Title 54. Public Utilities

Chapter 1
Public Service Commission

54-1-1 Establishment of commission -- Functions -- Participation in Risk Management Fund.
(1) The Public Service Commission of Utah is established as an independent agency.
(2) The Public Service Commission is charged with discharging the duties and exercising the legislative, adjudicative, and rule-making powers committed to it by law and may sue and be sued in its own name.
(3) Subject to Subsection 63E-1-304(2), the Public Service Commission may participate in coverage under the Risk Management Fund created by Section 63A-4-201.

Amended by Chapter 431, 2023 General Session

54-1-1.5 Appointment of members -- Terms -- Qualifications -- Chairman -- Quorum -- Removal -- Vacancies -- Compensation.
(1) The commission shall be composed of three members appointed by the governor with the advice and consent of the Senate and in accordance with Title 63G, Chapter 24, Part 2, Vacancies.
(2) The terms of the members shall be staggered so that one commissioner is appointed for a term of six years on March 1 of each odd-numbered year.
(3) Not more than two members of the commission shall belong to the same political party.
(4) One member of the commission shall be designated by the governor as chairman of the commission.
(5) Any two commissioners constitute a quorum.
(6) Any member of the commission may be removed for cause by the governor.
(7) Vacancies in the commission shall be filled for unexpired terms by appointment of the governor with the advice and consent of the Senate.
(8) Commissioners shall receive compensation as established by the governor within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation, and all actual and necessary expenses incurred in attending to official business.
(9) Each commissioner at the time of appointment and qualification shall be a resident citizen of the United States and of the state of Utah and shall be not less than 30 years of age.
(10) Except as provided by law, no commissioner may hold any other office either under the government of the United States or of this state or of any municipal corporation within this state.
(11) A commissioner shall comply with the conflict of interest provisions described in Title 63G, Chapter 24, Part 3, Conflicts of Interest.

54-1-1.6 Pro tempore commissioner -- Appointment -- Qualifications.
(1) If a commissioner has a temporary disability or is disqualified as a result of a conflict of interest from sitting as a commissioner, the governor may appoint a commissioner pro tempore for a period not to exceed 60 days.
(2) Any person appointed as a commissioner pro tempore shall possess the qualifications required for public service commissioners in Section 54-1-1.5 and have previous utility regulatory experience or other comparable professional experience.

(3) The governor may appoint a retired or resigned public service commissioner as a commissioner pro tempore in order to render findings, orders, or decisions on matters which the retired or resigned commissioner had fully heard before the commissioner's retirement or resignation.

54-1-2 Powers and duties.

(1) The Public Service Commission shall succeed to all powers and discharge all duties and perform all the functions which by existing and continuing law are conferred upon and required to be discharged or performed by the Public Utilities Commission of Utah.

(2) Whenever any existing and continuing law refers to or names the Public Utilities Commission of Utah or any officer, agent, or employee of such commission, the same shall be construed to mean, refer to, and name the Public Service Commission of Utah or the corresponding officer, agent, or employee of such Public Service Commission.

Amended by Chapter 314, 2022 General Session

54-1-2.1 Alignment with state energy policy.

When exercising the powers granted in this title, the commission shall act in accordance with the state energy policy provided in Title 79, Chapter 6, Part 3, State Energy Policy, unless the state energy policy is inconsistent with specific provisions of this title.

Enacted by Chapter 47, 2024 General Session

54-1-2.5 Procedures -- Adjudicative proceedings.

Except as specifically provided to the contrary in Chapter 7, Hearings, Practice, and Procedure, the commission shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

54-1-3 Transaction of business by commissioners -- Quorum -- Proceedings by less than majority or administrative law judge -- Effect of actions.

(1) A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty or for the exercise of any power of the commission. Any action taken by a majority of the commission shall be considered the action of the commission. Any vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission so long as a majority of the commission remains. The commission may hold hearings at any time or place within or without the state.

(2)

(a) The following proceedings shall be heard by at least a majority of the commissioners:

(i) general rate proceedings to establish rates for public utilities which have annual revenues generated from Utah utility service in excess of $200,000,000; or

(ii) any proceeding which the commission determines involves an issue of significant public interest.

(b) If a commission proceeding requiring a majority has commenced and the unavoidable absence of one or more commissioners results in less than a majority being available to continue the proceeding, the proceeding may continue before a single commissioner or

specified administrative law judge only upon agreement of the involved public utility and, if it is a party, the Division of Public Utilities.

(3) Any other investigation, inquiry, hearing or proceeding which the commission has power to undertake may be conducted before less than a majority of the commission or before an administrative law judge appointed by the commission.

(4) All proceedings conducted before less than a majority of the commission or before an administrative law judge shall be considered proceedings of the commission and the findings, orders, and decisions made by less than a majority of the commission or by an administrative law judge, when approved and confirmed by the commission and filed in its office, shall be considered findings, orders, and decisions of the commission and shall have the same effect as if originally made by the commission.

Amended by Chapter 306, 2007 General Session

54-1-4 Official seal.

The commission shall adopt and use an official seal with the words "Public Service Commission of Utah" and such other designations as the commission may prescribe engraved thereon; by which seal it shall authenticate its acts, orders, and proceedings; and of which seal the courts of this state shall take judicial notice. An impression of such seal shall be filed with the Division of Archives.

Amended by Chapter 67, 1984 General Session

54-1-5 Office and office hours.

The office of the commission shall be at the state capital in such rooms in the capitol or in such other public building as shall be assigned to it, and such office shall be open for business between the hours of 9 a.m. and 5 p.m. each business day in the year; one or more responsible persons, to be designated by the commission or by the secretary under the direction of the commission, shall be on duty at such times in immediate charge thereof.

No Change Since 1953

54-1-6 Employment of staff -- Status and compensation -- Employees not to be parties or witnesses and may not appeal commission decisions.

(1) The annual budget of the Public Service Commission shall provide sufficient funds for the commission to hire, develop, and organize an advisory staff to assist the commission in performing the powers, duties, and functions committed to it by statute.

(a) The commission may hire:

(i) economists, accountants, engineers, statisticians, lawyers, law clerks, and other professional and technical experts;

(ii) court reporters, transcribers of tape recordings, clerks, secretaries, and other administrative and support staff;

(iii) additional experts as required for a particular matter; and

(iv) administrative law judges, who shall be members of the Utah State Bar, and constitute a separate organizational unit reporting directly to the commission.

(b) The commission may provide for funds in the annual budget to acquire suitable electronic recording equipment to maintain a verbatim record of proceedings before the commission, any commissioner, or any administrative law judge.

(2)
(a) With the exception of clerical workers in nonconfidential positions, all staff of the Public Service Commission are exempt employees under the State Personnel Management Act and serve at the pleasure of the commission.
(b) Administrative law judges are exempt employees under the State Personnel Management Act and may only be removed from office upon due notice and by a unanimous vote of the commission.
(c)
(i) The Division of Human Resource Management shall determine pay schedules using standard techniques for determining compensation.
(ii) The Division of Human Resource Management may make the division's compensation determinations based upon compensation practices common to utility companies throughout the United States.
(3)
(a) The staff or other employees of the commission may not appear as parties or witnesses in any proceeding before the commission, any commissioner, or any administrative law judge.
(b) The staff or other employees of the commission may not appeal any finding, order, or decision of the commission.

Amended by Chapter 344, 2021 General Session

54-1-6.5 Executive staff director -- Appointment -- Functions.

The commission shall appoint an executive staff director, who shall serve at the pleasure of the commission and shall supervise and coordinate staff functions, assist the chairman of the commission with administrative duties, and perform any other duties the commission may direct.

Enacted by Chapter 246, 1983 General Session

54-1-7 Secretary of commission -- Appointment -- Functions.

The commission may appoint a secretary of the commission, who shall serve at the pleasure of the commission. It shall be the duty of the secretary to keep a full and true record of all the proceedings of the commission and of all determinations, rulings and orders made by the commission, or by any of the commissioners, and of the approval and confirmation by the commission of the determinations, rulings and orders made by individual commissioners or administrative law judges. The secretary shall be the custodian of the records of the commission, and shall file and preserve at its general office all books, profiles, tariffs, schedules, reports, maps and documents, and all papers whatsoever filed with it or entrusted to its care, and the secretary shall be responsible to the commission for the custody thereof. Under the direction of the commission the secretary shall superintend its clerical business, conduct its correspondence, give notice of all hearings, determinations, rulings and orders of the commission, prepare for service papers and notices required by the commission, and perform other duties the commission may prescribe. The secretary shall have power to administer oaths in all parts of the state in all proceedings by or before the commissioners and in all cases or matters pertaining to the duties of the office of secretary. In the absence of the secretary, the commission may designate another individual to perform the secretary's duties.

Amended by Chapter 246, 1983 General Session

54-1-7.5 Adoption of internal organization measures.

The commission shall have authority to adopt internal organizational measures to effectuate efficiency and economy in the management and operations of the commission.

Enacted by Chapter 246, 1983 General Session

54-1-8 Expenses of commission.

The Public Service Commission shall be provided by the state with such offices, equipment and facilities as may be proper and necessary for the performance of its duties. All necessary expenses of the commission including salaries of the secretary, and the compensation of all other persons employed by the commission, and all expenses of every kind incurred in the administration of this title shall be paid from the funds appropriated for the use of the commission after being approved by the commission upon claims therefor to be duly audited by the proper authority. The commissioners and secretary and such clerks, experts, attorneys and other subordinates as may be employed by it, shall be entitled to receive their necessary traveling expenses for authorized travel on business of the commission.

No Change Since 1953

54-1-10 Conservation planning -- Annual reports.

The Public Service Commission shall engage in long-range planning regarding public utility regulatory policy in order to facilitate the well-planned development and conservation of utility resources. The commission shall make and submit to the governor and the Legislature an annual report containing a full and complete account of the transactions of its office, together with any facts, suggestions and recommendations it may deem necessary. The Division of Public Utilities shall provide any assistance the commission may require in the preparation of the annual report. The report shall be made and submitted by October 1 of each year or as soon after as may be feasible and shall be published as are the reports of other departments of the state.

Amended by Chapter 246, 1983 General Session

54-1-11 Prohibited interests, relationships and actions by commissioners and employees.

(1) No person employed as a commissioner or as personnel of the commission shall, while so employed:
  (a) Have any pecuniary interest, whether as the holder of stock or other securities, or otherwise have any conflict of interest with any public utility or other entity subject to the jurisdiction of the commission;
  (b) Have any office, position or relationship, or be engaged in any business or avocation which interferes or is incompatible with the effective and objective fulfillment of the duties of office or employment with the commission;
  (c) Accept any gift, gratuity, emolument or employment from any public utility or other entity subject to the jurisdiction of the commission or from any other officer, agent, or employee thereof; or
  (d) Solicit, suggest, request, or recommend, directly or indirectly, the appointment of any person or entity to any office or employment with any public utility or other entity subject to the jurisdiction of the Public Service Commission.
(2) No officer, agent, attorney, or employee of any public utility shall directly or indirectly solicit, request, or recommend to the governor, any state senator, the commission, or the Division of

Public Utilities the appointment of any person as a commissioner or as executive director of the commission, or the appointment of any person to any commission staff position.

Enacted by Chapter 246, 1983 General Session

54-1-12 Deposit of funds.

All money collected by the commission under any provision of this title shall be deposited without deduction in the state treasury on or before the 15th day of each month next succeeding the month in which the same was received, accompanied by a statement showing the date received.

Amended by Chapter 116, 2013 General Session

54-1-13 Commission exploration and development of cleaner air options.

The commission shall immediately initiate and conduct proceedings to explore and develop options and opportunities for advancing and promoting measures designed to result in cleaner air in the state through the enhanced use of alternative fuel vehicles, including:

(1) consideration of the role that gas corporations should play in the enhancement and expansion of the infrastructure and maintenance and other facilities for alternative fuel vehicles;

(2) the potential funding options available to pay for the enhancement and expansion of infrastructure and facilities for alternative fuel vehicles;

(3) the role local government, including any local government entity established for the purpose of facilitating conversion to alternative fuel vehicles and of promoting the enhancement and expansion of the infrastructure and facilities for those vehicles, can or should play; and

(4) the most effective ways to overcome any obstacles to converting to alternative fuel vehicles and to enhancing and expanding the infrastructure and facilities for alternative fuel vehicles.

Amended by Chapter 246, 2019 General Session

Chapter 2
General Provisions

Part 1
Definitions

54-2-1 Definitions.

As used in this title:

(1) "Avoided costs" means the incremental costs to an electrical corporation of electric energy or capacity or both that, due to the purchase of electric energy or capacity or both from small power production or cogeneration facilities, the electrical corporation would not have to generate itself or purchase from another electrical corporation.

(2) "Clean coal technology" means a technology that may be researched, developed, or used for reducing emissions or the rate of emissions from a thermal electric generation plant that uses coal as a fuel source.

(3) "Cogeneration facility":

(a) means a facility that produces:

(i) electric energy; and
(ii) steam or forms of useful energy, including heat, that are used for industrial, commercial, heating, or cooling purposes; and
(b) is a qualifying cogeneration facility under federal law.
(4) "Commission" means the Public Service Commission.
(5) "Commissioner" means a member of the commission.
(6)
(a) "Corporation" includes an association and a joint stock company having any powers or privileges not possessed by individuals or partnerships.
(b) "Corporation" does not include towns, cities, counties, conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.
(7) "Department" means the Department of Transportation created in Section 72-1-201.
(8) "Distribution electrical cooperative" includes an electrical corporation that:
(a) is a cooperative;
(b) conducts a business that includes the retail distribution of electricity the cooperative purchases or generates for the cooperative's members; and
(c) is required to allocate or distribute savings in excess of additions to reserves and surplus on the basis of patronage to the cooperative's:
(i) members; or
(ii) patrons.
(9)
(a) "Electrical corporation" includes every corporation, cooperative association, and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any electric plant, or in any way furnishing electric power for public service or to its consumers or members for domestic, commercial, or industrial use, within this state.
(b) "Electrical corporation" does not include:
(i) an independent energy producer;
(ii) where electricity is generated on or distributed by the producer solely for the producer's own use, or the use of the producer's tenants, or the use of members of an association of unit owners formed under Title 57, Chapter 8, Condominium Ownership Act, and not for sale to the public generally;
(iii) an eligible customer who provides electricity for the eligible customer's own use or the use of the eligible customer's tenant or affiliate; or
(iv) a nonutility energy supplier who sells or provides electricity to:
(A) an eligible customer who has transferred the eligible customer's service to the nonutility energy supplier in accordance with Section 54-3-32; or
(B) the eligible customer's tenant or affiliate.
(c) "Electrical corporation" does not include an entity that sells electric vehicle battery charging services:
(i) if the entity obtains the electricity for the electric vehicle battery charging service, including any electricity from an electricity storage device:
(A) from an electrical corporation in whose service area the electric vehicle battery charging service is located; and
(B) under an established tariff for rates, charges, and conditions of service; and
(ii) unless the entity conducts another activity in the state that subjects the entity to the jurisdiction and regulation of the commission as an electrical corporation.

(10) "Electric plant" includes all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying conductors used or to be used for the transmission of electricity for light, heat, or power.

(11) "Eligible customer" means a person who:

(a) on December 31, 2013:

(i) was a customer of a public utility that, on December 31, 2013, had more than 200,000 retail customers in this state; and

(ii) owned an electric plant that is an electric generation plant that, on December 31, 2013, had a generation name plate capacity of greater than 150 megawatts; and

(b) produces electricity:

(i) from a qualifying power production facility for sale to a public utility in this state;

(ii) primarily for the eligible customer's own use; or

(iii) for the use of the eligible customer's tenant or affiliate.

(12) "Eligible customer's tenant or affiliate" means one or more tenants or affiliates:

(a) of an eligible customer; and

(b) who are primarily engaged in an activity:

(i) related to the eligible customer's core mining or industrial businesses; and

(ii) performed on real property that is:

(A) within a 25-mile radius of the electric plant described in Subsection (11)(a)(ii); and

(B) owned by, controlled by, or under common control with, the eligible customer.

(13) "Gas corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any gas plant for public service within this state or for the selling or furnishing of natural gas to any consumer or consumers within the state for domestic, commercial, or industrial use, except in the situation that:

(a) gas is made or produced on, and distributed by the maker or producer through, private property:

(i) solely for the maker's or producer's own use or the use of the maker's or producer's tenants; and

(ii) not for sale to others;

(b) gas is compressed on private property solely for the owner's own use or the use of the owner's employees as a motor vehicle fuel; or

(c) gas is compressed by a retailer of motor vehicle fuel on the retailer's property solely for sale as a motor vehicle fuel.

(14) "Gas plant" includes all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

(15) "Heat corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any heating plant for public service within this state.

(16)

(a) "Heating plant" includes all real estate, fixtures, machinery, appliances, and personal property controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of artificial heat.

(b) "Heating plant" does not include either small power production facilities or cogeneration facilities.

(17) "Independent energy producer" means every electrical corporation, person, corporation, or government entity, their lessees, trustees, or receivers, that own, operate, control, or manage an independent power production or cogeneration facility.

(18) "Independent power production facility" means a facility that:

(a) produces electric energy solely by the use, as a primary energy source, of biomass, waste, a renewable resource, a geothermal resource, or any combination of the preceding sources; or

(b) is a qualifying power production facility.

(19) "Large-scale electric utility" means a public utility that provides retail electric service to more than 200,000 retail customers in the state.

(20) "Large-scale natural gas utility" means a public utility that provides retail natural gas service to more than 200,000 retail customers in the state.

(21) "Nonutility energy supplier" means a person that:

(a) has received market-based rate authority from the Federal Energy Regulatory Commission in accordance with 16 U.S.C. Sec. 824d, 18 C.F.R. Part 35, Filing of Rate Schedules and Tariffs, or applicable Federal Energy Regulatory Commission orders; or

(b) owns, leases, operates, or manages an electric plant that is an electric generation plant that:

(i) has a capacity of greater than 100 megawatts; and

(ii) is hosted on the site of an eligible customer that consumes the output of the electric plant, in whole or in part, for the eligible customer's own use or the use of the eligible customer's tenant or affiliate.

(22) "Private telecommunications system" includes all facilities for the transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio facilities, that are owned, controlled, operated, or managed by a corporation or person, including their lessees, trustees, receivers, or trustees appointed by any court, for the use of that corporation or person and not for the shared use with or resale to any other corporation or person on a regular basis.

(23)

(a) "Public utility" includes every railroad corporation, gas corporation, electrical corporation, distribution electrical cooperative, wholesale electrical cooperative, telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, and independent energy producer not described in Section 54-2-201 where the service is performed for, or the commodity delivered to, the public generally, or in the case of a gas corporation or electrical corporation where the gas or electricity is sold or furnished to any member or consumers within the state for domestic, commercial, or industrial use.

(b)

(i) If any railroad corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, or independent energy producer not described in Section 54-2-201, performs a service for or delivers a commodity to the public, it is considered to be a public utility, subject to the jurisdiction and regulation of the commission and this title.

(ii) If a gas corporation, independent energy producer not described in Section 54-2-201, or electrical corporation sells or furnishes gas or electricity to any member or consumers within the state, for domestic, commercial, or industrial use, for which any compensation or payment is received, it is considered to be a public utility, subject to the jurisdiction and regulation of the commission and this title.

(c) Any corporation or person not engaged in business exclusively as a public utility as defined in this section is governed by this title in respect only to the public utility owned, controlled,

operated, or managed by the corporation or person, and not in respect to any other business or pursuit.

(d) Any person or corporation defined as an electrical corporation or public utility under this section may continue to serve its existing customers subject to any order or future determination of the commission in reference to the right to serve those customers.

(e)

(i) "Public utility" does not include any person that is otherwise considered a public utility under this Subsection (23) solely because of that person's ownership of an interest in an electric plant, cogeneration facility, or small power production facility in this state if all of the following conditions are met:

(A) the ownership interest in the electric plant, cogeneration facility, or small power production facility is leased to:

(I) a public utility, and that lease has been approved by the commission;

(II) a person or government entity that is exempt from commission regulation as a public utility; or

(III) a combination of Subsections (23)(e)(i)(A)(I) and (II);

(B) the lessor of the ownership interest identified in Subsection (23)(e)(i)(A) is:

(I) primarily engaged in a business other than the business of a public utility; or

(II) a person whose total equity or beneficial ownership is held directly or indirectly by another person engaged in a business other than the business of a public utility; and

(C) the rent reserved under the lease does not include any amount based on or determined by revenues or income of the lessee.

(ii) Any person that is exempt from classification as a public utility under Subsection (23)(e)(i) shall continue to be so exempt from classification following termination of the lessee's right to possession or use of the electric plant for so long as the former lessor does not operate the electric plant or sell electricity from the electric plant. If the former lessor operates the electric plant or sells electricity, the former lessor shall continue to be so exempt for a period of 90 days following termination, or for a longer period that is ordered by the commission. This period may not exceed one year. A change in rates that would otherwise require commission approval may not be effective during the 90-day or extended period without commission approval.

(f) "Public utility" does not include any person that provides financing for, but has no ownership interest in an electric plant, small power production facility, or cogeneration facility. In the event of a foreclosure in which an ownership interest in an electric plant, small power production facility, or cogeneration facility is transferred to a third-party financer of an electric plant, small power production facility, or cogeneration facility, then that third-party financer is exempt from classification as a public utility for 90 days following the foreclosure, or for a longer period that is ordered by the commission. This period may not exceed one year.

(g)

(i) The distribution or transportation of natural gas for use as a motor vehicle fuel does not cause the distributor or transporter to be a "public utility," unless the commission, after notice and a public hearing, determines by rule that it is in the public interest to regulate the distributers or transporters, but the retail sale alone of compressed natural gas as a motor vehicle fuel may not cause the seller to be a "public utility."

(ii) In determining whether it is in the public interest to regulate the distributors or transporters, the commission shall consider, among other things, the impact of the regulation on the availability and price of natural gas for use as a motor fuel.

(h) "Public utility" does not include:

(i) an eligible customer who provides electricity for the eligible customer's own use or the use of the eligible customer's tenant or affiliate; or
(ii) a nonutility energy supplier that sells or provides electricity to:
(A) an eligible customer who has transferred the eligible customer's service to the nonutility energy supplier in accordance with Section 54-3-32; or
(B) the eligible customer's tenant or affiliate.
(i) "Public utility" does not include an entity that sells electric vehicle battery charging services:
(i) if the entity obtains the electricity for the electric vehicle battery charging service, including any electricity from an electricity storage device:
(A) from a large-scale electric utility or an electrical corporation in whose service area the electric vehicle battery charging service is located; and
(B) under an established tariff for rates, charges, and conditions of service; and
(ii) unless the entity conducts another activity in the state that subjects the entity to the jurisdiction and regulation of the commission as a public utility.
(j) "Public utility" does not include an independent energy producer that is not subject to regulation by the commission as a public utility under Section 54-2-201.
(24) "Purchasing utility" means any electrical corporation that is required to purchase electricity from small power production or cogeneration facilities pursuant to the Public Utility Regulatory Policies Act, 16 U.S.C. Sec. 824a-3.
(25) "Qualifying power producer" means a corporation, cooperative association, or person, or the lessee, trustee, and receiver of the corporation, cooperative association, or person, who owns, controls, operates, or manages any qualifying power production facility or cogeneration facility.
(26) "Qualifying power production facility" means a facility that:
(a) produces electrical energy solely by the use, as a primary energy source, of biomass, waste, a renewable resource, a geothermal resource, or any combination of the preceding sources;
(b) has a power production capacity that, together with any other facilities located at the same site, is no greater than 80 megawatts; and
(c) is a qualifying small power production facility under federal law.
(27) "Railroad" includes every commercial, interurban, and other railway, other than a street railway, and each branch or extension of a railway, by any power operated, together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots, union depots, yards, grounds, terminals, terminal facilities, structures, and equipment, and all other real estate, fixtures, and personal property of every kind used in connection with a railway owned, controlled, operated, or managed for public service in the transportation of persons or property.
(28) "Railroad corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any railroad for public service within this state.
(29)
(a) "Sewerage corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage system for public service within this state.
(b) "Sewerage corporation" does not include private sewerage companies engaged in disposing of sewage only for their stockholders, or towns, cities, counties, conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.
(30) "Telegraph corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line for public service within this state.

(31) "Telegraph line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telegraph, whether that communication be had with or without the use of transmission wires.

(32) "Telephone cooperative" means a telephone corporation that:

(a) is a cooperative; and

(b) is organized for the purpose of providing telecommunications service to the telephone corporation's members and the public at cost plus a reasonable rate of return.

(33)

(a) "Telephone corporation" means any corporation or person, and their lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates, manages, or resells a public telecommunications service as defined in Section 54-8b-2.

(b) "Telephone corporation" does not mean a corporation, partnership, or firm providing:

(i) intrastate telephone service offered by a provider of cellular, personal communication systems (PCS), or other commercial mobile radio service as defined in 47 U.S.C. Sec. 332 that has been issued a covering license by the Federal Communications Commission;

(ii) Internet service; or

(iii) resold intrastate toll service.

(34) "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone whether that communication is had with or without the use of transmission wires.

(35) "Transportation of persons" includes every service in connection with or incidental to the safety, comfort, or convenience of the person transported, and the receipt, carriage, and delivery of that person and that person's baggage.

(36) "Transportation of property" includes every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and hauling, and the transmission of credit by express companies.

(37) "Utility-owned vehicle charging infrastructure" means all facilities, equipment, and electrical systems owned and installed by a large-scale electric utility:

(a) on the customer's side or the large-scale electric utility's side of the electricity metering equipment; and

(b) to facilitate utility vehicle charging service or other electric vehicle battery charging service.

(38) "Utility vehicle charging service" means the furnishing of electricity:

(a) to an electric vehicle battery charging station;

(b) by a public utility in whose service area the charging station is located; and

(c) pursuant to a duly established tariff for rates, charges, and conditions of service for the electricity.

(39) "Water corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any water system for public service within this state. It does not include private irrigation companies engaged in distributing water only to their stockholders, or towns, cities, counties, water conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.

(40)

(a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures, and personal

property owned, controlled, operated, or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, appointment, apportionment, or measurement of water for power, fire protection, irrigation, reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

(b) "Water system" does not include private irrigation companies engaged in distributing water only to their stockholders.

(41) "Wholesale electrical cooperative" includes every electrical corporation that is:

(a) in the business of the wholesale distribution of electricity it has purchased or generated to its members and the public; and

(b) required to distribute or allocate savings in excess of additions to reserves and surplus to members or patrons on the basis of patronage.

Amended by Chapter 314, 2022 General Session

54-2-2 Definition of "person."

As used in this chapter, "person" includes all individuals, corporations, partnerships, associations, trusts, and companies and their lessees, trustees, and receivers.

Enacted by Chapter 20, 1989 General Session

Part 2
Exemption from Commission Jurisdiction

54-2-201 Independent energy producer --- Exemption from commission jurisdiction.

(1) As used in this section:

(a) "Customer generation system" means the same as that term is defined in Section 54-15-102.

(b) "Net metering program" means the same as that term is defined in Section 54-15-102.

(2) An independent energy producer is exempt from regulation by the commission as a public utility for an independent power production facility if the independent energy producer produces a commodity or delivers a service:

(a) solely for the use of a state-owned facility;

(b) not for sale to the public, without charge, solely for the use of:

(i) the independent energy producer;

(ii) an independent energy producer's tenant; or

(iii) an association of unit owners formed under Title 57, Chapter 8, Condominium Ownership Act;

(c) for sale solely to an electrical corporation or other wholesale purchaser; or

(d)

(i) for use by:

(A) an entity the independent energy producer controls, is controlled by, or is an affiliate of; or

(B) a user located on real property that the independent energy producer manages or controls; and

(ii) for use on real property that is contiguous to, or is separated only by a public road or easement from, real property that the independent energy producer owns or controls.

(3) In addition to the exemptions described in Subsection (2), an independent energy producer that supplies energy, for direct consumption by a customer, via a customer generation system,

is exempt from regulation by the commission as a public utility for an independent power production facility if:

(a) the customer is:

(i) a United States governmental entity, including an entity of the United States military;

(ii) a state entity, including a political subdivision of the state;

(iii) a state institution of higher education;

(iv) a school district, charter school, or an entity within the state system of public education;

(v) a federal income tax exempt charitable organization under 26 U.S.C. Sec. 501(c)(3) that can provide proof of the entity's tax-exempt status; or

(vi) a residential customer participating in a net metering program in an area served by an electrical corporation with more than 200,000 retail customers in the state;

(b) the customer generation system is:

(i) for use on the real property where the customer generation system is located; and

(ii) designed to supply a maximum amount of electricity equal to the lesser of:

(A) 90% of the customer's average annual electricity consumption, based on an annualized billing period; or

(B) the maximum amount allowed under a net metering program, as defined in Section 54-15-102;

(c) the independent energy producer notifies the customer, before installing the customer generation system, of:

(i) the total cost a customer is required to pay for the customer generation system, including an interconnection cost; and

(ii) the potential for a change in:

(A) the amount the customer pays for energy from a public utility; and

(B) customer fees associated with net metering and generation;

(d) the independent energy producer enters into an interconnection agreement:

(i) with a public utility that provides retail electric service to the real property on which the customer generation system is located; and

(ii) that is subject to approval by a public utility's governing authority; and

(e) except for a customer described in Subsection (3)(a)(vi), the independent energy producer installs the customer generation system by December 31, 2021.

(4) An independent energy producer that supplies electric service to a customer described in Subsection (3)(a)(vi) via a customer generation system shall provide the electric service under an agreement that includes:

(a) the notification described in Subsection (3)(c);

(b) a description of the incentives, including any renewable energy certificate, generated by the agreement, or by the installation or use of the customer generation system;

(c) a description of an incentive described in Subsection (4)(b) that the customer forfeits or assigns to the independent energy producer under the agreement;

(d) the property, equipment, or liability that the independent energy producer will insure under the agreement, and what property, equipment, or liability that the customer is responsible for insuring; and

(e) the Internet address of a Division of Public Utilities website, if any, that describes considerations for a net metering customer.

(5) An independent energy producer may not provide electric service to a customer described in Subsection (3)(a)(vi) until the commission makes the first determination about a net metering program under which the independent energy producer will provide service required by Subsection 54-15-105.1(2), and the determination becomes final agency action.

(6) A public utility shall serve a customer in the public utility's service area that is partially served by an independent energy producer.

Enacted by Chapter 267, 2016 General Session

54-2-202 Out-of-state distribution electrical cooperative -- Exemption from commission jurisdiction.

(1) As used in this section, "out-of-state distribution electrical cooperative" means an electrical corporation that:
  (a) is a distribution electrical cooperative;
  (b) is headquartered and maintains its principal place of business in a state adjoining Utah; and
  (c) provides electric services to consumers located in Utah.
(2) An out-of-state distribution electrical cooperative is exempt from regulation by the commission if the out-of-state distribution electrical cooperative:
  (a) has not previously been headquartered or maintained its principal place of business in Utah;
  (b) serves fewer than 25,000 total customers;
  (c) provides less than 20% of the out-of-state distribution electrical cooperative's total power sales in Utah; and
  (d) provides and maintains on file with the commission written documentation certifying that the out-of-state distribution electrical cooperative is subject to the applicable laws, rules, and regulations of the state where the out-of state distribution electrical cooperative's principal place of business is located.
(3) Notwithstanding the other provisions of this section, the commission may exercise the commission's authority applicable to a distribution electrical cooperative pursuant to this title if:
  (a) the out-of-state distribution electrical cooperative fails to meet any of the qualifications of Subsection (2); or
  (b) a complaint is filed against the out-of-state distribution electrical cooperative by one of the out-of-state distribution electrical cooperative's customers within Utah.

Enacted by Chapter 332, 2018 General Session

Chapter 3
Duties of Public Utilities

54-3-1 Charges must be just; service adequate; rules reasonable.

All charges made, demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful. Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as will promote the safety, health, comfort and convenience of its patrons, employees and the public, and as will be in all respects adequate, efficient, just and reasonable. All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable. The scope of definition "just and reasonable" may include, but shall not be limited to, the cost of providing service to each category of customer, economic impact

of charges on each category of customer, and on the well-being of the state of Utah; methods of reducing wide periodic variations in demand of such products, commodities or services, and means of encouraging conservation of resources and energy.

Amended by Chapter 206, 1977 General Session

54-3-2 Schedules of rates and classification -- Right of inspection -- Changes by commission -- Online consumer access to usage data.

(1) Under the rules and regulations made by the commission, each public utility, shall file with the commission within the time and in the form as the commission may designate, and shall print and keep open to public inspection, schedules showing all rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected or enforced, together with all rules, regulations, contracts, privileges, and facilities which in any manner affect or relate to rates, tolls, rentals, charges, classifications, or service.

(2) Except for motor carriers exempted under federal law, nothing in this section shall prevent the commission from approving or fixing rates, tolls, rentals, or charges from time to time greater, or less, than those shown by the schedules.

(3) The commission shall have power, in its discretion, to determine and prescribe, by order, changes in the form of the schedules referred to in this section as it may find expedient, and to modify the requirements of any of its orders or rules or regulations in respect to any matters described in this section.

(4)

(a) If requested by a nonresidential customer, and to the extent available through existing meters, each electrical corporation shall provide the nonresidential customer access to the customer's usage data.

(b) Each electrical corporation shall provide the access described in Subsection (4)(a) broken down into:

(i) 15 minute intervals; or

(ii) the shortest requested interval available through existing meters.

(c) If incremental costs are associated with providing the access described in this Subsection (4), the electrical corporation may charge the customer an amount determined by the electrical corporation's governing authority, as defined in Section 54-15-102.

Amended by Chapter 228, 2019 General Session

54-3-3 Changes by utilities in schedules -- Notice.

Unless the commission otherwise orders, no change shall be made by any public utility in any rate, fare, toll, rental, charge or classification, or in any rule, regulation or contract relating to or affecting any rate, toll, fare, rental, charge, classification or service, or in any privilege or facility, except after 30 days' notice to the commission and to the public as herein provided. Such notice shall be given by filing with the commission, and keeping open for public inspection, new schedules stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect. The commission for good cause shown may allow changes, without requiring the 30 days' notice herein provided for, by an order specifying the changes so to be made, the time when they shall take effect and the manner in which they shall be filed and published. When any change is proposed in any rate, fare, toll, rental, charge or classification, or in any form of contract or agreement, or in any rule, regulation or contract relating to or affecting any rate, toll, fare, rental, charge, classification or service, or in

any privilege or facility, attention shall be directed to such change on the schedule filed with the commission by some character to be designated by the commission immediately preceding or following the item.

No Change Since 1953

54-3-4 Joint tariffs.

The names of the several public utilities which are parties to any joint tariff, rate, fare, toll, contract, classification or charge shall be specified in the schedule or schedules showing the same. Unless otherwise ordered by the commission, a schedule showing such joint tariff, rate, toll, fare, contract, classification or charge need be filed with the commission by only one of the parties to it, provided there is also filed with the commission, in such form as the commission may require, a concurrence in such joint tariff, rate, toll, fare, contract, classification or charge by each of the other parties thereto.

No Change Since 1953

54-3-7 Charges not to vary from schedules -- Refunds and rebates forbidden -- Exceptions.

Except as provided in this chapter or Chapter 8b, Public Telecommunications Law, no public utility shall charge, demand, collect or receive a greater or less or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals and charges applicable to such products or commodity or service as specified in its schedules on file and in effect at the time; nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals and charges so specified; nor extend to any person any form of contract or agreement, or any rule or regulation, or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons; provided, that the commission may, by rule or order, establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to any public utility.

Amended by Chapter 5, 2005 General Session

54-3-8 Preferences forbidden -- Power of commission to determine facts -- Applicability of section.

(1) Except as provided in Chapter 8b, Public Telecommunications Law, a public utility may not:
  (a) as to rates, charges, service, facilities or in any other respect, make or grant any preference or advantage to any person, or subject any person to any prejudice or disadvantage; and
  (b) establish or maintain any unreasonable difference as to rates, charges, service or facilities, or in any other respect, either as between localities or as between classes of service.
(2) The commission shall have power to determine any question of fact arising under this section.
(3) This section does not apply to, and the commission may not enforce this chapter concerning, a schedule, classification, rate, price, charge, fare, toll, rental, rule, service, facility, or contract of an entity described in Subsection 54-2-1(9)(b)(iii) or (iv), (21), or (23)(h), or if the electricity is consumed by an eligible customer for the eligible customer's own use or the use of the eligible customer's tenant or affiliate.

Amended by Chapter 314, 2022 General Session

54-3-8.5 Rate on electricity for agricultural irrigation or drainage.

The commission in approving any rate applicable to customers who use electric power for agricultural irrigation or soil drainage purposes which includes a demand or power charge as a separate charge shall take into consideration the productive utilization of agricultural water and electric energy.

Enacted by Chapter 249, 1983 General Session

54-3-9 Sliding scale of charges -- Control by commission.

Nothing in this title shall be taken to prohibit a corporation or person engaged in the production, generation, transmission, or furnishing of heat, light, water or power, or telegraph or telephone service, from establishing a sliding scale of charges, provided a schedule showing such scale of charges shall first have been filed with the commission and the rates set out therein are approved by it. Nothing in this title shall be taken to prohibit any such corporation or person from entering into an arrangement for a fixed period for the automatic adjustment of charges for heat, light, water or power, or telegraph or telephone service, in relation to the dividends to be paid to stockholders of such corporation or the profit to be realized by such person, provided a schedule showing the scale of charges under such arrangement shall first have been filed with the commission and each rate set out therein is approved by it. Nothing in this section shall prevent the commission from revoking its approval at any time and fixing other rates and charges for the product or commodity or service, as authorized by this title.

No Change Since 1953

54-3-10 Interchange of business required.

Every telephone corporation and telegraph corporation operating in this state shall receive, transmit, and deliver, without discrimination or delay, the conversations and messages of every other telephone or telegraph corporation with whose line a physical connection may have been made.

Amended by Chapter 170, 1996 General Session

54-3-19 Long and short distance service -- Through and intermediate rates.

(1) A telephone or telegraph corporation may not charge or receive any greater compensation, in the aggregate, for the transmission of any long distance message or conversation for a shorter than for a longer distance over the same line or route in the same direction within this state, the shorter being included within the longer distance; or charge any greater compensation for a through service than the aggregate of the intermediate rates or tolls; but this shall not be construed as authorizing any telephone or telegraph corporation to charge or receive as great a compensation for a shorter as for a longer distance.
(2) Upon application to the commission any telegraph or telephone corporation may in special cases, after investigation, be authorized by the commission to charge less for a longer than for a shorter distance service for the transmission of messages or conversations, and the commission may from time to time prescribe the extent to which the telegraph or telephone corporation may be relieved from the operation and requirements of this section.

Amended by Chapter 316, 1995 General Session

54-3-21 Commission to be furnished information and copies of records -- Hearings before commission to be public -- Privilege.

(1) Every public utility shall furnish to the commission in such form and such detail as the commission shall prescribe all tabulations and computations and all other information required by it to carry into effect any of the provisions of this title, and shall make specific answers to all questions submitted by the commission.

(2) Every public utility receiving from the commission any blanks with directions to fill the same shall cause the same to be properly filled so as to answer fully and correctly each question propounded therein; in case it is unable to answer any question, it shall give a good and sufficient reason for such failure.

(3) Whenever required by the commission every public utility shall deliver to the commission copies of any or all maps, profiles, contracts, agreements, franchises, reports, books, accounts, papers and records in its possession or in any way relating to its property or affecting its business, and also a complete inventory of all its property in such form as the commission may direct.

(4) Hearings or proceedings of the commission or of any commissioner shall be open to the public, and all records of all hearings or proceedings or orders, rules or investigations by the commission or any commissioner shall be at all times open to the public; provided, that any information furnished the commission by a public utility or by any officer, agent or employee of any public utility may be withheld from the public whenever and during such time as the commission may determine that it is for the best interests of the public to withhold such information. Any officer or employee of the commission who in violation of the provisions of this subsection divulges any such information is guilty of a class B misdemeanor.

Amended by Chapter 148, 2018 General Session

54-3-22 Required reports.

Every public utility shall furnish to the commission at such time and in such form as the commission may require a report in which the public utility shall specifically answer all questions propounded by the commission upon or concerning any matter upon which the commission may desire information. The commission shall have authority to require any public utility to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matter about which the commission is authorized to inquire or to keep itself informed or which it is required to enforce. All reports shall be under oath when required by the commission.

No Change Since 1953

54-3-23 Commission's orders must be obeyed.

Every public utility shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commission in the matters herein specified, or in any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation by all of its officers, agents and employees.

No Change Since 1953

54-3-24 Hostage situation -- Telephone communication prevention.

The supervising law enforcement official having jurisdiction in a geographical area where hostages are held, who has probable cause to believe that the holder of one or more hostages is committing a crime, may order a previously designated telephone company security employee to arrange to cut, reroute or divert telephone lines that serve the area in which the hostages are being held, in an emergency, for the purpose of preventing telephone communications by the holder of the hostages with any person other than a peace officer or person authorized by a peace officer.

The serving telephone company within the geographical area of the law enforcement unit shall designate a telephone company security official and an alternate to provide all required assistance to law enforcement officials to carry out the purpose of this section. Good faith reliance on an order given by a supervising law enforcement official shall constitute a complete defense to any action brought for conduct allowed under this section.

