corporation to show cause for not
seeking a financing order if, on its own motion or pursuant to a request for agency action, the
commission determines that financing rate recovery costs through the issuance of rate recovery
bonds is likely to result in net present value customer savings compared to traditional electrical
corporation financing mechanisms.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
commission shall make rules establishing the minimum requirements to be met for an
application for a financing order to be considered a complete filing.

(4) The rules under Subsection (3) shall require that an application for a financing
order include the following information:

(a) an estimated schedule for the retirement of any electric generating facility or
electric transmission facility included in rate recovery costs;

(b) a description of the qualifying service area;

(c) a designation of customers in the qualifying service that will be obligated to pay the
rate recovery charge and a proposed methodology for allocating the revenue requirement for
the rate recovery charge among customer classes;

(d) a description of the non-bypassable rate recovery charges required to be paid by
designated customers within the electrical corporation's qualifying service area for recovery of
rate recovery costs and financing costs;

(e) a proposed mechanism for making periodic adjustments in rate recovery charges
that are necessary to correct for any over or under collection of rate recovery charges in past
periods, or otherwise to guarantee the timely payment of rate recovery bonds and financing
costs and other required amounts payable in connection with rate recovery bonds;

(f) an estimate of the net present value of electrical corporation customer savings
expected to result if the financing order is issued, as determined by a net present value
comparison between:

(i) the costs to customers that are expected to result from the financing with rate
recovery bonds, including financing costs; and

(ii) the costs to customers that would result from the application of traditional electrical
corporation financing mechanisms for the same purposes;

(g) a statement proposing how the electrical corporation will expend amounts the
electrical corporation receives as consideration for its transfer of rate recovery property in a
manner that demonstrably benefits customer interests as follows:

(i) to repurchase or redeem outstanding debt or equity of the electrical corporation;

(ii) to pay or reimburse prudently incurred system restoration costs;

(iii) to pay or reimburse costs the electrical corporation has prudently incurred in the

buyout, buydown, restructuring, or renegotiation of the electrical corporation's power purchase

obligations;

(iv) to make prudent purchases of power to replace electricity generated by the electric

generating facilities that were retired in connection with the issuance of rate recovery bonds, if

the commission determines that the purchased power is a replacement resource;

(v) to make prudent purchases of electric transmission service to replace transmission

capability provided by transmission facilities that were retired in connection with the issuance

of rate recovery bonds, if the commission determines that the purchased transmitted power is a

replacement resource;

(vi) to acquire or construct and own electric generating facilities or electric

transmission facilities that are prudent replacement resources;

(vii) to acquire or construct and own prudent electricity storage capacity to the extent

that such investment is either required by law or rule or is needed to increase the amount of

replacement resources;

(viii) to prudently help customers invest in energy efficiency, including financing

assistance; or

(ix) to prudently invest in network modernization to the extent that the modernization

is necessary to increase the amount of replacement resources;

(h) one or more alternative financing scenarios in addition to the preferred scenario

contained in the application; and

(i) any additional information that the commission determines is necessary.

Section 10. Section 54-24-303 is enacted to read:


(1) The commission shall perform comprehensive due diligence in its evaluation of an

application for a financing order and shall oversee the process used to structure, market, and

price rate recovery bonds.