Enacted by Chapter 217, 1981 General Session

54-3-26 Retention of unclaimed capital credits by electric and telephone cooperatives -- Use of retained money -- Reporting requirements.

(1) As used in this section:
  (a) "Cooperative" means a:
    (i) distribution electrical cooperative, as defined in Section 54-2-1, that is incorporated in the state; or
    (ii) telephone cooperative, as defined in Section 54-2-1, that is incorporated in the state.
  (b) "Unclaimed capital credit" means a capital credit issued by a cooperative to the cooperative's customer that is unclaimed on the last day of the year three years after the year in which the credit was issued.
(2) A cooperative shall retain an unclaimed capital credit.
(3) A cooperative shall use the proceeds of a retained unclaimed capital credit to:
  (a) pay all or a portion of a low-income individual's utility bills;
  (b) provide scholarships to graduating high school seniors in the area where the cooperative provides service; or
  (c) provide financial assistance to, in the area where the cooperative provides service:
    (i) a school;
    (ii) a non-profit organization; or
    (iii) a community organization.
(4) A cooperative shall establish criteria for recipients of the financial assistance described in this section that are based on:
  (a) a recipient's financial or other needs; and
  (b) the recipient community's interests.
(5) A cooperative shall submit a report, before November 1 of each year, to the Public Service Commission that describes:
  (a) the amount of unclaimed capital credits retained by the cooperative;
  (b) the amount and recipients of financial assistance disbursed under this section; and
  (c) the criteria used by the cooperative to determine the recipients and amount of financial assistance disbursed under this section.

Amended by Chapter 315, 2016 General Session

54-3-27 Public utility easement.

(1) As used in this section:

(a) "Protected utility easement" means a recorded easement or right-of-way:
(i) for the use and installation of a utility facility; and
(ii) the ownership of which a gas corporation, electric corporation, or telephone corporation acquires and holds by any lawful means.
(b) "Public utility easement" means the area on a recorded plat map or other recorded document that is dedicated to the use and installation of public utility facilities.
(2)
(a) A public utility easement provides a public utility with:
(i) the right to install, maintain, operate, repair, remove, replace, or relocate public utility facilities; and
(ii) the rights of ingress and egress within the public utility easement for public utility employees, contractors, and agents.
(b) Notwithstanding Subsection (3), a public utility shall restore or repair, at the expense of the public utility, any fence, grass, soil, shrubbery, bushes, flowers, other low level vegetation, sprinkler system, irrigation system, gravel, flat concrete, or asphalt damaged or displaced from the exercise of the easement rights described in Subsection (2)(a).
(3) Except as provided in Subsection (2)(b), if a property owner places improvements to land that interfere with the easement rights described in Subsection (2)(a), the property owner shall bear the risk of loss or damage to those improvements resulting from the exercise of the easement rights described in Subsection (2)(a).
(4)
(a) Except as provided in Subsection (4)(b), a public utility easement is nonexclusive and may be used by more than one public utility.
(b) Notwithstanding Subsection (4)(a), a public utility may not:
(i) interfere with any facility of another public utility within the public utility easement; or
(ii) infringe on the legally required distances of separation between public utility facilities required by federal, state, or local law.
(5) A subdivision plat that includes a public utility easement may not be approved by a county or municipality unless the subdivider has provided the county or municipality proof that the subdivider has, as a courtesy, previously notified each public utility that is anticipated to provide service to the subdivision.
(6) A person may not acquire, whether by adverse possession, prescription, acquiescence, or otherwise, any right, title, or interest in a public utility easement or protected utility easement that is adverse to or interferes with a public utility's full use of the easement for the purposes for which the easement was created.
(7) A gas corporation's, electric corporation's, or telephone corporation's failure to possess, occupy, or use a protected utility easement does not diminish or extinguish any right that the gas corporation, electric corporation, or telephone corporation has under the easement.
(8) Nothing in this section may be construed to affect the right of a condemnor to condemn a public utility easement as provided by law.

Amended by Chapter 245, 2009 General Session

54-3-28 Notice required of certain public utilities before preparing or amending a long-range plan or acquiring certain property.
(1) As used in this section:
(a)

(i) "Affected entity" means each county, municipality, special district under Title 17B, Limited Purpose Local Government Entities - Special Districts, special service district, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, and specified public utility:

(A) whose services or facilities are likely to require expansion or significant modification because of expected uses of land under a proposed long-range plan or under proposed amendments to a long-range plan; or

(B) that has filed with the specified public utility a copy of the general or long-range plan of the county, municipality, special district, special service district, school district, interlocal cooperation entity, or specified public utility.

(ii) "Affected entity" does not include the specified public utility that is required under Subsection (2) to provide notice.

(b) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

(2)

(a) If a specified public utility prepares a long-range plan regarding the specified public utility's facilities proposed for the future in a county of the first or second class or amends an already existing long-range plan, the specified public utility shall, before preparing a long-range plan or amendments to an existing long-range plan, provide written notice, as provided in this section, of the specified public utility's intent to prepare a long-range plan or to amend an existing long-range plan.

(b) Each notice under Subsection (2) shall:

(i) indicate that the specified public utility intends to prepare a long-range plan or to amend a long-range plan, as the case may be;

(ii) describe or provide a map of the geographic area that will be affected by the long-range plan or amendments to a long-range plan;

(iii) be sent to:

(A) each county in whose unincorporated area and each municipality in whose boundaries is located the land on which the proposed long-range plan or amendments to a long-range plan are expected to indicate that the proposed facilities will be located;

(B) each affected entity;

(C) the Utah Geospatial Resource Center created in Section 63A-16-505;

(D) each association of governments, established pursuant to an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, of which a county or municipality described in Subsection (2)(b)(iii)(A) is a member; and

(E) the state planning coordinator appointed under Section 63J-4-401;

(iv) with respect to the notice to counties and municipalities described in Subsection (2)(b)(iii) (A) and affected entities, invite them to provide information for the specified public utility to consider in the process of preparing, adopting, and implementing the long-range plan or amendments to a long-range plan concerning:

(A) impacts that the use of land proposed in the proposed long-range plan or amendments to a long-range plan may have on the county, municipality, or affected entity; and

(B) uses of land that the county, municipality, or affected entity is planning or considering that may conflict with the proposed long-range plan or amendments to a long-range plan; and

(v) include the address of an Internet website, if the specified public utility has one, and the name and telephone number of an individual where more information can be obtained concerning the specified public utility's proposed long-range plan or amendments to a long-range plan.

(3)
(a) Except as provided in Subsection (3)(d), each specified public utility intending to acquire real property in a county of the first or second class for the purpose of expanding the specified public utility's infrastructure or other facilities used for providing the services that the specified public utility is authorized to provide shall provide written notice, as provided in this Subsection (3), of the specified public utility's intent to acquire the property if the intended use of the property is contrary to:
(i) the anticipated use of the property under the county or municipality's general plan; or
(ii) the property's current zoning designation.
(b) Each notice under Subsection (3)(a) shall:
(i) indicate that the specified public utility intends to acquire real property;
(ii) identify the real property; and
(iii) be sent to:
(A) each county in whose unincorporated area and each municipality in whose boundaries the property is located; and
(B) each affected entity.
(c) A notice under this Subsection (3) is a protected record as provided in Subsection 63G-2-305(8).
(d)
(i) The notice requirement of Subsection (3)(a) does not apply if the specified public utility previously provided notice under Subsection (2) identifying the general location within the municipality or unincorporated part of the county where the property to be acquired is located.
(ii) If a specified public utility is not required to comply with the notice requirement of Subsection (3)(a) because of application of Subsection (3)(d)(i), the specified public utility shall provide the notice specified in Subsection (3)(a) as soon as practicable after the specified public utility's acquisition of the real property.

Amended by Chapter 16, 2023 General Session

54-3-29 Removal, relocation, or alteration of utility facility in public highway construction or reconstruction -- Notice -- Cooperation.

(1) As used in this section:
(a) "Design-build" means a design-build transportation project for which a design-build transportation project contract is issued, within the meaning of Section 63G-6a-1402.
(b) "Municipality" means the same as that term is defined in Section 10-1-104.
(c) "Political subdivision" means a:
(i) county;
(ii) municipality; or
(iii) special service district.
(d) "Public agency" means an entity of state government or a political subdivision.
(e) "Public highway" means a highway, street, road, or alley constructed for public use in the state.
(f) "Utility company" means a privately, cooperatively, or publicly owned utility, including a utility owned by a political subdivision, that provides service using a utility facility.
(g) "Utility facility" means:
(i) a telecommunications, gas, electricity, cable television, water, sewer, or data facility;
(ii) a video transmission line;

(iii) a drainage and irrigation system; or
(iv) a facility similar to those listed in Subsections (1)(g)(i) through (iii) located in, on, along, across, over, through, or under any public highway.

(2) If a public agency engages in or proposes to engage in a construction or reconstruction project on a public highway that may require the removal, relocation, or alteration of a utility facility, the public agency shall:
(a) contact the association described in Section 54-8a-9, to identify each utility company that may have a utility facility in the area of the construction or reconstruction project;
(b) identify a utility company that has an above-ground utility facility in the area of the proposed construction or reconstruction project; and
(c) electronically notify each utility company identified in accordance with Subsections (2)(a) and (b).

(3) The notice required by Subsection (2)(c) shall:
(a) be made as early as practicable and at least 30 days:
(i) before the date of the preliminary design or project development meeting;
(ii) before the date of an issuance of a request for proposal for a design-build project; or
(iii) after a change in scope of a design-build project;
(b) include:
(i) information concerning the proposed project design;
(ii) the proposed date of a required removal, relocation, or alteration of a utility facility;
(iii) the federal identifying project number, if applicable; and
(c) advise the utility company if the proposed project may qualify for aid for the utility company's expense in removing, relocating, or altering a utility facility.

(4) A public agency shall permit a utility company notified under Subsection (2) to participate in the preliminary design or project development meeting or similar meeting at which the project design is addressed.

(5)
(a) A public agency shall, not less than 30 days after providing notice under Subsection (2) to each utility company, provide the utility company an opportunity to meet with the public agency to allow the utility company to:
(i) review project plans;
(ii) understand the objectives and funding sources for the proposed project;
(iii) provide and discuss recommendations to the public agency that may reasonably eliminate or minimize utility removal, relocation, or alteration costs, limit the disruption of utility company services, or eliminate or reduce the need for present or future utility facility removal, relocation, or alteration; and
(iv) provide reasonable schedules to enable coordination of the construction project and removal, relocation, or alteration of a utility facility.
(b) If a public agency provides a utility company with reasonable opportunities to meet in accordance with Subsection (5)(a), the utility company's failure to meet does not affect the public agency's ability to proceed with the project.

(6) While recognizing the essential goals and objectives of the public highway agency in proceeding with and completing a project, the parties shall use their best efforts to find ways to:
(a) eliminate the cost to the utility of relocation of the utility facilities; or
(b) if elimination of the costs is not feasible, minimize the relocation costs to the extent reasonably possible.

(7) A utility company notified under Subsection (2) shall coordinate with the public agency concerning the utility facility removal, relocation, or alteration, including the scheduling of the utility facility removal, relocation, or alteration.
(8) A public agency and a utility company may address the removal, relocation, or alteration of a utility facility in relation to a construction or reconstruction project on a public highway in a franchise agreement in lieu of this section, if the public agency is otherwise permitted to enter into the franchise agreement.
(9) This chapter does not affect a public agency's authority over a public right-of-way, including any rule, ordinance, order to relocate a utility as provided in Section 72-6-116, or other valid provision governing the use of the public right-of-way.

Amended by Chapter 369, 2024 General Session

54-3-30 Electric utility service within a provider municipality -- Electrical corporation prohibited as provider -- Exceptions -- Notice and agreement -- Transfer of customer.

(1) This section applies to an electrical corporation that intends to provide electric service to a customer:
  (a) who is located within the municipal boundary of a municipality that provides electric service; and
  (b) who is not described in Subsection 54-3-31(2).
(2)
  (a) If an electrical corporation is authorized by the commission to provide electric service to a customer in an area adjacent to a municipality, and the municipality provides electric service to a customer located within its municipal boundary, the electrical corporation may not provide electric service to a customer within the municipal boundary unless:
    (i) the electrical corporation has entered into a written agreement with the municipality authorizing the electrical corporation to provide electric service:
      (A) to a specified customer or to customers located within a specified area within the municipal boundary; and
      (B) in accordance with the terms and conditions of the electrical corporation's tariffs and regulations approved by the commission, or approved by the governing board for an electrical cooperative that meets the requirements of Subsection 54-7-12(7); and
    (ii)
      (A) except as provided in Subsection (2)(a)(ii)(B), the commission approves the agreement in accordance with Section 54-4-40; or
      (B) for an electrical cooperative that meets the requirements of Subsection 54-7-12(7), the governing board of the electrical cooperative approves the agreement.
  (b) The municipality or the electrical corporation may terminate the agreement for the provision of electric service if the commission imposes a condition authorized in Section 54-4-40 that is a material change to the agreement.
(3) An electrical corporation that enters into an agreement described in Subsection (2)(a) shall transfer service to a customer described in Subsection (2):
  (a) at the conclusion of a term specified in the agreement; or
  (b) upon termination of the agreement by the electrical corporation in accordance with Subsection (4).
(4) Unless otherwise agreed in writing by the electrical corporation and the municipality, the electrical corporation may terminate an agreement entered into in accordance with Subsection (2)(a) by giving written notice of termination to the municipality:

(a) no earlier than two years before the day of termination; or
(b) within a period of time shorter than two years if otherwise agreed to with the municipality.
(5) Upon termination of an agreement in accordance with Subsection (3)(a), (3)(b), or (4):
(a)
(i) the electrical corporation shall transfer the electric service customer to the municipality; and
(ii) the municipality shall provide electric service to the customer; and
(b) the electrical corporation shall transfer a facility in accordance with and for the value as provided in Section 10-2-421.
(6) This section may not be construed to modify or terminate any written franchise agreement or other agreement that expressly provides for electric service by an electrical corporation to a customer within a municipality that was entered into between an electrical corporation and a municipality on or before June 15, 2013.

Amended by Chapter 55, 2014 General Session

54-3-31 Electric utility service within a provider municipality -- Electrical corporation authorized as continuing provider for service provided on or before June 15, 2013 -- Notice of service and agreement -- Transfer of customer.
(1) This section applies to an electrical corporation that:
(a)
(i) provides electric service to a customer on or before June 15, 2013, within the municipal boundary of a municipality that provides electric service; or
(ii) provides electric service to a customer within an area:
(A) established by an agreement dated on or before June 15, 2013, with a municipality; and
(B) within the municipal boundary of a municipality that provides electric service; and
(b) intends to continue providing service to that customer.
(2) Notwithstanding Section 54-3-30, if an electrical corporation provides electric service to a customer as described in Subsection (1), and the municipality provides electric service to another customer within its municipal boundary, the electrical corporation may continue to provide electric service to the customer within the municipality's boundary after the termination of, or in the absence of, a written agreement, if:
(a) the electrical corporation provides, on or before December 15, 2013, the municipality with an accurate and complete verified written notice, in accordance with Subsection (3), identifying each customer within the municipality served by the electrical corporation on or before June 15, 2013;
(b) the electrical corporation enters into a written agreement with the municipality:
(i)
(A) prior to the termination of any prior written agreement; or
(B) in the absence of a written agreement; and
(ii) no later than June 15, 2014; and
(c)
(i) except as provided in Subsection (2)(c)(ii), the commission approves the agreement in accordance with Section 54-4-40; or
(ii) for an electrical cooperative that meets the requirements of Subsection 54-7-12(7), the governing board of the electrical cooperative approves the agreement.
(3) The written notice provided in accordance with Subsection (2)(a) shall include for each customer:
(a) the customer's meter number;

(b) the location of the customer's meter by street address, global positioning system coordinates, metes and bounds description, or other similar method of meter location;
(c) the customer's class of service; and
(d) a representation that the customer was receiving service from the electrical corporation on or before June 15, 2013.
(4) The agreement entered into in accordance with Subsection (2) shall require the following:
(a) The electrical corporation is the exclusive electric service provider to a customer identified in the notice described in Subsection (2)(a) unless the municipality and electrical corporation subsequently agree, in writing, that the municipality may provide electric service to the identified customer.
(b) If a customer who is located within the municipal boundary and who is not identified in Subsection (2)(a) requests service after June 15, 2013, from the electrical corporation, the electrical corporation may not provide that customer electric service unless the electrical corporation subsequently submits a request to and enters into a written agreement with the municipality in accordance with Section 54-3-30.
(5)
(a) Unless otherwise agreed in writing by the electrical corporation and the municipality, the electrical corporation may terminate an agreement entered into in accordance with Subsection (2)(b) by giving written notice of termination to the municipality:
(i) no earlier than two years before the day of termination; or
(ii) within a period of time shorter than two years if otherwise agreed to with the municipality.
(b) Upon termination of an agreement in accordance with Subsection (5)(a):
(i)
(A) the electrical corporation shall transfer an electric service customer located within the municipality to the municipality; and
(B) the municipality shall provide electric service to the customer; and
(ii) the electrical corporation shall transfer a facility in accordance with and for the value as provided in Section 10-2-421.
(6) This section may not be construed to modify or terminate any written franchise agreement or other agreement that expressly provides for electric service by an electrical corporation to a customer within a municipality that was entered into between an electrical corporation and a municipality on or before June 15, 2013.

Amended by Chapter 55, 2014 General Session
Amended by Chapter 189, 2014 General Session

54-3-32 Public utility duties -- Procedure to transfer service to a nonutility energy supplier.
(1) A transmission provider shall offer to an eligible customer available transmission service under the transmission provider's applicable Federal Energy Regulatory Commission approved open access transmission tariff.
(2) Notwithstanding Section 54-3-1, and except for transmission service required to be offered under Subsection (1), a public utility is not required to furnish or provide electric service to an eligible customer if the eligible customer has transferred service to a nonutility energy supplier in accordance with this section.
(3) An eligible customer may initiate the transfer of service to a nonutility energy supplier by:
(a) providing written notice to the public utility that provides electric service to the eligible customer:

(i) no later than18 months before the date the eligible customer intends to transfer service to the nonutility energy supplier; and
(ii) stating:
(A) that the eligible customer intends to receive service from the nonutility energy supplier; and
(B) the date on which the eligible customer intends to commence receiving service from the nonutility energy supplier; and
(b) filing a written application with the public utility's transmission provider in accordance with the transmission provider's approved Federal Energy Regulatory Commission open access transmission tariff no later than 240 days before the intended date of transfer of service described in Subsection (3)(a)(ii).
(4)
(a) Subject to Subsection (4)(c), an eligible customer shall provide written reports to the commission and the public utility updating any change in the intended date of transfer of service described in Subsection (3)(a)(ii):
(i) beginning nine months prior to the intended date of transfer of service described in Subsection (3)(a)(ii); and
(ii) no less frequently than every three months after the first written report is submitted in accordance with Subsection (4)(a)(i) until the sooner of:
(A) the date the notice described in Subsection (3)(a) is withdrawn in accordance with this section; or
(B) the date the eligible customer's service is transferred to the nonutility energy supplier.
(b) An eligible customer:
(i) may withdraw the notice described in Subsection (3)(a) at any time prior to transferring service to a nonutility energy supplier; or
(ii) subject to Subsection (4)(c), may delay the intended date of transfer of service described in Subsection (3)(a)(ii).
(c) Subject to Subsection (4)(d), the notice described in Subsection (3)(a) is considered to be withdrawn if a transfer of service under this section does not occur before the earlier of:
(i) December 31, 2020; or
(ii) 18 months after the intended date of transfer of service described in Subsection (3)(a)(ii).
(d) A time period provided in Subsection (4)(c) is tolled during any period of delay in a transfer of service to a nonutility energy supplier if the delay is solely attributable to the public utility, the public utility's transmission provider, or a contractor of the public utility or the public utility's transmission provider, in fulfilling the public utility's or the public utility's transmission provider's obligations under relevant law.
(5) An eligible customer that transfers service to a nonutility energy supplier shall pay, or receive credit for:
(a) any amounts due to the public utility for electric service provided to the eligible customer in accordance with a tariff or the eligible customer's contract for service;
(b) all balancing account costs, major plant addition costs, and any other surcharges or credits:
(i) attributable to the service provided to the eligible customer; and
(ii) incurred prior to the eligible customer's transfer of service to the nonutility energy supplier;
(c) all costs of metering, communication, and other facilities or equipment necessary to transfer the eligible customer's service to the nonutility energy supplier;
(d) all costs of transmission and ancillary services necessary for the eligible customer to receive service from the nonutility energy supplier; and
(e) any costs assessed to the eligible customer in accordance with Subsection (6).

(6)
(a) The Division of Public Utilities shall file a petition with the commission as provided in this section:
(i) no earlier than 12 months but no later than eight months before the later of:
(A) the intended date of transfer of service described in Subsection (3)(a)(ii); or
(B) if the eligible customer updates a change in the intended date of transfer of service in accordance with Subsection (4), the intended date of transfer of service stated in the written report described in Subsection (4); or
(ii) at any time earlier than the time period described in Subsection (6)(a)(i) if agreed to by the public utility, the Division of Public Utilities, the Office of Consumer Services, and the eligible customer.
(b) A petition under Subsection (6)(a) shall seek a determination by the commission of whether the eligible customer's intended transfer of service to a nonutility energy supplier will result in:
(i) costs or credits allocated to Utah under any interjurisdictional cost allocation methodology the commission reasonably expects to be in effect as of:
(A) the intended date of transfer of service described in Subsection (3)(a)(ii); or
(B) if the eligible customer updates a change in the intended date of transfer of service in accordance with Subsection (4), the intended date of transfer of service stated in the written report described in Subsection (4);
(ii)
(A) costs of facilities used to serve the eligible customer if the costs will not be recovered from the eligible customer and the facilities will not be used by other customers as a direct result of the eligible customer transferring service to a nonutility energy supplier; and
(B) any credits to offset the costs of facilities described in Subsection (6)(b)(ii)(A); and
(iii) any other costs to the public utility or to other customers of the public utility.
(c) In making its determination under Subsection (6)(b), the commission may consider:
(i) the benefits from resources, the costs of which are attributable to the eligible customer's load;
(ii) the cost of resources attributable to the eligible customer's load compared to the cost of new resources;
(iii) other credits and public interest considerations related to the eligible customer; and
(iv) any other issue raised by a party to the proceeding or any other issue the commission determines to be relevant.
(d) If the eligible customer's load was not substantially offset by the eligible customer's generation in the public utility's load forecast used in the public utility's 2013 integrated resource plan, the commission shall require the eligible customer to pay to the public utility, for the benefit of Utah customers, any costs described in Subsection (6)(b) the commission orders the eligible customer to pay.
(e) If the eligible customer's load was substantially offset by the eligible customer's generation in the public utility's load forecast used in the public utility's 2013 integrated resource plan, the commission, in its discretion, based on substantial evidence and taking into consideration the public interest, shall determine the reasonable amount:
(i)
(A) the eligible customer is required to pay to the public utility, for the benefit of Utah customers, for the costs the commission determines in accordance with Subsection (6)(b)(i); and

(B) the public utility is required to pay to the eligible customer, at a cost to be recovered from Utah customers, for any credits the commission determines in accordance with Subsection (6)(b)(i);

(ii) the following are required to pay to the public utility, for the costs or credits the commission determines in accordance with Subsection (6)(b)(ii):

(A) the eligible customer;

(B) other customers of the public utility; or

(C) the eligible customer and other customers of the public utility; and

(iii) the other customers of the public utility are required to pay to the public utility, for any costs the commission determines in accordance with Subsection (6)(b)(iii).

(f)

(i) The commission shall issue a decision on the petition filed in accordance with Subsection (6)(a) no later than 180 days after the Division of Public Utilities files the petition.

(ii) If the commission does not issue a decision within the time period required by Subsection (6)(f)(i), the commission shall allow the public utility to recover costs the commission determines in accordance with Subsection (6)(b), but may not impose any of those costs on the eligible customer.

(7) A public utility and an eligible customer may agree in writing to waive a time period described in Subsection (4) as necessary to facilitate the eligible customer to receive service from a nonutility energy supplier.

(8)

(a) Subject to Subsection (8)(b), an eligible customer shall arrange for the installation of any facilities and equipment necessary for the eligible customer to receive service from a nonutility energy supplier:

(i) at the cost of the eligible customer; and

(ii) in compliance with the public utility's applicable equipment standards and industry codes.

(b) The facilities and equipment described in Subsection (8)(a) may be installed by:

(i) the public utility;

(ii) the nonutility energy supplier; or

(iii) a third party contractor.

(9) An eligible customer may commence service from a nonutility energy supplier if:

(a) the eligible customer makes the payments described in Subsection (5);

(b) the eligible customer meets the requirements of Subsection (3);

(c) the eligible customer, or a designee of the eligible customer, enters into any necessary agreements for:

(i) the public utility's transmission provider to provide transmission service; and

(ii) the nonutility energy supplier to provide service;

(d) the installation described in Subsection (8) is completed; and

(e) the notice described in Subsection (3)(a) is not considered to be withdrawn under Subsection (4).

(10)

(a) If an eligible customer that has been receiving electricity from a nonutility energy supplier gives the public utility and the commission at least 36 months' prior written notice of the eligible customer's intention to reinstate electric service from the public utility, the public utility shall reinstate electric service to the eligible customer:

(i) under substantially the same terms as a new customer;

(ii) beginning 36 months after the date the public utility receives the written notice; and

(iii)

(A) at rates stated in the public utility's applicable rate schedule; or
(B) at a special contract rate agreed upon by the public utility and the eligible customer and approved by the commission.

(b) The notice described in Subsection (10)(a) is irrevocable unless, during the time period beginning on the date the eligible customer provides the notice described in Subsection (10)(a) and ending on the date the public utility reinstates service, the public utility is no longer a vertically integrated utility providing electric service that includes generation and transmission.

(c) If an eligible customer that has transferred service to a nonutility energy supplier elects to reinstate electric service from a public utility and receives the electric service from the public utility, the eligible customer may not transfer service to a nonutility energy supplier under this section.

Enacted by Chapter 381, 2014 General Session

54-3-33 Eligible customer energy supply contract.

(1) The commission may approve a contract between a large-scale electric utility and a customer of a large-scale electric utility that is eligible to transfer electric service to a non-utility energy supplier under Section 54-3-32.

(2) The commission shall exempt a customer that enters into a contract described in Subsection (1) from paying the costs recovered under Subsection 54-7-12.8(3), except the costs of the Utah solar incentive program included in Subsection 54-7-12.8(3)(b).

(3) If an eligible customer that enters into a contract described in Subsection (1) has provided notice to the commission under Subsection 54-3-32(3), the notice is not considered withdrawn under Subsection 54-3-32(4)(c) by the customer entering into the contract.

(4) Notwithstanding Subsection 54-3-32(4)(c), if the commission approves a contract under this section for an eligible customer that states a contract termination date that is after December 31, 2020, the notice described in Subsection 54-3-32(3)(a) is not considered to be withdrawn unless a transfer of service under Section 54-3-32 does not occur before the later of:

(a) the day three years after the termination date stated in the contract; or

(b) 18 months after the intended date of transfer of service described in Subsection 54-3-32(3)(a)(ii).

Enacted by Chapter 393, 2016 General Session

Chapter 4
Authority of Commission Over Public Utilities

54-4-1 General jurisdiction.

The commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in this state, and to supervise all of the business of every such public utility in this state, and to do all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of such power and jurisdiction; provided, however, that the Department of Transportation shall have jurisdiction over safety functions of public utilities as granted in Title 72, Transportation Code.

Amended by Chapter 66, 2023 General Session

54-4-1.1 Wholesale electrical cooperative exempt from rate regulation -- Requirements for rate increase.

The commission does not have the authority under the provisions of this title to regulate, fix, or otherwise approve or establish the rates, fares, tolls, or charges of a wholesale electrical cooperative. A wholesale electrical cooperative shall not vary its charges within any type or classification of service to any member or the public, one from the other, or from schedules of rates, fares, tolls, or charges which schedules shall be filed at least annually with the Division of Public Utilities for informational purposes only. The prohibition of this section applies only to the rates, fares, tolls, or charges and does not exempt wholesale electrical cooperatives from other areas of regulation under this title including, but not limited to, regulation having an indirect effect on rates, fares, tolls, or charges but which does not constitute an approval or establishment of them.

A wholesale electrical cooperative must, prior to the implementation of any rate increase after January 1, 1984, hold a public meeting for all its customers and members. Notice must be mailed at least 10 days prior to the meeting. In addition, any schedule of new rates or other change that results in new rates must be approved by the board of directors of the wholesale electrical cooperative.

Enacted by Chapter 50, 1984 General Session

54-4-1.5 Investigations, providing information, audits and recommendations by director.

In addition to its other powers and duties provided by law, the Public Service Commission may, with respect to any matter within its jurisdiction, order the director of the Division of Public Utilities to:

(1) conduct research, studies, and investigations;
(2) provide information, documents or records in compliance with the provisions regarding ex parte communications set forth in Section 54-7-1.5;
(3) conduct audits and inspections or take other enforcement actions to assure compliance with commission decisions and state and federal laws; and
(4) make recommendations regarding public utility regulations.

Enacted by Chapter 246, 1983 General Session

54-4-2 Investigations -- Hearings and notice -- Findings -- Applicability of chapter.

(1)
(a) The commission may conduct an investigation if the commission determines an investigation:
(i) is necessary to secure compliance with this title or with an order of the commission;
(ii) is in the public interest; or
(iii) should be made of any act or omission to act, or of anything accomplished or proposed, or of any schedule, classification, rate, price, charge, fare, toll, rental, rule, regulation, service, or facility of any public utility.
(b) If the commission conducts an investigation under Subsection (1)(a), the commission may:
(i) establish a time and place for a hearing;
(ii) provide notice to the public utility concerning the investigation; and
(iii) make findings and orders that are just and reasonable with respect to the investigation.
(2) This chapter does not apply to a schedule, classification, rate, price, charge, fare, toll, rental, rule, service, facility, or contract of an entity described in Subsection 54-2-1(9)(b)(iii) or

(iv), (21), or (23)(i), or if the electricity is consumed by an eligible customer for the eligible customer's own use or the use of the eligible customer's tenant or affiliate.

Amended by Chapter 314, 2022 General Session

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

(1)

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

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

(A) unjust;

(B) unreasonable;

(C) discriminatory;

(D) preferential; or

(E) otherwise in violation of any provisions of law; or

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

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

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

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

(2) The commission may:

(a) investigate:

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

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

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

(3)

(a) If in the commission's determination of just and reasonable rates the commission uses a test period, the commission shall select a test period that, on the basis of evidence, the commission finds best reflects the conditions that a public utility will encounter during the period when the rates determined by the commission will be in effect.

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

(i) a future test period that is determined on the basis of projected data not exceeding 20 months from the date a proposed rate increase or decrease is filed with the commission under Section 54-7-12;

(ii) a test period that is:

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

(B) adjusted for known and measurable changes; or

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

(A) future projections; and

(B) historic data.

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

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

(ii) are known in nature; and

(iii) are measurable in amount.

(4)

(a) If, in the commission's determination of just, reasonable, or sufficient rates, the commission considers the prudence of an action taken by a public utility or an expense incurred by a public utility, the commission shall apply the following standards in making its prudence determination:

(i) ensure just and reasonable rates for the retail ratepayers of the public utility in this state;

(ii) focus on the reasonableness of the expense resulting from the action of the public utility judged as of the time the action was taken;

(iii) determine whether a reasonable utility, knowing what the utility knew or reasonably should have known at the time of the action, would reasonably have incurred all or some portion of the expense, in taking the same or some other prudent action; and

(iv) apply other factors determined by the commission to be relevant, consistent with the standards specified in this section.

(b) The commission may find an expense fully or partially prudent, up to the level that a reasonable utility would reasonably have incurred.

Amended by Chapter 11, 2005 General Session

54-4-4.1 Rules to govern rates.

(1) The commission may, by rule or order, adopt any method of rate regulation that is:

(a) consistent with this title;

(b) in the public interest; and

(c) just and reasonable.

(2) In accordance with Subsection (1), a method of rate regulation may include:

(a) rate designs utilizing:

(i) volumetric rate components;

(ii) demand rate components;

(iii) fixed rate components; and

(iv) variable rate components;

(b) rate stabilization methods;

(c) decoupling methods;

(d) incentive-based mechanisms; and

(e) other components, methods, or mechanisms approved by the commission.

Amended by Chapter 319, 2009 General Session

54-4-7 Rules, equipment, service -- Regulation after hearing.

Whenever the commission shall find, after a hearing, that the rules, regulations, practices, equipment, appliances, facilities, or service of any public utility, or the methods of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe,

proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and shall fix the same by its order, rule or regulation. The commission, after a hearing, shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and on proper demand and tender of rates such public utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules.

No Change Since 1953

54-4-8 Additions, improvements, extensions, repairs, or changes -- Apportioning costs.

(1)

(a) Whenever the commission shall find that additions, extensions, repairs, or improvements to or changes in the existing plant, equipment, apparatus, facilities, or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures ought to be erected to promote the security or convenience of its employees or the public or in any way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements, or changes be made or such structure or structures be erected in the manner and within the time specified in the order.

(b) If any additions, extensions, repairs, improvements, or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the public utilities that the additions, extensions, repairs, improvements, or changes, or new structure or structures have been ordered and shall be made at their joint cost; whereupon the public utilities shall have reasonable time as the commission may grant within which to agree upon the portion or division of cost of the additions, extensions, repairs, improvements, or changes or any new structure or structures which each shall bear.

(2) If at the expiration of the time in Subsection (1)(b) the public utilities shall fail to file with the commission a statement that an agreement has been made for division or apportionment of the cost or expense of the additions, extensions, repairs, improvements, or changes, or of the new structure or structures, the commission shall have authority, after further hearing, to make an order fixing the proportion of the cost or expense to be borne by each public utility and the manner in which the cost or expense shall be paid or secured.

Amended by Chapter 306, 2007 General Session

54-4-12 Telegraph and telephone -- Connections -- Joint rates -- Division of costs.

Whenever the commission shall find, after a hearing, that a physical connection can reasonably be made between the lines of two or more telephone corporations, or two or more telegraph corporations, whose lines can be made to form a continuous line of communication by the construction and maintenance of suitable connections for the transfer of messages or conversations, and that public convenience and necessity will be subserved thereby, or shall find that two or more telegraph or telephone corporations have failed to establish joint rates, tolls or charges for service by or over their said lines and that joint rates, tolls or charges ought to be established, the commission may, by its order, require that such connection be made, except where the purpose of such connection is primarily to secure the transmission of local messages or conversations between points within the same city or town, and that conversations be transmitted

and messages transferred over such connections under such rules and regulations as the commission may establish and prescribe, and that through lines and joint rates, tolls and charges be made and be used, observed and be in force in the future. If such telephone or telegraph corporations do not agree upon the division between themselves of the cost of such physical connection or connections, or upon the division of the joint rates, tolls or charges established by the commission over such through lines, the commission shall have authority, after a further hearing, to establish such division by supplemental order.

No Change Since 1953

54-4-13 Joint use of properties by utilities -- Adjustment of costs -- Cable television easement rights.

(1) Whenever the commission shall find that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes or other equipment, or any part thereof, on, over or under any street or highway, belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment, or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission may, by order, direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use is directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment for such damage as may result therefrom to the property of such owner or other users thereof.

(2) Whenever a public utility including its successors, assigns, lessees, licensees and agents, is granted a right-of-way easement to construct, operate, maintain or remove utility facilities, electric power and other facilities as it may require upon, over, under and across land or upon, over, under and across a dedicated public utility strip, and such public utility has also entered into a pole attachment contract with a cable television company which has been granted a franchise by a city, county, municipal or other public authority including the right to use the wires, conduits, cables, or poles of such public utility, and providing for the attachment or installation of wires, cables, and other equipment of a cable television company, to certain poles or in certain conduits of such public utility under controlled conditions designed to ensure the continued safe operation of the utilities service and facilities without any additional burden on the grantor's property then, and in that event, the cable television company, has the right to share in and enjoy the use of the right-of-way easement, subject to the terms and conditions provided in the pole attachment contract, and the right-of-way easement or interest granted the public utility is apportionable to the cable television company under the following limitations or conditions:

(a) Consent is secured from the private property owner where the easement is located except this requirement shall not apply in the case of a dedicated public utility strip.

(b) The Public Service Commission determines that under the terms and conditions of the pole attachment contract the use of the utilities facilities by the cable television company will not interfere with the primary utility function or render its facilities unsafe, and that the contract is in the public interest.

(c) The right-of-way easement is not restricted to the sole use of the public utility; provided, that such restriction shall not apply in any easement granted for the use of a dedicated public utility strip.

(d) The use contemplated by the cable television company is the same or similar to that granted the public utility and that such use will not impose an additional burden upon the servient tenement.
(e) The use of the easement by the cable television company will not cause irreparable injury or damage to the grantor's property.

Amended by Chapter 117, 1973 General Session

54-4-13.1 Natural gas vehicle rate -- Natural gas clean air programs.

(1) The commission may find that a gas corporation's request for a natural gas vehicle rate that is less than full cost of service is:
(a) in the public interest; and
(b) just and reasonable.
(2) If the commission approves a gas corporation's request under Subsection (1), the remaining costs may be spread to other customers of the gas corporation.
(3) The commission may authorize a gas corporation to establish natural gas clean air programs that promote sustainability through increasing the use of natural gas or renewable natural gas that the commission determines are in the public interest, subject to the funding limits set forth in Subsection 54-20-105(3)(d).
(4) For purposes of this section, and as pertaining to the transportation sector, "natural gas clean air program" means:
(a) an incentive or program to support the use of natural gas, including renewable natural gas;
(b) a program to improve air quality through the use of natural gas or renewable natural gas; and
(c) does not include any program under Section 54-4-13.4.
(5) A gas corporation proposing a natural gas clean air program for approval by the commission under Subsection (3) shall seek input from:
(a) the Division of Public Utilities;
(b) the Office of Consumer Services; and
(c) any person that files a request for notice with the commission.
(6) The commission may review the expenditure made by a gas corporation for a natural gas clean air program to determine if the gas corporation made the expenditure prudently in accordance with the purposes of the program.
(7) If the commission approves a gas corporation's request under Subsection (3), the remaining costs may be spread to other customers of the gas corporation.
(8) A natural gas clean air program under Section 54-4-13.1 shall be considered distinct and independent of Section 54-4-13.4.

Amended by Chapter 460, 2019 General Session

54-4-13.4 Natural gas fueling stations and facilities -- Recovery of expenditures for stations and facilities.

(1) The commission shall find that a gas corporation's expenditures for the construction, operation, and maintenance of natural gas fueling stations and appurtenant natural gas facilities are in the public interest and are just and reasonable, if:
(a) the gas corporation's expenditures for the fueling stations and appurtenant facilities:
(i) are prudently incurred; and
(ii) do not exceed $5,000,000 in any calendar year;

(b) the gas corporation shows that the estimated annual incremental increase in revenue related to the stations and facilities exceeds 50% of the annual revenue requirement of the stations and facilities; and

(c) the stations and facilities are in service and are being used and are useful.

(2)

(a) A gas corporation may seek the recovery of expenditures under Subsection (1) through a mechanism designed to track and collect the expenditures between general rate cases.

(b)

(i) The commission shall allow a gas corporation to recover, through an incremental surcharge to all of its rate classes, expenditures that the gas corporation incurs that are directly related to the construction, operation, and maintenance of the stations and facilities described in Subsection (1), reduced by revenues the gas corporation receives during the same time period directly attributable to the stations and facilities.

(ii) The commission shall assign a surcharge under Subsection (2)(b)(i) to each rate class based upon the pro rata share, approved by the commission, of the tariff revenue ordered in the gas corporation's most recent general rate case.

(iii) A gas corporation may file an application to adjust a surcharge under Subsection (2)(b)(i) as frequently as semiannually.

(iv) At the gas corporation's next general rate case, the commission shall include in base rates all expenditures that the gas corporation prudently incurs associated with a surcharge under Subsection (2)(b)(i).

Amended by Chapter 460, 2019 General Session

54-4-14 Safety regulation.

The commission shall have power, by general or special orders, rules or regulations, or otherwise, to require every public utility to construct, maintain and operate its line, plant, system, equipment, apparatus, tracks and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers and the public, and to this end to prescribe, among other things, the installation, use, maintenance and operation of appropriate safety or other devices or appliances including interlocking and other protective devices at grade crossings or junctions, and block or other system of signaling, and to establish uniform or other standards of construction and equipment, and to require the performance of any other acts which the health or safety of its employees, passengers, customers or the public may demand, provided, however, that the department of transportation shall have jurisdiction over safety functions of public utilities as granted in Title 72, Transportation Code.

Amended by Chapter 66, 2023 General Session

54-4-16 Investigation and report of accidents.

The commission shall investigate the cause of all accidents occurring within this state upon the property of any public utility, or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to persons or property and requiring in the judgment of the commission investigation by it, and shall have the power to make such order or recommendation with respect thereto as in its judgment may seem just and reasonable; provided, that neither the order nor recommendation of the commission nor any accident report filed with the commission shall be admitted as evidence in any action for damage based on or arising out of the loss of life or injury to person or property in this section referred to. Every public utility is hereby

required to file with the commission, under such rules and regulations as the commission may prescribe, a report of each accident so occurring of such kinds or classes as the commission may from time to time designate. The Department of Transportation where private and public carriers are involved shall have and assume all powers heretofore held by the commission pursuant to this section; provided that the commission shall retain exclusive jurisdiction for the resolution of any dispute upon petition by any person aggrieved by any order of the department issued pursuant thereto.

Amended by Chapter 9, 1975 Special Session 1
Amended by Chapter 9, 1975 Special Session 1

54-4-18 Electric, gas, and water service.

The commission shall have power, after a hearing, to ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements or service to be furnished, imposed, observed and followed by all electrical, gas and water corporations; to ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage or other conditions pertaining to the supply of the product, commodity or service furnished or rendered by any such public utility; to prescribe reasonable regulations for the examination and testing of such products, commodity or service, and for the measurement thereof; to establish reasonable rules, regulations, specifications and standards to secure the accuracy of all meters and appliances for measurements; and to provide for the examination and testing of any and all appliances used for the measurement of any product, commodity or service of any such public utility.

No Change Since 1953

54-4-19 Right to enter upon public utility premises.

The commissioners and officers and employees of the commission and the Department of Transportation, where public carriers are involved, shall have power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests and exercising any of the other powers provided for in this title and to set up and use on such premises any apparatus and appliances necessary therefor. The agents and employees of such public utility shall have the right to be present at the making of such examinations and tests.

Amended by Chapter 9, 1975 Special Session 1
Amended by Chapter 9, 1975 Special Session 1

54-4-20 Consumer may have meter tested upon paying fee.

Any consumer or user of any product, commodity or service of a public utility may have any appliance used in the measurement thereof tested, upon paying the fees fixed by the commission. The commission shall establish and fix reasonable fees to be paid for testing such appliances on the request of the consumer or user; the fee to be paid by the consumer or user at the time of the consumer's or user's request, but to be paid by the public utility and repaid to the consumer or user under such rules and regulations as may be prescribed by the commission, if the appliance is found defective or incorrect to the disadvantage of the consumer or user.

Amended by Chapter 365, 2024 General Session

54-4-21 Valuation of public utilities.

The commission shall have power to ascertain the value of the property of every public utility in this state and every fact which in its judgment may or does have any bearing on such value. The commission shall have power to make revaluations from time to time and to ascertain the value of new construction, extensions, and additions to the property of every public utility; provided, that the valuation of the property of all public utilities doing business within this state located in Utah as recorded in accordance with Section 54-4-22 of this chapter shall be considered the actual value of the properties of said public utilities in Utah unless otherwise changed after hearings by order of the commission. In case the commission changes the valuation of the properties of any public utility said new valuations found by the commission shall be the valuations of said public utility for all purposes provided in this chapter.

No Change Since 1953

54-4-22 Statements of valuations -- Affidavits -- Records of valuation.

The Public Service Commission must on or before the first day of December of each year furnish every public utility doing business in the state of Utah whose rates are based on the valuation of its properties or the amount of its investments with blank forms providing spaces for statements of the valuation of all of the properties of the public utilities located within this state. Said blank forms shall provide for whatever segregation or division of the values of said properties as the commission may require.

Each blank form shall have affixed thereto an affidavit which must be substantially as follows:

"I, ____, do swear that I am ____ (position held), of the ____ (name of company), and that as such I am in a position to know the valuations of both the tangible and intangible properties of the ____ (name of company), located in the state of Utah, and that to the best of my knowledge the above figures represent the true valuations of said properties at 12 noon on the first day of January of the year ____".

Said affidavit in addition to the above must state the principal place of business of the public utility and other information required by the commission.

The Public Service Commission shall require every public utility doing business within the state of Utah whose rates are based on the valuation of its properties or the amount of its investments to declare through its authorized agent on said blank forms the full value of all of the tangible and intangible properties of said utility which are located within the state of Utah, and it shall furthermore require that the valuation of the tangible properties be listed separately from the intangible properties. In making this declaration every public utility may take into consideration any increase or decrease in values of its property during the tax year last past and may raise or lower its declared true values accordingly.

The Public Service Commission shall also require that this blank form be filed with the commission on or before a specific date each year to be determined by the commission, and shall require the affidavit of this blank form to be signed and sworn to by a duly qualified and acting officer of the respective public utility in the manner provided by law. The Public Service Commission shall prepare each year a book to be called "Record of Valuations of Utility Companies," in which must be entered the names of every person, organization, or corporation engaged in any utility business in Utah together with the valuation of the tangible and the valuation of the intangible properties of each of said person, organization, or corporation as determined and declared by the duly qualified officers of said public utilities and as declared and filed in accordance with the provisions of this section or as otherwise determined by the commission

according to law. The Public Service Commission shall accept the values filed as provided herein unless otherwise changed by the commission upon evidence taken by and filed with the commission as the true values of the tangible and the intangible properties of the public utility and these last declared values shall be the values upon which said utility might earn a fair return. Under no circumstances shall an increase in the rates of any public utility be found justified by the commission if the increase shall result in an earning by the respective utility of an amount greater than a fair return on the value of the properties of the public utility located in the state of Utah as shown on the forms provided herein.

Amended by Chapter 75, 2000 General Session

54-4-23 Accounts and records of utilities.

The commission shall have power to establish a system of accounts to be kept by public utilities subject to its jurisdiction, to classify said public utilities and to establish a system of accounts for each class and to prescribe the manner in which such accounts shall be kept. It may also, in its discretion prescribe the forms of accounts, records and memoranda to be kept by such public utilities, including accounts, records and memoranda of the movement of traffic as well as of the receipts and expenditures of money, and any other forms, records and memoranda which in the judgment of the commission may be necessary to carry out any of the provisions of this title. The system of accounts established by the commission and the forms of accounts, records and memoranda prescribed by it shall not be inconsistent, in the case of corporations subject to the provisions of the Act of Congress entitled, "An Act to Regulate Commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, with the system and forms from time to time established for such corporations by the Interstate Commerce Commission; but nothing herein contained shall affect the power of the commission to prescribe forms of accounts, records and memoranda covering information in addition to that required by the Interstate Commerce Commission. The commission may, after hearing had upon its own motion or upon complaint, prescribe by order the accounts in which particular outlays and receipts shall be entered, charged or credited. When the commission shall have prescribed the forms of accounts, records or memoranda to be kept by any public utility corporation for any of its business it shall thereafter be unlawful for such public utility to keep any accounts, records or memoranda for such business other than those so prescribed or those prescribed by or under the authority of any other state or of the United States, excepting such accounts, records or other memoranda as shall be explanatory of and supplemental to the accounts, records or memoranda prescribed by the commission.

No Change Since 1953

54-4-24 Depreciation accounts and fund.

The commission shall have power to require any or all public utilities to carry a proper and adequate depreciation account in accordance with such rules, regulations and forms of account as the commission may prescribe. The commission may from time to time ascertain, determine and, by order, fix the proper and adequate rates of depreciation of the several classes of property of each public utility. Each public utility shall conform its depreciation accounts to the rates so ascertained, determined and fixed, and shall set aside the money so provided for out of earnings and carry the same in a depreciation fund and expend such fund only for such purposes and under such rules and regulations, both as to original expenditure and subsequent replacement, as the

commission may prescribe. The income upon investments of money in such fund shall likewise be carried in such fund.

No Change Since 1953

54-4-25 Certificate of convenience and necessity prerequisite to construction and operation -- Electrical suppliers.

(1) Except as provided in Section 11-13-304, a gas corporation, electric corporation, telephone corporation, telegraph corporation, heat corporation, water corporation, or sewerage corporation may not establish, or begin construction or operation of a line, route, plant, or system or of any extension of a line, route, plant, or system, without having first obtained from the commission a certificate that present or future public convenience and necessity does or will require the construction.

(2) This section may not be construed to require any corporation to secure a certificate for an extension:

(a) within any city or town within which it has lawfully commenced operations;

(b) into territory, either within or without a city or town, contiguous to its line, plant, or system that is not served by a public utility of like character; or

(c) within or to territory already served by it, necessary in the ordinary course of its business.

(3) If any public utility in constructing or extending its line, plant, or system interferes or may interfere with the operation of the line, plant, or system of any other public utility already constructed, the commission, on complaint of the public utility claiming to be injuriously affected, may, after a hearing, make an order and prescribe the terms and conditions for the location of the lines, plants, or systems affected as the commission determines are just and reasonable.

(4)

(a)

(i) Each applicant for a certificate shall file in the office of the commission evidence as required by the commission to show that the applicant has received or is in the process of obtaining the required consent, franchise, or permit of the proper county, city, municipal, or other public authority.

(ii) If the applicant is in the process of obtaining the required consent, franchise, or permit, a certificate shall be conditioned upon:

(A) receipt of the consent, franchise, or permit within the time period the commission may direct; and

(B) the filing of such evidence of the receipt of the consent, franchise, or permit as the commission may require.

(b) Each applicant, except an interlocal entity defined in Section 11-13-103, shall also file in the office of the commission a statement that any proposed line, plant, or system will not conflict with or adversely affect the operations of any existing certificated fixed public utility which supplies the same product or service to the public and that it will not constitute an extension into the territory certificated to the existing fixed public utility.

(c) The commission may, after a hearing:

(i) issue the certificate as requested;

(ii) refuse to issue the certificate; or

(iii) issue the certificate for the construction of a portion only of the contemplated line, plant, or system, or extension thereof, or for the partial exercise only of the right or privilege.

(d) The commission may attach to the exercise of the rights granted by the certificate the terms and conditions as in its judgment public convenience and necessity may require.

(e)

(i) If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing but which has not yet been granted to it, the public utility may apply to the commission for an order preliminary to the issue of the certificate.

(ii) The commission may make an order declaring that it will upon application, under rules and regulations as it may prescribe, issue the desired certificate upon terms and conditions as it may designate after the public utility has obtained the contemplated franchise or permit.

(iii) Upon presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue the certificate.

(5)

(a) Any supplier of electricity which is brought under the jurisdiction and regulation of the Public Service Commission by this title may file with the commission an application for a certificate of convenience and necessity, giving the applicant the exclusive right to serve the customers it is serving in the area in which it is serving at the time of this filing, subject to the existing right of any other electrical corporation to likewise serve its customers in existence in the area at the time.

(b) The application shall be prima facie evidence of the applicant's rights to a certificate, and the certificate shall be issued within 30 days after the filing, pending which, however, the applicant shall have the right to continue its operations.

(c) Upon good cause shown to the commission by anyone protesting the issuance of such a certificate, or upon the commission's own motion, a public hearing may be held to determine if the applicant has sufficient finances, equipment, and plant to continue its existing service. The commission shall issue its order within 45 days after the hearing according to the proof submitted at the hearing.

(d) Every electrical corporation, save and except those applying for a certificate to serve only the customers served by applicant on May 11, 1965, applying for a certificate shall have established a ratio of debt capital to equity capital or will within a reasonable period of time establish a ratio of debt capital to equity capital which the commission shall find renders the electrical corporation financially stable and which financing shall be found to be in the public interest.

(6) Nothing in this section affects the existing rights of municipalities.

(7) The commission shall consolidate an action filed under Chapter 17, Part 3, Resource Plans and Significant Energy Resource Approval or Part 4, Voluntary Request for Resource Decision Review with a proceeding under this section if:

(a) a public utility is required to obtain a certificate of convenience and necessity pursuant to this section; and

(b) the public utility files an action under Chapter 17, Part 3, Resource Plans and Significant Energy Resource Approval or Part 4, Voluntary Request for Resource Decision Review.

Amended by Chapter 11, 2005 General Session

54-4-26 Contracts calling for expenditures -- Commission to approve.

Every public utility when ordered by the commission shall, before entering into any contract for construction work or for the purchase of new facilities or with respect to any other expenditures, submit such proposed contract, purchase or other expenditure to the commission for its approval; and, if the commission finds that any such proposed contract, purchase or other expenditure

diverts, directly or indirectly, the funds of such public utility to any of its officers or stockholders or to any corporation in which they are interested, or is not proposed in good faith for the economic benefit of such public utility, the commission shall withhold its approval of such contract, purchase or other expenditure, and may order other contracts, purchases or expenditures in lieu thereof for the legitimate purposes and economic welfare of such public utility.

No Change Since 1953

Superseded 7/1/2024

54-4-27 Payment of dividends -- Notice -- Restraint.

(1) No gas or electric corporation doing business in this state shall pay any dividend upon its common stock prior to 30 days after the date of the declaration of such dividend by the board of directors of such utility corporation.

(2) Within five days after the declaration of such dividend the management of such corporation shall:

(a) notify the utilities commission in writing of the declaration of said dividend, the amount thereof, the date fixed for payment of the same; and

(b) publish a notice, including the information described in Subsection (2)(a):

(i) in a newspaper having general circulation in the city or town where its principal place of business is located; and

(ii) as required in Section 45-1-101.

(3) If the commission, after investigation, shall find that the capital of any such corporation is being impaired or that its service to the public is likely to become impaired or is in danger of impairment, it may issue an order directing such utility corporation to refrain from the payment of said dividend until such impairment is made good or danger of impairment is avoided.

(4) The district court of any county in which said utility is doing business in this state is authorized upon a suit by the commission to enforce the order of the commission, and empowered to issue a restraining order pending final determination of the action.

Amended by Chapter 388, 2009 General Session

Effective 7/1/2024

54-4-27 Payment of dividends -- Notice -- Restraint.

(1) No gas or electric corporation doing business in this state shall pay any dividend upon its common stock prior to 30 days after the date of the declaration of such dividend by the board of directors of such utility corporation.

(2) Within five days after the declaration of such dividend the management of such corporation shall:

(a) notify the utilities commission in writing of the declaration of said dividend, the amount thereof, the date fixed for payment of the same; and

(b) publish a notice, including the information described in Subsection (2)(a):

(i) in a newspaper having general circulation in the city or town where its principal place of business is located; and

(ii) as required in Section 45-1-101.

(3) If the commission, after investigation, shall find that the capital of any such corporation is being impaired or that its service to the public is likely to become impaired or is in danger of impairment, it may issue an order directing such utility corporation to refrain from the payment of said dividend until such impairment is made good or danger of impairment is avoided.

(4) A court may enforce the order of the commissionand issue a restraining order pending final determination of the action.

Amended by Chapter 158, 2024 General Session

54-4-28 Merger, consolidation, or combination.

No public utility shall combine, merge nor consolidate with another public utility engaged in the same general line of business in this state, without the consent and approval of the Public Service Commission, which shall be granted only after investigation and hearing and finding that such proposed merger, consolidation or combination is in the public interest.

Amended by Chapter 9, 2001 General Session

54-4-29 Acquiring voting stock or securities of like utility only on consent of commission.

Hereafter no public utility shall purchase or acquire any of the voting securities or the secured obligations of any other public utility engaged in the same general line of business without the consent and approval of the Public Service Commission, which shall be granted only after investigation and hearing and finding that such purchase and acquisition of such securities, or obligations, will be in the public interest.

Amended by Chapter 9, 2001 General Session

54-4-30 Acquiring properties of like utility only on consent of commission.

Hereafter no public utility shall acquire by lease, purchase or otherwise the plants, facilities, equipment or properties of any other public utility engaged in the same general line of business in this state, without the consent and approval of the Public Service Commission. Such consent shall be given only after investigation and hearing and finding that said purchase, lease or acquisition of said plants, equipment, facilities and properties will be in the public interest.

Amended by Chapter 9, 2001 General Session

54-4-31 Electrical corporation to issue securities only on consent of commission -- Exceptions -- Validity of securities.

(1) Except as provided by Subsection (2) or (4), without prior written approval of the commission, no electrical corporation may:
  (a) issue any security; or
  (b) assume any obligation or liability as guarantor, endorser, surety, or otherwise, for any security of another person relating to the financing of pollution control revenue bonds.
(2)
  (a) Authorization of the commission is not required for the issuance or renewal of, or assumption of liability on, a note or draft if:
    (i) the maturity date of the note or draft is not more than one year after the date of the issue, renewal, or assumption of liability; and
    (ii) the aggregate value of the note or draft together with all other outstanding notes and drafts of a maturity of one year or less on which the public utility is primarily or secondarily liable is not more than 5% of the par value of the other outstanding securities of the public utility.
  (b) In the case of securities having no par value, the par value for the purpose of this section is the fair market value as of the date of issue.

(3) Any securities issued pursuant to an order entered by authority of this section shall be valid notwithstanding the outcome of any further proceedings, unless:
(a) application for stay is filed with a court of competent jurisdiction within five days following the issuance of the order; and
(b) a stay is entered by the commission or a court of competent jurisdiction within 10 days after the order is issued.
(4) The commission may by rule, or by order pursuant to standards promulgated by rule, exempt any security, class of securities, electrical corporation, or class of electrical corporation from the requirement of Subsection (1), subject to any terms and conditions prescribed in the order or rule, if it finds that the application of Subsection (1) to the security, class of securities, electrical corporation, or class of electrical corporation is not required by the public interest.

Amended by Chapter 206, 1997 General Session

54-4-37 Definitions -- Unauthorized charge to account -- Penalties -- Procedures for verification -- Authority of commission and Division of Public Utilities.

(1) For purposes of this section:
(a) "Agents" includes any person representing a public utility for purposes of billing for a service or merchandise from a third-party supplier.
(b) "Billing aggregator" means any person that:
(i) initiates charges;
(ii) combines or aggregates charges from third-party suppliers of services or merchandise; or
(iii)
(A) creates bills for account holders; and
(B) passes these bills for the billing of account holders to:
(I) another billing aggregator; or
(II) a public utility.
(c)
(i) "Public utility" is as defined in Section 54-2-1.
(ii) "Public utility" does not include a telecommunications corporation providing only mobile wireless service or Internet access.
(d) "Subscriber" means a person or government or a person acting legally on behalf of a person or government who authorizes a charge from a third-party provider of service or merchandise.
(e)
(i) "Third party" means any person other than the account holder and the public utility.
(ii) "Third party" includes:
(A) a billing aggregator;
(B) a public utility;
(C) a nonpublic utility provider of services and merchandise;
(D) those persons billing for services or merchandise; and
(E) those persons verifying a subscriber's authorization.
(iii) "Third party" does not include:
(A) an affiliated or subsidiary company of a public utility whose charges the commission determines by rule would be reasonably associated by a subscriber with the type of charges that would appear on that particular public utility's bill;
(B) a presubscribed local or long distance telecommunications corporation or its affiliated or subsidiary company as to charges for local or long distance telephone, data, or wireless services.

(2) This section does not apply to:
(a) telecommunications services that are used, initiated, or requested by the customer, including dial-around services such as:
(i) 10-10-XXX;
(ii) 1-900 numbers;
(iii) directory assistance;
(iv) operator-assisted calls;
(v) acceptance of collect calls; and
(vi) other casual calling by the customer;
(b) changes in telecommunications providers regulated by Section 54-8b-18;
(c) the provision of any charges for financing by an affiliated or subsidiary company of a public utility in connection with the purchase of services or merchandise if there is a written agreement for the financing between the customer and the affiliated or subsidiary company; or
(d) except for Subsections (5) and (6), services provided by any of the following that are billed through a public utility:
(i) a city;
(ii) a town; or
(iii) a county.
(3) Pursuant to this section, a public utility may not charge an account holder for services the account holder never:
(a) ordered; or
(b) knowingly authorized.
(4) A public utility shall ensure that its account holders receive:
(a) identification of a third-party provider of services or merchandise;
(b) upon subscriber request, toll-free numbers to enable a subscriber to contact the third party to resolve disputes;
(c) a clear, concise description of services or merchandise being billed;
(d) highlight or identification of each service or merchandise different from prior billing cycle services or merchandise;
(e) clear identification of the payment amount needed for each service or merchandise to ensure that any public utility service will continue;
(f) prompt and courteous treatment of all disputed charges; and
(g) information about the provisions in Subsections (5) and (6).
(5)
(a) Unless specifically instructed by the account holder, each public utility shall first apply all payments received to the account holder's bill for the public utility's own tariffed utility services.
(b) Any remaining credit after the application of payment under Subsection (5)(a) shall be allocated proportionally to other charges, unless otherwise specified by the account holder.
(6) A public utility may not disconnect or threaten disconnection of any account holder's basic utility service for failure to pay third-party charges.
(7) Accounts receivable purchased by a public utility from third parties may not be treated as public utility charges regardless of the service or product upon which the account receivable is based.
(8)
(a) If an account holder informs the public utility that a third-party service or merchandise charge is neither knowingly used nor authorized, or the charge in whole or part is disputed, the public utility shall:

(i)
(A) immediately credit the account holder's account for the disputed amount; and
(B) refer the matter back to the third party for collection; or
(ii) suspend the account holder's obligation of payment of the disputed amount until it is determined whether the charge was either knowingly used or authorized.
(b) The public utility may not request the account holder to contact the third party to resolve the dispute prior to applying the credit under Subsection (8)(a).
(c) The disputed charge shall be removed from the public utility's bill to the account holder no later than two billing cycles following the billing cycle during which the complaint or dispute is registered unless it is later determined that the charge was authorized and the account holder is required to pay the charge.
(d) Immediately upon the account holder's first complaint or inquiry, the public utility shall inform the account holder of:
(i) the process provided in this Subsection (8); and
(ii) the account holder's options.
(e) Except as provided in Subsection (8)(c), once the charges have been removed from the account holder's utility bill:
(i) the third party may not use the utility bill to:
(A) rebill the charges; or
(B) further attempt to collect the charge; and
(ii) the public utility may not allow any further collection attempts by the third party to involve the utility bill.

(9)
(a) If requested by the account holder, a public utility shall provide the account holder with toll-free numbers supplied by the provider of the service or merchandise, so the account holder may contact the third-party supplier of the services or merchandise billed.
(b) The public utility responsibility prescribed by Subsection (9)(a) applies through all layers of third parties, including:
(i) public utilities;
(ii) service providers;
(iii) merchandise providers;
(iv) affiliate billing companies; or
(v) billing aggregators.
(c) A public utility shall perform due diligence to acquire the information required under this Subsection (9) from any provider for whom it bills.

(10) A third-party provider of services or merchandise may not request a public utility to bill its charges unless and until it:
(a) has provided to the public utility valid toll-free numbers to enable a subscriber to contact the third-party to resolve any disputed charges;
(b) has provided updated toll-free numbers to the public utility upon any change in the numbers; and
(c) has received authorization from the subscriber for the service or merchandise through:
(i) obtaining the subscriber's written authorization;
(ii) having the subscriber's oral authorization verified by an independent verifier; or
(iii) any means provided by rule of the commission.

(11) If the subscriber is not an individual, an authorization shall be valid only if given by an authorized representative of the subscriber.

(12) The written authorization for the service or merchandise described in Subsection (10) shall:

(a) be signed by the subscriber; and
(b) contain a clear, conspicuous, and unequivocal request by the subscriber for the service or merchandise.
(13) The confirmation by a verifier shall, at a minimum:
(a)
(i) confirm the subscriber's identity with information unique to the customer; or
(ii) if the customer refuses to provide identifying information, note the fact that the customer would not provide the identifying information;
(b) confirm that the subscriber requests the service or merchandise be provided by the third party; and
(c) confirm that the subscriber has the authority to request the service or merchandise be provided by the third party.
(14) A verifier shall meet each of the following:
(a) any criteria set for verifiers by the commission;
(b) not be directly or indirectly managed, controlled, directed, or owned wholly or in part by:
(i) the public utility on whose bill the charge will appear;
(ii) a third-party provider;
(iii) an agent of a public utility or third-party provider that seeks to provide the service or merchandise;
(iv) a person who directly owns or indirectly manages, controls, directs, or owns more than 5% of the public utility or third-party provider described in Subsection (14)(b)(i) or (ii);
(v) the marketing entity that seeks to market the third-party provider's service or merchandise; or
(vi) any person who directly or indirectly manages, controls, or owns more than 5% of the marketing entity described in Subsection (14)(b)(v);
(c) operate from facilities physically separated from those facilities of:
(i) the public utility on whose bill the charge will appear;
(ii) the third party or its agents that seek to provide the service or merchandise to the subscriber; or
(iii) the marketing entity that seeks to market the third-party provider's service or merchandise to the subscriber; and
(d) not derive commissions or compensation based upon the number of authorizations verified.
(15) A verifier that obtains the subscriber's oral verification regarding the change shall record that verification by obtaining the appropriate verification data.
(16)
(a) The record verifying a subscriber's request for a third-party to provide services or merchandise shall be available to the subscriber upon request.
(b) Information obtained from the subscriber through verification may not be used for any other purpose.
(c) Any intentional unauthorized release of the information in violation of Subsection (16)(b) is grounds for:
(i) penalties or other action by the commission; or
(ii) remedies provided by law to the aggrieved subscriber against any of the following who is responsible for the violation:
(A) the third-party provider;
(B) the verifier;
(C) an agent or employee of the third-party provider or verifier.
(17) The verification shall occur in the same language as that in which the request was solicited.

(18) Each public utility shall allow account holders to prohibit the public utility from billing for all or selected third parties for services or merchandise.
(19)
(a) Each public utility shall maintain monthly records of the number of complaints about unauthorized charges that appear on a public utility bill.
(b) The records described in Subsection (19)(a) shall be available to the commission upon request.
(20)
(a) Proceedings for violations of this section may be commenced by request for agency action filed with the commission by:
(i) an account holder;
(ii) a public utility;
(iii) the Division of Public Utilities; or
(iv) the commission on the commissioner's own motion.
(b) The remedies provided by this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.
(21) Any public utility, its agents, or a third-party provider of goods or services who violates this section or rules adopted to implement this section shall be subject to Sections 54-7-23 through 54-7-29.
(22) The Division of Public Utilities shall have power to seek injunctive relief to stop repeated unauthorized violations of this section by a public utility or a third-party provider of service or merchandise.
(23) The commission is granted authority to:
(a) enforce this section; and
(b) implement rules to carry out the requirements of the section.

Amended by Chapter 139, 2001 General Session

54-4-39 Natural gas derived from new technologies -- Long-term contracts.
(1) As used in this section:
(a) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.
(b) "Long-term contract" means a contract greater than five years in duration, but no greater than 10 years in duration.
(c) "Oil shale" means a group of fine black to dark brown shales containing bituminous material that yields petroleum upon distillation.
(d) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon and require further processing other than mechanical blending before becoming finished petroleum products.
(2) The commission shall approve a long-term contract for the sale of natural gas derived from coal-to-liquid, oil shale, or tar sands technology to a utility if the commission considers the contract prudent.

Enacted by Chapter 346, 2006 General Session

54-4-40 Approval of certain agreements between an electrical corporation and a municipality.

(1) The commission shall review an agreement entered into between an electrical corporation and a municipality if the electrical corporation is required to obtain commission approval in accordance with Section 10-8-14, 54-3-30, or 54-3-31.
(2) The requirements of Subsection (1) do not confer jurisdiction on the commission to regulate any electric service provided by a municipality.
(3) The commission shall provide public notice of an agreement described in Subsection (1) no later than three business days after the day on which the commission receives an application to approve the agreement.
(4) An agreement described in Subsection (1) is approved 20 days after the day on which the commission posts the notice described in Subsection (3) unless, before the agreement is approved:
  (a) the commission:
    (i) determines that additional time is warranted and in the public interest; and
    (ii) notifies the parties to the agreement of the commission's determination; or
  (b) a person that the agreement affects submits a request to the commission, in writing, that the commission:
    (i) hold a public hearing regarding the agreement; or
    (ii) provide additional time for the person to investigate the agreement.

Amended by Chapter 318, 2015 General Session

54-4-41 Recovery of investment in utility-owned vehicle charging infrastructure.
(1) As used in this section, "charging infrastructure program" means the program described in Subsection (2).
(2) The commission shall authorize a large-scale electric utility program that:
  (a) allows for funding from large-scale electric utility customers for a maximum of $50,000,000 for all costs and expenses associated with:
    (i) the deployment of utility-owned vehicle charging infrastructure; and
    (ii) utility vehicle charging service provided by the large-scale electric utility;
  (b) creates a new customer class, with a utility vehicle charging service rate structure that:
    (i) is determined by the commission to be in the public interest;
    (ii) is a transitional rate structure expected to allow the large-scale electric utility to recover, through charges to utility vehicle charging service customers, the large-scale electric utility's full cost of service for utility-owned vehicle charging infrastructure and utility vehicle charging service over a reasonable time frame determined by the commission; and
    (iii) may allow different rates for large-scale electric utility customers to reflect contributions to investment; and
  (c) includes a transportation plan that promotes:
    (i) the deployment of utility-owned vehicle charging infrastructure in the public interest; and
    (ii) the availability of utility vehicle charging service.
(3) Before submitting a proposed charging infrastructure program to the commission for commission approval under Subsection (2), a large-scale electric utility shall seek and consider input from:
  (a) the Division of Public Utilities, established in Section 54-4a-1;
  (b) the Office of Consumer Services, created in Section 54-10a-201;
  (c) the Division of Air Quality, created in Section 19-1-105;
  (d) the Department of Transportation, created in Section 72-1-201;
  (e) the Governor's Office of Economic Opportunity, created in Section 63N-1a-301;

(f) the Office of Energy Development, created in Section 79-6-401;
(g) the board of the Utah Inland Port Authority, created in Section 11-58-201;
(h) representatives of the Point of the Mountain State Land Development Authority, created in Section 11-59-201;
(i) third-party electric vehicle battery charging service operators; and
(j) any other person who files a request for notice with the commission.

(4) The commission shall find a charging infrastructure program to be in the public interest if the commission finds that the charging infrastructure program:
(a) increases the availability of electric vehicle battery charging service in the state;
(b) enables the significant deployment of infrastructure that supports electric vehicle battery charging service and utility-owned vehicle charging infrastructure in a manner reasonably expected to increase electric vehicle adoption;
(c) includes an evaluation of investments in the areas of the authority jurisdictional land, as defined in Section 11-58-102, and the point of the mountain state land, as defined in Section 11-59-102;
(d) enables competition, innovation, and customer choice in electric vehicle battery charging services, while promoting low-cost services for electric vehicle battery charging customers; and
(e) provides for ongoing coordination with the Department of Transportation, created in Section 72-1-201.

(5) The commission may, consistent with Subsection (2), approve an amendment to the charging infrastructure program if the large-scale electric utility demonstrates that the amendment:
(a) is prudent;
(b) will provide net benefits to customers; and
(c) is otherwise consistent with the requirements of Subsection (2).

(6) The commission shall authorize recovery of a large-scale electric utility's investment in utility-owned vehicle charging infrastructure through a balancing account or other ratemaking treatment that reflects:
(a) charging infrastructure program costs associated with prudent investment, including the large-scale electric utility's pre-tax average weighted cost of capital approved by the commission in the large-scale electric utility's most recent general rate proceeding, and associated revenue and prudently incurred expenses; and
(b) a carrying charge.

(7) A large-scale electric utility's investment in utility-owned vehicle charging infrastructure is prudently made if the large-scale electric utility demonstrates in a formal adjudicative proceeding before the commission that the investment can reasonably be anticipated to:
(a) result in one or more projects that are in the public interest of the large-scale electric utility's customers to reduce transportation sector emissions over a reasonable time period as determined by the commission;
(b) provide the large-scale electric utility's customers significant benefits that may include revenue from utility vehicle charging service that offsets the large-scale electric utility's costs and expenses; and
(c) facilitate any other measure that the commission determines:
(i) promotes deployment of utility-owned vehicle charging infrastructure and utility vehicle charging service; or
(ii) creates significant benefits in the long term for customers of the large-scale electric utility.

(8) A large-scale electric utility that establishes and implements a charging infrastructure program shall annually, on or before June 1, submit a written report to the Public Utilities, Energy, and

Technology Interim Committee of the Legislature about the charging infrastructure program's activities during the previous calendar year, including information on:
(a) the charging infrastructure program's status, operation, funding, and benefits;
(b) the disposition of charging infrastructure program funds; and
(c) the charging infrastructure program's impact on rates.

Amended by Chapter 280, 2021 General Session
Amended by Chapter 282, 2021 General Session

54-4-42 Utility Bill Assistance Program.
(1) As used in this section:
(a) "Division" means the Division of Public Utilities established in Section 54-4a-1.
(b) "Eligible customer" means the same as that term is defined in Section 54-7-13.6.
(c) "Existing credit" refers to bill payment assistance provided under Section 54-7-13.6.
(d) "Large-scale utility" means a large-scale electric utility or a large-scale natural gas utility.
(e) "Program" means the Utility Bill Assistance Program created in this section.
(2)
(a) There is created in the Department of Commerce the Utility Bill Assistance Program that shall be administered by the division.
(b) The purpose of the program is to provide credits to eligible customers to use against utility service balances.
(3) A large-scale utility may request approval for a tariff that authorizes the large-scale utility to provide credits to eligible customers from funds available to the program.
(4) The commission shall approve a large-scale utility's tariff request described in Subsection (3) if:
(a) the commission finds the tariff to be in the public interest; and
(b) the tariff does not result in increased costs to the large-scale utility's customers.
(5) The division shall allocate available funds in accordance with a commission-approved tariff of a large-scale utility.
(6) A large-scale utility that receives an allocation under Subsection (5) shall provide credits from funds received under this program to eligible customers to use against utility service balances.
(7)
(a) A credit provided under the program shall be in addition to any existing credit the eligible customer receives.
(b) If a large-scale utility provides an existing credit on a monthly basis, the large-scale utility shall only provide a credit under this section if the eligible customer has a utility service balance after application of an existing credit.
(8) A large-scale utility with an approved tariff under Subsection (4) shall report to the commission semi-annually concerning:
(a) amounts expended since the program's inception or the previous report;
(b) amounts remaining to fund credits; and
(c) verification of customer eligibility.
(9) The division shall report to the Public Utilities, Energy, and Technology Interim Committee concerning the status of the program before November 30 of each year for which credits are provided.
(10) The commission and the division may review records in the possession of a large-scale utility concerning the credits provided in accordance with this section.
(11) The division may administer the program as long as funds appropriated for the program remain.

Enacted by Chapter 23, 2023 General Session

Chapter 4a
Division of Public Utilities

54-4a-1 Establishment of division -- Functions.

(1) There is established within the Department of Commerce a Division of Public Utilities that may:

(a) commence original proceedings, file complaints, appear as a party, present factual information and evidence, examine witnesses, advocate policy recommendations, commence appeals, otherwise participate in proceedings before the Public Service Commission, and engage in all other activities consistent with its statutory responsibilities;

(b) commence original proceedings, file complaints, appear as a party, appeal, and otherwise represent the public interest in matters and proceedings involving regulation of a public utility pending before any officer, department, board, agency, commission, governmental authority, or court of Utah, of another state, or of the United States, and may intervene in, protest, resist, or advocate the granting, denial, or modification of any petition, application, complaint, or other proceeding, or any decision or order of any of those governmental authorities;

(c) investigate or study, upon complaint, upon order of the Public Service Commission, or upon its own initiative, any matter within the jurisdiction of the commission;

(d) conduct audits and inspections, or take enforcement actions regarding any matter within the jurisdiction of the commission in order to insure compliance with decisions, orders, and policies of the Public Service Commission, either upon order of the commission or upon its own initiative;

(e) require any person or entity subject to the jurisdiction of the Public Service Commission to:

(i) provide information, reports, and other data compilations relevant to matters within the jurisdiction of the commission;

(ii) provide access to inspect and copy records and other data compilations relevant to matters within the jurisdiction of the commission;

(iii) permit inspection of properties and tangible things used in providing public utility service; and

(iv) engage in other methods of discovery authorized by the commission;

(f) receive complaints from any person or entity regarding matters within jurisdiction of the Public Service Commission;

(g) review applications filed with the Public Service Commission and present recommendations to the commission on the disposition of those applications;

(h) make recommendations regarding public utility regulatory policy and long-range planning on matters within the jurisdiction of the Public Service Commission; and

(i) engage in settlement negotiations and make stipulations or agreements regarding matters within the jurisdiction of the Public Service Commission.

(2)

(a) Any investigations, studies, audits, inspections, enforcement actions, or requests for discovery of information pursuant to Subsection (1)(c), (d), or (e), shall be preceded by reasonable advance notice to the person or entity against whom investigation, study, audit, inspection, enforcement, or discovery is sought.

(b) The targeted person or entity may require that a complaint or other formal proceeding be instituted with the Public Service Commission prior to the commencement of the investigation, study, audit, inspection, enforcement, or discovery by the division pursuant to Subsection (1)(c), (d), or (e).

(3) Any settlements, stipulations, or other forms of compromise or agreement negotiated by the division shall be approved by the commission before becoming effective.

Amended by Chapter 225, 1989 General Session

54-4a-2 Director of division -- Appointment -- Authority and responsibility.

The director of the Division of Public Utilities shall be appointed by the executive director of the Department of Commerce and shall serve at the pleasure of the executive director. The director of the Division of Public Utilities is subject to the administrative authority of the executive director of the Department of Commerce and is responsible for the administration and supervision of the division. The director of the Division of Public Utilities shall have authority to adopt internal organizational measures to effectuate efficiency and economy in the management and operation of the division.

Amended by Chapter 225, 1989 General Session

54-4a-3 Budget of division -- Employment of personnel.

(1) The annual budget of the Division of Public Utilities shall provide sufficient funds for the division to hire, develop, and organize a technical and professional staff to perform the duties, powers, and responsibilities committed to it by statute.

(2) The division director may:

(a) hire economists, accountants, engineers, inspectors, statisticians, lawyers, law clerks, and other technical and professional experts as may be required;

(b) retain additional experts as required for a particular matter, but only to the extent that it is necessary to supplement division staff in order to fulfill its duties; and

(c) employ necessary administrative and support staff.

(3)

(a) The Division of Human Resource Management shall determine pay schedules using standard techniques for determining compensation.

(b) The Division of Human Resource Management may make the division's compensation determinations based upon compensation common to utility companies throughout the United States.

Amended by Chapter 344, 2021 General Session

54-4a-4 Legal counsel.

The attorney general shall appoint sufficient full time legal counsel to assist, advise, and represent the division and its staff in the discharge of its duties and in all proceedings before the Public Service Commission, and in all other proceedings.

Enacted by Chapter 246, 1983 General Session

54-4a-5 Interests, relationships, and actions by employees prohibited.

No employee of the Division of Public Utilities shall, while so employed:

(1) have any pecuniary interest, whether as the holder of stock or other securities, or otherwise have any conflict of interest with any public utility or other entity subject to the jurisdiction of the commission;
(2) have any office, position, or relationship, or be engaged in any business or avocation which interferes or is incompatible with the effective and objective fulfillment of the duties of office or employment with the division;
(3) accept any gift, gratuity, emolument, or employment from any public utility or any other entity subject to the jurisdiction of the commission or from any officer, agent, or employee thereof; or
(4) solicit, suggest, request, or recommend, directly or indirectly, the appointment of any person or entity to any office or employment with any public utility or other entity subject to the jurisdiction of the Public Service Commission.

Enacted by Chapter 246, 1983 General Session

54-4a-6 Objectives.

In the performance of the duties, powers, and responsibilities committed to it by law, the Division of Public Utilities shall act in the public interest in order to provide the Public Service Commission with objective and comprehensive information, evidence, and recommendations consistent with the following objectives:
(1) promote the safe, healthy, economic, efficient, and reliable operation of all public utilities and their services, instrumentalities, equipment, and facilities;
(2) provide for just, reasonable, and adequate rates, charges, classifications, rules, regulations, practices, and services of public utilities;
(3) make the regulatory process as simple and understandable as possible so that it is acceptable to the public; feasible, expeditious, and efficient to apply; and designed to minimize controversies over interpretation and application;
(4) for purposes of guiding the activities of the Division of Public Utilities, the phrase "just, reasonable, and adequate" encompasses, but is not limited to the following criteria:
  (a) maintain the financial integrity of public utilities by assuring a sufficient and fair rate of return;
  (b) promote efficient management and operation of public utilities;
  (c) protect the long-range interest of consumers in obtaining continued quality and adequate levels of service at the lowest cost consistent with the other provisions of Subsection (4).
  (d) provide for fair apportionment of the total cost of service among customer categories and individual customers and prevent undue discrimination in rate relationships;
  (e) promote stability in rate levels for customers and revenue requirements for utilities from year to year; and
  (f) protect against wasteful use of public utility services.

Enacted by Chapter 246, 1983 General Session

Chapter 5
Public Utilities Regulation Fee

54-5-1.5 Special regulation fee -- Supplemental Levy Committee -- Supplemental fee -- Fee for electrical cooperatives.