(2)(a) In performing its duties under Subsection (1) and Section 54-24-307, the
commission may retain a specialized consultant experienced in securitized electrical
corporation ratepayer-backed bond financing, to advise the commission on the proposed
issuance of rate recovery bonds.
(b) Upon request of the commission, the specialized consultant shall:
(i) review and determine the reasonableness of all proposed up front and ongoing
financing costs;
(ii) ensure that the structuring, marketing, and pricing of rate recovery bonds optimizes
net present value customer savings, consistent with market conditions and the terms of the
financing order; and
(iii) be available to testify under oath before the commission in any proceeding
concerning the approval of a financing order for the issuance of rate recovery bonds.
(3) The commission, and the specialized consultant if retained in accordance with
Subsection (2)(a), shall use all reasonable efforts not to delay the approval of a financing order
or the issuance of rate recovery bonds.
(4) The commission shall make documentation provided by the specialized consultant
available to the electrical corporation, the division, the office, or other interested persons under
the terms and conditions determined appropriate by the commission.
(5) (a) The commission and the specialized consultant shall execute contracts approved
by the commission with terms and conditions approved by the commission.
(b) Unless otherwise provided by contract, invoices for the specialized consultant's
services shall be sent to the division for review and approval.
(c) After approval under Subsection (5)(b), the invoices shall be forwarded to the
affected electrical corporation for payment to the specialized consultant.
(6) (a) The costs incurred by the electrical corporation for payment to the specialized
consultant may be included as financing costs in a financing order.
(b) If the costs incurred by the electrical corporation for payment to the specialized
consultant are not included as financing costs pursuant to a financing order;
(i) the affected electrical corporation may, in a general rate case or other appropriate
commission proceeding, include recovery by the affected electrical corporation of any amount
paid by the affected electrical corporation for the specialized consultant; and
(ii) the commission shall allow recovery by the affected electrical corporation of any
amount paid by the affected electrical corporation for the specialized consultant.

Section 11. Section 54-24-304 is enacted to read:

54-24-304. Public interest determination.

(1) The commission may issue a financing order if the commission finds:

(a) that the financing order is in the public interest, taking into consideration whether

the issuance of rate recovery bonds and the imposition and collection of rate recovery charges:

(i) are just and reasonable; and

(ii) will provide benefits to customers that are greater than the benefits that would be

achieved absent issuance of rate recovery bonds;

(b) that the proposed structure, marketing, and pricing of the rate recovery bonds will:

(i) lower the overall costs to customers or mitigate rate impacts to customers relative to

traditional methods of financing; and

(ii) achieve the maximum net present value savings, consistent with market conditions

at the time of sale and the terms of the financing order; and

(c) that the proposed upfront and ongoing financing costs are just and reasonable.

(2) The commission may:

(a) attach any conditions to the approval of a financing order that the commission

deems appropriate to:

(i) promote the public interest;

(ii) maximize the financial benefits or minimize the financial risks of the transaction to

customers and directly impacted Utah workers and communities; and

(iii) ensure that the structuring, marketing, and pricing of rate recovery bonds will

result in the lowest rate recovery charge consistent with:

(A) prevailing market conditions at the time of pricing the rate recovery bonds; and

(B) the structure and terms of rate recovery bonds approved pursuant to the financing

order;

(b) grant relief that is different from that which was requested in the application; and

(c) specify details of the process used to structure, market, and price rate recovery

bonds, including the selection of the underwriter or underwriters.

Section 12. Section 54-24-305 is enacted to read:

54-24-305. Financing order authorizing issuance of rate recovery bonds.
(1) In the financing order, the commission shall:

(a) determine the maximum amount of rate recovery costs that may be financed from
proceeds of rate recovery bonds authorized to be issued pursuant to the financing order;
(b) describe the customer billing mechanism for rate recovery charges and include a
finding that the mechanism is:
   (i) consistent with Part 4, Customer Billing and Reporting; and
   (ii) just and reasonable;
(c) describe the financing costs that may be recovered through proceeds of rate
recovery bonds or through rate recovery charges;
(d) describe the rate recovery property that may be used to pay and secure the payment
of the rate recovery bonds and financing costs authorized in the financing order;
(e) subject to the restriction in Subsection (2), authorize the electrical corporation to
finance rate recovery costs through the issuance of one or more series of rate recovery bonds;
(f) describe the mechanism for making periodic adjustments in the rate recovery
charges to correct for any over or under collection of rate recovery charges and to provide for
timely payment of scheduled principal of and interest on the rate recovery bonds and the
payment and recovery of financing costs;
(g) include provisions to ensure that the structuring, marketing, and pricing of rate
recovery bonds results in the lowest rate recovery charge consistent with:
   (i) prevailing market conditions at the time of pricing the rate recovery bonds; and
   (ii) the structure and terms of rate recovery bonds approved pursuant to the financing
order, including any conditions for the approval of a financing order that the commission
deems appropriate to maximize the financial benefits or to minimize the financial risks of the
transaction to customers and directly impacted Utah workers and communities;
(h) subject to the requirement in Subsection (3), specify the degree of flexibility
afforded to the electrical corporation in establishing the terms and conditions of the rate
recovery bonds, including repayment schedules, expected interest rates, and other financing
costs;
(i) specify the timing of actions required by the financing order so that:
   (i) the rate recovery bonds are issued as soon as feasible following the issuance of the
financing order, independent of the schedule of closing and de-commissioning of any electric
generating facility or electric transmission facility; and