(1)

(a) A special fee to defray the cost of regulation is imposed upon all public utilities subject to the jurisdiction of the Public Service Commission.
(b) The special fee is in addition to any charge now assessed, levied, or required by law.
(2)
(a) The executive director of the Department of Commerce shall determine the special fee for the Department of Commerce.
(b) The chair of the Public Service Commission shall determine the special fee for the Public Service Commission.
(c) The fee shall be assessed as a uniform percentage of the gross operating revenue for the preceding calendar year derived from each public utility's business and operations during that period within this state, excluding income derived from interstate business. Gross operating revenue shall not include income to a wholesale electric cooperative derived from the sale of power to a rural electric cooperative which resells that power within the state.
(3)
(a) The executive director of the Department of Commerce shall notify each public utility subject to the provisions of this chapter of the amount of the fee.
(b) The fee is due and payable on or before July 1 of each year.
(4)
(a) There is created a restricted account within the General Fund known as the Public Utility Regulatory Restricted Account.
(b) Notwithstanding Subsection 13-1-2(3)(c), the Department of Commerce shall deposit a fee assessed under this section into the Public Utility Regulatory Restricted Account.
(c) Within appropriations by the Legislature:
(i) the Department of Commerce may use the funds in the Public Utility Regulatory Restricted Account to administer:
(A) the Division of Public Utilities; and
(B) the Office of Consumer Services;
(ii) the Public Service Commission may use the funds in the Public Utility Regulatory Restricted Account to administer the Public Service Commission; and
(iii) the Division of Public Utilities may use the funds in the Public Utility Regulatory Restricted Account to administer the Utility Bill Assistance Program created under Section 54-4-42.
(d) At the end of each fiscal year, the director of the Division of Finance shall transfer into the General Fund any balance in the Public Utility Regulatory Restricted Account in excess of $3,000,000.
(5)
(a) The Legislature intends that the public utilities provide all of the funds for the administration, support, and maintenance of:
(i) the Public Service Commission;
(ii) state agencies within the Department of Commerce involved in the regulation of public utilities; and
(iii) expenditures by the attorney general for utility regulation.
(b) Notwithstanding Subsection (5)(a), the fee imposed by Subsection (1) shall not exceed the greater of:
(i)
(A) for a public utility other than an electrical cooperative, .3% of the public utility's gross operating revenues for the preceding calendar year; or
(B) for an electrical cooperative, .15% of the electrical cooperative's gross operating revenues for the preceding calendar year; or

(ii) $50.

(6)

(a) There is created a Supplemental Levy Committee to levy additional assessments on public utilities when unanticipated costs of regulation occur in any fiscal year.

(b) The Supplemental Levy Committee shall consist of:

(i) one member selected by the executive director of the Department of Commerce;

(ii) one member selected by the chairman of the Public Service Commission;

(iii) two members selected by the three public utilities that paid the largest percent of the current regulatory fee; and

(iv) one member selected by the four appointed members.

(c)

(i) The members of the Supplemental Levy Committee shall be selected within 10 working days after the executive director of the Department of Commerce gives written notice to the Public Service Commission and the public utilities that a supplemental levy committee is needed.

(ii) If the members of the Supplemental Levy Committee have not been appointed within the time prescribed, the governor shall appoint the members of the Supplemental Levy Committee.

(d)

(i) During any state fiscal year, the Supplemental Levy Committee, by a majority vote and subject to audit by the state auditor, may impose a supplemental fee on the regulated utilities for the purpose of defraying any increased cost of regulation.

(ii) The supplemental fee imposed upon the utilities shall equal a percentage of their gross operating revenue for the preceding calendar year.

(iii) The aggregate of all fees, including any supplemental fees assessed, shall not exceed .3% of the gross operating revenue of the utilities assessed for the preceding calendar year.

(iv) Payment of the supplemental fee is due within 30 days after receipt of the assessment.

(v) The utility may, within 10 days after receipt of assessment, request a hearing before the Public Service Commission if it questions the need for, or the reasonableness of, the supplemental fee.

(e)

(i) Any supplemental fee collected to defray the cost of regulation shall be transferred to the state treasurer as a departmental collection.

(ii) Supplemental fees are excess collections, credited according to the procedures of Section 63J-1-105.

(iii) Charges billed to the Department of Commerce by any other state department, institution, or agency for services rendered in connection with regulation of a utility shall be credited by the state treasurer from the special or supplemental fees collected to the appropriations account of the entity providing that service according to the procedures provided in Title 63J, Chapter 1, Budgetary Procedures Act.

(7)

(a) For purposes of this section, "electrical cooperative" means:

(i) a distribution electrical cooperative; or

(ii) a wholesale electrical cooperative.

(b) Subject to Subsection (7)(c), if the regulation of one or more electrical cooperatives causes unanticipated costs of regulation in a fiscal year, the commission may impose a supplemental fee on the one or more electrical cooperatives in this state responsible for the increased cost of regulation.

(c) The aggregate of all fees imposed under this section on an electrical cooperative in a calendar year shall not exceed the greater of:
(i) .3% of the electrical cooperative's gross operating revenues for the preceding calendar year; or
(ii) $50.

Amended by Chapter 23, 2023 General Session

54-5-2 How gross operating revenue is determined.
(1) Gross operating revenues of public utilities shall be determined by the executive director of the Department of Commerce from:
(a) the annual gross revenue reports filed with the Public Service Commission; and
(b) other sources of information as the Public Service Commission may by rule prescribe.
(2) If any public utility liable for the payment of the fee assessed under Section 54-5-1.5 fails to file a report showing its gross operating revenue from business derived from its operations within the state for the preceding calendar year on or before April 15th, the executive director of the Department of Commerce shall:
(a) compute or make an estimate of the amount of the fee to be paid by the utility from available information, records, and data; and
(b) assess the fee against the utility.

Amended by Chapter 214, 1993 General Session

Superseded 7/1/2024
54-5-3 Default in payment of fee -- Procedure to collect -- Penalties.
(1) If the public utility fee is due and the payment is in default, a lien in the amount of the fee may be filed against the property of the utility and may be foreclosed in an action brought by the executive director of the Department of Commerce in the district court of any county in which property of the delinquent utility is located.
(2)
(a) If the fee computed and imposed under this chapter is not paid within 60 days after it becomes due, the rights and privileges of the delinquent utility shall be suspended.
(b) The executive director of the Department of Commerce shall transmit the name of the utility to the Public Service Commission, which may immediately enter an order suspending the operating rights of the utility.

Amended by Chapter 214, 1993 General Session

Effective 7/1/2024
54-5-3 Default in payment of fee -- Procedure to collect -- Penalties.
(1)
(a) If the public utility fee is due and the payment is in default, the executive director of the Department of Commerce may:
(i) file a lien in the amount of the property of the utility; and
(ii) bring an action to foreclose the property in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.

(b) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, the executive director shall bring an action described in Subsection (1)(a)(ii) in the county in which the property of the delinquent utility is located if the action is brought in the district court.

(2)

(a) If the fee computed and imposed under this chapter is not paid within 60 days after it becomes due, the rights and privileges of the delinquent utility shall be suspended.

(b) The executive director of the Department of Commerce shall transmit the name of the utility to the Public Service Commission, which may immediately enter an order suspending the operating rights of the utility.

Amended by Chapter 158, 2024 General Session

54-5-4 Penalties.

Any person or corporation which exercises or attempts to exercise any right or privilege as any such utility during the period for which the operating rights of any such utility are suspended as provided in Section 54-5-3 is guilty of a class B misdemeanor. Each day's violation shall constitute a separate offense. Jurisdiction of such offense shall be held to be in any county in which any part of such transaction of business occurred. Every contract made in violation of this section is unenforceable by such corporation or person.

Amended by Chapter 148, 2018 General Session

Chapter 7
Hearings, Practice, and Procedure

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

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

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

(i) public utilities;

(ii) the state; and

(iii) consumers;

(b) enhance administrative efficiency; or

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

(2)

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

(b) The commission shall reserve to the parties the right to maintain appropriate confidentiality in the negotiation process even when the commission uses a settlement proposal to resolve a disputed matter.

(3)

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

(b) In accordance with this Subsection (3), the commission may adopt any settlement proposal entered into by two or more of the parties to an adjudicative proceeding.
(c) The commission shall notify all parties to an adjudicative proceeding of the terms of any settlement proposal related to the adjudicative proceeding.
(d)
(i) The commission may adopt a settlement proposal if:
(A) the commission finds that the settlement proposal is just and reasonable in result; and
(B) the evidence, contained in the record, supports a finding that the settlement proposal is just and reasonable in result.
(ii) When considering whether to adopt a settlement proposal, the commission shall consider the significant and material facts related to the case.
(e)
(i) The commission may adopt a settlement proposal related to an adjudicative proceeding at any stage of the adjudicative procedure.
(ii) The commission shall conduct a hearing before adopting a settlement proposal if requested by:
(A) any party initiating the adjudicative proceeding;
(B) any party against whom the adjudicative proceeding is initiated; or
(C) an intervening party to the adjudicative proceeding.
(f) The commission shall accept or reject a settlement proposal within a reasonable time.
(4) In cases or procedures involving rate increases as defined in Section 54-7-12, the commission may limit the factors and issues to be considered in its determination of just and reasonable rates.

Amended by Chapter 200, 2003 General Session

54-7-1.5 Communications between commission personnel and parties restricted.

No member of the Public Service Commission, administrative law judge, or commission employee who is or may reasonably be expected to be involved in the decision making process, shall make or knowingly cause to be made to any party any communication relevant to the merits of any matter under adjudication unless notice and an opportunity to be heard are afforded to all parties. No party shall make or knowingly cause to be made to any member of the commission, administrative law judge, or commission employee who is or may reasonably be expected to be involved in the decision making process, an ex parte communication relevant to the merits of any matter under adjudication. Any member of the commission, administrative law judge or commission employee who receives an ex parte communication shall place the communication into the public record of the proceedings and afford all parties an opportunity to comment on the information.

Enacted by Chapter 246, 1983 General Session

54-7-2 Process -- Service -- Fees.

The process issued by the commission or any commissioner shall extend to all parts of the state, and may be served by any person authorized to serve process of courts of record, or by any person designated for that purpose by the commission or a commissioner. The person executing any such process shall receive such compensation as may be allowed by the commission, not to exceed the fees prescribed by law for similar services in civil actions, and such fees shall be paid in the same manner as provided herein for payment of the fees of witnesses.

No Change Since 1953

54-7-3 Subpoena -- Witness fees -- Depositions.

(1)

(a) The commission and each commissioner may administer oaths, certify to all official acts, and issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and other evidence in any inquiry, investigation, hearing, or proceeding in any part of the state.

(b)

(i) Each witness who appears by order of the commission or a commissioner shall receive the same fees and mileage for his attendance that are allowed by law to a witness in the district court.

(ii) The party at whose request the witness is subpoenaed shall pay the witness and mileage fee.

(iii) When any witness who has not been required to attend at the request of any party is subpoenaed by the commission, his fees and mileage shall be paid from the funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid.

(iv) Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the commission, may at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear and one day's attendance.

(v) If the witness demands the fees at the time of service and they are not paid at that time, he is not required to attend the hearing.

(vi) All fees or mileage to which any witness is entitled under the provisions of this section may be collected by action instituted by the person to whom the fees are payable.

(vii) No witness furnished with free transportation receives mileage for the distance he may have traveled.

(2) The commission or any commissioner or any party may in any investigation before the commission cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for depositions in civil actions in the district courts of this state, and may compel the attendance of witnesses and the production of books, waybills, documents, papers, and accounts.

Amended by Chapter 161, 1987 General Session

54-7-4 Copies, competent evidence.

Copies of any official documents or orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the secretary or the assistant secretary under the official seal of the commission to be true copies of the originals, shall be evidence in the same manner as the originals.

No Change Since 1953

54-7-5 Orders and certificates to be in writing and entered on records of commission -- Recordation.

Every order, authorization or certificate issued or approved by the commission under any provision of this title shall be in writing and entered on the records of the commission. Any such order, authorization or certificate, or a copy thereof or a copy of the record of any such

order, authorization or certificate certified by a commissioner or by the secretary or the assistant secretary under the official seal of the commission to be a true copy of the original, may be recorded in the office of the recorder of any county in which is located the principal place of business of any public utility affected thereby or in which is situated any property of any such public utility, and such record shall impart notice of its provisions to all persons. A certificate under the seal of the commission that any such order, authorization or certificate has not been modified, stayed, suspended or revoked may also be recorded in the same manner and with like effect.

No Change Since 1953

54-7-6 Fees.

(1) The commission shall charge and collect the following fees: for filing applications for certificates of convenience and necessity, $100 each; for copies of papers and records not required to be certified or otherwise authenticated by the commission, 15 cents for each folio; for certified copies of official documents and orders filed in its office, 20 cents for each folio, and $2 for every certificate under seal affixed thereto; for certifying a copy of any report made by a public utility, $2; for each certified copy of the annual report of the commission, $3; for certified copies of evidence and proceedings before the commission, 50 cents for each folio in the original copy and 25 cents for each folio in the carbon copies.
(2) Fees may not be charged or collected for copies of papers, records, or official documents, except certified copies of evidence and proceedings referred to in this chapter, furnished to public officers for use in their official capacity, or for the annual reports of the commission in the ordinary course of distributions. However, the commission may fix reasonable charges for publications issued under its authority.
(3) All fees charged and collected under this section shall be paid into the treasury of the state to the credit of the funds appropriated for the use of the commission, but fees for certified copies of evidence and proceedings before the commission which are reported by a shorthand reporter may be collected and retained by the official shorthand reporter of the commission pursuant to rules prescribed by the commission.

Amended by Chapter 101, 1988 General Session

54-7-7 Books and records of utilities subject to inspection.

The commission, each commissioner and each officer and person employed by the commission shall have the right at any and all times to inspect the accounts, books, papers and documents of any public utility, and the commission, each commissioner and any officer of the commission or any employee authorized to administer oaths shall have power to examine under oath any officer, agent or employee of any public utility in relation to the business and affairs of said public utility; provided, that any person other than a commissioner or an officer of the commission demanding such inspection shall produce under the hand and seal of the commission that person's authority to make such inspection; and provided further, that written record of the testimony or statement so given under oath shall be made and filed with the commission.

Amended by Chapter 365, 2024 General Session

54-7-8 Offices for utility's books and records -- Production for examination.

(1) Each public utility shall have an office in a county of this state in which its property or some portion thereof is located, and shall keep in said office all such books, accounts, papers and

records as shall be required by the commission to be kept within this state. No books, accounts, papers or records required by the commission to be kept within this state shall be at any time removed from the state except upon such conditions as may be prescribed by the commission.
(2) The commission may require, by order served on any public utility in the manner provided herein for the service of orders, the production within this state at such time and place as it may designate of any books, accounts, papers or records kept by said public utility in any office or place without this state, or at its option verified copies in lieu thereof, so that an examination thereof may be made by the commission or under its direction.

No Change Since 1953

54-7-9 Complaints against utilities -- Scope.
(1) When any public utility violates any provision of law or any order or rule of the commission:
  (a) the commission may file a notice of agency action; or
  (b) any person, corporation, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing organization or association, or any body politic or municipal corporation may file a request for agency action.
(2) The notice or request shall specify the act committed or omitted by the public utility that is claimed to be in violation of the law or a rule or order of the commission.
(3) No request for agency action shall be entertained by the commission concerning the reasonableness of any rates or charges of any gas, electrical, water, sewerage, or telephone corporation, unless the request is signed by:
  (a) the mayor, the president or chairman of the board of trustees, or the commissioners, or a majority of the council, commission, or other legislative body of the city, county, or town within which the alleged violation occurred; or
  (b) by not less than 25 consumers or purchasers, or prospective consumers or purchasers, of the gas, electricity, water, sewerage, or telephone service.
(4) The commission need not dismiss any complaint because of the absence of direct damage to the complainant.

Amended by Chapter 92, 1987 General Session
Amended by Chapter 161, 1987 General Session

54-7-10 Orders on hearings -- Time effective.
(1) Orders of the commission shall take effect and become operative on the date issued, except as otherwise provided in the order.
(2) They shall continue in force for the period designated in the order, or until changed or abrogated by the commission.

Amended by Chapter 161, 1987 General Session

54-7-11 Complaints by utilities -- Procedure.
Any public utility may request agency action by the commission on any of the grounds upon which requests for agency action are allowed to be filed by other parties. The commission shall follow the same procedure as in other cases.

Amended by Chapter 161, 1987 General Session

54-7-12 Rate increase or decrease -- Procedure -- Effective dates -- Electrical or telephone cooperative.

(1) As used in this section:

(a)

(i) "Base rates" means those charges included in a public utility's generally applicable rate tariffs, including:

(A) a fare;

(B) a rate;

(C) a rental;

(D) a toll; or

(E) any other charge generally applicable to a public utility's rate tariffs.

(ii) Unless included by a commission order, "base rates" does not include charges included in:

(A) a deferred account;

(B) a balancing account;

(C) a major plant addition surcharge;

(D) a major plant addition surcredit;

(E) a special contract; or

(F) a public utility program offering.

(b)

(i) "Complete filing" means an application filed by a public utility that substantially complies with minimum filing requirements established by the commission, by rule, for a general rate increase or decrease.

(ii) The commission shall within 180 days after March 25, 2009 create and finalize rules concerning the minimum requirements to be met for an application to be considered a complete filing.

(c) "General rate decrease" means:

(i) any direct decrease to a public utility's base rates; or

(ii) any modification of a classification, contract, practice, or rule that decreases a public utility's base rates.

(d) "General rate increase" means:

(i) any direct increase to a public utility's base rates; or

(ii) any modification of a classification, contract, practice, or rule that increases a public utility's base rates.

(2)

(a) A public utility that files for a general rate increase or general rate decrease shall file a complete filing with the commission setting forth the proposed rate increase or decrease.

(b)

(i) For purposes of this Subsection (2), a public utility's application for a general rate increase or decrease shall be considered a complete filing unless within 30 days after the day on which the commission receives the public utility's application, the commission issues an order describing information that the public utility must provide for the application to be considered a complete filing.

(ii) Subject to Subsection (2)(b)(iii) and within 14 days after the day on which the application is received by the commission, a party or a person may file a motion to challenge whether an application for a general rate increase or decrease is a complete filing.

(iii) A party or a person may not file a motion described in Subsection (2)(b)(ii) unless the person or party has first filed a motion to intervene with the commission.

(c) If, in accordance with Subsection (2)(b)(i), the commission issues an order that an application is not a complete filing, the commission shall:
(i) determine the materiality of an application deficiency; and
(ii)
(A) if the deficiencies are not material, issue an order that the 240-day period described in Subsection (3)(a) shall continue without delay or be suspended and resume when the public utility files the required information; or
(B) if the deficiencies are material, issue an order that the 240-day period described in Subsection (3)(a) shall start over when the public utility files the required information.
(d)
(i) The commission shall, after reasonable notice, hold a hearing to determine whether the proposed rate increase or decrease, or some other rate increase or decrease, is just and reasonable.
(ii) If a rate decrease is proposed by a public utility, the commission may waive a hearing unless it seeks to suspend, alter, or modify the rate decrease.
(e) Except as otherwise provided in Subsection (2)(d), (3), or (4), a proposed rate increase or decrease is not effective until after completion of the hearing and issuance of a final order by the commission concerning the proposed increase or decrease.
(3)
(a) Within 240 days after a public utility submits a complete filing, the commission shall issue a final order to:
(i) grant the proposed general rate increase or decrease;
(ii) grant a different general rate increase or decrease; or
(iii) deny the proposed general rate increase or decrease.
(b) If the commission does not issue a final written order within 240 days after the public utility submits a complete filing in accordance with Subsection (3)(a):
(i) the public utility's proposed rate increase or decrease is final; and
(ii) the commission may not order a refund of any amount already collected or returned by the public utility under Subsection (3)(a).
(4)
(a)
(i) A request for interim rates shall be made within 90 days after the day on which a public utility files a complete filing for a general rate increase or a general rate decrease.
(ii) The commission, on its own initiative or in response to an application by a public utility or other party, may, after a hearing, allow any rate increase or decrease proposed by a public utility, or a reasonable part of the rate increase or decrease, to take effect on an interim basis within 45 days after the day on which the request is filed, subject to the commission's right to order a refund or surcharge.
(iii) The evidence presented in the hearing held pursuant to this Subsection (4) need not encompass all issues that may be considered in a rate case hearing held pursuant to Subsection (2)(d), but shall establish an adequate prima facie showing that the interim rate increase or decrease is justified.
(b) The commission may, after a hearing, issue a final order before the expiration of 240 days after the day on which the public utility files a complete filing establishing the utility's revenue requirement and fixing the utility's allowable rates before the commission determines the final allocation of the increase or decrease among categories of customers and classes of service.
(c)

(i) If the commission in the commission's final order on a public utility's revenue requirement finds that the interim increase ordered under Subsection (4)(a)(ii) exceeds the increase finally ordered, the commission shall order the public utility to refund the excess to customers.

(ii) If the commission in the commission's final order on a public utility's revenue requirement finds that the interim decrease ordered under Subsection (4)(a)(ii) exceeds the decrease finally ordered, the commission shall order a surcharge to customers to recover the excess decrease.

(5)

(a) Notwithstanding any other provisions of this title, any schedule, classification, practice, or rule filed by a public utility with the commission that does not result in any rate increase shall take effect 30 days after the date of filing or within any lesser time the commission may grant, subject to its authority after a hearing to suspend, alter, or modify that schedule, classification, practice, or rule.

(b) When the commission suspends a schedule, classification, practice, or rule, the commission shall hold a hearing on the schedule, classification, practice, or rule before issuing its final order.

(c) For purposes of this Subsection (5), any schedule, classification, practice, or rule that introduces a service or product not previously offered may not result in a rate increase.

(6) Notwithstanding any other provision of this title, whenever a public utility files with the commission any schedule, classification, practice, or rule that does not result in an increase in any rate, fare, toll, rental, or charge, the schedule, classification, practice, or rule shall take effect 30 days after the date of filing or at any earlier time the commission may grant, subject to the authority of the commission, after a hearing, to suspend, alter, or modify the schedule, classification, practice, or rule.

(7) This section does not apply to any rate changes of an electrical or telephone cooperative that meets all of the requirements of this Subsection (7).

(a)

(i) The cooperative is organized for the purpose of either distributing electricity or providing telecommunication services to its members and the public at cost.

(ii) "At cost" includes interest costs and a reasonable rate of return as determined by the cooperative's board of directors.

(b) The cooperative's board of directors and any appropriate agency of the federal government have approved the rate increase or other rate change and all necessary tariff revisions reflecting the increased rate or rate change.

(c) Before implementing any rate increases, the cooperative has held a public meeting for all its customers and members. The cooperative shall mail a notice of the meeting to all of the cooperative's customers and members not less than 10 days prior to the date that the meeting is held.

(d) The cooperative has filed its tariff revisions reflecting the rate increase or other rate change with the commission, who shall make the tariffs available for public inspection.

(8) Notwithstanding Subsections (2) and (4), the procedures for implementing a proposed rate increase by a telephone corporation having less than 30,000 subscriber access lines in the state are provided in this Subsection (8).

(a)

(i) The proposed rate increase by a telephone corporation subject to this Subsection (8) may become effective on the day the telephone corporation files with the commission

the proposed tariff revisions and necessary information to support a determination by the commission that the proposed rate increase is just and reasonable.

(ii) The telephone corporation shall notify the commission and all potentially affected access line subscribers of the proposed rate increase 30 days before filing the proposed rate increase or change.

(b)

(i) The commission may investigate whether the proposed rate increase is just and reasonable.

(ii) If the commission determines, after notice and hearing, that the rate increase is unjust or unreasonable in whole or in part, the commission may establish the rates, charges, or classifications that the commission finds to be just and reasonable.

(c) The commission shall investigate and hold a hearing to determine whether any proposed rate increase is just and reasonable if 10% or more of the telephone corporation's potentially affected access line subscribers file a request for agency action requesting an investigation and hearing.

(9) For a rebate received by an end-use customer under a demand side management program of a large-scale natural gas utility's approved schedule, the commission shall allow the end-use customer to continue receiving the rebate for up to one calendar year if:

(a) the end-use customer:

(i) is currently participating in the demand side management program; and

(ii) has completed new construction within the previous 12 months; and

(b) the schedule under which the rebate was created is modified due to a change in:

(i) standards adopted under Title 15A, State Construction and Fire Codes Act; or

(ii) 10 C.F.R. Chapter 2, Chapter 3, and Chapter 5.

Amended by Chapter 328, 2020 General Session

54-7-12.1 Depreciation expense.

In determining the depreciation expense of a telephone corporation in any proceeding under Section 54-7-12, the commission shall consider all relevant factors, including the alteration of asset lives to better reflect changes in the economic life of plant and equipment used to provide telecommunications services. A relevant factor to consider shall be the asset lives of existing and emerging competitive telecommunications providers. Nevertheless, the commission shall retain the authority to determine the depreciation expense of telecommunications corporations for ratemaking purposes.

Enacted by Chapter 269, 1995 General Session

54-7-12.8 Electric energy efficiency, sustainable transportation and energy, and conservation tariff.

(1) As used in this section:

(a) "Demand side management" means an activity or program that promotes electric energy efficiency or conservation, the use of heat pumps, or more efficient management of electric energy loads.

(b) "Pilot program period" means a period of five years, beginning on January 1, 2017, during which the sustainable transportation and energy plan is effective.

(c) "Sustainable transportation and energy plan" means the same as that term is defined in Section 54-20-102.

(d) "Utah solar incentive program" means the eligible utility rooftop solar pilot program established by commission order in 2012.

(2)

(a) As provided in this section, the commission may approve a tariff under which an electrical corporation includes a line item charge on the electrical corporation's customers' bills to recover costs incurred by the electrical corporation for demand side management.

(b) The commission shall authorize a large-scale electric utility that is allowed to charge a customer for demand side management under Subsection (2)(a) to:

(i) if requested by the large-scale electric utility, capitalize the annual costs incurred for demand side management provided in Subsection (2)(a);

(ii) amortize the annual cost for demand side management over a period of 10 years;

(iii) apply a carrying charge to the unamortized balance that is equal to the large-scale electric utility's pretax weighted average cost of capital approved by the commission in the large-scale electric utility's most recent general rate proceeding; and

(iv) recover the amortization cost described in Subsection (2)(b)(ii) and the carrying charge described in Subsection (2)(b)(iii) in customer rates.

(3) The commission shall, before January 1, 2017, authorize a large-scale electric utility to implement a combined line item charge on the large-scale electric utility's customers' bills to recover the cost to the large-scale electric utility of:

(a) demand side management, including the cost of amortizing a deferred balance;

(b) the sustainable transportation and energy plan; and

(c) the additional expense described in Subsection (5)(a)(i).

(4) On December 31, 2016, the commission shall end the Utah solar incentive program and surcharge tariff and the large-scale electric utility shall stop accepting new applications for solar incentive program incentives.

(5)

(a) The commission may authorize a large-scale electric utility that capitalizes demand side management costs under Subsection (2)(b) to:

(i) recognize the difference between the annual revenues the large-scale electric utility collects for demand side management and the annual amount of the large-scale electric utility's demand side management cost amortization expense as an additional expense;

(ii) establish and fund, via the additional expense described in Subsection (5)(a)(i), a regulatory liability; and

(iii) use the regulatory liability described in Subsection (5)(a)(ii) to depreciate thermal generation plant.

(b)

(i) The commission may authorize the large-scale electric utility to use the regulatory liability described in Subsection (5)(a)(ii) to depreciate thermal generation plant for which the commission determines depreciation is in the public interest for compliance with an environmental regulation or another purpose.

(ii) The commission may not consider the existence of the regulatory liability described in Subsection (5)(a)(ii) in a determination to accelerate depreciation under Subsection (5)(b)(i).

(c) The commission shall allow the large-scale electric utility to apply a carrying charge to the regulatory liability described in Subsection (5)(a)(ii) in an amount equal to the large-scale electric utility's pretax average weighted cost of capital approved by the commission in the large-scale electric utility's most recent general rate proceeding.

(d) The commission may allow a large-scale electric utility to use the regulatory liability carrying charge described in Subsection (5)(c) to offset the carrying charge described in Subsection (2)(b)(iii).

(e) The large-scale electric utility shall apply the carrying charge described in Subsection (5)(c) to funds that a large-scale electric utility is authorized to use to depreciate thermal generation plant under Subsection (5)(a) until the reduction in the large-scale electric utility's rate base associated with the thermal generation plant depreciation for which the funds are used is reflected in the large-scale electric utility's customers' rates.

(f) If the commission determines that funds established in the regulatory liability under Subsection (5)(a) are no longer needed for the purpose of depreciating thermal generation plant, the large-scale electric utility shall use the balance of the funds in the regulatory liability to offset the capitalized demand side management costs described in Subsection (2)(b)(i).

(6)

(a) During the pilot program period, of the funds a large-scale electric utility collects via the line item charge described in Subsection (3), the commission shall authorize the large-scale electric utility to allocate on an annual basis:

(i) $10,000,000 to the sustainable transportation and energy plan; and

(ii) the funds not allocated to the sustainable transportation and energy plan to demand side management.

(b) The commission shall authorize a large-scale electric utility to spend up to:

(i) $2,000,000 annually for the electric vehicle incentive program described in Section 54-20-103; and

(ii) an annual average of:

(A) $1,000,000 for the clean coal technology program described in Section 54-20-104; and

(B) $3,400,000 for the innovative utility programs described in Section 54-20-105.

(c) The commission shall authorize a large-scale electric utility to recoup the large-scale electric utility's unrecovered costs paid through the Utah solar incentive program from the funds allocated under Subsection (6)(a)(i).

(d) The commission may authorize a large-scale electric utility to allocate funds the large-scale electric utility collects via the line item charge described in Subsection (3) not spent under this Subsection (6) to a conservation, efficiency, or new technology program if the conservation, efficiency, or new technology program is cost-effective and in the public interest.

(7) A large-scale electric utility shall establish a balancing account that includes:

(a) funds allocated under Subsection (6)(a)(i);

(b) the program expenditures described in Subsection (6)(b);

(c) the unrecovered Utah solar incentive program costs described in Subsection (6)(c); and

(d) a carrying charge in an amount determined by the commission.

(8) A customer that is paying a contract rate under an agreement with a large-scale electric utility as of January 1, 2016, is exempt from the costs recovered under Subsection (3), except for costs created by or arising from the Utah solar incentive program included in Subsection 54-7-12.8(3)(b).

(9)

(a) In any proceeding commenced under Section 54-3-32, the commission may not consider or assess to an eligible customer an expenditure, cost, amortization, charge, or liability of any kind that is created by or arises in whole or in part from:

(i) any program created under Title 54, Chapter 20, Sustainable Transportation and Energy Plan Act; or

(ii) this section, except for costs created by or arising from the Utah solar incentive program included in Subsection 54-7-12.8(3)(b).

(b) Except as provided in Subsection (9)(a) and in Section 54-3-33, this section and Title 54, Chapter 20, Sustainable Transportation and Energy Plan Act, do not:

(i) amend or repeal any provision of Section 54-3-32; or

(ii) affect any right, defense, or credit available to an eligible customer under Section 54-3-32.

(10) Each electrical corporation proposing a tariff under this section shall, before submitting the tariff to the commission for approval, seek input from:

(a) the Division of Public Utilities;

(b) the Office of Consumer Services; and

(c) a person that files a request for notice with the commission.

(11) Before approving a tariff under this section, the commission shall hold a hearing if:

(a) requested in writing by the electrical corporation, a customer of the electrical corporation, or any other interested party within 15 days after the tariff filing; or

(b) the commission determines that a hearing is appropriate.

(12)

(a) The commission may approve a demand side management tariff under this section either with or without a provision allowing an end-use customer to receive a credit against the charges imposed under the tariff for electric energy efficiency measures that:

(i) the customer implements or has implemented at the customer's expense; and

(ii) qualify for the credit under criteria established by the commission.

(b) For a credit that an end-use customer receives under an approved demand side management tariff pursuant to Subsection (12)(a), the commission shall allow the end-use customer to continue receiving the credit for up to one calendar year if:

(i) the end-use customer:

(A) is currently participating in the demand side management tariff; and

(B) has completed new construction within the previous 12 months; and

(ii) the tariff under which the credit was created is modified due to a change in:

(A) standards adopted under Title 15A, State Construction and Fire Codes Act; or

(B) 10 C.F.R. Chapter 2, Chapter 3, and Chapter 5.

(13) In approving a tariff under this section, the commission may impose whatever conditions or limits it considers appropriate, including a maximum annual cost.

(14) Unless otherwise ordered by the commission, each tariff under this section approved by the commission shall take effect no sooner than 30 days after the electrical corporation files the tariff with the commission.

Amended by Chapter 328, 2020 General Session

54-7-12.9 Gross receipts tax decrease on electrical corporations -- Tariffs -- Procedure.

(1) As used in this section:

(a)

(i) "electrical corporation" includes every corporation, cooperative association, and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any electric plant, or in any way furnishing electric power for public service or to its consumers or members for domestic, commercial, or industrial use, within this state, that:

(A) pays property taxes under Title 59, Chapter 2, Property Tax Act; and

(B) is subject to rate regulation by the commission; and

(ii) "electrical corporation" does not include independent energy producers, or electricity that is generated on or distributed by the producer solely for the producer's own use, the use of the producer's tenants, or for the use of members of an association of unit owners formed under Title 57, Chapter 8, Condominium Ownership Act, and not for sale to the public generally; and

(b) "gross receipts tax" means the tax:

(i) imposed by Title 59, Chapter 8a, Gross Receipts Tax on Electrical Corporations Act; and

(ii) repealed by Laws of Utah 2006, Chapter 221, Section 5.

(2) An electrical corporation shall:

(a) file new tariffs with the commission on or before July 31, 2006 as part of its 2006 general rate case revenue requirement:

(i) reflecting the decrease in the electrical corporation's rates as a result of the repeal of the gross receipts tax by Laws of Utah 2006, Chapter 221, Section 5; and

(ii) spreading the amount of the decrease described in Subsection (2)(a)(i) among all classes of the electrical corporation's customers on the same basis that the gross receipts tax was allocated to each class of the electrical corporation's customers under the rates effective on the day on which the rate determined by the commission take effect under the electrical corporation's 2006 general rate case filed on or before September 1, 2006; and

(b) on or before the day on which the electrical corporation files new tariffs with the commission under Subsection (2)(a), file with the commission a complete report of the calculation of the allocation required by this section.

Amended by Chapter 250, 2008 General Session

54-7-13.4 Alternative cost recovery for major plant addition -- Procedure.

(1) As used in this section:

(a)

(i) "Complete filing" means an application filed by a gas corporation or electrical corporation that substantially complies with minimum filing requirements established by the commission, by rule, for cost recovery of a major plant addition.

(ii) The commission shall within 180 days after March 25, 2009 create and finalize rules concerning the minimum requirements to be met for an application to be considered a complete filing.

(b) "In-service date" means the first day that a gas corporation or an electrical corporation is no longer allowed to accrue an allowance for funds used during construction for a major plant addition.

(c) "Major plant addition" means any single capital investment project of a gas corporation or an electrical corporation that in total exceeds 1% of the gas corporation's or electrical corporation's rate base, based on the gas corporation's or electrical corporation's most recent general rate case determination, that is:

(i) used to serve Utah customers; and

(ii) assigned or allocated to Utah.

(2) A gas corporation or an electrical corporation may file with the commission a complete filing for cost recovery of a major plant addition if the commission has, in accordance with Section 54-7-12, entered a final order in a general rate case proceeding of the gas corporation or electrical corporation within 18 months of the projected in-service date of a major plant addition.

(3)

(a) A gas corporation or an electrical corporation may not file for cost recovery of a major plant addition more than 150 days before the projected in-service date of the major plant addition.

(b) If the commission determines that the gas corporation or electrical corporation has not submitted a complete filing for cost recovery of a major plant addition, the commission shall determine:

(i) what information the electrical corporation or gas corporation needs to provide to the commission; and

(ii) the materiality of an application deficiency.

(c) With respect to the applicable 90 or 150-day time period under Subsection (4) for the commission to enter an order as described in Subsection (4)(a)(iii), the commission may:

(i) if the deficiencies are not material:

(A) continue without delay; or

(B) suspend the applicable 90 or 150-day time period and resume when the electrical corporation or gas corporation has filed the required information; or

(ii) if the deficiencies are material, start the applicable 90 or 150-day time period over when the electrical corporation or gas corporation has filed the required information.

(4)

(a) The commission shall:

(i) review the application for cost recovery of a major plant addition;

(ii) after a hearing, approve, approve with conditions, or deny cost recovery of the major plant addition; and

(iii) enter an order on cost recovery of a major plant addition within:

(A) 90 days after the day on which a complete filing is made with respect to a significant energy resource approved by the commission under Section 54-17-302 or resource decision under Section 54-17-402; or

(B) 150 days after the day on which a complete filing is made for any other major plant addition.

(b)

(i) If the commission approves cost recovery of a major plant addition, the commission shall determine the state's share of projected net revenue requirement impacts of the major plant addition, including prudently-incurred capital costs and other reasonably projected costs, savings, and benefits.

(ii) The gas corporation or electrical corporation shall have the burden to prove a major plant addition's impacts as described in Subsection (4)(b)(i).

(c) If the commission has previously issued an order and approved the major plant addition as a significant energy resource under Section 54-17-302 or resource decision under Section 54-17-402, the commission shall presume the prudence of the utility's capital costs up to the projected costs specified in the commission's previous significant energy resource order or resource decision order.

(5) If the commission approves or approves with conditions cost recovery of a major plant addition, the commission shall do one or all of the following:

(a) subject to Subsection (6)(c), authorize the gas corporation or electrical corporation to defer the state's share of the net revenue requirement impacts of the major plant addition for recovery in general rate cases; or

(b) adjust rates or otherwise establish a collection method for the state's share of the net revenue requirement impacts that will apply to the appropriate billing components.

(6)

(a) Deferral or collection of the state's share of the net revenue requirement impacts of a major plant addition under this section shall commence upon the later of:
(i) the day on which a commission order is issued approving the deferral or collection amount; or
(ii) the in-service date of the major plant addition.
(b) The deferral described in this section shall terminate upon a final commission order that provides for recovery in rates of all or any part of the net revenue requirement impacts of the major plant addition.
(c) If the commission authorizes deferral under Subsection (5)(a), the amount deferred shall accrue a carrying charge on the net revenue requirement impacts as determined by the commission.

Enacted by Chapter 319, 2009 General Session

54-7-13.5 Energy balancing accounts.

(1) As used in this section:
(a) "Base rates" means the same as that term is defined in Subsection 54-7-12(1).
(b) "Energy balancing account" means an electrical corporation account for some or all components of the electrical corporation's incurred actual power costs, including:
(i)
(A) fuel;
(B) purchased power; and
(C) wheeling expenses; and
(ii) the sum of the power costs described in Subsection (1)(b)(i) less wholesale revenue.
(c) "Gas balancing account" means a gas corporation account to recover on a dollar-for-dollar basis, purchased gas costs, and gas cost-related expenses.

(2)
(a) The commission may authorize an electrical corporation to establish an energy balancing account.
(b) An energy balancing account shall become effective upon a commission finding that the energy balancing account is:
(i) in the public interest;
(ii) for prudently-incurred costs; and
(iii) implemented at the conclusion of a general rate case.
(c) An electrical corporation:
(i) may, with approval from the commission, recover costs under this section through:
(A) base rates;
(B) contract rates;
(C) surcredits; or
(D) surcharges; and
(ii) shall file a reconciliation of the energy balancing account with the commission at least annually with actual costs and revenue incurred by the electrical corporation.
(d) For an electrical corporation with an energy balancing account established before January 1, 2016, the commission shall allow an electrical corporation to recover 100% of the electrical corporation's prudently incurred costs as determined and approved by the commission under this section.
(e) Except in the case of an interim rate request made in accordance with Subsection (2)(k), an energy balancing account may not alter:

(i) the standard for cost recovery; or
(ii) the electrical corporation's burden of proof.
(f) The collection method described in Subsection (2)(c)(i) shall:
(i) apply to the appropriate billing components in base rates; and
(ii) be incorporated into base rates in an appropriate commission proceeding.
(g) The collection of costs related to an energy balancing account from customers paying contract rates shall be governed by the terms of the contract.
(h) Revenue collected in excess of prudently incurred actual costs shall:
(i) be refunded as a bill surcredit to an electrical corporation's customers over a period specified by the commission; and
(ii) include a carrying charge.
(i) Prudently incurred actual costs in excess of revenue collected shall:
(i) be recovered as a bill surcharge over a period to be specified by the commission; and
(ii) include a carrying charge.
(j) The carrying charge applied to the balance in an energy balancing account shall be:
(i) determined by the commission; and
(ii) symmetrical for over or under collections.
(k)
(i) The commission may consider an interim rate request made as a part of an electrical corporation's filing an energy balancing account.
(ii) The commission, on the commission's own initiative or in response to an interim rate request by an electrical corporation or another party:
(A) shall hold a hearing on an interim rate; and
(B) if the electrical corporation or the other party makes the showing required by Subsection (2)(k)(iii), may allow any rate increase or decrease, or a reasonable part of the rate increase or decrease, to take effect on an interim basis, subject to the commission's right to order a refund or surcharge.
(iii) The electrical corporation or the other party shall make an adequate prima facie showing that:
(A) the proposed interim rate appears consistent with prior years' filings; and
(B) the interim rate requested is more likely to reflect actual power costs than the current base rates.
(l) The commission may issue a final order establishing and fixing the electrical corporation's energy balancing account:
(i) after a hearing; and
(ii) before the expiration of 300 days after the day on which the electrical corporation files a complete filing.
(m)
(i) If the commission in the commission's final decision on an electrical corporation's energy balancing account finds that the interim rate ordered under Subsection (2)(k)(ii) exceeds the rate finally determined in the energy balancing account, the commission shall order the electrical corporation to refund the excess revenue generated by the interim rate to customers.
(ii) If the commission in the commission's final decision on an electrical corporation's energy balancing account finds that the interim rate ordered under Subsection (2)(k)(ii) is lower than the rate finally determined in the energy balancing account, the commission shall order the electrical corporation to charge a surcharge to customers to recover the revenue not recovered during that period.

(3)
(a) The commission may:
(i) establish a gas balancing account for a gas corporation; and
(ii) set forth procedures for a gas corporation's gas balancing account in the gas corporation's commission-approved tariff.
(b) A gas balancing account may not alter:
(i) the standard of cost recovery; or
(ii) the gas corporation's burden of proof.
(4)
(a) All allowed costs and revenue associated with an energy balancing account or gas balancing account shall remain in the respective balancing account until charged or refunded to customers.
(b) The balance of an energy balancing account or gas balancing account may not be:
(i) transferred by the electrical corporation or gas corporation; or
(ii) used by the commission to impute earnings or losses to the electrical corporation or gas corporation.
(c) An energy balancing account or gas balancing account that is formed and maintained in accordance with this section does not constitute impermissible retroactive ratemaking or single-issue ratemaking.
(5) This section does not create a presumption for or against approval of an energy balancing account.
(6)
(a) An electrical corporation that has established an energy balancing account under this section shall report to the Public Utilities, Energy, and Technology Interim Committee before December 1 of each even numbered year.
(b) The report required in Subsection (6)(a) shall provide information regarding:
(i) the continued 100% recovery of the electrical corporation's prudently incurred costs related to the energy balancing account; and
(ii) any determination by the commission of costs not prudently incurred.

Amended by Chapter 249, 2021 General Session

54-7-13.6 Low-income assistance program.
(1) As used in this section:
(a) "Eligible customer" means an electrical corporation or a gas corporation customer:
(i) that earns no more than:
(A) 125% of the federal poverty level for bill payment assistance or 200% of the federal poverty level for any other low-income assistance; or
(B) another percentage of the federal poverty level as determined by the commission by order; and
(ii) whose eligibility is certified by the Utah Department of Workforce Services.
(b) "Low-income assistance" means:
(i) bill payment assistance;
(ii) replacement of an appliance with a more efficient appliance;
(iii) replacement of a wood burning appliance or wood burning fireplace with an efficient appliance; or
(iv) other energy efficient improvement to an eligible customer's residence.

(2) A customer's income eligibility for the program described in this section shall be renewed annually.
(3) An eligible customer may not receive low-income assistance at more than one residential location at any one time.
(4) Notwithstanding Section 54-3-8, the commission may approve a low-income assistance program to provide low-income assistance to an eligible customer who is a residential customer of:
(a) an electrical corporation with more than 50,000 customers; or
(b) a gas corporation with more than 50,000 customers.
(5)
(a)
(i) Subject to Subsection (5)(a)(ii), low-income assistance program funding from each rate class may be in an amount determined by the commission.
(ii) Low-income assistance program funding described in Subsection (5)(a)(i) may not exceed 0.5% of the rate class's retail revenues.
(iii) An electrical corporation or gas corporation may use low-income assistance program funding to pay:
(A) administrative costs associated with the electrical corporation's or gas corporation's program; or
(B) contractor or employee costs incurred in implementing or installing a measure described in Subsections (1)(b)(ii) through (iv).
(b)
(i) Low-income assistance program funding shall be provided through a surcharge on the monthly bill of each Utah retail customer of the electrical corporation or gas corporation providing the low-income assistance program.
(ii) The surcharge described in Subsection (5)(b)(i) may not be collected from a customer who is receiving bill payment assistance.
(c)
(i) Subject to Subsection (5)(c)(ii), the monthly surcharge described in Subsection (5)(b)(i) shall be calculated as an equal percentage of revenues from all rate schedules.
(ii) The monthly surcharge described in Subsection (5)(b)(i) may not exceed $50 per month for any customer, adjusted periodically as the commission determines appropriate for inflation.
(6)
(a) An eligible customer shall receive low-income assistance in the form of one or more of the following:
(i) a billing credit on the monthly electric or gas bill for the customer's residence;
(ii) replacement of an appliance with a more efficient appliance;
(iii) replacement of a wood burning appliance or wood burning fireplace with an efficient appliance; or
(iv) other energy efficiency improvement to the eligible customer's residence.
(b) The allocation of low-income assistance to an eligible customer, as described in Subsection (6)(a), shall be determined by the commission based on:
(i) the projected funding of the low-income assistance program;
(ii) the projected customer participation in the low-income assistance program; and
(iii) other factors that the commission determines relevant.
(c) The low-income assistance funding level shall be adjusted concurrently with the final order in a general rate increase or decrease case under Section 54-7-12 for the electrical corporation or gas corporation providing the program or as determined by the commission.

Amended by Chapter 100, 2022 General Session

54-7-14 Orders and decisions conclusive on collateral attack.

In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive.

No Change Since 1953

54-7-14.5 Rescission or amendment of orders or decisions.

(1) The commission may, at any time after providing an affected utility notice and an opportunity to be heard, rescind, alter, or amend any order or decision made by the commission.
(2) An order rescinding, altering, or amending an original commission order or decision shall have the same effect on the public utility as the original order or decision.

Enacted by Chapter 319, 2009 General Session

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

(1) Before seeking judicial review of the commission's action, any party, stockholder, bondholder, or other person pecuniarily interested in the public utility who is dissatisfied with an order of the commission shall meet the requirements of this section.
(2)
  (a) After any order or decision has been made by the commission, any party to the action or proceeding, any stockholder, bondholder, or other party pecuniarily interested in the public utility affected may apply for rehearing of any matters determined in the action or proceeding.
  (b) An applicant may not urge or rely on any ground not set forth in the application in an appeal to any court.
  (c) Any application for rehearing not granted by the commission within 30 days is denied.
  (d)
    (i) If the commission grants any application for rehearing without suspending the order involved, the commission shall issue its decision on rehearing within 30 days after final submission.
    (ii) If the commission fails to render its decision on rehearing within 30 days, the order involved is affirmed.
  (e) Unless an order of the commission directs that an order is stayed or postponed, an application for review or rehearing does not excuse any corporation or person from complying with and obeying any order or decision of the commission.
(3) Any order or decision on rehearing that abrogates, changes, or modifies an original order or decision has the same effect as an original order or decision, but does not affect any right, or the enforcement of any right, arising from the original order or decision unless ordered by the commission.
(4) An order of the commission, including a decision on rehearing:
  (a) has effect only with respect to a public utility that is an actual party to the proceeding in which the order is rendered; and
  (b) does not determine any right, privilege, obligation, duty, constraint, burden, or responsibility with respect to a public utility that is not a party to the proceeding in which the order is rendered unless, in accordance with Subsection 63G-3-201(6), the commission makes a rule that incorporates the one or more principles of law that:

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

Amended by Chapter 23, 2020 General Session

54-7-17 Stay of commission's order or decision pending appeal.

(1) A petition for judicial review does not stay or suspend the operation of the order or decision of the commission.

(2)
(a) The court may stay or suspend, in whole or in part, the operation of the commission's order or decision after at least three days' notice and after a hearing.
(b) If the court stays or suspends the order or decision of the commission, the order shall contain a specific finding, based upon evidence submitted to the court and identified by reference, that:
(i) great or irreparable damage will result to the petitioner absent suspension or a stay of the order; and
(ii) specifies the nature of the damage.

(3)
(a) The court's order staying or suspending the decision of the commission is not effective until a supersedeas bond is executed, filed with, and approved by the commission (or approved, on review, by the court).
(b) The bond shall be payable to the state, and shall be sufficient in amount and security to insure the prompt payment by the party petitioning for the review of:
(i) all damages caused by the delay in the enforcement of the order or decision of the commission; and
(ii) all money that any person or corporation is compelled to pay, pending the review proceedings, for transportation, transmission, product, commodity, or service in excess of the charges fixed by the order or decision of the commission.
(c) Whenever necessary to insure the prompt payment of damages and any overcharges, the court may order the party petitioning for a review to give additional security or to increase the supersedeas bond.

(4)
(a) When the court stays or suspends the order or decision of the commission in any matter affecting rates, fares, tolls, rentals, charges, or classifications, it shall order the public utility affected to pay into court, or into some bank or trust company paying interest on deposits, all sums of money collected by the public utility that are greater than the sum a person would have paid if the order or decision of the commission had not been stayed or suspended.
(b)
(i) Upon the final decision by the court, the public utility shall refund all money collected by it that exceeds the amount authorized by the court's final decision, together with interest if the money was deposited in a bank or trust company, to the persons entitled to the refund.
(ii) The commission shall prescribe the methods for distributing the refund.
(c)
(i) If any of the refund money has not been claimed within one year from the final decision of the court, the commission shall publish notice of the refund:
(A)

(I) once per week for two successive weeks in a newspaper of general circulation printed and published in the city and county of Salt Lake; and
(II) in any other newspapers that the commission designates; and
(B) in accordance with Section 45-1-101 for two successive weeks.
(ii) The notice shall state the names of the persons entitled to the money and the amount due each person.
(iii) All money not claimed within three months after the publication of the notice shall be paid by the public utility into the General Fund.
(5) When the court stays or suspends any order or decision lowering any rate, fare, toll, rental, charge, or classification, after the execution and approval of the supersedeas bond, the commission shall order the public utility affected to keep accounts, verified by oath, that show:
(a) the amounts being charged or received by the public utility; and
(b) the names and addresses of the persons to whom overcharges will be refundable.

Amended by Chapter 342, 2011 General Session

54-7-18 Preference of actions and proceedings on courts' calendars.
(1) The courts of this state shall consider, hear, and determine all actions and proceedings under this chapter, and all actions and proceedings to which the commission or the state of Utah is a party, in which any question arises under this title or under or concerning any order or decision of the commission before considering, hearing, or determining all other civil causes except election causes.
(2) If the commission requests it, the courts shall grant the same preference to the commission in any action or proceeding in which the commission is allowed to intervene.

Amended by Chapter 161, 1987 General Session

54-7-19 Valuation of utilities -- Procedure -- Findings conclusive evidence.
(1)
(a) In determining the value, or revaluing the property of a public utility as required by Section 54-4-21, the commission may hold hearings.
(b) The commission may make a preliminary examination or investigation into the matters designated in this section and in Section 54-4-21 and may inquire into those matters in any other investigation or hearing.
(c) The commission may seek any available sources of information.
(d)
(i) The evidence introduced at the hearing shall be reduced to writing and certified under the seal of the commission.
(ii) The findings of the commission, when properly certified under the seal of the commission, are admissible in evidence in any action, proceeding, or hearing before the commission, and before any court as conclusive evidence of the facts as stated.
(e) The commission's findings of facts can be controverted in a subsequent proceeding only by showing a subsequent change in conditions bearing upon the facts.
(2)
(a) The commission may hold further hearings and investigations to make revaluations or to determine the value of any betterments, improvements, additions, or extensions made by any public utility.

(b) The commission may examine all matters that may change, modify, or affect any finding of fact previously made, and may make additional findings of fact to supplement findings of fact previously made.

Amended by Chapter 161, 1987 General Session

54-7-20 Reparations -- Courts to enforce commission's orders -- Limitation of action.

(1) When complaint has been made to the commission concerning any rate, fare, toll, rental or charge for any product or commodity furnished or service performed by any public utility, and the commission has found, after investigation, that the public utility has charged an amount for such product, commodity or service in excess of the schedules, rates and tariffs on file with the commission, or has charged an unjust, unreasonable or discriminatory amount against the complainant, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection.

(2) If the public utility does not comply with the order for the payment of reparation within the time specified in such order, suit may be instituted in any court of competent jurisdiction to recover the same. All complaints concerning unjust, unreasonable or discriminatory charges shall be filed with the commission within one year, and those concerning charges in excess of the schedules, rates and tariffs on file with the commission shall be filed with the commission within two years, from the time such charge was made, and all complaints for the enforcement of any order of the commission shall be filed in court within one year from the date of such order. The remedy in this section provided shall be cumulative and in addition to any other remedy or remedies under this title in case of failure of a public utility to obey an order or decision of the commission.

No Change Since 1953

54-7-21 Commission charged with enforcing laws -- Attorney general to aid.

The commission shall see that the provisions of the Constitution and statutes of this state affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the state therefor recovered and collected; and to this end it may sue in the name of the state of Utah. Upon request of the commission, it shall be the duty of the attorney general to aid in any investigation, hearing or trial under the provisions of this title and to institute and prosecute actions or proceedings for the enforcement of the provisions of the Constitution and statutes of this state affecting public utilities and for the punishment of all violations thereof.

Amended by Chapter 130, 1971 General Session

54-7-23 Penalties.

(1) This title shall not have the effect to release or waive any right of action by the state, the commission or any person for any right, penalty or forfeiture, which may have arisen or accrued or may hereafter arise or accrue under any law of this state.

(2) All penalties accruing under this title shall be cumulative and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture, or be a bar to any criminal prosecution against any public utility, or any officer, director, agent or employee thereof, or any other corporation or person, or be a bar to the exercise by the commission of its power to punish for contempt.

No Change Since 1953

54-7-24 Injunction to stop violations or threatened violations.

Whenever the commission, or the Department of Transportation where the safety of public carriers is involved, shall be of the opinion that any public utility is failing or omitting, or is about to fail or omit, to do anything required of it by law, or by any order, decision, rule, direction or requirement of the commission, or where applicable, the department, or is doing anything, or is about to do anything, or is permitting anything, or is about to permit anything, to be done, contrary to or in violation of law or of any order, decision, rule, direction or requirement of the commission or department, it shall direct the commencement of an action or proceeding in the name of the state, for the purpose of having such violations or threatened violations stopped or prevented.

Amended by Chapter 9, 1975 Special Session 1
Amended by Chapter 9, 1975 Special Session 1

54-7-25 Violations by utilities -- Penalty.

(1) Any public utility that violates or fails to comply with this title or any rule or order issued under this title, in a case in which a penalty is not otherwise provided for that public utility, is subject to a penalty of not less than $500 nor more than $2,000 for each offense.
(2) Any violation of this title or any rule or order of the commission by any corporation or person is a separate and distinct offense. In the case of a continuing violation, each day's continuance of the violation shall be a separate and distinct offense.
(3) In construing and enforcing the provisions of this title relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility acting within the scope of his official duties or employment shall in each case be deemed to be the act, omission, or failure of that public utility.

Amended by Chapter 131, 1989 General Session

54-7-26 Violations by officers or agents of utility -- Penalty.

Every officer, agent, or employee of any public utility who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility of any provision of the Constitution of this state or of this title, or who fails to obey, observe, or comply with any order, decision, direction, demand, or requirement, or any part or provision thereof, of the commission, or who procures, aids, or abets any public utility in its failure to obey, observe, and comply with any order, decision, direction, demand, or requirement, or any part or provision thereof, in a case in which a penalty has not been provided for, the officer, agent, or employee is guilty of a class A misdemeanor.

Amended by Chapter 305, 2008 General Session

54-7-27 Violations by corporations other than utilities -- Penalty.

Every corporation, other than a public utility, which violates any provision of this title, or which fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement, or any part or provision thereof, of the commission, in a case in which a penalty has not hereinbefore been provided for such corporation, is subject to a penalty of not less than $500 nor more than $2,000 for each and every offense.

No Change Since 1953

54-7-28 Violations by individuals -- Penalty.

Every person who, either individually, or acting as an officer, agent, or employee of a corporation other than a public utility, violates any provision of this title or fails to observe, obey, or comply with any order, decision, direction, demand, or requirement, or any part or provision thereof, of the commission, or who procures, aids, or abets any public utility in its violation of this title or in its failure to obey, observe, or comply with any order, decision, direction, demand, or requirement, or any part or portion thereof, in a case in which a penalty has not been provided for the person, is guilty of a class A misdemeanor.

Amended by Chapter 305, 2008 General Session

54-7-29 Actions to recover fines and penalties.

Actions to recover penalties under this title shall be brought in the name of the state of Utah. In any such action all penalties incurred up to the time of commencing the same may be sued for and recovered. All fines and penalties recovered by the state in any such action, together with cost thereof, shall be paid into the state treasury to the credit of the General Fund. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

No Change Since 1953

54-7-30 Interstate commerce -- Title does not apply.

Neither this title nor any provisions thereof, except when specifically so stated, shall apply to or be construed to apply to commerce with foreign nations or commerce among the several states of this Union, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress.

No Change Since 1953

Chapter 8
Utah Underground Conversion of Utilities Law

54-8-1 Short title.

This act shall be known and cited as the "Utah Underground Conversion of Utilities Law."

Enacted by Chapter 157, 1969 General Session

54-8-2 Legislative purpose.

The Legislature finds that in many areas of the state, it is in the public interest to convert existing overhead electric and communication facilities to underground locations through the creation of an improvement district. The Legislature hereby declares that a public purpose will be served by providing a procedure to accomplish such conversion and that it is in the public interest to provide for such conversion by proceedings taken pursuant to this chapter whether such areas be within the limits of a city or town or within a county.

Enacted by Chapter 157, 1969 General Session

54-8-3 Definitions.

As used in this chapter:

(1) "Assessment" means for the purpose of taxation wherever appropriate.

(2) "Communication service" means the transmission of intelligence by electrical means, including telephone, telegraph, messenger-call, clock, police, fire alarm, and traffic control circuits or the transmission of standard television or radio signals.

(3) "Convert" or "conversion" means the removal of all or any part of any existing overhead electric or communications facilities and the replacement thereof with underground electric or communication facilities constructed at the same or different locations.

(4)

(a) "Electric or communication facilities" means any works or improvements used or useful in providing electric or communication service, including poles, supports, tunnels, manholes, vaults, conduits, pipes, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cut-outs, switches, capacitors, meters, communication circuits, appliances, attachments and appurtenances.

(b) "Electric facilities" does not include:

(i) in a city of the first class or a county of the first class, any facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of 138,000 volts; or

(ii) in any location not described in Subsection (4)(b)(i), any facilities used or intended to be used for the transmission of electric energy at nominal voltages in excess of 35,000 volts.

(5) "Electric service" means the distribution of electricity by an electrical corporation for heat, cooling, light or power.

(6) "Governing body" means the board of commissioners, city council, or board of trustees as may be appropriate depending on whether the improvement district is located in a county or within a city or town.

(7) "Overhead electric or communication facilities" means electric or communication facilities located, in whole or in part, above the surface of the ground.

(8) "Point of delivery" means:

(a) a meter, for electric facilities; or

(b) a network interface device, for communication facilities.

(9) "Public utility" means any electric corporation or communications corporation that provides electric or communication service to the general public by means of electric or communication facilities.

(10) "Resolution" means ordinance when the governing body properly acts by ordinance rather than by resolution.

(11) "Service entrance equipment" means facilities on the property owner's side of the point of delivery that are necessary to accommodate service from a public utility.

(12) "Underground electric or communication facilities" means electric or communication facilities located, in whole or in part, beneath the surface of the ground.

Amended by Chapter 282, 2019 General Session

54-8-4 Creation of local improvement districts authorized.

The governing body of every county is hereby authorized and empowered to create local improvement districts under this chapter within the unincorporated portion of such county, and the governing body of every city and town is hereby authorized and empowered to create local improvement districts under this chapter within its territorial limits:

To provide for the conversion of existing overhead electric and communication facilities to underground locations and the construction, reconstruction or relocation of any other electric or communication facilities which may be incidental thereto, pursuant to the provisions of this chapter.

Enacted by Chapter 157, 1969 General Session

54-8-5 Apportionment of costs -- Assessment against benefitted property -- Public lands not subject to assessment.

(1) If an improvement district is created as provided in this chapter, the governing body of the county or municipality that created the improvement district may levy an assessment on property within the district.

(2)

(a) If an assessment is levied under this section, it shall be levied on all blocks, lots, parts of blocks, and lots, tracts, or parcels of property bounding, abutting upon, or adjacent to the improvements or affected or specially benefitted by the improvements to the extent of the benefits to the property because of the improvements.

(b) The benefits to the property may be indirect and need not actually increase the fair market value of the property.

(3) A governing body may levy an assessment under this section to the full depth of the property or to the depth determined by the governing body.

(4) Assessments under this section shall be equal and uniform according to the benefits received.

(5)

(a) Assessments may be according to area, frontage, assessed value, taxable value, lot, number of connections, or any combination of these methods, as the governing body considers fair and equitable.

(b) Different improvements in an improvement district may be assessed according to different methods.

(c) The governing body shall make an allowance for corner lots so that they are not assessed at full rate on both sides adjacent to the street.

(6) The entire cost of the improvement may be assessed against the benefitted property as provided in this section or, if money for paying part of such cost is available from any other source, the money so available may be so applied and the remaining cost so assessed against the benefitted property.

(7) The cost and expenses to be assessed as provided in this section shall include the contract price of the improvement, engineering and clerical services, advertising, cost of inspection, cost of collecting assessments, and interest upon bonds if issued, and for legal services for preparing proceedings and advising in regard thereto.

(8) Fee lands and property of public entities such as the federal government, the state, or any county, city, or town may not be considered as lands or property benefitted by any improvement district, and, unless such public entity within the boundaries of an improvement district consents in writing, filed before the governing body adopts the resolution provided for in Section 54-8-8, the lands and property of such public entity shall not be subject to assessment for the payment of any of the cost or expense of such improvement.

Amended by Chapter 129, 2006 General Session

54-8-6 Creation of improvement district -- Petition by property owners -- Resolution of governing body -- Utilities to submit reports.

(1)

(a) A governing body may, upon a petition signed by two-thirds of the owners of the real property and the owners of not less than two-thirds in value of the real property, as shown by the last assessment rolls, of any proposed district requesting the creation of an improvement district as provided for in this chapter, pass a resolution at any regular or special meeting declaring that it finds that the improvement district proposed is in the public interest.

(b) In order to pass a resolution under Subsection (1)(a), the governing body shall determine that the formation of the local improvement district for the purposes set out in this chapter will promote the public convenience, necessity, and welfare.

(2) Each resolution adopted under Subsection (1) shall:

(a) state that the costs and expenses will be levied and assessed upon the property benefitted;

(b) request that each public utility corporation serving such area by overhead electric or communication facilities shall, within 120 days after the receipt of the resolution, make a study of the cost of conversion of its facilities in such area to underground service; and

(c) require that the public utilities be provided with the name and address of the owner of each parcel or lot within the proposed improvement district, if known, and, if not known, the description of the property and other matters required by the public utility corporations in order to perform the work involved in the cost study.

(3) Each public service corporation serving the improvement district area by overhead electric or communication facilities shall:

(a) within 120 days after receipt of the resolution, make a study of the costs of conversion of its facilities in the district to underground service; and

(b) provide the governing body and make available to its office a report, prepared jointly with each other public service corporation serving the improvement district area by overhead electric or communication facilities, as to the results of the study.

(4) The governing body shall make each report under Subsection (3) available in its office to each owner of land within the improvement district.

Amended by Chapter 129, 2006 General Session

54-8-7 Reports of utilities -- Recommendations -- Estimate of costs.

The public utility or utilities report shall set forth an estimate of the total underground conversion costs and shall also indicate the costs of underground conversion of facilities of the public utility corporations located within the boundaries of the various parcels or lots then receiving service. The report shall also contain the public utility corporations' recommendations concerning the feasibility of the project for the district proposed in so far as the physical characteristics of the district and the facilities of the public utilities within the district are concerned. The report shall make recommendations by the public utility corporations concerning inclusion or exclusion of areas within the district or immediately adjacent to the district. The governing body shall give careful consideration to the public utility corporations' recommendations concerning feasibility, recognizing their expertise in this area, and may amend the boundaries of the proposed improvement district provided that the costs and feasibility report of the public utilities contains a cost figure on the district as amended or it may request a new costs and feasibility report from the public utilities concerned on the basis of the amended district. The cost estimate contained in the report shall

not be considered binding on the utilities if construction is not commenced within six months of the submission of the estimate for reasons not within the control of the utility. Should such a delay result in a significant increase of the conversion costs, new hearings shall be held on the creation of the district. In the event that only a minor increase results, only the hearing on the assessments need be held again.

Enacted by Chapter 157, 1969 General Session

54-8-8 Approval of utilities' report by governing body -- Passage of resolutions -- Contents.

On the filing with the clerk of any governing body of the costs and feasibility report by the public utility corporation(s), as hereinbefore provided and after considering the same, the governing body may, at any regular or special meeting, pass a resolution declaring its intention to create a local improvement district. The resolution shall state that the costs and expenses of the district created are, except as otherwise provided for, to be levied and assessed upon the abutting, adjoining, and adjacent lots and land along or upon which improvements are to be made, and upon lots and lands benefited by such improvements and included in the improvement district created; that it is the intention of the governing body to make such improvement which will promote the public welfare; and shall further state the area and boundaries of the proposed improvement district, the character of the proposed improvement, the estimated total cost of the same, and the intention of the governing body to hold or cause to be held a public hearing on the proposed improvement.

Enacted by Chapter 157, 1969 General Session

54-8-9 Public hearing -- Notice -- Contents.

(1) After the passage of the resolution in Section 54-8-8, the governing body shall cause notice of a public hearing on the proposed improvement to be given as provided in Section 54-8-10.

(2) The notice required under Subsection (1) shall:

(a) describe the boundaries or area of the district with sufficient particularity to permit each owner of real property in the proposed district to ascertain that the owner's property lies in the district;

(b) describe in a general way the proposed improvement, specifying the streets or property along which it will be made and the nature of the benefits to the property within the district;

(c) state the estimated cost as determined from the costs and feasibility report and including the contract price of the improvement and the cost of engineering and clerical service, advertising, inspection, collection of assessments, interests upon bonds, if issued, and for legal services for preparing proceedings and advising in regard to them;

(d) state that it is proposed to assess the real property in the district to pay all or a designated portion of the cost of the improvement according to the method determined by the governing body under Section 54-8-5;

(e) state the date, time, and place that the governing body will conduct a public hearing upon the proposed improvement and on the question of benefits to be derived by the real property in the district;

(f) state that all interested persons will be heard and that any property owner will be heard on the question of whether his property will be benefitted by the proposed improvement; and

(g) designate the date, time, and place of a public hearing at which the governing body will consider objections to the creation of the proposed district and the making of the proposed improvements.

Amended by Chapter 129, 2006 General Session

54-8-10 Public hearing -- Notice -- Publication.

(1) The governing body shall provide notice of a public hearing on the proposed improvement for the proposed district, as a class B notice under Section 63G-30-102, for at least 14 days.

(2) The addresses to be used for the purpose of mailing notice as required by Subsection 63G-30-102(3) shall be:

(a) the last address appearing on the real property assessment rolls of the county for each owner of real property whose property will be assessed for the cost of the improvement; and

(b) the street number of each piece of improved property to be affected by the assessment.

(3) Mailed notices and the published notice shall state where a copy of the resolution creating the district will be available for inspection by any interested parties.

Amended by Chapter 435, 2023 General Session

54-8-11 Protests -- Hearings -- Representatives of utilities to be present -- Changes in proposal -- Adoption or abandonment of project.

(1)

(a) On the date and at the time and place specified in the notice under Section 54-8-9, the governing body shall in open and public session hear all objections to the creation of the proposed district, the making of the proposed improvements, and the benefits accruing to any tract, block, lot, or parcel of land in the proposed district.

(b) Representatives of the public utilities concerned shall be present at each hearing under Subsection (1)(a).

(c) A hearing under Subsection (1)(a) may be adjourned from time to time to a fixed future time and place.

(d) If at any time during a hearing under Subsection (1)(a), it appears to the governing body that changes in the proposed improvements or the proposed district should be made, which, after consultation with the public utilities concerned, appear to affect either the cost or feasibility of the improvements, the hearing shall be adjourned to a fixed future time and place and a new costs and feasibility report prepared on the basis of the contemplated changes.

(2) After the hearing has been concluded and after all persons desiring to be heard have been heard, the governing body:

(a) shall consider the arguments put forth;

(b) may make changes in the area to be included in the district as it considers desirable or necessary, if a costs and feasibility report has been prepared on the basis of those changes; and

(c) shall adopt a resolution either abandoning the district and project or determining to proceed with the district and project, either as described in the notice or with changes made as authorized in this section.

Amended by Chapter 129, 2006 General Session

54-8-12 Property owners failing to appear at hearings -- Waiver of rights.

Every person who has real property within the boundaries of the district and who fails to appear before the governing body at the hearing and make any objection the property owner may have to the creation of the district, the making of the improvements and the inclusion of the owner's real property in the district, shall be deemed to have waived every such objection. Such waiver shall

not, however, preclude the property owner's right to object to the amount of the assessment at the hearing for which provision is made in Section 54-8-17.

Amended by Chapter 365, 2024 General Session

54-8-13 Assessment list to be prepared.

After a decision is taken by a governing body to proceed with the district and project, it shall cause to be prepared an assessment list detailing the total amount to be assessed, the specific properties assessed, and the amount of assessment on each piece of property.

Enacted by Chapter 157, 1969 General Session

54-8-14 Declaration of costs -- Contents of resolution.

After the preparation of the proposed assessment list, the governing body shall cause to be prepared for adoption at the hearing hereinafter provided for, a resolution declaring the entire cost of the improvement including the cost of construction as determined from the costs and feasibility report and other incidental costs, legal and fiscal fees and costs, the cost of the publication of notices and all other costs properly incident to the construction of the improvement and the financing thereof. Such resolution shall specify what share, if any, of the total cost is payable from sources other than the imposition of assessments and shall incorporate the proposed assessment list provided for in Section 54-8-13.

Enacted by Chapter 157, 1969 General Session

54-8-15 Board of equalization and review -- Appointment -- Functions and authority.

Whenever the governing body of any municipality shall propose to levy any tax under any provision of this chapter, it shall before doing so, appoint a board of equalization and review which shall consist of three or more of its members. This board shall perform the functions of the governing body under Sections 54-8-16 and 54-8-17 and shall have authority to make corrections in the proposed assessments under the provisions of Section 54-8-17. After having concluded the public hearings provided for in Section 54-8-17, the board shall make a report to the body appointing it of any changes or corrections made by it in the assessment list together with its finding that each piece of property within the improvement district will be benefited in amounts not less than the assessment to be levied against such property.

Amended by Chapter 92, 1987 General Session

54-8-16 Notice of assessment -- Publication.

(1) After the preparation of a resolution under Section 54-8-14, the governing body shall give notice of a public hearing on the proposed assessments.

(2)

(a) The governing body shall provide the notice described in Subsection (1) for the district, as a class B notice under Section 63G-30-102, for at least 20 days before the date of the hearing.

(b) The addresses to be used for the purpose of mailing notice as required by Subsection 63G-30-102(3) are:

(i) the last address appearing on the real property assessment rolls of the county for each owner of real property whose property will be assessed for part of the cost of the improvement; and

(ii) the street number of each piece of improved property to be affected by the proposed assessment.

(3) Each notice shall state that at the specified time and place, the governing body will hold a public hearing upon the proposed assessments and shall state that any owner of any property to be assessed pursuant to the resolution will be heard on the question of whether the owner's property will be benefited by the proposed improvement to the amount of the proposed assessment against the owner's property and whether the amount assessed against the owner's property constitutes more than the owner's proper proportional share of the total cost of the improvement.

(4) The notice shall further state where a copy of the resolution proposed to be adopted levying the assessments against all real property in the district will be on file for public inspection, and that subject to such changes and corrections therein as may be made by the governing body, it is proposed to adopt the resolution at the conclusion of the hearing.

(5) A published notice shall describe the boundaries or area of the district with sufficient particularity to permit each owner of real property therein to ascertain that the owner's property lies in the district.

(6) The mailed notice may refer to the district by name and date of creation and shall state the amount of the assessment proposed to be levied against the real property of the person to whom the notice is mailed.

Amended by Chapter 435, 2023 General Session

54-8-17 Assessments -- Hearings on -- Corrections of -- Assessment not to exceed benefit.

On the date and at the time and place specified in the aforesaid notice, the governing body shall, in open and public session, hear all arguments relating to the benefits accruing to any tract, block, lot or parcel of land therein and the amounts proposed to be assessed against any such tract, block, lot or parcel. The hearing may be adjourned from time to time to a fixed future time and place. After the hearing has been concluded and all persons desiring to be heard have been heard, the governing body shall consider the arguments presented and shall make such corrections in the assessment list as may be considered just and equitable. Such corrections may eliminate, may increase, or may decrease the amount of the assessment proposed to be levied against any piece of property. However, no increase of any proposed assessment shall be valid unless the owner of the property is given notice and an opportunity to be heard. After such corrections have been made, the governing body shall make a specific finding that no proposed assessment on the corrected assessment list exceeds the benefit to be derived from the improvement by the piece of property to be so assessed and that no piece of property so listed will bear more than its proper proportionate share of the cost of such improvement.

Enacted by Chapter 157, 1969 General Session

54-8-18 Assessments -- Resolution to adopt.

After the public hearing has been concluded and all corrections made to the assessment list, and in the case of a municipality, after receiving the report from the board of equalization and review, the governing body shall proceed to adopt the assessment resolution.

Enacted by Chapter 157, 1969 General Session

54-8-19 Assessments -- Right to levy against property -- Due date -- Notice -- Payment in annual installments.

(1) The governing body may levy the assessments under the assessment list in whole or in part at any time after the adoption of the assessment resolution, but if not levied as a whole, any partial levies shall be made on the basis of completed improvements and the property benefited by the improvements.

(2) The amount of the assessment will become due and collectible immediately upon the levying of the assessment and, if it is not paid within 30 days from the date of the levy, it shall, at the expiration of the 30 days, commence to bear interest at a rate fixed by the governing body but not to exceed 7% per annum.

(3)

(a) Notice shall be given in the same manner as provided in Section 54-8-16.

(b) The notice under Subsection (3)(a) shall:

(i) specify the date and amount of the levy affecting each tract, block, lot, or parcel, the date when interest will commence, the amount of such interest, and the period of years over which installment payments may be made;

(ii) identify the easement that may be acquired by Subsection 54-8-26(2); and

(iii) be recorded in the office of the recorder of the county in which the tract, block, lot, or parcel is located.

(4)

(a) If the assessment is not paid within the 30 days allowed, each owner shall be presumed to exercise the right and option to pay the amount due in equal annual installments bearing interest at the rate specified in the notice and extending over the period of years, not exceeding 20 specified in the notice.

(b) The first installment shall become due one year from the date when interest commenced, and one installment shall become due on the same day of the same month annually thereafter.

(c) Any assessment may be prepaid on any annual installment date without interest penalty provided the total balance of the assessment, including accrued interest, costs and penalties, be paid.

Amended by Chapter 129, 2006 General Session

54-8-20 Assessments -- Failure to pay installment -- Interest and penalties -- Lien on property -- Sale of property -- Disposition of proceeds.

The failure to pay any installment and any interest thereon when due shall ipso facto cause all other installments and the interest thereon to become due and payable and the governing body shall, within 30 days from the date of such default, proceed against the property for the collection of the total amount due thereon, including interest plus 10% additional on unpaid principal and interest as penalties and costs of collection. Special assessments levied hereunder shall rank on an equality with taxes levied against the property assessed by the state, the county and all other taxing districts, and no sale of property for the nonpayment of taxes or other special assessments shall extinguish the lien of other than the taxes or special assessments for the nonpayment of which such sale is had. The proceeds of the sale of any property for nonpayment of special assessments shall be applied in the discharge of such assessments, the interest thereon, costs and penalties. If there are outstanding any special improvement bonds issued pursuant to the improvement in question, proceeds of the sale of any property for nonpayment of any special assessments shall after the payment therefrom of the costs of collection be applied to the costs of redemption prior to maturity of as many of the outstanding special improvement bonds as can be

retired with the amount available. Any surplus remaining after the payment of amounts due shall be paid over to the owner of the property sold. The lien of special assessments levied hereunder shall be superior to all other liens against the property assessed except that it shall be on a parity with the lien of ad valorem taxes and a lien of other special assessments and shall be effective from and after the date upon which the resolution levying the assessments is adopted.

Enacted by Chapter 157, 1969 General Session

54-8-21 Assessments -- Prepayment of unpaid installments.

The governing body may in the resolution levying the assessments provide that all unpaid installments of assessments levied against any piece of property may (but only in their entirety) be paid prior to the dates on which they become due if the property owner paying such installments pays all interest which would accrue thereon to the next succeeding date on which interest is payable on the bonds issued in anticipation of the collection of the assessments, together with such additional amount of interest as in the opinion of the governing body is necessary to assure the availability of money fully sufficient to pay interest on the bonds as interest becomes due and any redemption premiums which may become payable on the bonds in order to retire in advance of maturity bonds in a sufficient amount to utilize the assessments thus paid in advance. If no bonds have been issued then all unpaid installments of assessments levied against any piece of property may be paid in their entirety prior to the date upon which they become due by paying the principal amount due and the interest accrued thereon to the date of payment.

Enacted by Chapter 157, 1969 General Session

54-8-22 Bonds -- Issuance authorized -- Amount -- Interest -- Additional requirements.

After the expiration of 30 days from the date of the adoption of the resolution levying the assessments, the county legislative body may issue negotiable interest-bearing bonds in a principal amount not exceeding the unpaid balance of the assessments levied. The bonds shall bear interest at not exceeding 7% per annum, payable semiannually or annually, and shall mature serially over a period not exceeding 20 years, but in no event shall such bonds extend over a longer period of time than the period of time over which such installments of special assessments are due and payable and 90 days thereafter. The bonds shall be of such form and denomination and shall be payable in principal and interest at such times and place, and shall be sold, authorized, and issued in such manner as the county legislative body may determine. The bonds shall be dated no earlier than the date on which the special assessment shall begin to bear interest, and shall be secured by and payable from the irrevocable pledge and dedication of the funds derived from the levy and collection of the special assessments in anticipation of the collection of which they are issued. Any premium received on the sale of the bonds may be applied as other bond proceeds or if not so applied the same shall be placed in the fund for the payment of principal of and interest on the bonds. The bonds shall be callable for redemption from the proceeds of any property sold for the nonpayment of special assessments but not otherwise unless the bonds on the face thereof provide for redemption prior to maturity, and the county legislative body may provide that the bonds shall be redeemable on any interest payment date or dates prior to maturity pursuant to such notice and at such premiums as it deems advisable. The bonds shall be signed by the county executive and the chair of the county legislative body and shall be countersigned by the city recorder or the clerk of the board of the town trustees or the clerk of the county legislative body, whichever is applicable, and one of such signatures may be a

facsimile signature. Interest may be evidenced by interest coupons attached to such bonds and signed by a facsimile signature of one of the individuals who signed the bond.

Amended by Chapter 227, 1993 General Session

54-8-23 Objection to amount of assessment -- Civil action -- Litigation to question or attack proceedings or legality of bonds -- Notice.

(1) No special assessment levied under this chapter shall be declared void, nor shall any such assessment or part thereof be set aside in consequence of any error or irregularity permitted or appearing in any of the proceedings under this chapter, but any party feeling aggrieved by any such special assessment or proceeding may bring a civil action to cause such grievance to be adjudicated if such action is commenced prior to the expiration of the period specified in this section.

(2) The burden of proof to show that such special assessment or part thereof is invalid, inequitable or unjust shall rest upon the party who brings such suit.

(3) Any such litigation shall not be regarded as an appeal within the meaning of the prohibition contained in Section 54-8-18.

(4) Every person whose property is subject to such special assessment and who fails to appear during the public hearings on said assessments to raise his objection to such tax shall be deemed to have waived all objections to such levy except the objection that the governing body lacks jurisdiction to levy such tax.

(5) For a period of 20 days after the governing body has adopted the enactment authorizing the assessment, any taxpayer in the district shall have the right to institute litigation for the purpose of questioning or attacking the proceedings pursuant to which the assessments have been authorized subject to the provisions of the preceding paragraph.

(6) Whenever any enactment authorizing the issuance of any bonds pursuant to the improvement contemplated shall have been adopted such resolution shall be provided for the district, as a class A notice under Section 63G-30-102, for 20 days.

(7) For a period of 20 days thereafter, any person whose property shall have been assessed and any taxpayer in the district shall have the right to institute litigation for the purpose of questioning or attacking the legality of such bonds.

(8) After the expiration of such 20-day period, all proceedings theretofore had by the governing body, the bonds to be issued pursuant thereto, and the special assessments from which such bonds are to be paid, shall become incontestable, and no suit attacking or questioning the legality thereof may be instituted in this state, and no court shall have the authority to inquire into such matters.

Amended by Chapter 435, 2023 General Session

54-8-24 Payment to utilities -- Allowable costs.

(1) In determining the conversion costs included in the costs and feasibility report required by Section 54-8-7, the public utility corporations shall be entitled to amounts sufficient to repay them for the following, as computed and reflected by the uniform system of accounts approved by the Public Service Commission, Federal Communications Commission, or Federal Power Commission:

(a) the original costs less depreciation taken of the existing overhead electric and communication facilities to be removed;

(b) the estimated costs of removing such overhead electric and communication facilities, less the salvage value of the facilities removed;
(c) if the estimated cost of constructing underground facilities exceeds the original cost of existing overhead electric and communication facilities, then the cost difference between the two; and
(d) the cost of obtaining new easements when technical considerations make it reasonably necessary to utilize easements for the underground facilities different from those used for aboveground facilities, or where the pre-existing easements are insufficient for the underground facilities.
(2) Notwithstanding Subsection (1), if conversion costs are included in tariffs, rules, or regulations filed with or promulgated by the Public Service Commission such conversion costs shall be the costs included in the costs and feasibility report.