(ii) the electrical corporation files to adjust its rates as required in Subsection (1)(f) simultaneously with the inception of the rate recovery charges and independently of the scheduled closing and decommissioning of any electric generating facility or electric transmission facility;

(i) specify how amounts received by the electrical corporation in connection with its transfer of rate recovery property shall be prudently used by the electrical corporation, consistent with the potential uses described in Subsection 54-24-302(4)(g);

(k) subject to the restriction in Subsection (4), specify a future ratemaking process to reconcile any difference between the projected rate recovery costs and financing costs included in the amount financed by rate recovery bonds and the final actual rate recovery costs and financing costs approved by the financing order, which may affect the electrical corporation's base rates, including any rider adopted under Subsection (6); and

(l) include any additional findings or conclusions deemed appropriate by the commission.

(2) The commission may not require an electrical corporation to secure a separate financing order for each issuance of rate recovery bonds or for each scheduled phase of the previously approved retirement of electric generating facilities and electric transmission facilities approved in a financing order.

(3) The scheduled final maturity of the rate recovery bonds shall be the earlier of:

(a) thirty years from the issue date of the rate recovery bonds; or

(b) as late as possible, consistent with obtaining AAA ratings on the rate recovery bonds while concurrently ensuring that the structuring, marketing, and pricing of rate recovery bonds will result in the lowest rate recovery charge consistent with:

(i) prevailing market conditions at the time of pricing the rate recovery bonds; and

(ii) the structure and terms of rate recovery bonds approved pursuant to the financing order.

(4) A future ratemaking process to reconcile any difference between the projected rate recovery costs and financing costs included in the amount financed by rate recovery bonds and the final actual rate recovery costs and financing costs approved by the financing order under Subsection (1)(k) may not affect the amount of the rate recovery bonds or the associated rate
recovery charges to be paid by customers.

(5) A financing order shall permit, and may require, the creation of an electrical
corporation's rate recovery property to be conditioned upon, and simultaneous with, the sale or
other transfer of rate recovery property to an assignee and the pledge of rate recovery property
to secure rate recovery bonds.

(6) A financing order shall require the electrical corporation, simultaneously with the
imposition of rate recovery charges, to reduce its rates through a reduction in base rates or by a
negative rider or surcharge on customer bills in an amount equal to the revenue requirement
associated with the electrical corporation's assets being financed by rate recovery bonds.

Section 13. Section 54-24-306 is enacted to read:

54-24-306. Financing order is a final order -- Request for review.

(1) A financing order is a final order of the commission.

(2) A party aggrieved by the issuance of a financing order shall comply with Section
54-7-15 before seeking judicial review.

(3) In a petition for judicial review of a final financing order, the court shall:
(a) proceed to hear and determine the action as expeditiously as practicable; and
(b) give the action precedence over other matters not accorded similar precedence by
law.

Section 14. Section 54-24-307 is enacted to read:

54-24-307. Duration of effectiveness of financing order.

(1) A financing order shall remain in effect until:
(a) the rate recovery bonds authorized by the financing order have been legally
defeased or paid in full; and
(b) all financing costs relating to the rate recovery bonds have been paid in full.