Amended by Chapter 306, 2007 General Session

54-8-25 Utilities responsible for work -- May subcontract -- Title to converted facilities retained.
(1) The utility concerned:
(a) shall be responsible for the accomplishment of all construction work to the point of delivery; and
(b) may contract out any part of the construction work as it considers desirable.
(2) Title to the converted facilities shall be at all times solely and exclusively vested in the public utility corporations involved.
(3) The public body, improvement district, or the public generally will not own the facilities at any time and the public is purchasing only the intangible benefits which come from converted facilities, that is the removal of the overhead facilities and replacement by underground facilities.

Amended by Chapter 369, 2008 General Session

54-8-26 Notice that service from underground facilities is available -- Consequences of failure to convert overhead facilities.
(1)
(a) If service from the underground public utility is to be made available to all or part of an improvement district area, the governing body of the county or municipality that created the district shall mail a notice to each owner of real property served from existing overhead facilities stating that:
(i) conversion of all facilities owned within the improvement district by a public utility from overhead to underground to the point of delivery is proceeding;
(ii) the property owner is responsible for the changes in the service entrance equipment located on the property to accommodate the conversion of the applicable public utility's facilities from overhead to underground at the point of delivery; and
(iii) each owner shall coordinate with the applicable public utility to make the conversion from overhead to underground service.
(b) In addition to improvement district assessments, the property owner shall bear the expense of the conversion from overhead to underground described in Subsections (1)(a)(ii) and (iii).
(c) Each conversion of overhead facilities to underground facilities shall comply with all applicable state and local laws, ordinances, rules, and regulations, and with all tariffs of the applicable public utility.

(d) The public utility or its contractor shall perform the necessary construction to the point of delivery, unless the public utility authorizes another to perform the construction.

(2)

(a) Failure to have the property owner's service entrance equipment described in Subsection (1)(a)(ii) converted to accommodate underground service within the time that the governing body specifies in writing shall be considered as the property owner's consent to and grant of a construction easement to the county or municipality and as express authority to the county or municipality to arrange for qualified persons to enter upon the lot or parcel for the purpose of making the required changes.

(b) A construction easement under Subsection (2)(a) terminates upon completion of the conversion of overhead facilities to underground.

(3) If the county or municipality arranges for the conversion of the service entrance equipment, all county, municipal, and public utility costs and expenses of the conversion, including the engineering, legal, advertising, and incidental expenses, shall be assessed against the property upon which the service entrance equipment was converted and become a lien upon the property served.

Amended by Chapter 369, 2008 General Session

54-8-27 Bill for conversion costs -- Not to exceed estimate -- Payment within 30 days -- Accounting procedures.

Upon completion of the conversion contemplated by this chapter, the public utility corporation shall present the governing body with its verified bill for conversion costs as computed pursuant to Section 54-8-24 but based upon the actual cost of constructing the underground facility rather than the estimated cost of the facility. In no event shall the bill for conversion cost presented by the public utility corporation exceed the amount of estimated conversion costs by the public utility corporation. In the event the conversion costs are less than the estimated conversion costs, each owner within the improvement district shall receive the benefit, prorated in such form and at such time or times as the governing body may determine. The bill of the public utility corporation shall be paid within 30 days by the governing body from the improvement district funds. In determining the actual cost of constructing the underground facility the public utility shall use its standard accounting procedures, such as the Uniform System of Accounts as defined by the Federal Communications Commission or the Federal Power Commission and as is in use at the time of the conversion by the public utility involved.

Enacted by Chapter 157, 1969 General Session

54-8-28 Additional overhead facilities prohibited -- Exception.

Once removed, no overhead electric or communication facilities shall be installed within the boundary of a local improvement district for conversion of overhead electric and communication facilities in nominal voltages of less than 35,000 volts.

Enacted by Chapter 157, 1969 General Session

54-8-29 Jurisdiction over public utilities.

Nothing contained in this chapter shall vest any jurisdiction over public utilities in the governing bodies. The Public Service Commission of Utah shall retain all jurisdiction now or hereafter conferred upon it by law.

Enacted by Chapter 157, 1969 General Session

54-8-30 Commencement of conversion -- When required.

If an improvement district is established pursuant to this chapter, the public utility corporations involved shall not be required to commence conversion until the ordinance, the assessment roll and issuance of bonds have become final and no civil action has been filed or if civil action has been filed, until the decision of the court upon the action has become final and is not subject to further appeal.

Enacted by Chapter 157, 1969 General Session

Chapter 8a
Damage to Underground Utility Facilities

54-8a-2 Definitions.

As used in this chapter:

(1) "Association" means two or more operators organized to receive notification of excavation activities in the state, as provided by Section 54-8a-9.

(2) "Backfill" means soil or material that is approved for the soil or material's intended use and meets a project's plans and specifications.

(3) "Business hours" means the hours between 8:00 a.m. and 4:00 p.m. Monday through Friday, excluding holidays.

(4) "Board" means the Underground Facilities Damage Dispute Board created in Section 54-8a-13.

(5) "Electronic positive response system" means an automated information system, operated by the association, that allows excavators, locators, operators, and others to communicate the status of an excavation notice.

(6) "Emergency" means an occurrence or suspected natural gas leak necessitating immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

(7) "Excavate" or "excavation" means an operation in which earth, rock, or other material on or below the ground is moved or displaced by tools, equipment, explosives, or demolition.

(8) "Excavation notice" means a communication that:

(a) has a location request assignment;

(b) provides notice of a person's intent to excavate in a specified location in the state; and

(c) meets the requirements of Section 54-8a-4.

(9) "Excavator" means any person that excavates or conducts excavation activities.

(10) "48 hours" means a 48-hour period, occurring during business days that includes any day except Saturday, Sunday, or a holiday, that begins at 8:00 a.m. on the first business day after notice has been submitted.

(11) "Hand tool" means an implement:

(a) powered by hand; or

(b) designed to avoid damaging an underground facility, including a vacuum excavation tool and air knife.

(12) "Holiday" means all legal holidays as defined in Section 63G-1-301, the Friday after Thanksgiving Day, December 24th, and any other association observed holiday as posted in the association's excavator's guide.
(13) "Location" means the site of a proposed area of excavation described:
(a)
(i) by street address, if available;
(ii) by the area at that street address to be excavated; and
(iii) as specified in Subsection 54-8a-4(3) or 54-8a-5(2)(b)(ii); or
(b) if there is no street address available, by the area of excavation using any available designations, including a nearby street or road, an intersection, GPS coordinates, or other generally accepted methods.
(14) "Location request assignment" means a number assigned to a proposed excavation by the association upon receiving an excavation notice.
(15) "Mark" means to locate and indicate the existence of a line or facility according to the guidelines published by the association in the association's current version of the excavator's guide.
(16) "Municipality" means the same as that term is defined in Section 10-1-104.
(17) "No response notice" means notice given by an excavator to the association that:
(a) describes indications of specific facilities or facility types;
(b) indicates that the facilities or facility types were not marked by the operator at the site of the proposed excavation; and
(c) is submitted after the excavator previously submitted an excavation notice regarding the site.
(18)
(a) "Operator" means a person that owns, operates, or maintains an underground facility.
(b) "Operator" does not include an owner of real property where underground facilities are:
(i) located within:
(A) the owner's property; or
(B) a public street adjacent to the owner's property, a right-of-way adjacent to the owner's property, or a public utility easement adjacent to the owner's property;
(ii) used exclusively to furnish services to the owner's property; and
(iii) maintained under the operation and control of that owner.
(19) "Person" includes:
(a) an individual, government entity, corporation, partnership, association, or company; and
(b) the trustee, receiver, assignee, and personal representative of a person listed in Subsection (19)(a).
(20) "Sewer lateral cleanout" means a point of access where a sewer lateral can be serviced.
(21) "Tolerance zone" means the area surrounding a facility that:
(a) for an underground facility that has the diameter of the facility marked, is the distance of one half of the marked diameter plus 24 inches on either side of the designated center;
(b) for an underground facility that does not have the diameter of the facility marked, is 24 inches on either side of the outside edge of the mark indicating a facility; or
(c) for an above ground facility, is 24 inches in each direction of the outside edge of the physically present facility.
(22) "24 hours" means a 24-hour period, excluding hours occurring during a Saturday, Sunday, or a holiday.
(23) "Underground facility" means personal property that is buried or placed below ground level for use in the storage or conveyance of any of the following:
(a) water;

(b) sewage, including sewer laterals;
(c) communications, including electronic, photonic, telephonic, or telegraphic communications;
(d) television, cable television, or other telecommunication signals, including transmission to subscribers of video or other programming;
(e) electric power;
(f) oil, gas, or other fluid and gaseous substances;
(g) steam;
(h) slurry; or
(i) dangerous materials or products.

Amended by Chapter 369, 2024 General Session

54-8a-3.5 Excavation-related information included with construction and building permit.

An entity issuing a permit for building or construction that may require excavation may, and is encouraged to, include a notice on or with a permit stating, "Attention, Utah law requires any excavator to notify the owner of underground facilities 48 hours before excavating and comply with Utah Code Title 54, Chapter 8a, Damage to Underground Utility Facilities."

Enacted by Chapter 344, 2008 General Session

54-8a-4 Notice of excavation.

(1)
(a) Before excavating, an excavator shall notify each operator with an underground facility in the area of the proposed excavation.
(b) The requirements of Subsection (1)(a) do not apply:
(i) if there is an emergency;
(ii) while gardening; or
(iii) while tilling private ground.
(2) The notice required by Subsection (1) shall:
(a) be given:
(i) by telephone;
(ii) by electronic communication; or
(iii) by other means acceptable to the association;
(b) be given not:
(i) less than 48 hours before excavation begins; or
(ii) more than 14 days before excavation begins; and
(c) include the proposed excavation's anticipated:
(i) location, with reasonable specificity;
(ii) dimensions; and
(iii) type.
(3) If the proposed excavation's anticipated location and dimensions cannot be described as required under Subsection (2)(c) or as requested in accordance with Subsection 54-8a-5(2)(b), an excavator shall outline the proposed excavation site using as a guideline the then-existing Uniform Color Code and Marking Guidelines, Appendix B, published by the Common Ground Alliance, as amended in the current version of the excavators' guide published by the statewide association established in Section 54-8a-9.
(4) If more than one excavator will operate at the same excavation site, each excavator shall provide the notice required by this section.

(5) Notice provided to the association constitutes notice to each operator that has facilities within the proposed excavation site.
(6)
(a) Notice given under this section is valid for 21 days from the day on which the notice is given.
(b) If an excavation will continue beyond the 21-day period under Subsection (6)(a), the excavator shall provide notice of that fact at least 48 hours, but no sooner than seven calendar days, before expiration of the 21-day period.
(c) A notice under Subsection (6)(b) is valid for 21 days from the day on which the previous notice expires.
(d) An excavator shall give notice as provided in this Subsection (6) for the duration of the excavation.
(7)
(a) An excavator shall confirm before excavation that:
(i) operators that utilize electronic positive response have responded through the association's electronic positive response system; and
(ii)
(A) all facilities that may be affected by the proposed excavation have been marked;
(B) the operators have indicated that there are no underground facilities within the proposed excavation site; or
(C) the operators have not requested a meeting under Subsection 54-8a-5(2).
(b) If an operator has not marked a facility or responded within 48 hours of the initial excavation notice:
(i) the excavator may not begin excavation if the excavator is aware of or observes indications of a facility that was not marked at the proposed excavation area until:
(A) the excavator has given a no response notice; and
(B) the operator makes arrangements for the facility to be marked by the operator; or
(ii) the excavator may begin excavation if there are no visible indications of a facility within the proposed excavation area.
(c) Within four business hours of the association receiving a no response notice, an operator shall mark the facilities or make arrangements for the facilities to be marked.
(8) If markings made by the operator have been disturbed so that the markings no longer identify the underground facility:
(a) before excavating the site an excavator shall notify:
(i) the association; or
(ii) each operator; and
(b) the operator shall mark the area again within 48 hours of the notification provided by the excavator under Subsection (8)(a).
(9) Unless an operator remarks an area pursuant to Subsection (8), the excavator shall be responsible for the costs incurred by an operator to remark its underground facilities following the second or subsequent notice given by an excavator for a proposed excavation.

Amended by Chapter 369, 2024 General Session

54-8a-5 Marking of underground facilities.
(1) Within 48 hours of the receipt of the notice required by Section 54-8a-4, the operator shall:
(a)
(i) mark the location of the operator's underground facilities in the area of the proposed excavation; or

(ii) notify the excavator, by telephonic or electronic message or indication at the excavation site, that the operator does not have any underground facility in the area of the proposed excavation; and

(b) if the operator utilizes the association's electronic positive response system, provide a response to the association's electronic positive response system to indicate whether the operator can provide the information described in Subsection (1)(a)(i).

(2)

(a) The operator is not required to mark the underground facilities within 48 hours if:

(i) the proposed excavation:

(A) is not identified in accordance with Subsection 54-8a-4(2) or is not marked as provided in Subsection 54-8a-4(3);

(B) is located in a remote area;

(C) is an extensive excavation; or

(D) presents other constraints that make it unreasonably difficult for the operator to comply with the marking requirements of this section; or

(ii) the operator is not able to readily locate the underground facilities from the surface with standard underground detection devices.

(b) If the operator cannot proceed with the marking because of a situation described in Subsection (2)(a), the operator shall contact the excavator within 48 hours after the excavation notice and:

(i) request a meeting at the proposed excavation site or some other mutually agreed upon location; or

(ii) at the operator's discretion, contact the excavator and request the proposed excavation site be outlined in accordance with Subsection 54-8a-4(3).

(c) For a situation described under Subsection (2)(a)(i), the meeting or completed outlining of the proposed excavation site constitutes the beginning of a new 48-hour period within which the operator shall begin marking the underground facilities.

(d)

(i) For the situation described under Subsection (2)(a)(ii), the excavator and operator shall agree on a plan of excavation designed to prevent damage to the operator's underground facility.

(ii) Notwithstanding the agreement, the excavator shall proceed in a manner that is reasonably calculated to avoid damage to the underground facility.

(e)

(i) An operator need not mark an underground facility the operator does not own.

(ii) An underground facility under Subsection (2)(e)(i) includes a water or sewer lateral or a facility running from a house to a garage or outbuilding.

(f)

(i) An operator may mark the location of a known facility connected to the operator's facilities that is not owned or operated by the operator.

(ii) Marking a known facility under Subsection (2)(f)(i) imposes no liability on the operator for the accuracy of the marking.

(3) Each marking is valid for not more than 21 calendar days from the date notice is given.

(4) If multiple lines exist:

(a) the markings must indicate the number of lines; or

(b) all lines must be marked.

Amended by Chapter 369, 2024 General Session

54-8a-5.5 Determining the precise location of marked underground facilities.

(1) An excavator may not use any power-operated or power-driven excavating or boring equipment within the tolerance zone unless:
  (a) the excavator determines the exact location of the underground facility by excavating with hand tools to confirm that the excavation will not damage the underground facilities; or
  (b) the operator provides an excavator with written or electronic notice waiving the requirement that the excavator determine the exact location of the underground facilities by excavating with hand tools.
(2) Power-operated or power-driven excavating or boring equipment may be used for the removal of any existing pavement if there is no underground facility contained in the pavement, as marked by the operator.

Amended by Chapter 369, 2024 General Session

54-8a-5.8 Excavator access.

An excavator may enter or access an owner's property or dwelling to locate a sewer lateral with the owner's permission.

Enacted by Chapter 209, 2009 General Session

54-8a-6 Duties and liabilities of an excavator.

(1) Damage to an underground facility by an excavator who excavates but fails to comply with Section 54-8a-4, is prima facie evidence that the excavator is liable for any damage caused by the negligence of that excavator.
(2)
  (a) An excavator is not liable for a civil penalty under this chapter if the excavator has:
    (i) given proper notice of the proposed excavation as required in this chapter;
    (ii) marked the area of the proposed excavation as required in Section 54-8a-4;
    (iii) complied with Section 54-8a-5.5; and
    (iv) complied with Section 54-8a-7.
  (b) An excavator is liable for damage incurred by an operator if:
    (i) the operator complies with Section 54-8a-5; and
    (ii) the damage occurs within the tolerance zone.

Amended by Chapter 369, 2024 General Session

54-8a-7 Notice of contact or damage -- Repairs.

(1) An excavator performing an excavation that results in contact or damage to a facility shall:
  (a) provide notice of the contact or damage including the location and nature of any damage immediately to the operator;
  (b) allow the operator reasonable time when considering the safety of the area, and the availability of materials, labor, or equipment, to make or coordinate necessary repairs before completing the excavation in the immediate area of the facility; and
  (c) delay any backfilling in the immediate area of the contacted or damaged facility until the operator authorizes the excavator to resume backfilling.
(2) After receiving notification of contact or damage to a facility, the operator, or qualified personnel authorized by the operator, shall:

(a) expedite a response to examine the contacted or damaged facility; and
(b) make or coordinate necessary repairs to the contacted or damaged facility within eight business hours or notify the excavator that the repairs will take longer than eight business hours due to safety or availability of materials, labor, or equipment.

(3)
(a) An excavator that is responsible for an excavation where any contact or damage to a facility results in the discharge of electricity or escape of any flammable, toxic, or corrosive gas or liquid, or that endangers life, health, or property shall:
(i) immediately notify:
(A) emergency responders, including 911 services; and
(B) the facility operator; and
(ii) take reasonable measures to protect the excavator, other persons, property, and the environment until the operator or emergency responders arrive.

Amended by Chapter 369, 2024 General Session

54-8a-7.5 Third-party damages caused by failure to mark a facility.

(1) If an operator fails to mark a facility as required by this chapter and an excavator damages another operator's facility of a similar size and appearance that fits surface markings, the operator who failed to mark the operator's own facility is liable for the costs of damage to the facility caused by the excavator if:
(a) the excavator complies with Sections 54-8a-4, 54-8a-5.5, and 54-8a-6; and
(b) the excavator demonstrates that the damage is the direct result of the operator's failure to mark the operator's own facility.

(2) An excavator who damages a third-party operator's facility as described in Subsection (1):
(a) shall pay for the costs of repairing the damaged facility; and
(b) may seek recovery of the costs of damage from the operator that failed to mark the operator's own facility.

(3) Resolution of a dispute under this section may be in accordance with Section 54-8a-13.

Amended by Chapter 369, 2024 General Session

54-8a-8 Civil penalty -- Exceptions -- Other remedies.

(1) A civil penalty may be imposed for a violation of this chapter as provided in this section.

(2) A civil penalty under this section may be imposed on:
(a) any person that violates this chapter in an amount no greater than $5,000 for each violation with a maximum civil penalty of $100,000 per excavation; or
(b) an excavator that fails to provide notice of an excavation in accordance with Section 54-8a-4 in an amount no greater than $500 in addition to the amount under Subsection (2)(a), regardless of whether the excavation resulted in damage to a facility.

(3) Notwithstanding Subsection (2)(a), a penalty under this chapter may not be imposed on an excavator or operator unless the excavator or operator fails to comply with this chapter and damages an underground facility.

(4) The amount of a civil penalty under this section shall be made taking into consideration the following:
(a) the excavator's or operator's history of any prior violation or penalty;
(b) the seriousness of the violation;
(c) any discharge or pollution resulting from the damage;

(d) the hazard to the health or safety of the public;
(e) the degree of culpability and willfulness of the violation;
(f) any good faith of the excavator or operator; and
(g) any other factor considered relevant, including the number of past excavations conducted by the excavator, the number of location requests made by the excavator and the number of location markings made for the excavator or by the operator.

(5) "Good faith," as used in Subsection (4)(f), includes actions taken before the filing of an action for civil penalty under this section to:
(a) remedy, in whole or in part, a violation of this chapter; or
(b) mitigate the consequences and damages resulting from a violation of this chapter.

(6)
(a) A civil penalty may not be imposed on an excavator if the damage to an underground facility results from an operator's:
(i) failure to mark;
(ii) inaccurate marking or locating of the operator's underground facilities; or
(iii) failure to comply with Section 54-8a-5.
(b) In addition to or in lieu of part of or all of a civil penalty, the excavator or operator may be required to undertake actions that are designed to prevent future violations of this chapter, including attending safety and compliance training, improving internal monitoring and compliance processes and procedures, or any other action that may result in compliance with this chapter.

(7) Subsection (1) does not apply to an excavation made:
(a) during an emergency, if reasonable precautions are taken to protect any underground facility;
(b) in agricultural operations;
(c) for the purpose of finding or extracting natural resources; or
(d) with hand tools on property owned or occupied by the excavator.

(8)
(a) A civil penalty under this section is in addition to any damages that an operator or an excavator may seek to recover.
(b) In an action brought under this section, the prevailing party shall be awarded its costs and attorney fees as determined by the court.

Amended by Chapter 369, 2024 General Session

54-8a-9 Association for mutual receipt of excavation notices.

(1)
(a)
(i) Two or more operators may form and operate a statewide association providing for mutual receipt of notice of excavation activities.
(ii) When an association is operational, notice to the association shall be given pursuant to Section 54-8a-4.
(b)
(i) When an association is formed, each operator with an underground facility in the state shall become a member of the association and participate in it to:
(A) receive an excavation notice submitted to the association;
(B) receive the services furnished by it;
(C) pay its share of the cost for the service furnished; and

(D) provide electronic positive response information to the association's electronic positive response system, if the system is utilized by the operator.

(ii) If an operator does not comply with Subsection (1)(b)(i) and Section 54-8a-5, the operator is liable for damages incurred by an excavator who complies with this chapter's requirements.

(2) The association's notification center shall:

(a) notify members and participants in the relevant geographic area within 24 hours after receiving an excavation notice;

(b) maintain a record of any notice received for a period of five years to document compliance with the requirements of this chapter; and

(c) implement and operate a statewide electronic positive response system.

(3) The association and its notification center shall not be responsible for:

(a) resolving reports of alleged violations of this chapter; or

(b) a failure on the part of an excavator or operator to perform an excavator's or operator's responsibilities under this chapter.

(4) An association contacted by a public agency to identify a utility company, in accordance with Section 54-3-29, shall provide the public agency with a list, including contact information to the extent available, of each utility company of which the association is aware that has a utility facility within the area identified by the public agency.

Amended by Chapter 369, 2024 General Session

54-8a-9.5 Inspection of records.

The books and records of an association shall be open to inspection by its members during normal business hours upon 48 hours advance notice.

Enacted by Chapter 198, 1998 General Session

54-8a-10 Installation of nonmetallic facilities.

Any operator installing a nonmetallic facility, such as a sewer, water, or fiber optic line, shall install the nonmetallic facility so that it can be located with standard underground facility detection devices or in a concrete conduit system.

Amended by Chapter 344, 2008 General Session

54-8a-10.5 Installation and location of sewer lateral cleanouts -- Records.

(1)

(a) An operator or person installing or replacing a sewer lateral cleanout beginning August 1, 2009 shall install or replace the sewer lateral cleanout in a manner so that the lateral can be located, including:

(i) house sheets; or

(ii) electronic markers.

(b) An operator or person installing a sewer lateral cleanout shall notify the sewer operator of the sewer lateral cleanout location for record keeping purposes.

(2) Beginning on August 1, 2009, a sewer operator shall maintain records identifying where all new, replaced, or contractor-identified sewer lateral cleanouts are located within the sewer operator's jurisdiction.

(3)

(a) A sewer operator shall provide to an excavator information in the sewer operator's possession pertaining to a sewer lateral cleanout location within the sewer operator's jurisdiction.
(b) The sewer operator shall provide the information within 48 hours of the excavator's request.

Enacted by Chapter 209, 2009 General Session

54-8a-11 Applicability of federal law.

The following persons are subject to the provisions of Title 49, Code of Federal Regulations, Part 198, Regulations for Grants to Aid State Pipeline Safety Programs, including those provisions relating to damage to underground facilities:
(1) an operator, to the extent subject to the Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60101 et seq.;
(2) an excavator; and
(3) the association.

Amended by Chapter 369, 2024 General Session

Superseded 7/1/2024

54-8a-12 Enforcement -- Attorney general.

(1)
(a) The attorney general may bring an action in the district court located in the county in which the excavation is located to enforce this chapter.
(b) The right of any person to bring a civil action for damage arising from an excavator's or operator's actions or conduct relating to underground facilities is not affected by:
(i) a proceeding commenced by the attorney general under this chapter; or
(ii) the imposition of a civil penalty under this chapter.
(c) If the attorney general does not bring an action under Subsection (1)(a), the operator or excavator may pursue any remedy, including a civil penalty.
(2) Any civil penalty imposed and collected under this chapter shall be deposited into the General Fund.

Enacted by Chapter 344, 2008 General Session

Effective 7/1/2024

54-8a-12 Enforcement -- Attorney general.

(1)
(a)
(i) The attorney general may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to enforce this chapter.
(ii) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, the attorney general shall bring the action described in Subsection (1)(a)(i) in the county in which the excavation is located if the attorney general brings the action in the district court.
(b) The right of any person to bring a civil action for damage arising from an excavator's or operator's actions or conduct relating to underground facilities is not affected by:
(i) a proceeding commenced by the attorney general under this chapter; or
(ii) the imposition of a civil penalty under this chapter.
(c) If the attorney general does not bring an action under Subsection (1)(a), the operator or excavator may pursue any remedy, including a civil penalty.

(2) Any civil penalty imposed and collected under this chapter shall be deposited into the General Fund.

Amended by Chapter 158, 2024 General Session

54-8a-13 Underground Facilities Damage Dispute Board -- Arbitration -- Relationship with Public Service Commission.

(1) There is created within the commission the Underground Facilities Damage Dispute Board to arbitrate, or parties may mutually agree to mediate, a dispute arising from:
  (a) an operator's or excavator's violation of this chapter; and
  (b) damage caused by excavation during an emergency.
(2) The board consists of five members appointed by the governor as follows:
  (a) one member from a list of names provided to the governor by a group representing operators;
  (b) one member from a list of names provided to the governor by the Associated General Contractors;
  (c) one member from a list of names provided to the governor by Blue Stakes of Utah;
  (d) one member from a list of names provided to the governor by the Utah Home Builders Association; and
  (e) one member from the Division of Public Utilities.
(3)
  (a) A member of the board:
    (i) shall be appointed for a three-year term; and
    (ii) may continue to serve until the member's successor takes office.
  (b) At the time of appointment, the governor shall stagger the terms of the members to ensure that approximately 1/3 of the members of the board are reappointed each year.
  (c) A vacancy in the board shall be filled:
    (i) for the unexpired term; and
    (ii) in the same manner as the board member is initially appointed.
  (d) The board shall select an alternate for a specific board member to serve on a specific case if it becomes necessary to replace a member who has a conflict of interest because a dispute involves that member or that member's employer.
(4) Three members of the board constitute a quorum.
(5) The board may, upon agreement of the disputing parties, arbitrate or mediate a dispute regarding damages, not including personal injury damages, arising between:
  (a) an operator;
  (b) an excavator;
  (c) a property owner; or
  (d) any other interested party.
(6) At least four members of the board shall be present and vote on an arbitration decision.
(7) An arbitration before the board shall be consistent with Title 78B, Chapter 11, Utah Uniform Arbitration Act.
(8) The prevailing party in an arbitration conducted under this section shall be awarded its costs and attorney fees in an amount determined by the board.
(9) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  (a) Section 63A-3-106;
  (b) Section 63A-3-107; and
  (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(10) The commission shall provide administrative support to the board.

Amended by Chapter 369, 2024 General Session

Chapter 8b
Public Telecommunications Law

54-8b-1 Title.

This chapter is known as the "Public Telecommunications Law."

Amended by Chapter 269, 1995 General Session

54-8b-1.1 Legislative policy declarations.

The Legislature declares it is the policy of the state to:

(1) endeavor to achieve the universal service objectives of the state as set forth in Section 54-8b-11;

(2) facilitate access to high quality, affordable public telecommunications services to all residents and businesses in the state;

(3) encourage the development of competition as a means of providing wider customer choices for public telecommunications services throughout the state;

(4) allow flexible and reduced regulation for telecommunications corporations and public telecommunications services as competition develops;

(5) facilitate and promote the efficient development and deployment of an advanced telecommunications infrastructure, including networks with nondiscriminatory prices, terms, and conditions of interconnection;

(6) encourage competition by facilitating the sale of essential telecommunications facilities and services on a reasonably unbundled basis;

(7) seek to prevent prices for tariffed public telecommunications services or price-regulated services from subsidizing the competitive activities of regulated telecommunications corporations;

(8) encourage new technologies and modify regulatory policy to allow greater competition in the telecommunications industry;

(9) enhance the general welfare and encourage the growth of the economy of the state through increased competition in the telecommunications industry; and

(10) endeavor to protect customers who do not have competitive choice.

Enacted by Chapter 269, 1995 General Session

54-8b-2 Definitions.

As used in this chapter:

(1) "Access line" means a circuit-switched connection, or the functional equivalent of a circuit-switched connection, from an end-user to the public switched network.

(2)

(a) "Aggregator" means any person or entity that:

(i) is not a telecommunications corporation;

(ii) in the ordinary course of its business makes operator assisted services available to the public or to customers and transient users of its business or property through an operator service provider; and

(iii) receives from an operator service provider by contract, tariff, or otherwise, commissions or compensation for calls delivered from the aggregator's location to the operator service provider.

(b) "Aggregator" may include any hotel, motel, hospital, educational institution, government agency, or coin or coinless telephone service provider so long as that entity qualifies under Subsection (2)(a).

(3) "Basic residential service" means a local exchange service for a residential customer consisting of:

(a) a single line with access to the public switched network;

(b) touch-tone or the functional equivalent;

(c) local flat-rate unlimited usage, exclusive of extended area service;

(d) single-party service;

(e) a free phone number listing in directories received for free;

(f) access to operator services;

(g) access to directory assistance;

(h) access to lifeline and telephone relay assistance;

(i) access to 911 and E911 emergency services;

(j) access to long-distance carriers;

(k) access to toll limitations services;

(l) other services as may be determined by the commission; and

(m) no feature.

(4) "Certificate" means a certificate of public convenience and necessity issued by the commission authorizing a telecommunications corporation to provide specified public telecommunications services within a defined geographic service territory in the state.

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

(6) "Essential facility or service" means any portion, component, or function of the network or service offered by a provider of local exchange services:

(a) that is necessary for a competitor to provide a public telecommunications service;

(b) that cannot be reasonably duplicated; and

(c) for which there is no adequate economic alternative to the competitor in terms of quality, quantity, and price.

(7)

(a) "Feature" means a custom calling service available from the central office switch, including call waiting, call forwarding, three-way calling, and similar services.

(b) "Feature" does not include long distance calling.

(8) "Federal Telecommunications Act" means the Communications Act of 1934, as amended, and the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

(9) "Incumbent telephone corporation" means a telephone corporation, its successors or assigns, which, as of May 1, 1995, held a certificate to provide local exchange services in a defined geographic service territory in the state.

(10) "Intrastate telecommunications service" means any public telecommunications service in which the information transmitted originates and terminates within the boundaries of this state.

(11) "Local exchange service" means the provision of telephone lines to customers with the associated transmission of two-way interactive, switched voice communication within the

geographic area encompassing one or more local communities as described in maps, tariffs, or rate schedules filed with and approved by the commission.

(12) "Mobile telecommunications service" means a mobile telecommunications service:

(a) that is defined as a mobile telecommunications service in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124; and

(b) in which the information transmitted originates and terminates in one state.

(13)

(a) "New public telecommunications service" means a service offered by a telecommunications corporation which that corporation has never offered before.

(b) "New public telecommunications service" does not include:

(i) a tariff, price list, or competitive contract that involves a new method of pricing any existing public telecommunications service;

(ii) a package of public telecommunications services that includes an existing public telecommunications service; or

(iii) a public telecommunications service that is a direct replacement for:

(A) a fully regulated service;

(B) an existing service offered pursuant to a tariff, price list, or competitive contract; or

(C) an essential facility or an essential service.

(14) "Operator assisted services" means services which assist callers in the placement or charging of a telephone call, either through live intervention or automated intervention.

(15) "Operator service provider" means any person or entity that provides, for a fee to a caller, operator assisted services.

(16) "Price-regulated service" means any public telecommunications service governed by Section 54-8b-2.3.

(17) "Public switched network" means the same as that term is defined in 47 C.F.R. Sec. 20.3.

(18) "Public telecommunications service" means the two-way transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means offered to the public generally.

(19) "Substantial compliance" with reference to a rule or order of the commission means satisfaction of all material obligations in a manner consistent with the rule or order.

(20) "Telecommunications corporation" means any corporation or person, and their lessees, trustees, receivers, or trustees appointed by any court, owning, controlling, operating, managing, or reselling a public telecommunications service.

(21)

(a) "Total service long-run incremental cost" means the forward-looking incremental cost to a telecommunications corporation caused by providing the entire quantity of a public telecommunications service, network function, or group of public telecommunications services or network functions, by using forward-looking technology, reasonably available, without assuming relocation of existing plant and equipment.

(b) The "long-run" means a period of time long enough so that cost estimates are based on the assumption that all inputs are variable.

Amended by Chapter 423, 2017 General Session

54-8b-2.1 Competitive entry.

(1) Notwithstanding any provision of Section 54-4-25 to the contrary, the commission may issue a certificate to a telecommunications corporation authorizing it to compete in providing local exchange services or other public telecommunications services in all or part of the

service territory of an incumbent telephone corporation, except until December 31, 1997, a telecommunications corporation may not receive a certificate to compete in providing local exchange service within any local exchange with fewer than 5,000 access lines that is owned or controlled by an incumbent telephone corporation with fewer than 30,000 access lines in the state. The procedure specified in Subsection (3)(c) for excluding competition within a local exchange with fewer than 5,000 access lines shall apply on December 31, 1997 or thereafter.

(2) The commission shall issue a certificate to the applying telecommunications corporation if the commission determines that:

(a) the applicant has sufficient technical, financial, and managerial resources and abilities to provide the public telecommunications services applied for; and

(b) the issuance of the certificate to the applicant is in the public interest.

(3)

(a) The commission shall process the application in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(b) Each telecommunications corporation holding a certificate to provide public telecommunications service within the geographic area where an applicant is seeking to provide telecommunications service shall be provided notice of the application and granted automatic status as an intervenor.

(c) An intervening incumbent telephone corporation serving fewer than 30,000 access lines in the state may petition the commission to exclude from an application filed pursuant to Subsection (1) any local exchange with fewer than 5,000 access lines that is owned or controlled by the intervening incumbent telephone corporation. Upon finding that the action is consistent with the public interest, the commission shall order that the application exclude such local exchange.

(d) The commission shall approve or deny the application under this section within 240 days after it is filed. If the commission has not acted on an application within 240 days, the application is considered granted.

(4) If the commission issues a certificate to a competitive telecommunications corporation to provide local exchange services in a local exchange that has fewer than 5,000 lines and that is controlled by an incumbent telephone corporation with fewer than 30,000 access lines in the state, the commission shall impose an obligation upon the competitive telecommunications corporation to provide public telecommunications services to any customer or class of customers who requests service within the local exchange. The competing telecommunications corporation's obligation to serve shall be no greater than that of the incumbent telephone corporation.

(5) An incumbent telephone corporation with fewer than 30,000 access lines in the state may not be required to become a carrier of intrastate toll services.

Amended by Chapter 382, 2008 General Session

54-8b-2.2 Interconnection.

(1)

(a)

(i) The commission may require any telecommunications corporation to interconnect its essential facilities with another telecommunications corporation that provides public telecommunications services in the same, adjacent, or overlapping service territory.

(ii) Interconnecting telecommunications corporations shall permit the mutual exchange of traffic between their networks without unreasonable blocking or other unreasonable restrictions on

the flow of traffic. In determining unreasonable blocking or unreasonable restrictions, the commission shall, among other things, take into account the necessity and time required for adapting the network to respond to significant changes in usage patterns.

(b)

(i) Whenever the commission grants a certificate to one or more telecommunications corporations to provide public telecommunications services in the same or overlapping service territories, all telecommunications corporations providing public telecommunications services in the affected area shall have the right to interconnect with the essential facilities and to purchase the essential services of all other certificate holders operating in the same area on a nondiscriminatory and reasonably unbundled basis.

(ii) Each telecommunications corporation shall permit access to and interconnection with its essential facilities and the purchase of its essential services on terms and conditions, including price, no less favorable than those the telecommunications corporation provides to itself and its affiliates.

(c) Nothing in this section shall prevent a telecommunications corporation from entering into nondiscriminatory agreements for interconnection with its essential facilities and the purchase and sale of essential services.

(d)

(i) A telecommunications corporation shall file with the commission the prices, terms, and conditions of any agreement it makes for the interconnection of essential facilities or the purchase or sale of essential services.

(ii) The agreement shall take effect 10 days after filing.

(iii) Each telecommunications corporation shall allow any other telecommunications corporation to obtain interconnection with its essential facilities and to purchase essential services on prices, terms, and conditions no less favorable than those on file with the commission.

(e) If there is a dispute over interconnection of essential facilities, the purchase and sale of essential services, or the planning or provisioning of facilities or unbundled elements, one or both of the disputing parties may bring the dispute to the commission, and the commission, by order, shall resolve the dispute on an expedited basis.

(f) It is not a discriminatory pricing practice to vary prices to reflect genuine cost differences.

(2)

(a) The commission shall adopt rules or issue an interim order which implements by December 31, 1996, the competitive provision of facilities-based intraLATA toll and local exchange services.

(b) The rules or interim order shall address those issues the commission determines are essential for a competing telecommunications corporation to provide intraLATA toll and local exchange services and necessary to protect the public interest, including the interconnection with essential facilities and the purchase and sale of essential services of telecommunications corporations authorized to provide public telecommunications services in the same or overlapping service territories on a nondiscriminatory and reasonably unbundled basis.

(3)

(a) By December 31, 1997, the commission shall adopt additional rules or issue a final order to implement the competitive provision of facilities-based intraLATA toll and local exchange services.

(b) The rules or final order shall address other issues relating to:

(i) competition for intraLATA toll and local exchange services;

(ii) blocking, timing of provisioning of unbundled elements, and service quality standards for interconnecting carriers;

(iii) the transition to a competitive market; and
(iv) the protection of the public interest.
(4) Nothing in this section shall require or prohibit the commission from ordering changes in dialing patterns for intraLATA toll services.
(5) If the commission, by order, approves the application of a telecommunications corporation to provide public telecommunications services in all or part of the service territory certificated to an incumbent telephone corporation before the adoption of the rules or final order described in Subsection (3), the commission may:
(a) order the interconnection of essential facilities and the purchase and sale of the essential services of a telecommunications corporation with those of a competing telecommunications corporation on such terms and conditions and to the extent necessary to allow the competing telecommunications corporation to operate under authority granted by the commission; and
(b) address and resolve, by order, other issues necessary for the competitive provision of intraLATA toll and local exchange services.

Amended by Chapter 226, 1997 General Session

54-8b-2.3 Pricing flexibility.
(1)
(a) A telecommunications corporation that obtains a certificate to compete with the incumbent telephone corporation in a defined geographic area pursuant to Section 54-8b-2.1 may price any public telecommunications services it is authorized to offer, or any new public telecommunications service, by means of a price list or competitive contract.
(b) Before the telecommunications corporation begins providing any authorized public telecommunications service, it shall notify the commission of:
(i) its intent to begin providing the service; and
(ii) the defined geographic area in which it will provide the service.
(2)
(a) Notwithstanding other requirements of this chapter relating to pricing flexibility, beginning on May 2, 2005, an incumbent telephone corporation may offer retail end user public telecommunications services by means of a price list or competitive contract in the same manner as a competing telecommunications corporation as provided in Subsection (1):
(i) if the incumbent telephone corporation:
(A) is in substantial compliance with rules and orders of the commission issued under Section 54-8b-2.2; and
(B) has more than 30,000 access lines; and
(ii) except as provided in Subsection (2)(b).
(b)
(i) The incumbent telephone corporation's pricing flexibility shall be the same as a competing telecommunications corporation's pricing flexibility for all public telecommunications services.
(ii) The incumbent telephone corporation shall offer basic residential service throughout the area in which the incumbent telephone corporation is authorized by certificate to provide basic residential service.
(3) Each price list shall:
(a) be filed with the commission:
(i) electronically; or
(ii) by paper copies only if permitted by commission rule;

(b) describe the public telecommunications service;
(c) set forth the basic terms and conditions upon which the public telecommunications service is offered; and
(d) list the prices to be charged for the public telecommunications service or the basis on which the services will be priced.
(4) Prices, terms, and conditions offered under price lists or competitive contracts that are different from tariff prices, terms, and conditions for the same services are not considered discriminatory under Section 54-3-8 and Subsection 54-8b-3.3(2).
(5) A price list filed with the commission under this section shall take effect five days after it is filed with the commission.
(6)
(a) Except as provided in Subsection (6)(b), the prices, terms, and conditions of a public telecommunications service offered by a telecommunications corporation pursuant to a competitive contract with a retail customer need not be filed with the commission.
(b) Notwithstanding Subsection (6)(a), a copy of a competitive contract shall be provided to the commission or division of public utilities if the commission or division of public utilities, pursuant to general investigatory powers, requests a copy of the competitive contract.
(7)
(a) Subject to Subsection (7)(b), the commission may, as determined necessary to protect the public interest, set an upper limit on the price that may be charged by telecommunications corporations for public telecommunications services that may be priced by means of a price list or competitive contract in a defined geographic area.
(b) The upper limit on price imposed under Subsection (7)(a) shall be applied to all telecommunications corporations holding a certificate to provide the public telecommunications services in the defined geographic area in a competitively neutral manner.
(8)
(a) The commission may revoke the authority of a telecommunications corporation to offer a public telecommunications service pursuant to a price list or competitive contract or the commission may adopt conditions or restrictions on the telecommunications corporation's pricing flexibility if the commission finds:
(i)
(A) the telecommunications corporation has materially violated statutes or rules applicable to the specific service;
(B) there has been or there is an imminent threat of a material and substantial diminution in the level of competition; or
(C) competition has not developed; and
(ii) revocation or conditions or restrictions on the telecommunications corporation's pricing flexibility is in the public interest.
(b) The party asserting that revocation or conditions or restrictions on the telecommunications corporation's pricing flexibility should be imposed shall bear the burden of proof.
(9) The commission shall establish rules or procedures to protect confidential, proprietary, and competitively sensitive information provided to the commission or the division pursuant to this section.
(10)
(a) An incumbent telephone corporation serving fewer than 30,000 access lines in the state may petition the commission to be regulated under price regulation rather than traditional rate of return regulation.

(b) In implementing price regulation for an incumbent telephone corporation serving fewer than 30,000 access lines, the commission may modify the requirements of any provision of this section if necessary to the individual circumstances of the incumbent telephone corporation.

Amended by Chapter 10, 2009 General Session

54-8b-3 Exemptions from requirements.

(1)
(a) The commission, on its own initiative or in response to an application by a telecommunications corporation, a public agency, or a user of a public telecommunications service, may, after public notice and a hearing, issue an order exempting any telecommunications corporation or public telecommunications service from any requirement of this title, including any requirement or limitation relating to a telecommunication corporation's earnings, rate base, or pricing of public telecommunications services.
(b) The commission may issue an order described in Subsection (1)(a), after an informal adjudication, without a hearing if:
(i) the matter is not a proceeding described in Subsection 54-1-3(2)(a);
(ii) a party to an application submitted under Subsection (1)(a) requests an informal adjudication; and
(iii) no person opposes the request for informal adjudication before 10 business days after the day on which the party files the request.

(2) The commission shall specify in the order any requirements, terms, or conditions which may apply to any exemption.

(3) An exemption may be granted for the entire service territory of a telecommunications corporation or for a specific geographic area of the service territory.

(4) The commission may issue an order for an exemption only if it finds that:
(a) the telecommunications corporation or service is subject to effective competition; and
(b) the exemption is in the public interest.

(5) In determining if the telecommunications corporation or service is subject to effective competition, the commission shall consider all relevant factors, which may include:
(a) the extent to which competing telecommunications services are available from alternative telecommunications providers;
(b) the ability of alternative telecommunications providers to offer competing telecommunications services that are functionally equivalent or substitutable and reasonably available at comparable prices, terms, quality, and conditions;
(c) the market share of the telecommunications corporation for which an exemption is proposed;
(d) the extent of economic or regulatory barriers to entry;
(e) the impact of potential competition; and
(f) the type and degree of exemptions to this title that are proposed.

(6) In determining if the proposed exemption is in the public interest, the commission shall consider, in addition to other relevant factors, the impact the proposed exemption would have on captive customers of the telecommunications corporation.

(7)
(a) The commission shall approve or deny any application for exemption under this section within 240 days, except that the commission may by order defer action for an additional 30-day period.
(b) If the commission has not acted on any application within the permitted time period, the application is considered granted.

Amended by Chapter 130, 2017 General Session

54-8b-3.3 Services that must be offered on a nondiscriminatory basis -- Public telecommunications to be cost-based -- Packaged services -- Quality of service standards.

(1)
(a) As used in this section, "cost-based" means that the prices for the telecommunications services shall be established after taking into consideration the total service long-run incremental cost of providing the service.
(b) The term "cost-based" does not prevent the establishment of prices:
(i) that promote the universal availability of service in the state; or
(ii) that are offered by a telecommunications corporation for a public telecommunications service in a promotional offer, or market trial, or to meet competition.

(2) Except with respect to a price regulated service offered in a promotional offer, or market trial, or to meet competition and notwithstanding any other provision of this chapter:
(a) a telecommunications corporation with more than 30,000 access lines in the state that provides a public telecommunications service may not:
(i) as to the pricing and provisioning of the public telecommunications service, make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality; or
(ii) in providing services that utilize the local exchange network:
(A) make or give any undue or unreasonable preference or advantage to any person, corporation, or locality; or
(B) subject any person, corporation, or locality to any undue or unreasonable prejudice or disadvantage;
(b) public telecommunications services provided by a telecommunications corporation with more than 30,000 access lines in the state shall be nondiscriminatory, cost-based, and subject to resale as determined by the commission; and
(c) public telecommunications services may be packaged with other services, so long as they are also offered on a separate, unbundled basis.

(3)
(a) In order to promote continued investment in the public telecommunications network and to improve the quality of service for end users, the commission may adopt rules governing service quality standards to end users for all public telecommunications services.
(b) The commission shall have the authority to enforce the rules adopted under this Subsection (3) by granting billing credits to the affected end user where the noncompliance is for reasons within the telecommunications corporation's control.
(c) Rules adopted under this Subsection (3) on or after January 1, 2005, shall impose no greater requirements or obligations on any telecommunications corporation:
(i) than were applicable to that telecommunications corporation under rules adopted before January 1, 2005; or
(ii) than were imposed on telecommunications corporations that were not incumbent telephone corporations, if the telecommunications corporation is not an incumbent telephone corporation.
(d) An incumbent telephone corporation with less than 30,000 access lines in the state is exempt from this Subsection (3).

Amended by Chapter 5, 2005 General Session

54-8b-3.4 Exemption from merger and acquisition approval by commission.

(1)

(a) Except as provided in Subsection (2), a telecommunications corporation is exempt from the requirements of Sections 54-4-28, 54-4-29, and 54-4-30 if the telecommunications corporation is:

(i) a competitive entrant pursuant to Section 54-8b-2.1; or

(ii) an incumbent telecommunications corporation that has pricing flexibility pursuant to Section 54-8b-2.3.

(b) A telecommunications corporation that is exempt under Subsection (1) shall notify the commission in writing prior to the conclusion of any transaction that would otherwise be subject to Section 54-4-28, 54-4-29, or 54-4-30.

(2) The exemption described in Subsection (1) does not apply if the telecommunications corporation receives high cost support from the Universal Public Telecommunications Support Fund established in Section 54-8b-15, other than a one-time distribution described in Section 54-8b-15.

Enacted by Chapter 85, 2019 General Session

54-8b-4.5 Commission order -- Negotiated provisions of services -- Contracts under this section.

(1)

(a) The commission may enter an order partially or wholly exempting any public telecommunications service from any requirement of this title relating to rates, tariffs, or fares.

(b) The commission may authorize the provision of all or any portion of a public telecommunications service under stated or negotiated terms to any person that is committed to the acquisition of comparable telecommunications services from an alternative source of supply through construction, lease, or any other form of acquisition.

(2) An incumbent telephone corporation may negotiate with the person or entity within the incumbent telephone corporation's service territory for the provision of retail end user public telecommunications services without regard to the provisions of any tariffs on file and approved by the commission, or any price list or competitive contract filed under Section 54-8b-2.3 with the commission but any rate, toll, fare, rental, charge, or classification of service in such contracts shall comply with Section 54-8b-3.3.

(3)

(a) Within 10 days after the conclusion of the negotiations and prior to the execution of a contract under this section, the incumbent telephone corporation shall file with the commission the proposed final agreements and other evidence of the public telecommunications services to be provided, together with the charges and other conditions of the service.

(b)

(i) The commission may approve or deny an application, or begin adjudicative proceedings to consider approval of a contract under this section within 30 days of the filing of the application by the incumbent telephone corporation.

(ii) If the commission begins adjudicative proceedings, the contract is effective when the commission orders that it is effective.

(iii) If the commission fails to approve a contract under this section, or fails to begin adjudicative proceedings within 30 days, the final contract is effective.

(c) In determining whether or not to approve a contract under this section, the commission shall consider all relevant factors, including, whether or not the contract for any rate, toll, fare, rental, charge, or classification of service:
(i) complies with Section 54-8b-3.3;
(ii) provides for adequate service at just and reasonable rates.
(d) After a contract under this section has become effective, the commission shall in the next general rate case for that incumbent telephone corporation:
(i) review the contract for consistency with the factors stated in this Subsection (3); and
(ii) make any adjustment in its rate order, including retroactive adjustments, that are necessary to avoid cross subsidization from other regulated intrastate telecommunications services.
(e) Subsection (3) does not apply to an incumbent telephone corporation subject to price regulation for public telecommunications services under Section 54-8b-2.3.
(4) Any incumbent telephone corporation that provides public telecommunications services pursuant to a contract under this section may not offer the services under contract in a manner that unfairly discriminates between similarly situated customers.
(5) Subject to Subsection (4), terms and conditions offered in contracts under this section that are different from tariff terms and conditions for the same services are not considered discriminatory under Section 54-3-8 and Subsection 54-8b-3.3(2).

Amended by Chapter 5, 2005 General Session

54-8b-6 Prohibition on subsidization of telecommunications services.

A telecommunications corporation providing intrastate public telecommunications services may not subsidize its intrastate telecommunications services which are exempted from regulation or offered pursuant to a price list or competitive contract under authority of this chapter with proceeds from its other intrastate telecommunications services not so exempted or made subject to a price list or competitive contract. Similarly, proceeds from intrastate telecommunications services which are exempted from regulation or offered pursuant to a price list or competitive contract as authorized by this chapter may not subsidize other intrastate telecommunications services not so exempted or made subject to a price list or competitive contract.

Amended by Chapter 269, 1995 General Session

54-8b-7 Continuous jurisdiction of commission -- Orders.

The commission shall retain continuous jurisdiction over every telecommunications corporation or public telecommunications service exempted under this chapter and may exercise any statutory grant of power pertaining thereto, including the power to revoke or modify any order approving an exemption from regulation. The commission may, after notice and hearing, revoke or modify an order approving exemption, if after considering the factors in Subsection 54-8b-3(5), the commission finds such modification or revocation to be in the public interest.

Amended by Chapter 30, 1992 General Session

54-8b-8 Antitrust and restraint of trade laws not affected by chapter.

Nothing in this chapter shall in any way preempt, modify, exempt, abrogate, or otherwise affect any right, cause of action, liability, duty, or obligation arising from any federal, state, or local law governing unfair business practices or antitrust, restraint of trade, or other anti-competitive activity.

Enacted by Chapter 257, 1985 General Session

54-8b-9 Commission's jurisdiction under other provisions of title not enlarged or reduced by chapter.

(1) Nothing in this chapter shall be construed to enlarge or reduce the commission's jurisdiction over the services and entities for which jurisdiction is provided or excluded by other provisions of this title.

(2) Nothing in this chapter shall be construed to enlarge the commission's jurisdiction over:

(a) providers of:

(i) cellular or wireless telecommunications services; or

(ii) the one-way transmission to subscribers of video programming and the subscriber interaction, if any, which is required for the selection of the video programming; or

(b) telecommunications companies classified as cooperatives.

(3) Nothing in this chapter shall diminish the commission's authority to regulate the quality of telecommunications services provided by telecommunications corporations.

Amended by Chapter 269, 1995 General Session

54-8b-10 Imposing a surcharge to provide deaf, hard of hearing, and speech impaired individuals with telecommunication devices -- Definitions -- Procedures for establishing program -- Surcharge -- Administration and disposition of surcharge money.

(1) As used in this section:

(a) "Certified deaf, hard of hearing, or severely speech impaired individual" means any state resident who:

(i) is so certified by:

(A) a licensed physician;

(B) a licensed physician assistant;

(C) an otolaryngologist;

(D) a speech language pathologist;

(E) an audiologist; or

(F) a qualified state agency; and

(ii) qualifies for assistance under any low income public assistance program administered by a state agency.

(b) "Certified interpreter" means a person who is a certified interpreter under Title 35A, Chapter 13, Part 6, Interpreter Services for the Deaf and Hard of Hearing Act.

(c)

(i) "Telecommunication device" means any mechanical adaptation device that enables a deaf, hard of hearing, or severely speech impaired individual to use the telephone.

(ii) "Telecommunication device" includes:

(A) telecommunication devices for the deaf (TDD);

(B) telephone amplifiers;

(C) telephone signal devices;

(D) artificial larynxes; and

(E) adaptive equipment for TDD keyboard access.

(2) The commission shall establish a program whereby a certified deaf, hard of hearing, or severely speech impaired customer of a telecommunications corporation that provides service through a local exchange or of a wireless telecommunications provider may obtain a telecommunication

device capable of serving the customer at no charge to the customer beyond the rate for basic service.

(3)

(a) The program described in Subsection (2) shall provide a dual party relay system using third party intervention to connect a certified deaf, hard of hearing, or severely speech impaired individual with a normal hearing individual by way of telecommunication devices designed for that purpose.

(b) The commission may, by rule, establish the type of telecommunications device to be provided to ensure functional equivalence.

(4) The commission shall cover the costs of the program described in this section from the Universal Public Telecommunications Service Support Fund created in Section 54-8b-15.

(5) In administering the program described in this section, the commission may use funds from the Universal Public Telecommunications Service Support Fund:

(a) for the purchase, maintenance, repair, and distribution of telecommunication devices;

(b) for the acquisition, operation, maintenance, and repair of a dual party relay system;

(c) for the general administration of the program;

(d) to train individuals in the use of telecommunications devices; and

(e) to contract, in compliance with Title 63G, Chapter 6a, Utah Procurement Code, with:

(i) an institution within the state system of higher education listed in Section 53B-1-102 for a program approved by the Utah Board of Higher Education that trains persons to qualify as certified interpreters; or

(ii) the Utah State Office of Rehabilitation created in Section 35A-1-202 for a program that trains persons to qualify as certified interpreters.

(6) The commission may create disbursement criteria and procedures by rule made under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for administering funds under Subsection (5).

(7) The commission shall solicit advice, counsel, and physical assistance from deaf, hard of hearing, or severely speech impaired individuals and the organizations serving deaf, hard of hearing, or severely speech impaired individuals in the design and implementation of the program.

Amended by Chapter 365, 2020 General Session

54-8b-11 Establishing just and reasonable rates.

In administering this title, the commission shall endeavor to make available high-quality, universal telecommunications services at just and reasonable rates for all classes of customers throughout this state.

Enacted by Chapter 96, 1989 General Session

Superseded 7/1/2024

54-8b-13 Rules governing operator assisted services.

(1) The commission shall make rules to implement the following requirements pertaining to the provision of operator assisted services:

(a) Rates, surcharges, terms, or conditions for operator assisted services shall be provided to customers upon request without charge.

(b) A customer shall be made aware, prior to incurring any charges, of the identity of the operator service provider handling the operator assisted call by a form of signage placed on or near the telephone or by verbal identification by the operator service provider.
(c) Any contract between an operator service provider and an aggregator shall contain language which assures that any person making a telephone call on any telephone owned or controlled by the aggregator or operator service provider can access:
(i) where technically feasible, any other operator service provider operating in the relevant geographic area; and
(ii) the public safety emergency telephone numbers for the jurisdiction where the aggregator's telephone service is geographically located.
(d) No operator service provider shall transfer a call to another operator service provider unless that transfer is accomplished at, and billed from, the call's place of origin. If such a transfer is not technically possible, the operator service provider shall inform the caller that the call cannot be transferred as requested and that the caller should hang up and attempt to reach another operator service provider through the means provided by that other operator service provider.
(2)
(a) The Division of Public Utilities shall be responsible for enforcing any rule adopted by the commission under this section.
(b) If the Division of Public Utilities determines that any person, or any officer or employee of any person, is violating any rule adopted under this section, the division shall serve written notice upon the alleged violator which:
(i) specifies the violation;
(ii) alleges the facts constituting the violation; and
(iii) specifies the corrective action to be taken.
(c) After serving notice as required in Subsection (2)(b), the division may request the commission to issue an order to show cause. After a hearing, the commission may impose penalties and, if necessary, may request the attorney general to enforce the order in district court.
(3)
(a) Any person who violates any rule made under this section or fails to comply with any order issued pursuant to this section is subject to a penalty not to exceed $2,000 per violation.
(b) In the case of a continuing violation, each day that the violation continues constitutes a separate and distinct offense.
(4) A penalty assessment under this section does not relieve the person assessed from civil liability for claims arising out of any act which was a violation of any rule under this section.

Amended by Chapter 324, 2010 General Session

Effective 7/1/2024
54-8b-13 Rules governing operator assisted services.
(1) The commission shall make rules to implement the following requirements pertaining to the provision of operator assisted services:
(a) Rates, surcharges, terms, or conditions for operator assisted services shall be provided to customers upon request without charge.
(b) A customer shall be made aware, prior to incurring any charges, of the identity of the operator service provider handling the operator assisted call by a form of signage placed on or near the telephone or by verbal identification by the operator service provider.

(c) Any contract between an operator service provider and an aggregator shall contain language which assures that any person making a telephone call on any telephone owned or controlled by the aggregator or operator service provider can access:
(i) where technically feasible, any other operator service provider operating in the relevant geographic area; and
(ii) the public safety emergency telephone numbers for the jurisdiction where the aggregator's telephone service is geographically located.
(d) No operator service provider shall transfer a call to another operator service provider unless that transfer is accomplished at, and billed from, the call's place of origin. If such a transfer is not technically possible, the operator service provider shall inform the caller that the call cannot be transferred as requested and that the caller should hang up and attempt to reach another operator service provider through the means provided by that other operator service provider.
(2)
(a) The Division of Public Utilities shall be responsible for enforcing any rule adopted by the commission under this section.
(b) If the Division of Public Utilities determines that any person, or any officer or employee of any person, is violating any rule adopted under this section, the division shall serve written notice upon the alleged violator which:
(i) specifies the violation;
(ii) alleges the facts constituting the violation; and
(iii) specifies the corrective action to be taken.
(c) After serving notice as required in Subsection (2)(b), the division may request the commission to issue an order to show cause.
(d) After a hearing, the commission may impose penalties and, if necessary, may request the attorney general to enforce the order in a court.
(3)
(a) Any person who violates any rule made under this section or fails to comply with any order issued pursuant to this section is subject to a penalty not to exceed $2,000 per violation.
(b) In the case of a continuing violation, each day that the violation continues constitutes a separate and distinct offense.
(4) A penalty assessment under this section does not relieve the person assessed from civil liability for claims arising out of any act which was a violation of any rule under this section.

Amended by Chapter 158, 2024 General Session

54-8b-14 Intrastate interexchange toll service prices.
(1) Prices for intrastate interexchange message toll services transmitted between two specific points shall be the same regardless of the point of origin.
(2) Subsection (1) applies only to services provided by telecommunications corporations subject to the jurisdiction of the commission.

Enacted by Chapter 269, 1995 General Session

54-8b-15 Universal Public Telecommunications Service Support Fund -- Commission duties -- Charges -- Lifeline program.
(1) For purposes of this section:

(a) "Broadband Internet access service" means the same as that term is defined in 47 C.F.R. Sec. 8.2.
(b) "Carrier of last resort" means:
(i) an incumbent telephone corporation; or
(ii) a telecommunications corporation that, under Section 54-8b-2.1:
(A) has a certificate of public convenience and necessity to provide local exchange service; and
(B) has an obligation to provide public telecommunications service to any customer or class of customers that requests service within the local exchange.
(c) "Connection" means an authorized session that uses Internet protocol or a functionally equivalent technology standard to enable an end-user to initiate or receive a call from the public switched network.
(d) "Fund" means the Universal Public Telecommunications Service Support Fund established in this section.
(e) "Non-rate-of-return regulated" means having price flexibility under Section 54-8b-2.3.
(f) "Rate-of-return regulated" means subject to regulation under Section 54-4-4.
(g) "Wholesale broadband Internet access service" means the end-user loop component of Internet access provided by a rate-of-return regulated carrier of last resort that is used to provide, at retail:
(i) combined consumer voice and broadband Internet access; or
(ii) stand-alone, consumer, broadband-only Internet access.
(2)
(a) There is established an expendable special revenue fund known as the "Universal Public Telecommunications Service Support Fund."
(b) The fund shall provide a mechanism for a qualifying carrier of last resort to obtain specific, predictable, and sufficient funds to deploy and manage, for the purpose of providing service to end-users, networks capable of providing:
(i) access lines;
(ii) connections; or
(iii) wholesale broadband Internet access service.
(c) The commission shall develop, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this section, policies and procedures to govern the administration of the fund.
(3) Subject to this section, the commission shall use funds in the Universal Public Telecommunications Service Support Fund to:
(a) fund the hearing and speech impaired program described in Section 54-8b-10;
(b) fund a lifeline program that covers the reasonable cost to an eligible telecommunications carrier, as determined by the commission, to offer lifeline service consistent with the Federal Communications Commission's lifeline program for low-income consumers;
(c) fund, for the purpose of providing service to end-users, a rate-of-return regulated or non-rate-of-return regulated carrier of last resort's deployment and management of networks capable of providing:
(i) access lines;
(ii) connections; or
(iii) wholesale broadband Internet access service that is consistent with Federal Communications Commission rules; and

(d) fund one-time distributions from the Universal Public Telecommunications Service Support Fund for a non-rate-of-return regulated carrier of last resort's deployment and management of networks capable of providing:
(i) access lines;
(ii) connections; or
(iii) broadband Internet access service.

(4)
(a) A rate-of-return regulated carrier of last resort is eligible for payment from the Universal Public Telecommunications Service Support Fund if:
(i) the rate-of-return regulated carrier of last resort provides the services described in Subsections (3)(c)(i) through (iii); and
(ii) the rate-of-return regulated carrier of last resort's reasonable costs, as determined by the commission, to provide public telecommunications service and wholesale broadband Internet access service are greater than the sum of:
(A) the rate-of-return regulated carrier of last resort's revenue from basic residential service considered affordable by the commission;
(B) the rate-of-return regulated carrier of last resort's regulated revenue derived from providing other public telecommunications service;
(C) the rate-of-return regulated carrier of last resort's revenue from rates approved by the Federal Communications Commission for wholesale broadband Internet access service; and
(D) the amount the rate-of-return regulated carrier of last resort receives from federal universal service funds.
(b) A non-rate-of-return regulated carrier of last resort is eligible for payment from the Universal Public Telecommunications Service Support Fund for reimbursement of reasonable costs as determined by the commission if the non-rate-of-return regulated carrier meets criteria that are:
(i) consistent with Subsections (2) and (3); and
(ii) developed by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(5) A rate-of-return regulated carrier of last resort that qualifies for funds under this section:
(a) is entitled to a rate of return equal to the weighted average cost of capital rate of return prescribed by the Federal Communications Commission for rate-of-return regulated carriers; and
(b) may use any depreciation method allowed by the Federal Communications Commission.

(6)
(a) The commission shall determine if a rate-of-return regulated carrier of last resort is correctly applying a depreciation method described in Subsection (5)(b).
(b) If the commission determines under Subsection (6)(a) that a rate-of-return regulated carrier of last resort is incorrectly applying a depreciation method or that the rate-of-return regulated carrier of last resort is not using a depreciation method allowed by the Federal Communications Commission, the commission shall issue an order that provides corrections to the rate-of-return regulated carrier of last resort's method of depreciation.

(7) A carrier of last resort that receives funds from the Universal Public Telecommunications Service Support Fund may only use the funds in accordance with this section within the area for which the carrier of last resort has a carrier of last resort obligation.

(8)

(a) Except as provided in Subsection (8)(b), each access line provider and each connection provider shall contribute to the Universal Public Telecommunications Service Support Fund through an explicit charge assessed by the commission on the access line provider or connection provider.

(b) The charge described in Subsection (8)(a) does not apply to a prepaid wireless telecommunications service, as defined in Section 69-2-405, that is subject to the service charge described in Subsection 69-2-405(2)(b).

(9) The commission shall calculate the amount of each explicit charge described in Subsection (8) using a method developed by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

(a) does not discriminate against:

(i) any access line or connection provider; or

(ii) the technology used by any access line or connection provider;

(b) is competitively neutral; and

(c) is a function of an access line or connection provider's:

(i) annual intrastate revenue;

(ii) number of access lines or connections in the state; or

(iii) a combination of an access line or connection provider's annual intrastate revenue and number of access lines or connections in the state.

(10) The commission shall develop the method described in Subsection (9) before January 1, 2018.

(11) An access line or connection provider that provides mobile telecommunications service shall contribute to the Universal Public Telecommunications Service Support Fund only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

(12) Nothing in this section shall be construed to enlarge or reduce the commission's jurisdiction or authority, as provided in other provisions of this title.

(13) A person that fails to make a required contribution to the fund created by this section, or that fails to comply with a commission directive concerning the person's books, records, or other information required by the commission to administer this section, is subject to applicable penalties.

(14) Nothing in this section gives the commission the authority:

(a) to regulate broadband Internet access service;

(b) to require a carrier of last resort to provide broadband Internet access service; or

(c) assess a contribution in violation of the Internet Tax Freedom Act, 47 U.S.C. Sec. 151 note.

(15)

(a) A facilities-based or nonfacilities-based wireless telecommunication provider is eligible for distributions from the Universal Telecommunications Service Support Fund under the lifeline program described in Subsection (3)(b) for providing lifeline service that is consistent with the Federal Communications Commission's lifeline program for low-income consumers.

(b) Except as provided in Subsection (15)(c), the commission may impose reasonable conditions for providing a distribution to a wireless telecommunication provider under the lifeline program described in Subsection (3)(b).

(c) The commission may not require a wireless telecommunication provider to offer unlimited local calling to a lifeline customer as a condition of receiving a distribution under the lifeline program described in Subsection (3)(b).

(16) The commission shall report to the Public Utilities, Energy, and Technology Interim Committee each year before November 1 regarding:

(a) the contribution method described in Subsection (9);

(b) the amount of distributions from and contributions to the Universal Public Telecommunications Service Support Fund during the last fiscal year;
(c) the availability of services for which Subsection (3) permits Universal Public Telecommunications Service Support Fund funds to be used; and
(d) the effectiveness and efficiency of the Universal Public Telecommunications Service Support Fund.

Amended by Chapter 294, 2020 General Session

54-8b-16 Public Service Commission authority to enforce interconnection service quality standards and interconnection agreements -- Grounds for filing complaint.

(1) For purposes of this section, "interconnection service quality standards" means specific, measurable criteria that shall be applied to a telecommunications corporation, including obligations pursuant to Section 251 of the Federal Telecommunications Act, regarding the telecommunications corporation's provision of or request for:
(a) interconnection services;
(b) services for resale;
(c) unbundled network elements; and
(d) access to operations support systems that support those services and elements.
(2) To serve the public interest and to enable the development and growth of competition within the telecommunications market in the state, the commission shall, by order when considered necessary by the commission, enforce:
(a) rules regarding interconnection service quality standards adopted by the commission under authority of this chapter;
(b) a commission approved interconnection agreement pursuant to Sections 251 and 252 of the Federal Telecommunications Act; and
(c) a statement of generally available terms under Section 252(f) of the Federal Telecommunications Act.
(3) An aggrieved party may file a complaint under Subsection 54-8b-2.2(1)(e) with the commission for a violation of:
(a) the terms of the commission's interconnection service quality rules;
(b) the terms or conditions of an interconnection agreement;
(c) a statement of generally available terms; or
(d) a telecommunications corporations' obligations under the Federal Telecommunications Act.
(4) In a proceeding described in Subsection (3), the commission shall have the power to enforce:
(a) the terms of the interconnection agreement;
(b) the commission's interconnection service quality rules;
(c) the statement of generally available terms; or
(d) the telecommunications corporation's obligations pursuant to the Federal Telecommunications Act.

Enacted by Chapter 96, 1998 General Session

54-8b-17 Procedures for enforcement of interconnection service quality -- Penalties for violation -- Funds collected.

(1) Proceedings under Subsection 54-8b-2.2(1)(e) shall be conducted in accordance with the following procedure:

(a) The complaint shall be served upon the defendant telecommunications corporation and filed with the commission. A copy of the complaint shall also be served upon the Division of Public Utilities.
(b) An answer or other responsive pleading to the complaint shall be filed with the commission not more than 10 days after receipt of service of the complaint. Copies of the answer or responsive pleading shall be served on the complainant and the Division of Public Utilities.
(c) A prehearing conference shall be held not later than 10 days after the complaint is filed.
(d)
(i) The commission shall commence a hearing on the complaint not later than 25 days after the complaint is filed, unless the commission finds that extraordinary conditions exist that warrant postponing the hearing date, in which case the commission shall commence the hearing as soon as practicable.
(ii) Parties shall be entitled to present evidence as provided by the commission's rules.
(e) The commission shall take final action on a complaint not more than 45 days after the complaint is filed unless:
(i) the commission finds that extraordinary conditions exist that warrant extending final action, in which case the commission shall take final action as soon as practicable; or
(ii) the parties agree to an extension of final action by the commission.
(2) The commission shall have the enforcement powers listed in Subsection (3) if, in the proceeding, the commission finds that:
(a) the telecommunications corporation has violated the terms of the commission's interconnection service quality rules;
(b) the telecommunications corporation has breached its obligations under the provisions of the Federal Telecommunications Act;
(c) either party to an approved interconnection agreement has violated the terms of the agreement; or
(d) either party has violated the terms of a statement of generally available terms.
(3) If the commission makes any of the findings described in Subsection (2), the commission shall:
(a) order the telecommunications corporation to:
(i) remedy the violation; and
(ii) comply, as applicable, with the terms of the commission's interconnection service quality rules, the interconnection agreement, or statement of generally available terms;
(b) if considered appropriate by the commission, prescribe the specific actions that the telecommunications corporation must take to remedy its violation, including a time frame for compliance and the submission of a plan to prevent future violations;
(c) if considered appropriate by the commission, impose a penalty on the defendant telecommunications corporation subject to the following:
(i) if the violation is of the duties imposed under Section 54-8b-2.2 or 54-8b-16, the commission may impose a penalty for such violation as provided in Section 54-7-25; or
(ii) if the violating telecommunications corporation is other than an incumbent telephone corporation with fewer than 50,000 access lines in this state, and the violation is of a duty imposed under an interconnection agreement, a statement of generally available terms, or the obligations of Section 251 of the Federal Telecommunications Act, the commission may impose a penalty subject to the following:
(A) if the commission finds that the violation was willful or intentional, the penalty may be in an amount of up to $5,000 per day and the period for which the penalty is levied shall commence on the date the commission finds the violation to have first occurred through and including the date the violation is corrected; or

(B) if the commission finds that the violation was not willful or intentional, the penalty may be in an amount prescribed by Section 54-7-25 and the period for which the penalty is levied shall commence on the day after the deadline for compliance in the commission's order.

(4)

(a) The commission shall have the authority, on its own or at the request of the injured telecommunications corporation, to investigate a party's compliance with the commission's order under Subsection (3)(c)(ii).

(b) If corrective or remedial action acceptable to the commission is not completed:

(i) 45 days after the deadline set by the commission, the commission may increase the penalty up to $10,000 per violation per day for a willful or intentional violation; or

(ii) 90 days after the deadline set by the commission, the commission may increase the penalty up to $4,000 per violation per day for a violation that is not willful or intentional.

(5)

(a) The penalty under Subsection (3)(c) shall be in addition to, and not in lieu of, civil damages or other remedies that may be available to the injured party.

(b) In determining the amount of the penalty or the amount agreed to in compromise, the commission shall consider:

(i) the appropriateness of the penalty to the size of the violating party;

(ii) the gravity of the violation;

(iii) the good faith of the defendant telecommunications corporation in attempting to achieve compliance after notification of the violation;

(iv) the impact of the violation to the establishment of competition; and

(v) the actual economic harm incurred by the plaintiff telecommunications corporation.

(c) Each day of a continuing violation or a failure to comply is a separate offense for purposes of levying a penalty under this section.

(6) All funds collected under this section shall go into the Universal Public Telecommunications Service Support Fund established under Section 54-8b-15, and shall be in addition to any contributions required of a telecommunications corporation under that section.

Enacted by Chapter 96, 1998 General Session

54-8b-18 Definitions -- Unauthorized change of telecommunications provider -- Unauthorized charges -- Procedures for verification -- Penalties -- Authority of commission.

(1) For purposes of this section:

(a) "Agents" includes any person, firm, or corporation representing a telecommunications corporation for purposes of requesting a change in a subscriber's telecommunications provider, but does not include a local service provider when executing a request submitted by another service provider or its agents.

(b) "Freeze" means a directive from a subscriber to retain the provider of public telecommunications services selected by the subscriber until the subscriber provides authorization for a change to another provider of public telecommunications services through any means by which a freeze is implemented.

(c) "Small commercial subscriber" is a person or entity conducting a business, agriculture, or other enterprise in the state having less than five telecommunications lines.

(d) "Subscriber" means a corporation, person, or government, or a person acting legally on behalf of a corporation, person, or government who has purchased public telecommunications services from a telecommunications corporation.

(2) No telecommunications corporation or its agents shall make any change or authorize a different telecommunications corporation to make any change in the provider of any public telecommunications service to a subscriber unless it complies, at a minimum, with Subsections (2)(a) through (e). This Subsection (2) does not apply to a telecommunications corporation that effectuates a change in service provider pursuant to a change authorization submitted or requested by another telecommunications corporation.

(a) The telecommunications corporation or its agents shall, at a minimum, inform the subscriber of the nature, extent, and rates of the service being offered and any charges associated with the change.

(b) Notwithstanding Section 13-26-4, changes in provider of telecommunication service accomplished through telephone solicitation shall comply with the Telephone Fraud Prevention Act, Sections 13-26-2, 13-26-8, 13-26-10, and 13-26-11.

(c) For sales of residential service or small commercial subscriber service, the telecommunications corporation or its agents shall confirm that the subscriber is aware of any charges that the subscriber must pay associated with the change and that the subscriber authorizes the change of provider. The subscriber's authorization to change the provider shall be confirmed by any one of the following methods:

(i) obtaining the subscriber's written authorization;

(ii) having the subscriber's oral authorization verified by an independent third party; or

(iii) any means provided by rule of the Federal Communications Commission or the commission.

(d) If the subscriber is not an individual, an authorization shall be valid only if given by an authorized representative of the subscriber.

(e)

(i) The written authorization to change the provider shall be signed by the subscriber and shall contain a clear, conspicuous, and unequivocal request by the subscriber for a change of telecommunications provider.

(ii) A written authorization is not valid if it is presented to the subscriber for signature in connection with a sweepstakes, game of chance, or any other means prohibited by commission rule.

(iii) Nothing in this section shall be construed to prohibit any person from offering a premium, incentive, or a thing of value to another as consideration for authorizing a change of telecommunications service provider, provided that no element of chance or skill is associated with the offer of the premium, incentive, or thing of value or its receipt.

(3) The confirmation by a third-party verifier shall, at a minimum:

(a) confirm the subscriber's identity with information unique to the customer, unless the customer refuses to provide identifying information, then that fact shall be noted;

(b) confirm that the subscriber agrees to the requested change in telecommunications service providers; and

(c) confirm that the subscriber has the authority to select the provider as the provider of that service.

(4) A third-party verifier shall meet each of the following criteria:

(a) any criteria for third-party verifiers set by the Federal Communications Commission;

(b) not be directly or indirectly managed, controlled, directed, or owned wholly or in part:

(i) by the telecommunications corporation or its agents that seek to provide the telecommunications service or by any corporation, firm, or person who directly or indirectly manages, controls, directs, or owns more than 5% of the telecommunications corporation; or

(ii) by the marketing entity that seeks to market the telecommunications service or by any corporation, firm, or person who directly or indirectly manages, controls, directs, or owns more than 5% of the marketing entity;

(c) operate from facilities physically separated from:

(i) those of the telecommunications corporation or its agents that seek to provide the subscriber's telecommunications service; or

(ii) those of the marketing entity that seeks to market a telecommunications service to the subscriber; and

(d) not derive commissions or compensation based upon the number of change authorizations verified.

(5) A telecommunications corporation or its agents seeking to verify the change authorization shall connect the subscriber to the third-party verifier or arrange for the third-party verifier to call the subscriber to verify the change authorization.

(6) A third-party verifier that obtains the subscriber's oral verification regarding the change shall record that verification by obtaining appropriate verification data.

(7)

(a) The record verifying a subscriber's change of provider shall be available to the subscriber upon request.

(b) Information obtained from the subscriber through verification may not be used for any other purpose.

(c) Any intentional unauthorized release of the information in Subsection (7)(b) is grounds for penalties or other action by the commission or remedies provided by law to the aggrieved subscriber against the telecommunications corporation, third-party verifier, their agents, or their employees who are responsible for the violation.

(8) The third-party verification shall occur in the same language as that in which the change was solicited.

(9) The verification requirements described in this section shall apply to all changes in the provider of any public telecommunications service.

(10) The commission may promulgate rules:

(a) necessary to implement this section;

(b) consistent with any rules promulgated by the Federal Communications Commission; and

(c) in a nondiscriminatory and competitively neutral manner.

(11)

(a) Each subscriber may elect to require the telecommunications corporation providing the subscriber's local exchange service to implement a freeze until the subscriber provides authorization for a change to another provider of public telecommunications services.

(b) Once a subscriber has elected the freeze option under Subsection (11)(a), the telecommunications corporation providing the subscriber's local exchange service may not process a request to change the subscriber to another provider of telecommunications services without prior authorization directly from the subscriber.

(12)

(a) Whenever the subscriber's provider of a telecommunications service changes, the new provider shall:

(i) retain a record of the verified change authorization consistent with requirements of the Federal Communications Commission or rules issued by the commission; and

(ii) be responsible for providing a conspicuous notice of the change within 30 days of the effective date of the change of service.

(b) At a minimum, the notice in Subsection (12)(a)(ii) shall identify the new provider, contain a general description of the service and price, and provide information necessary for the subscriber to have questions answered or to rescind the change.

(13) Any bill shall identify each telecommunications service provider of telecommunication service for which billing is rendered.

(14)

(a) Any person or provider of telecommunications service inadvertently or knowingly designating or changing the subscriber's telecommunications service provider in violation of this section shall refund to the subscriber any amounts required by the rules of the Federal Communications Commission and the commission.

(b) The unauthorized provider in Subsection (14)(a) additionally shall:

(i) bear all costs of restoring the customer to the service of the subscriber's original service provider; and

(ii) pay to any other telecommunications provider any fees set by the commission for the designation or change.

(15) Proceedings for violations of this section may be commenced by request for agency action filed with the commission by a subscriber, a telecommunications corporation, the Division of Public Utilities, or by the commission on its own motion.

(16) Any telecommunications corporation, its agents, or a third-party verifier who violates this section or rules adopted to implement this section shall be subject to the provisions of Sections 54-7-23 through 54-7-29.

(17) The commission is granted authority to enforce provisions relating to an unauthorized telecommunication service provider change in interstate and intrastate telecommunication service involving telecommunications corporations operating in the state.

Enacted by Chapter 113, 1999 General Session

Chapter 8c
High Voltage Overhead Lines

54-8c-1 Definitions.

As used in this chapter:

(1) "Authorized person" means an employee or agent:

(a) of a public utility that:

(i) generates, transmits, or delivers electricity; or

(ii) provides and whose work relates to communication services;

(b) of an industrial plant whose work relates to the electrical system of the industrial plant;

(c) of a cable television or communication services company, or of a contractor of cable television or communication services company, if specifically and expressly authorized by the owner of the poles to make cable television or communication services attachments; or

(d) of a state, county, or municipal agency which has or whose work relates to:

(i) overhead electrical lines;

(ii) overhead lighting systems;

(iii) authorized overhead circuit construction;

(iv) conductors on poles; or

(v) structures of any type.

(2) "Business day" means any day other than Saturday, Sunday, or a legal holiday.
(3) "High voltage" means voltage in excess of 600 volts measured between:
(a) conductors; or
(b) a conductor and the ground.
(4) "Overhead line" means all bare or insulated electrical conductors installed above the ground.
(5) "Public utility" means any entity that generates, transmits, or distributes electrical energy, including any:
(a) public utility as defined in Title 54, Chapter 2, General Provisions;
(b) municipality as defined in Title 10, Utah Municipal Code;
(c) agricultural cooperative association as defined in Title 3, Uniform Agricultural Cooperative Association Act;
(d) improvement district as defined in Section 17B-1-102; or
(e) entity created pursuant to Title 11, Chapter 13, Interlocal Cooperation Act.
(6) "Responsible party" means any person who contracts to perform, is responsible for the performance of, or has control over, any function or activity at any location.