(2) A financing order shall remain in effect and unabated notwithstanding the
bankruptcy, reorganization, or insolvency of:
(a) the electrical corporation to which the financing order applies; or
(b) any affiliate of the electrical corporation described in Subsection (2)(a) or successor
or assignee.

(3) (a) A financing order issued under this part is irrevocable.
(b) The commission may not reduce, impair, postpone, or terminate rate recovery
charges approved in a financing order or impair rate recovery property or the collection or
recovery of rate recovery revenue if the rate recovery bonds secured by the rate recovery
property are outstanding.

(4) Notwithstanding Subsection (1), upon application by the electrical corporation or
request for agency action, the commission may amend a financing order to provide for the
financing, retiring, or refunding of all or a portion of an outstanding series of rate recovery
bonds issued pursuant to the original financing order if the commission determines that:
(a) the amended financing order meets the same criteria as specified in the original
financing order; and

(b) the modification provided for in the amended financing order does not impair the
covenants and terms of the rate recovery bonds to be refinanced, retired, or refunded.

Section 15. Section 54-24-308 is enacted to read:

54-24-308. Post-issuance review.

(1) Within 120 days after the issuance of rate recovery bonds, the applicant electrical
corporation shall file with the commission information regarding the actual upfront and
ongoing financing costs of the rate recovery bonds.

(2) The commission shall review the prudence of the electrical corporation's actions to
determine whether the structuring, marketing, and pricing of rate recovery bonds resulted in the
lowest rate recovery charge consistent with:
(a) prevailing market conditions at the time of pricing the rate recovery bonds; and

(b) the structure and terms of rate recovery bonds approved pursuant to the financing
order.

(3) If the commission determines that the electrical corporation's actions were not
prudent, that the structuring, marketing, and pricing of rate recovery bonds did not in fact result
in the lowest rate recovery charge consistent with prevailing market conditions at the time of
pricing the rate recovery bonds, and consistent with the structure and terms of rate recovery
bonds approved pursuant to the financing order, or otherwise were inconsistent with the
financing order, the commission may apply any remedies that are available to it, including:
(a) imposing financial penalties on the electrical corporation for failure to comply with
commission orders;

(b) imposing injunctive orders against the electrical corporation; or
(c) reducing other electrical corporation rates and charges by reducing the
non-securitized revenue requirement of the electrical corporation.

Section 16. Section 54-24-309 is enacted to read:

54-24-309. Periodic adjustments.

(1) The commission shall periodically approve adjustments of the rate recovery charges
pursuant to the adjustment mechanism approved in the financing order to:

(a) correct for any over or under collection; and

(b) provide for the timely payment of:

(i) scheduled principal of and interest on the rate recovery bonds; and

(ii) the payment and recovery of financing costs in accordance with the financing order.

(2) At least semi-annually, or more frequently as specified in the financing order, the
electrical corporation shall file with the commission:

(a) a calculation estimating:

(i) whether the existing rate recovery charge is sufficient to provide for timely payment
of scheduled principal of and interest on the rate recovery bonds and the payment and recovery
of other financing costs in accordance with the financing order; and

(ii) if either an over collection or under collection is projected; and

(b) a calculation showing the adjustment to the rate recovery charge to correct for any
existing over collection or under collection.

(3) The adjustment mechanism shall remain in effect until the rate recovery bonds and
financing costs have been fully paid and recovered or legally defeased.

(4) On the same day the electrical corporation files its calculation of the adjustment to
the rate recovery charge with the commission, the electrical corporation shall cause notice of
the filing to be given to the parties of record in the case in which the financing order was
issued.

Section 17. Section 54-24-310 is enacted to read:

54-24-310. Restrictions on commission related to financing order.

(1) Except as otherwise provided in Subsection (2), if the commission issues a
financing order to an electrical corporation, the commission may not, in exercising its powers
and carrying out its duties:

(a) consider the rate recovery bonds issued under the financing order to be debt of the
electrical corporation, other than for income tax purposes, unless it is necessary to consider the
rate recovery bonds to be such debt to achieve consistency with prevailing utility debt rating
methodologies:
(b) consider the rate recovery charges paid under the financing order to be revenue of
the electrical corporation;
(c) consider rate recovery costs or financing costs specified in the financing order to be
regulated costs or assets of the electrical corporation; or
(d) determine any prudent action taken by the electrical corporation that is consistent
with the financing order to be unjust or unreasonable.
(2) Nothing in Subsection (1) shall;
(a) affect the authority of the commission to apply or modify any billing mechanism
designed to recover rate recovery charges;
(b) prevent or preclude the commission from investigating the compliance of an
electrical corporation with the terms and conditions of a financing order and requiring
compliance with the financing order; or
(c) prevent or preclude the commission from imposing regulatory sanctions against an
electrical corporation for failure to comply with the terms and conditions of a financing order
or requirements of this chapter.
(3)(a) As provided in Subsection 54-24-202(8) and except as provided in Subsection
(3)(b), the commission may condition its approval of the recovery of a portion of rate recovery
costs upon the issuance of rate recovery bonds to finance approved rate recovery costs.
(b) The commission may not refuse to allow the recovery of any costs associated with
the retirement of one or more electric generating facilities or electric transmission facilities by
an electrical corporation solely because the electrical corporation has elected to finance those
activities through a financing mechanism other than rate recovery bonds.
Section 18. Section 54-24-401 is enacted to read:

Part 4. Customer Billing and Reporting

54-24-401. Cost allocation of rate recovery charges.

An electrical corporation that has obtained a financing order shall allocate the revenue
requirement for rate recovery charges among the electrical corporation's customer classes in a
manner that is consistent with the cost allocation methodology approved in the most recent
Section 19. Section 54-24-402 is enacted to read:

**54-24-402. Annual report on rate recovery revenues.**

(1) An electrical corporation that has obtained a financing order and caused rate recovery bonds to be issued shall demonstrate in an annual filing with the commission that rate recovery revenues have been applied to:

(a) the repayment of rate recovery bonds;

(b) other financing costs; and

(c) any other purposes approved in the financing order.

(2) The annual filing described in Subsection (1) shall outline the impact that the issuance or rate recovery bonds has had on customer rates.

Section 20. Section 54-24-403 is enacted to read:

**54-24-403. Customer bills shall inform customers of rate recovery charges and property.**

The electric bills of customers of an electrical corporation that has obtained a financing order and caused rate recovery bonds to be issued shall:

(1) inform customers that a portion of the charges on the bill represent rate recovery charges approved in a financing order issued to the electrical corporation;

(2) inform customers if the rate recovery property has been transferred to an assignee or successor; and

(3) include a statement that:

(a) the assignee or successor is the owner of the rights to rate recovery charges; and

(b) the electrical corporation or other entity is acting as a collection agent or servicer for the assignee or successor.

Section 21. Section 54-24-404 is enacted to read:

**54-24-404. Benefits of financing order shall accrue to customers paying non-bypassable rate recovery charge.**

(1) If an electrical corporation has obtained a financing order, the electrical corporation shall remove from rates any costs associated with the rate recovery property that is the subject of a financing order at the same time that the electrical corporation imposes the rate recovery costs as a non-bypassable rate recovery charge on the electric bills of its customers.
(2) If the financing order applies to rate recovery costs associated with replaced assets, as defined in Subsection 54-17-902(15), and a participating customer is allowed and elects to cease participating in a community renewable energy program:

(a) the customer shall continue to pay the non-bypassable rate recovery charge for rate recovery bonds issued pursuant to a previously adopted financing order; and

(b) the electrical corporation may not include any costs associated with the rate recovery property that is the subject of a financing order in the customer's rates.

Section 22. Section 54-24-501 is enacted to read:

Part 5. Rate Recovery Property and Bonds

54-24-501. Rate recovery property an existing present property right.

(1) Rate recovery property that is described in a financing order shall constitute an existing present property right and interest for all purposes even though the imposition and collection of rate recovery charges depends on the electrical corporation to which the financing order is issued performing its servicing functions relating to the collection of rate recovery charges and on future electricity consumption.

(2) The property right and interest described in Subsection (1) exists:

(a) regardless of whether revenues arising from the rate recovery property have been billed, have accrued, or have been collected; and

(b) notwithstanding the fact that the value or amount of the property right and interest is dependent on the future provision of service to customers by the electrical corporation or by a successor or assignee of the electrical corporation.

(3) All or any portion of rate recovery property described in a financing order issued to an electrical corporation may be transferred, sold, conveyed, or assigned to a successor or assignee that is wholly-owned, directly or indirectly, by the electrical corporation and is created for the limited purpose of acquiring, owning, or administering rate recovery property and issuing rate recovery bonds as authorized by the financing order.

(4) All or any portion of rate recovery property may be pledged to secure:

(a) rate recovery bonds issued under a financing order;

(b) amounts payable to financing parties and to counterparties under any ancillary agreements; and

(c) other financing costs.
(5) Each transfer, sale, conveyance, assignment, or pledge by an electrical corporation, or an affiliate of an electrical corporation, is a transaction in the ordinary course of business.

(6) (a) If an electrical corporation defaults on any required remittance of rate recovery revenue arising from rate recovery property described in a financing order, a court, upon application by an interested party and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the rate recovery revenues arising from the rate recovery property to the financing parties.

(b) A financing order described in Subsection (6)(a) remains in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the electrical corporation or its successors or assignees.

(7) The interest of a transferee, purchaser, acquirer, assignee, or pledgee in rate recovery property specified in a financing order issued to an electrical corporation, and in the rate recovery revenue arising from that rate recovery property, is not subject to setoff, counterclaim, surcharge, or defense by the electrical corporation or any other person or in connection with the reorganization, bankruptcy, or other insolvency of the electrical corporation or any other entity.

(8) A successor to an electrical corporation, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, other business combination, or transfer by operation of law, as a result of electrical corporation restructuring or otherwise, shall:

(a) perform and satisfy all obligations of, and have the same duties and rights under a financing order as, the electrical corporation to which the financing order applies; and

(b) perform the duties and exercise the rights in the same manner and to the same extent as the electrical corporation, including collecting and paying to any person entitled to receive them, the rate recovery revenues with respect to rate recovery property described in the financing order.

Section 23. Section 54-24-502 is enacted to read:

54-24-502. Rate recovery bonds are permitted investments, not public debt.

(1) Banks, trust companies, savings and loan associations, insurance companies, executors, administrators, guardians, trustees, and other fiduciaries may legally invest any money within their control in rate recovery bonds.
(2) Political subdivisions may invest public funds in rate recovery bonds.

(3) Rate recovery bonds issued under a financing order are not debt of, or a pledge of, the faith and credit or taxing power of the state, any agency of the state, or any county, municipality, or other political subdivision of the state.

(4) Holders of rate recovery bonds have no right to have taxes levied by the state or by a county, municipality, or other political subdivision of the state for the payment of the principal or interest on rate recovery bonds.

(5) The issuance of rate recovery bonds may not directly, indirectly, or contingently obligate the state, or a political subdivision of the state, to levy any tax or make any appropriation for payment of principal or interest on the rate recovery bonds.

Section 24. Section 54-24-503 is enacted to read:

54-24-503. Contract with bondholders.

(1) The state of Utah hereby pledges to and agrees with bondholders that neither the state, nor any of its instrumentalities, departments, or agencies, will:

(a) alter the provisions of this chapter which make rate recovery charges imposed by a financing order irrevocable, binding, and non-bypassable;

(b) take or permit any action that impairs or would impair the value of rate recovery property or revises the rate recovery costs for which recovery is authorized; or

(c) except as authorized under this chapter, reduce, alter, or impair rate recovery charges that are to be imposed, collected, and remitted for the benefit of bondholders and other financing parties until any and all principal, interest, redemption premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed in connection with the related rate recovery bonds have been paid and performed in full.

(2) This section does not preclude limitation or alteration if full compensation is made by law for the full protection of the rate recovery charges collected pursuant to a financing order of bondholders, of financing parties, and of any assignee or successor financing parties.

(3) A person or entity that issues rate recovery bonds may include the pledge specified in this section in the rate recovery bonds and related documentation.

Section 25. Section 54-24-504 is enacted to read:

54-24-504. Other financing parties not subject to commission regulation.

An assignee, successor, or financing party that is not regulated by the commission may
not become subject to commission regulation solely as a result of engaging in a transaction
authorized by or described in this chapter.

Section 26. Section 54-24-505 is enacted to read:

54-24-505. Conflicts of law provisions -- Severability.

(1) This chapter shall govern if any provision of this chapter conflicts with any other
law, including Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions,
regarding the attachment, assignment, perfection, effect of perfection, or priority of any
security interest in or transfer of rate recovery property.

(2) Effective on the date that rate recovery bonds are first issued, if any provision of
this chapter is held to be invalid or is invalidated, the invalidity does not affect any action
allowed under this chapter that was lawfully taken by the commission, an electrical
corporation, a successor, an assignee, a collection agent, a financing party, a bondholder, or a
party to an ancillary agreement before the occurrence, and any such action remains in full force
and effect.

Section 27. Section 54-24-506 is enacted to read:

54-24-506. Absolute transfer of rate recovery property and perfected sale of rate
recovery property.

(1) A sale, assignment, or transfer of rate recovery property is an absolute transfer and
true sale of, and not a pledge of or secured transaction relating to, the seller's right, title, and
interest in, to, and under the rate recovery property if the documents governing the transaction
expressly state that the transaction is a sale or other absolute transfer.

(2) A transfer of an interest in rate recovery property may be created only when all of
the following have occurred:

(a) the financing order creating and describing the rate recovery property has become
effective;

(b) the documents evidencing the transfer of the rate recovery property have been
executed and delivered to the assignee; and

(c) value has been received.

(3) Upon the filing of a financing statement with the Division of Corporations and
Commercial Code, a transfer of an interest in rate recovery property is perfected against all
third persons, including any judicial lien or other lien creditors or any claims of the seller or
creditors of the seller, other than creditors holding a prior security interest, ownership interest, or assignment in the rate recovery property previously perfected.

(4) The characterization of a sale, assignment, or transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the assignee shall not be affected or impaired by the existence or occurrence of any of the following:

(a) commingling of rate recovery revenue with other money;
(b) the retention by the seller of a partial or residual interest, including an equity interest in the rate recovery property, whether direct or indirect, or whether subordinate or otherwise;
(c) the right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of rate recovery revenue;
(d) any indemnification rights, obligations, or repurchase rights made or provided by the seller;
(e) an obligation of the seller to collect rate recovery revenues on behalf of an assignee;
(f) the treatment of the sale, assignment, or transfer for tax, financial reporting, or other purposes;
(g) any subsequent financing order amending a financing order; or
(h) any application of an adjustment mechanism as authorized by Subsection 54-24-304(1)(f).

Section 28. Section 54-24-601 is enacted to read:

Part 6. Security Interests in Rate Recovery Property

54-24-601. Security interest in rate recovery property and perfection of security interests.

(1) All of the following apply to any security interest in rate recovery property to secure the repayment of the principal and interest on rate recovery bonds, amounts payable under any ancillary agreement, and other financing costs:

(a) the description or indication of rate recovery property in a transfer or security agreement and a financing statement is sufficient only if the description or indication refers to this chapter and the financing order creating the rate recovery property;

(b) a security interest in rate recovery property is created, valid, and binding as soon as all of the following events have occurred:
(i) the financing order that describes the rate recovery property is issued;
(ii) a security agreement is executed and delivered; and
(iii) value is received for the rate recovery bonds;
(c) once a security interest in rate recovery property is created under this section, the
security interest attaches without any physical delivery of collateral or any other act;
(d) the security interest is perfected against all parties having claims of any kind in tort,
contract or otherwise against the person granting the security interest, regardless of whether
such parties have notice of the lien, upon the filing of a financing statement with the Division
of Corporations and Commercial Code in accordance with Title 70A, Chapter 9a, Uniform
Commercial Code - Secured Transactions;
(e) the Division of Corporations and Commercial Code shall maintain a financing
statement filed under this section in accordance with Title 70A, Chapter 9a, Uniform
Commercial Code - Secured Transactions;
(f) a perfected security interest in rate recovery property is a continuously perfected
security interest and has priority over any other lien, created by operation of law or otherwise,
which may subsequently attach to the rate recovery property unless the holder of the security
interest has agreed in writing otherwise;
(g) the validity or priority of a security interest in rate recovery property shall not be
affected by the commingling of rate recovery property or rate recovery revenue with other
money;
(h) an assignee, bondholder, or financing party shall have a security interest in all rate
recovery property or rate recovery revenue that is pledged for the payment of rate recovery
bonds, even if the rate recovery property or rate recovery revenue is deposited in a cash or
deposit account of the electrical corporation in which the rate recovery revenue is commingled
with other money, and any other security interest that applies to the other money does not apply
to the rate recovery revenue; and
(i) neither a subsequent order of the commission amending a financing order, nor
application of an adjustment mechanism, shall affect the validity, perfection, or priority of a
security interest in or transfer of rate recovery property.
(2) Sections 70A-9a-204 and 70A-9a-205 shall apply to a pledge of rate recovery
property.
(3) If an event of default occurs under the security agreement covering the rate recovery property, the secured party, subject to the terms of the security agreement, shall:
(a) have all rights and remedies of a secured party upon default under Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions; and
(b) be entitled to foreclose or otherwise enforce its security interest in the rate recovery property, subject to the rights of any third parties holding prior security interests in the rate recovery property perfected in the manner provided in this section.

(4) A perfected security interest in rate recovery property is a continuously perfected security interest in all rate recovery revenue, whether or not the rate recovery revenue has accrued.

(5) The preceding paragraphs of this section set forth the terms by which a consensual security interest can be created and perfected in rate recovery property.

(6) (a) Unless otherwise ordered by the commission with respect to any series of rate recovery bonds on or prior to the issuance of the series, there shall exist a statutory lien as provided in this Subsection (6).

(b)(i) Upon the effective date of the financing order, there shall exist a first priority lien on all rate recovery property and rate recovery revenue then existing or thereafter arising:
(A) pursuant to the terms of the financing order; and
(B) whether or not any rate recovery revenue has accrued.
(ii) The lien created in this Subsection (6) arises automatically without any action on the part of the electrical corporation, any affiliate thereof, the financing party, or any other person.

(c) The lien described in this Subsection (6) shall secure all obligations, then existing or subsequently arising, to:
(i) the holders of the rate recovery bonds issued pursuant to the financing order;
(ii) the trustee or representative for the holders described in Subsection (6)(c)(i); and
(iii) any other entity specified in the financing order.

(d) The persons for whose benefit the lien described in this Subsection (6) is established shall, upon the occurrence of any defaults specified in the financing order:
(i) have all rights and remedies of a secured party upon default under Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions; and
(ii) be entitled to foreclose or otherwise enforce this statutory lien in the rate recovery property.

(e) The lien described in this Subsection (6) shall:

(i) attach to the rate recovery property regardless of who owns, or is subsequently determined to own, the rate recovery property; and

(ii) be valid, perfected, and enforceable against the owner of the rate recovery property and all third parties upon the effectiveness of the financing order without any further public notice or filing.