Amended by Chapter 329, 2007 General Session

54-8c-2 Notification to public utility -- Protective measures -- Procedures -- Payment.
(1) No person or thing may be brought within 10 feet of any high voltage overhead line unless:
(a) a responsible party has notified the public utility operating the high voltage overhead line of the intended activity; and
(b) a responsible party and the public utility have completed mutually satisfactory precautions for the activity.
(2) If the identity of the public utility owning or operating the high voltage overhead line is unknown, the county clerk in the county where the line is located shall provide the name, address, and telephone number of the utility's designated representative. If there is an association as provided in Section 54-8c-6 in the county, the association shall provide this information. The notification required in Subsection (1)(a) shall be given by telephone or in person and shall include the location and duration of the proposed activity.
(3) Mutually satisfactory precautions required in Subsection (1)(b) may include:
(a) coordination of work, construction, and activity schedules;
(b) placement of temporary mechanical barriers to separate and prevent contact between persons or things and the high voltage overhead line;
(c) temporary deenergization and grounding or temporary relocation or raising of the high voltage overhead line.
(4) If a responsible party is under contract or agreement with a governmental entity, and the governmental entity and the public utility operating the high voltage overhead line have already reached agreement concerning precautions, further agreements for the activity are not required.
(5) All responsible parties are obligated to pay to the public utility operating the high voltage overhead line the cost of mutually satisfactory precautions, except if:
(a) prior arrangements for payment have been made between a governmental entity for whom the work is to be done and the public utility operating the line; or
(b) the public utility operating the line has not installed the line in conformance with the National Electrical Safety Code or its preceding code in effect at the time the line was constructed.
(6)

(a) Unless other arrangements are necessary, the public utility operating the high voltage overhead line shall commence the precautionary measures:
(i) within three business days after the date an agreement for payment, if required, has been reached; or
(ii) if no payment is required, within five business days after the date of the request of a responsible party.
(b) The public utility shall not be required to provide the precautionary measures until an agreement for payment, if required, has been reached. Once started, the precautionary measures shall continue without unreasonable interruption until completed.

Enacted by Chapter 250, 1988 General Session

54-8c-3 Information filed with county clerk.

(1) A public utility shall file with the county clerk of each county in which it has high voltage overhead lines a list containing:
(a) the name of the public utility owning the high voltage overhead lines;
(b) the name of any municipality, city, or town where the public utility operates high voltage overhead lines; and
(c) the name, title, and address of its representative designated to receive calls for activity close to its high voltage overhead lines.
(2) In counties where an association provided in Section 54-8c-6 is established, the telephone number of the association shall be filed with the county clerk on behalf of all participating public utilities.

Amended by Chapter 39, 1989 General Session

54-8c-4 Violation.

(1) Any responsible party who causes, permits, or allows a function or an activity in violation of any provision of this chapter is subject to a civil penalty in an amount not to exceed $1,000, to be imposed by any court of competent jurisdiction against this party and in favor of the state. If imposed, the fine shall be paid into the General Fund.
(2) Actions to recover the civil penalty under this section shall be brought by a public utility or the county attorney of the county in which the violation occurs.
(3) A responsible party is liable to the public utility operating the high voltage overhead line for all damages to the facilities and for all liability incurred by the public utility as a result of any contact if:
(a) the responsible party causes, permits, or allows a function or an activity in violation of any provision of this chapter; and
(b) as a result, a physical or electrical contact with a high voltage overhead line occurs.

Enacted by Chapter 250, 1988 General Session

54-8c-5 Exemptions.

This chapter does not apply to construction, reconstruction, operation, or maintenance by an authorized person of:
(1) overhead electrical, cable television, or communications circuits or conductors and their supporting structures;
(2) electrical generating, transmission, or distribution systems; or

(3) communications, cable television, or overhead lighting systems.

Enacted by Chapter 250, 1988 General Session

54-8c-6 Association for mutual receipt of notification of activities close to high voltage overhead lines.

(1) Public utilities may form and operate an association providing for mutual receipt of notification of activities close to high voltage overhead lines in a specified area.
(2) In areas where an association is formed:
  (a) notification to the association is effected as set forth in Section 54-8c-2; and
  (b) public utilities with high voltage overhead lines in the area:
    (i) may become members of the association;
    (ii) may participate in and receive the services furnished by the association; and
    (iii) shall pay their proportionate share of the cost for the services furnished.
(3) The association whose members or participants have high voltage overhead lines within a county shall file a list containing the name, address, and telephone number of every member and participating public utility with the county clerk.
(4) If notification is made by telephone, an adequate record shall be maintained by the association to document compliance with the requirements of this chapter.

Amended by Chapter 10, 1997 General Session

Chapter 9
Electric Power Facilities Act

54-9-101 Title.

This chapter is known as the "Electric Power Facilities Act."

Enacted by Chapter 286, 2002 General Session

54-9-102 Definitions.

As used in this chapter:
(1) "Common facilities" means all works and facilities:
  (a) owned or used by two or more public power entities or power utilities; and
  (b) necessary to the generation, transmission, or distribution of electric power and energy.
(2) "Interlocal entity" has the same meaning as provided in Section 11-13-103.
(3) "Power utility":
  (a) means a public agency, as defined in Section 11-13-103, or other person engaged in generating, transmitting, distributing, or marketing electric power and energy; and
  (b) does not include a public power entity.
(4) "Public power entity" means:
  (a) a city or town that owns a system for the generation, transmission, or distribution of electric power and energy for public or private use; and
  (b) an interlocal entity.

Amended by Chapter 345, 2012 General Session

54-9-103 Public power entity authority regarding common facilities -- Determination of needs -- Agreement requirements -- Ownership interest.

(1)

(a) Notwithstanding Title 11, Chapter 13, Interlocal Cooperation Act, and Subsection 11-14-103(1)(b)(xi), and in addition to all other powers conferred on public power entities, a public power entity may:

(i) plan, finance, construct, acquire, operate, own, and maintain an undivided interest in common facilities;

(ii) participate in and enter into agreements with one or more public power entities or power utilities; and

(iii) enter into contracts and agreements as may be necessary or appropriate for the joint planning, financing, construction, operation, ownership, or maintenance of common facilities.

(b)

(i) Before entering into an agreement providing for common facilities, the governing body of each public power entity shall determine the needs of the public power entity for electric power and energy based on engineering studies and reports.

(ii) In determining the future electric power and energy requirements of a public power entity, the governing body shall consider:

(A) the economies and efficiencies of scale to be achieved in constructing or acquiring common facilities for the generation and transmission of electric power and energy;

(B) the public power entity's need for reserve and peaking capacity, and to meet obligations under pooling and reserve sharing agreements reasonably related to the needs of the public power entity for power and energy;

(C) the estimated useful life of the common facilities;

(D) the estimated time necessary for the planning, financing, construction, and acquisition of the common facilities and the estimated timing of the need for an additional power supply; and

(E) the reliability and availability of existing or alternate power supply sources and the cost of those existing or alternate power supply sources.

(2)

(a) Each agreement providing for common facilities shall:

(i) contain provisions not inconsistent with this chapter that the governing body of the public power entity determines to be in the interests of the public power entity, including:

(A) the purposes of the agreement;

(B) the duration of the agreement;

(C) the method of appointing or employing the personnel necessary in connection with the common facilities;

(D) the method of financing the common facilities, including the apportionment of costs of construction and operation;

(E) the ownership interests of the owners in the common facilities and other property used or useful in connection with the common facilities and the procedures for disposition of the common facilities and other property when the agreement expires or is terminated or when the common facilities are abandoned, decommissioned, or dismantled;

(F) any agreement of the parties prohibiting or restricting the alienation or partition of the undivided interests of an owner in the common facilities;

(G) the construction and repair of the common facilities, including, if the parties agree, a determination that a power utility or public power entity may construct or repair the common facilities as agent for all parties to the agreement;
(H) the administration, operation, and maintenance of the common facilities, including, if the parties agree, a determination that a power utility or public power entity may administer, operate, and maintain the common facilities as agent for all parties to the agreement;
(I) the creation of a committee of representatives of the parties to the agreement;
(J) if the parties agree, a provision that if any party defaults in the performance or discharge of its obligations with respect to the common facilities, the other parties may perform or assume, pro rata or otherwise, the obligations of the defaulting party and may, if the defaulting party fails to remedy the default, succeed to or require the disposition of the rights and interests of the defaulting party in the common facilities;
(K) provisions for indemnification of construction, operation, and administration agents, for completion of construction, for handling emergencies, and for allocation of output of the common facilities among the parties to the agreement according to the ownership interests of the parties;
(L) methods for amending and terminating the agreement; and
(M) any other matter, not inconsistent with this chapter, determined by the parties to the agreement to be necessary and proper;
(ii) clearly disclose the ownership interest of each party;
(iii) provide for an equitable method of allocating operation, repair, and maintenance costs of the common facilities; and
(iv) be approved or ratified by resolution of the governing body of the public power entity.
(b) A provision under Subsection (2)(a)(i)(F) in an agreement providing for common facilities under this Subsection (2) is not subject to any law restricting covenants against alienation or partition.
(c) Each committee created under Subsection (2)(a)(i)(I) in an agreement providing for common facilities under this Subsection (2) shall have the powers, not inconsistent with this chapter, regarding the construction and operation of the common facilities that the agreement provides.
(d)
(i) The ownership interest of a public power entity in the common facilities may not be less than the proportion of the funds or the value of property supplied by it for the acquisition, construction, and operation of the common facilities.
(ii) Each public power entity shall own and control the same proportion of the electrical output from the common facilities as its ownership interest in them.
(3) Notwithstanding any other provision of this chapter, an interlocal entity may not act in a manner inconsistent with any provision of the agreement under which it was created.

Amended by Chapter 306, 2007 General Session

54-9-104 Joint owners to supply materials, arrange for own financing, and share in costs and taxes -- Public power entity authority to finance through financing agent -- Common facilities owners authority to appoint an agent.
(1) The joint owners of the common facilities shall supply the materials and make the payments provided for in the agreement.
(2) Each owner shall arrange its own funding and financing and be responsible for all the costs, interest, and payments required in connection with its share of the funding for the planning,

acquisition, construction, operation, repairs, and improvements, and each participant shall pay its share of taxes or charges in lieu of taxes in connection with the common facilities.

(3) Notwithstanding any other provision of this section, a public power entity may finance its funding share with one or more other owners through a financing agent, as long as no public power entity is liable for more than its proportionate share of the debt service with respect to the financing.

(4)

(a) The owners of common facilities may appoint as their agent:

(i) a public power entity or power utility that owns an interest in common facilities;

(ii) an interlocal entity of which a public power entity that owns an interest in the common facilities is a member;

(iii) an interlocal entity that owns electric generation or transmission facilities that are located on a site adjacent to the common facilities; or

(iv) a public agency that is an owner of the common facilities or that purchases power from a public agency that is an owner of the common facilities.

(b) One or more agents under Subsection (4)(a) may be appointed, as determined by the owners of the common facilities, for one or more of the following purposes:

(i) the construction, repair, administration, operation, or maintenance of the common facilities;

(ii) the administration and payment of, and any challenge or dispute regarding, any tax, fee in lieu of any tax, impact alleviation payment, or other fee or payment imposed by the state or a political subdivision of the state that relates to the common facilities; or

(iii) the financing of all or part of the common facilities under Subsection (3).

Renumbered and Amended by Chapter 286, 2002 General Session

54-9-105 Limitations on liability.

(1)

(a) Each public power entity and power utility may be held liable only for its own acts, omissions, and obligations with respect to the planning, financing, construction, acquisition, administration, operation, ownership, repair, or maintenance of the common facilities and may not be jointly or severally liable for the acts, omissions, or obligations of others.

(b) Subsection (1)(a) may not be construed to:

(i) affect the liability of a public power entity or power utility with respect to its contractual obligations, including a contractual obligation to indemnify a construction, operation, or administrative agent for the common facilities; or

(ii) affect an immunity or other protection that may be available to a public power entity or power utility under applicable law.

(2) No money, materials, or other contribution supplied by a public power entity may be credited or otherwise applied to the account of any other owner in the common facilities, nor may the undivided share of a public power entity be charged, directly or indirectly, with any debt or obligation of any other owner or be subject to any lien as a result thereof.

(3) No action in connection with common facilities may be binding upon a public power entity unless the action or the agreement under which the action is taken is authorized or approved by a resolution or ordinance of its governing body.

Renumbered and Amended by Chapter 286, 2002 General Session

54-9-106 Funding -- Power sales contracts -- Revenue bonds -- Fee in lieu of ad valorem property taxes -- Bond issues -- Public purpose.

(1) A public power entity participating in common facilities under this chapter may furnish money and provide property, both real and personal, and, in addition to any other authority now existing, may issue and sell, either at public or privately negotiated sale, general obligation bonds or revenue bonds, pledging either the revenues of its entire electric system or only its interest or share of the revenues derived from the common facilities in order to pay its respective share of the costs of the planning, financing, acquisition, construction, repair, and replacement of common facilities.

(2)

(a) Capacity or output derived by a public power entity from its ownership share of common facilities not then required by the public power entity for its own use and for the use of its customers may be sold or exchanged for a consideration, for a period, and upon other terms and conditions as may be determined by the parties prior to the sale and as embodied in a power sales contract.

(b) Any revenues arising under a power sales contract under Subsection (2)(a) may be pledged by the public power entity to the payment of revenue bonds issued to pay its respective share of the costs of the common facilities.

(c)

(i) As used in this Subsection (2)(c), "nonexempt purchaser" means a purchaser that is not exempt from property taxes under Utah Constitution Article XIII, Section 2.

(ii)

(A) Each power sales contract between a public power entity and a nonexempt purchaser shall contain a provision requiring the nonexempt purchaser to pay an annual fee to the public power entity in lieu of ad valorem property taxes.

(B) The amount of the fee in lieu of ad valorem property taxes under Subsection (2)(c)(ii)(A) shall be based on the taxable value of the public power entity's percentage ownership of the common facilities used to produce the capacity or output that the public power entity sells to or exchanges with the nonexempt purchaser.

(iii) The public power entity shall pay over to the county treasurer each fee in lieu of ad valorem property taxes that it receives from a nonexempt purchaser for distribution in the same manner as other ad valorem tax revenues.

(iv) This Subsection (2)(c) does not apply to a public power entity to the extent that its interest in common facilities is subject to or exempt from the fee in lieu of ad valorem property taxes under Section 11-13-302.

(3) A public power entity acquiring or owning an undivided interest in common facilities may contract with a county to pay, solely from the revenues derived from the interest of the public power entity in the common facilities, to the county or counties in which the common facilities are located, an annual fee in lieu of ad valorem property taxes based upon the taxable value of the percentage of the ownership share of the public power entity in the common facilities, which fee in lieu of ad valorem property taxes shall be paid over by the public power entity to the county treasurer of the county or counties in which the common facilities are located for distribution as per distribution of other ad valorem tax revenues.

(4)

(a) Bonds issued by a city or town shall be issued under the applicable provisions of Title 11, Chapter 14, Local Government Bonding Act, authorizing the issuance of bonds for the acquisition and construction of electric public utility properties by cities or towns.

(b) Bonds or other debt instruments issued by an interlocal entity shall be issued under Title 11, Chapter 13, Interlocal Cooperation Act, or other applicable law.
(5) All money paid or property supplied by a public power entity for the purpose of carrying out powers conferred by this chapter is declared to be for a public purpose.

Amended by Chapter 342, 2011 General Session

54-9-107 Disposition of proceeds and revenues.

All money belonging to a public power entity in connection with common facilities, including the proceeds of the sale of bonds and the revenues arising from the operation of common facilities:
(1) may be deposited in a bank or trust company doing business within or without the state; and
(2) shall be accounted for and disbursed in accordance with applicable law and the provisions of the resolution or indenture authorizing the issuance of the bonds.

Renumbered and Amended by Chapter 286, 2002 General Session

54-9-108 Scope -- Ownership or use of works or facilities.

(1) Nothing in this chapter may be construed as imposing on an interlocal entity, as defined in Section 11-13-101, created on or before January 1, 1981, under Laws of Utah 1977, Chapter 47, Section 3, as amended, or in an agreement to which an interlocal entity is a party, any duty, requirement, or restriction other than those imposed by Title 11, Chapter 13, Interlocal Cooperation Act.
(2) For purposes of this chapter, a person does not own or use works or facilities if the person is a party to a power sales contract to purchase output generated by, the capacity of, or an entitlement in the works or facilities.

Enacted by Chapter 345, 2012 General Session

Chapter 10a
Office of Consumer Services Act

Part 1
General Provisions

54-10a-101 Title.

This chapter is known as the "Office of Consumer Services Act."

Enacted by Chapter 237, 2009 General Session

54-10a-102 Definitions.

For the purpose of this chapter:
(1) "Applicable public utility" means a public utility in this state for:
(a) natural gas;
(b) electricity; or
(c) telephone.
(2) "Committee" means the Committee of Consumer Services created in Section 54-10a-202.

(3) "Director" means the director of the office appointed under Section 54-10a-201.
(4) "Office" means the Office of Consumer Services created in Section 54-10a-201.
(5) "Residential consumer" is a customer or user of an applicable public utility who maintains a permanent residence within the state.
(6) "Small commercial consumer" is a person conducting a business enterprise, agriculture enterprise, or other enterprise in the state that has:
(a) less than 25 employees; or
(b) a gross income less than $1,000,000 annually.

Renumbered and Amended by Chapter 237, 2009 General Session

Part 2
Organization

54-10a-201 Office of Consumer Services -- Director.
(1) There is created within the Department of Commerce the "Office of Consumer Services."
(2)
(a) The governor shall appoint, with the concurrence of the Committee of Consumer Services and the advice and consent of the Senate, a qualified person in the field of public utilities to be the director of the office.
(b) The director shall serve for a term of six years.
(c) For purposes of the individual who is the director on May 12, 2009, that individual's six-year term is considered to begin on July 1, 2009.
(d) The governor may remove the director for cause.
(3) In accordance with this chapter, the director shall on behalf of the office:
(a) represent residential consumers and small commercial consumers of an applicable public utility; and
(b) represent the interests of:
(i) residential consumers; and
(ii) small commercial consumers.

Amended by Chapter 352, 2020 General Session

54-10a-202 Committee of Consumer Services.
(1)
(a) There is created within the office a committee known as the "Committee of Consumer Services."
(b) A member of the committee shall maintain the member's principal residence within Utah.
(2)
(a) The governor shall appoint five members to the committee subject to Subsection (3).
(b) Except as required by Subsection (2)(c), as terms of current committee members expire, the governor shall appoint a new member or reappointed member to a four-year term.
(c) Notwithstanding the requirements of Subsection (2)(b), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.

(d) When a vacancy occurs in the membership for any reason, the governor shall appoint a replacement for the unexpired term.
(3) Members of the committee shall represent the following consumer interests:
(a) one member shall be an individual with experience and understanding of issues affecting low-income residents;
(b) one member shall be a retired person;
(c) one member shall be an individual with experience and understanding of issues affecting small commercial consumers;
(d) one member shall be a farmer or rancher who uses electric power to pump water in the member's farming or ranching operation; and
(e) one member shall be a residential consumer.
(4)
(a) No more than three members of the committee may be from the same political party.
(b) Subject to Subsection (3), for a member of the committee appointed on or after May 12, 2009, the governor shall appoint, to the extent possible, an individual with expertise or experience in:
(i) public utility matters related to consumers;
(ii) economics;
(iii) accounting;
(iv) financing;
(v) engineering; or
(vi) public utilities law.
(5) The governor shall designate one member as chair of the committee.
(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
(7)
(a) The committee may hold monthly meetings.
(b) The committee may hold other meetings, at the times and places the chair and a majority of the committee determine.
(8)
(a) Three members of the committee constitute a quorum of the committee.
(b) A majority of members voting when a quorum is present constitutes an action of the committee.

Amended by Chapter 154, 2020 General Session

54-10a-203 Attorney general to represent office.
(1) The attorney general shall assign at least one attorney to the office to represent the office.
(2) An attorney assigned to the office under Subsection (1) shall represent the office at a hearing or other proceeding affecting the services, rates, or charges of an applicable public utility.
(3) An attorney assigned to the office may prosecute an action that the office considers necessary to enforce the rights of residential consumers and small commercial consumers of an applicable public utility.

Renumbered and Amended by Chapter 237, 2009 General Session

Part 3
Powers and Duties of Office

54-10a-301 Powers and duties of office.

(1) The office shall:

(a) assess the impact of utility rate changes and other regulatory actions related to an applicable public utility on:

(i) residential consumers; and

(ii) small commercial consumers;

(b) assist a residential consumer or a small commercial consumer in appearing before the commission; and

(c) through its director, advocate, on the office's own behalf and in its own name, a position most advantageous to:

(i) residential consumers; and

(ii) small commercial consumers.

(2)

(a) The director may bring an original action in the name of the office before:

(i) the commission; or

(ii) a court having appellate jurisdiction over an order or decision of the commission.

(b) The director on behalf of the office may:

(i) commence an original proceeding, file a complaint, appear as a party, appeal, or otherwise represent residential consumers or small commercial consumers in a matter or a proceeding involving regulation of an applicable public utility pending before one or more of the following of the federal government:

(A) an officer, department, board, agency, commission, or governmental authority; or

(B) a court; or

(ii) intervene in, protest, resist, or advocate the granting, denial, or modification of a petition, application, complaint, or other proceeding, decision, or order of a governmental authority of the federal government.

Renumbered and Amended by Chapter 237, 2009 General Session

54-10a-302 Powers of committee.

By a majority vote of a quorum of the committee, the committee may:

(1) advise the director as to a duty or power of the office under Section 54-10a-301; and

(2) give direction to the director on a policy objective related to a duty or power of the office under Section 54-10a-301 that serves the needs of residential consumers and small commercial consumers.

Enacted by Chapter 237, 2009 General Session

54-10a-303 Representation of municipal electrical energy utility prohibited.

The office, director, or committee may not represent, assist, or be an advocate on behalf of a municipality, as defined in Section 10-1-104, that generates, transmits, or distributes electrical energy.

Renumbered and Amended by Chapter 237, 2009 General Session

Chapter 12
Small Power Production and Cogeneration

54-12-1 Legislative policy.

(1) The Legislature declares that in order to promote the more rapid development of new sources of electrical energy, to maintain the economic vitality of the state through the continuing production of goods and the employment of its people, and to promote the efficient utilization and distribution of energy, it is desirable and necessary to encourage independent energy producers to competitively develop sources of electric energy not otherwise available to Utah businesses, residences, and industries served by electrical corporations, and to remove unnecessary barriers to energy transactions involving independent energy producers and electrical corporations.

(2) It is the policy of this state to encourage the development of independent and qualifying power production and cogeneration facilities, to promote a diverse array of economical and permanently sustainable energy resources in an environmentally acceptable manner, and to conserve our finite and expensive energy resources and provide for their most efficient and economic utilization.

Amended by Chapter 374, 2008 General Session

54-12-2 Purchase of power from qualifying power producers.

(1) Purchasing utilities shall offer to purchase power from qualifying power producers.

(2) The commission shall establish reasonable rates, terms, and conditions for the purchase or sale of electricity or electrical generating capacity, or both, between a purchasing utility and a qualifying power producer. In establishing these rates, terms, and conditions, the commission shall either establish a procedure under which qualifying power producers offer competitive bids for the sale of power to purchasing utilities or devise an alternative method which considers the purchasing utility's avoided costs. The capacity component of avoided costs shall reflect the purchasing utility's long-term deferral or cancellation of generating units which may result from the purchase of power from qualifying power producers.

(3) Purchasing utilities and qualifying power producers may agree to rates, terms, or conditions for the sale of electricity or electrical capacity which differ from the rates, terms, and conditions adopted by the commission under Subsection (2).

(4) The commission may adopt further rules which encourage the development of small power production and cogeneration facilities.

Amended by Chapter 374, 2008 General Session

54-12-3 Recovery of investment costs.

The commission may not consider any purchasing utility's purchase of power from a qualifying power producer as a reason for disallowing recovery of the purchasing utility's investment costs

for facilities which are in use prior to signing a contract for the purchase of power from a qualifying power producer.

Amended by Chapter 374, 2008 General Session

Chapter 13
Natural Gas Pipeline Safety

54-13-1 Definitions.

As used in this chapter, "intrastate pipeline transportation" and "pipeline facilities" have the definitions set forth in the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. Section 60101.

Amended by Chapter 9, 2001 General Session

54-13-2 Commission's responsibilities.

The commission is responsible for establishing safety standards and practices for intrastate pipeline transportation and shall make and enforce rules required by the federal Natural Gas Pipeline Safety Act to maintain state control over the regulation of intrastate pipeline transportation.

Enacted by Chapter 131, 1989 General Session

54-13-3 Rules.

The commission shall adopt and enforce rules pursuant to Section 54-13-2 including rules which:

(1) incorporate the safety standards established under the federal Natural Gas Pipeline Safety Act that are applicable to intrastate pipeline transportation; and

(2) require persons engaged in intrastate pipeline transportation to:

(a) maintain records and to submit reports and information to the commission to enable the commission to determine whether the person is acting in compliance with this chapter or rules adopted under this chapter; and

(b) maintain a plan for inspection and maintenance of each pipeline facility that is available to the commission upon commission request.

Amended by Chapter 102, 2015 General Session

54-13-4 Inspection and examination of records and properties.

Officers, employees, or agents authorized by the commission, upon presenting appropriate credentials to the person in charge, may inspect and examine, at reasonable times and in a reasonable manner, the records and properties of any person engaged in intrastate pipeline transportation to the extent those records and properties are relevant to determining whether the person is acting in compliance with this chapter or rules under this chapter.

Enacted by Chapter 131, 1989 General Session

54-13-5 Establishment of fee.

The commission may, by rule, establish a fee for the inspection of pipeline facilities of any person engaged in intrastate pipeline transportation who does not pay a public utilities regulation fee pursuant to Title 54, Chapter 5, Public Utilities Regulation Fee.

Enacted by Chapter 131, 1989 General Session

Superseded 7/1/2024

54-13-7 Minimum distances for placement of structures and facilities near main and transmission lines.

(1) As used in this section:
  (a) "Main" has the meaning set forth in 49 C.F.R. Section 192.3.
  (b) "Minimum distance" means:
    (i) the width of a recorded easement when the width is described;
    (ii) 15 feet when the width of a recorded easement is undefined; or
    (iii) for any underground facility, it means an area measured one foot vertically and three feet horizontally from the outer surface of a main or transmission line.
  (c) "Transmission line" has the meaning set forth in 49 C.F.R. Section 192.3.
  (d) "Underground facility" has the meaning set forth in Section 54-8a-2.
(2)
  (a) After April 30, 1995, a building or structure requiring slab support or footings, or an underground facility may not be placed within the minimum distance of a main or transmission line.
  (b) Subsection (2)(a) does not apply if:
    (i) the building or structure is used for public or railroad transportation, natural gas pipeline purposes, or by a public utility subject to the jurisdiction or regulation of the Public Service Commission;
    (ii) in order to receive natural gas service, the building or structure must be located within the minimum distance of the pipeline;
    (iii) the owner or operator of the main or transmission line has been notified prior to construction or placement pursuant to Section 54-8a-4 and has given written permission; or
    (iv) the commission by rule exempts such action from the provisions of Subsection (2)(a).
(3) An owner or operator of a main or transmission line may obtain a mandatory injunction from the district court of the judicial district in which the main or transmission line is located against any person who violates Subsection (2).
(4) The penalties specified in Title 54, Chapter 7, Hearings, Practice, and Procedure, do not apply to a violation of this section.

Amended by Chapter 340, 2011 General Session

Effective 7/1/2024

54-13-7 Minimum distances for placement of structures and facilities near main and transmission lines.

(1) As used in this section:
  (a) "Main" has the meaning set forth in 49 C.F.R. Section 192.3.
  (b) "Minimum distance" means:
    (i) the width of a recorded easement when the width is described;
    (ii) 15 feet when the width of a recorded easement is undefined; or

(iii) for any underground facility, it means an area measured one foot vertically and three feet horizontally from the outer surface of a main or transmission line.
(c) "Transmission line" has the meaning set forth in 49 C.F.R. Section 192.3.
(d) "Underground facility" has the meaning set forth in Section 54-8a-2.
(2)
(a) After April 30, 1995, a building or structure requiring slab support or footings, or an underground facility may not be placed within the minimum distance of a main or transmission line.
(b) Subsection (2)(a) does not apply if:
(i) the building or structure is used for public or railroad transportation, natural gas pipeline purposes, or by a public utility subject to the jurisdiction or regulation of the Public Service Commission;
(ii) in order to receive natural gas service, the building or structure must be located within the minimum distance of the pipeline;
(iii) the owner or operator of the main or transmission line has been notified prior to construction or placement pursuant to Section 54-8a-4 and has given written permission; or
(iv) the commission by rule exempts such action from the provisions of Subsection (2)(a).
(3)
(a) An owner or operator of a main or transmission line may obtain a mandatory injunction from a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, against any person who violates Subsection (2).
(b) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, the owner or operator shall bring an action described in Subsection (3)(a) in the county in which the main or transmission line is located if the action is brought in the district court.
(4) The penalties specified in Chapter 7, Hearings, Practice, and Procedure, do not apply to a violation of this section.

Amended by Chapter 158, 2024 General Session

Superseded 7/1/2024

54-13-8 Violation of chapter -- Penalty.

(1) Any person engaged in intrastate pipeline transportation who is determined by the commission, after notice and an opportunity for a hearing, to have violated any provision of this chapter or any rule or order issued under this chapter, is liable for a civil penalty of not more than $100,000 for each violation for each day the violation persists.
(2) The maximum civil penalty assessed under this section may not exceed $1,000,000 for any related series of violations.
(3) The amount of the penalty shall be assessed by the commission by written notice.
(4) In determining the amount of the penalty, the commission shall consider:
(a) the nature, circumstances, and gravity of the violation; and
(b) with respect to the person found to have committed the violation:
(i) the degree of culpability;
(ii) any history of prior violations;
(iii) the effect on the person's ability to continue to do business;
(iv) any good faith in attempting to achieve compliance;
(v) the person's ability to pay the penalty; and
(vi) any other matter, as justice may require.
(5)

(a) A civil penalty assessed under this section may be recovered in an action brought by the attorney general on behalf of the state in the appropriate district court, or before referral to the attorney general, it may be compromised by the commission.
(b) The amount of the penalty, when finally determined, or agreed upon in compromise, may be deducted from any sum owed by the state to the person charged.
(6) Any penalty collected under this section shall be deposited in the General Fund.

Amended by Chapter 102, 2015 General Session

Effective 7/1/2024
54-13-8 Violation of chapter -- Penalty.
(1) Any person engaged in intrastate pipeline transportation who is determined by the commission, after notice and an opportunity for a hearing, to have violated any provision of this chapter or any rule or order issued under this chapter, is liable for a civil penalty of not more than $100,000 for each violation for each day the violation persists.
(2) The maximum civil penalty assessed under this section may not exceed $1,000,000 for any related series of violations.
(3) The amount of the penalty shall be assessed by the commission by written notice.
(4) In determining the amount of the penalty, the commission shall consider:
(a) the nature, circumstances, and gravity of the violation; and
(b) with respect to the person found to have committed the violation:
(i) the degree of culpability;
(ii) any history of prior violations;
(iii) the effect on the person's ability to continue to do business;
(iv) any good faith in attempting to achieve compliance;
(v) the person's ability to pay the penalty; and
(vi) any other matter, as justice may require.
(5)
(a) A civil penalty assessed under this section may be recovered in an action brought by the attorney general on behalf of the state in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, or before referral to the attorney general, it may be compromised by the commission.
(b) The amount of the penalty, when finally determined, or agreed upon in compromise, may be deducted from any sum owed by the state to the person charged.
(6) Any penalty collected under this section shall be deposited in the General Fund.

Amended by Chapter 158, 2024 General Session

Chapter 14
Utility Facility Review Board Act

Part 1
General Provisions

54-14-101 Title.
This chapter is known as the "Utility Facility Review Board Act."

Amended by Chapter 242, 2007 General Session

54-14-102 Legislative findings.

(1)
(a) The Legislature finds that the construction of facilities by public utilities under this title is a matter of statewide concern.
(b) The construction of these facilities may affect the safety, reliability, adequacy, and efficiency of service to customers in areas within the jurisdiction of more than a single local government.
(c) Excess costs imposed by requirements of a local government for the construction of facilities may affect either the rates and charges of the public utility to customers other than customers within the jurisdiction of the local government or the financial viability of the public utility, unless the local government pays for those excess costs.

(2) The Legislature finds that it is in the public interest to establish the Utility Facility Review Board to resolve issues regarding the construction and installation of public utility facilities.

Amended by Chapter 242, 2007 General Session

54-14-103 Definitions.

As used in this chapter:

(1) "Actual excess cost" means the difference in cost between:
(a) the standard cost of a facility; and
(b) the actual cost of the facility, including any necessary right-of-way, as determined in accordance with Section 54-14-203.

(2) "Board" means the Utility Facility Review Board.

(3) "Commencement of construction of a facility" includes the project design and the ordering of materials necessary to construct the facility.

(4) "Estimated excess cost" means any material difference in estimated cost between the costs of a facility, including any necessary right-of-way, if constructed in accordance with the requirements of a local government and the standard cost of the facility.

(5)
(a) "Facility" means a transmission line, a substation, a gas pipeline, a tap, a measuring device, or a treatment device.
(b) "Facility" includes a high voltage power line route as defined in Section 54-18-102.

(6)
(a) "Gas pipeline" means equipment, material, and structures used to transport gas to the public utility's customers, including:
(i) pipe;
(ii) a compressor;
(iii) a pressure regulator;
(iv) a support structure; and
(v) any other equipment or structure used to transport or facilitate transportation of gas through a pipe.
(b) "Gas pipeline" does not include a service line.

(7) "Local government":
(a) means a city or town as defined in Section 10-1-104 or a county; or
(b) may refer to one or more of the local governments in whose jurisdiction a facility is located if a facility is proposed to be located in more than one local government jurisdiction.

(8) "Pay" includes, in reference to a local government paying the actual excess cost of a facility, payment by:
(a) a special district under Title 17B, Limited Purpose Local Government Entities - Special Districts;
(b) a special service district under Title 17D, Chapter 1, Special Service District Act; or
(c) a private entity other than the public utility pursuant to a regulation or decision of the local government.
(9)
(a) "Standard cost" means the estimated cost of a facility, including any necessary right-of-way, if constructed in accordance with:
(i) the public utility's normal practices; and
(ii) zoning, subdivision, and building code regulations of a local government, including siting, setback, screening, and landscaping requirements:
(A) imposed on similar land uses in the same zone; and
(B) that do not impair the ability of the public utility to provide service to its customers in a safe, reliable, adequate, and efficient manner.
(b) With respect to a transmission line, "standard cost" is the cost of any overhead line constructed in accordance with the public utility's normal practices.
(c) With respect to a facility of a gas corporation, "standard cost" is the cost of constructing the facility in accordance with the public utility's normal practices.
(10)
(a) "Substation" means a separate space within which electric supply equipment is located for the purpose of switching, regulating, transforming, or otherwise modifying the characteristics of electricity, including:
(i) electrical equipment such as transformers, circuit breakers, voltage regulating equipment, buses, switches, capacitor banks, reactors, protection and control equipment, and other related equipment;
(ii) the site at which the equipment is located, any foundations, support structures, buildings, or driveways necessary to locate, operate, and maintain the equipment at the site; and
(iii) the structure intended to restrict access to the equipment to qualified persons.
(b) "Substation" does not include a distribution pole-mounted or pad-mounted transformer that is used for the final transformation of power to the voltage level utilized by the customer.
(11)
(a) "Transmission line" means an electrical line, including structures, equipment, plant, or fixtures associated with the electrical line, operated at a nominal voltage of 34,000 volts or above.
(b) "Transmission line" includes, for purposes of Title 54, Chapter 18, Siting of High Voltage Power Line Act, an electrical line as described in Subsection (11)(a) operated at a nominal voltage of 230 kilovolts or more.

Amended by Chapter 16, 2023 General Session

54-14-104 Rules and procedures.

The board may, pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, adopt rules governing proceedings under this chapter consistent with this chapter and Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 382, 2008 General Session

Part 2
Conditions on Siting of Facilities

54-14-201 Conditions on siting of facilities by local governments -- Payment of actual excess costs.

If otherwise authorized by law, a local government may require or condition the construction of a facility in any manner if:

(1) the requirements or conditions do not impair the ability of the public utility to provide safe, reliable, and adequate service to its customers; and

(2) the local government pays for the actual excess cost resulting from the requirements or conditions, except:

(a) any actual excess costs that the public utility collects from its customers pursuant to an order, rule, or regulation of the commission; or

(b) any portion of the actual excess costs that the board requires to be borne by the public utility.

Enacted by Chapter 197, 1997 General Session

54-14-202 Public utility to provide standard cost and estimated excess cost.

(1)

(a) A public utility shall provide the information described in Subsection (1)(b) if a local government:

(i) is considering imposing requirements or conditions on construction of a facility that may result in an estimated excess cost and requests that the public utility provide the estimated excess cost; or

(ii) recommends an alternative to the public utility's proposed high voltage transmission line corridor in accordance with the provisions of Title 54, Chapter 18, Siting of High Voltage Power Line Act.

(b) Subject to Subsection (1)(a), a public utility shall provide to the local government:

(i)

(A) the estimated standard cost of the facility; and

(B) the estimated excess cost of the facility if constructed in accordance with local government requirements or conditions; and

(ii) the estimated cost of the alternative line corridor proposed by a local government provided that all affected land use authorities agree to the alternative line corridor proposed by the local government.

(2) If a public utility does not provide the information as described in Subsection (1), the local government may:

(a) appeal to the board; and

(b) request that the board review the information provided by the public utility.

(3)

(a) If the board finds that the public utility has failed to provide the standard costs and estimated excess costs in accordance with the provisions of Subsection (1), the board may request additional information from the public utility.

(b) In accordance with Subsection (3)(a), a public utility shall provide any information requested by the board within 30 days of the day that the request was made.

(c) If a public utility fails to comply with Subsections (3)(a) and (b), the board may suspend issuing its written decision in accordance with Section 54-14-305 for 30 days after the day on which the public utility provides the information requested under Subsection (3)(a).

Amended by Chapter 316, 2009 General Session

54-14-203 Actual excess cost.

(1) If a local government issues a permit, authorization, approval, exception, or waiver based upon its agreement to pay for the actual excess cost of a facility, the local government shall within 30 days either accept the estimate of excess cost as the actual excess cost of a facility or request the public utility to obtain competitive bids for the facility if constructed in accordance with the requirements and conditions of the local government.
(2) If the local government requests the public utility to obtain competitive bids, the public utility shall obtain competitive bids, and the actual excess cost of the facility shall be the difference between the lowest bid acceptable to the public utility plus the public utility's contract administration and oversight expense and the standard cost of the facility.
(3) Any dispute regarding specifications, lowest acceptable bid, or administration and oversight expense shall be resolved by the board on an expedited basis.

Enacted by Chapter 197, 1997 General Session

54-14-204 Requirements or conditions on facility considered waived if local government does not pay for actual excess cost 30 days before construction.

Any requirement or condition in any permit, authorization, approval, exception, or waiver of a local government for a facility that imposes an actual excess cost shall be considered waived if the local government does not pay the public utility for the actual excess cost, except any actual excess costs specified in Subsection 54-14-201(2)(a) or (2)(b), within 30 days before the date construction of the facility should commence in order to avoid a significant risk of impairment of safe, reliable, and adequate service to customers of the public utility.

Enacted by Chapter 197, 1997 General Session

Part 3
Utility Facility Review Board

54-14-301 Creation, purpose, and composition of board.

(1) The Utility Facility Review Board is created to resolve disputes between local governments and public utilities regarding the siting and construction of facilities as provided in this part.
(2) The board shall be composed of:
  (a) the three members of the commission;
  (b) an individual appointed by the governor from a list of nominees of the Utah League of Cities and Towns; and
  (c) an individual appointed by the governor from a list of nominees of the Utah Association of Counties.
(3) The chair of the commission shall serve as chair of the board.

(4) Members of the commission shall serve as members of the board during their terms of office as commissioners and until their successors on the commission have been appointed and taken office.
(5)
(a) Members of the board who are not commissioners:
(i) shall have four-year terms, except the initial term of the individual first appointed by the governor from nominees of the Utah Association of Counties shall be two years;
(ii) may be appointed for one succeeding term; and
(iii) may continue to serve until their successor takes office.
(b) Vacancies in the board of members who are not commissioners shall be filled for the unexpired term.
(6) Three members of the board constitute a quorum.
(7) A member of the board may be removed for cause by the governor.
(8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 89, 2013 General Session

54-14-302 Staff and support for board.

The Department of Commerce and the commission shall provide any staff, services, or meeting rooms the board requires to perform its duties.

Enacted by Chapter 197, 1997 General Session

54-14-303 Actions or disputes for which board review may be sought.

(1) A local government or public utility may seek review by the board, if:
(a) a local government has imposed requirements on the construction of a facility that result in estimated excess costs without entering into an agreement with the public utility to pay for the actual excess cost, except any actual excess costs specified in Subsection 54-14-201(2)(a) or (2)(b), at least 30 days before the date construction of the facility should commence in order to avoid significant risk of impairment of safe, reliable, efficient, and adequate service to customers of the public utility;
(b) there is a dispute regarding:
(i) the estimated excess cost or standard cost of a facility;
(ii) when construction of a facility should commence in order to avoid significant risk of impairment of safe, reliable, and adequate service to customers of the public utility;
(iii) whether the public utility has sought a permit, authorization, approval, exception, or waiver with respect to a facility sufficiently in advance of the date construction should commence, based upon reasonably foreseeable conditions, to allow the local government reasonable time to pay for any estimated excess cost;
(iv) the geographic boundaries of a proposed corridor as set forth in a notice submitted by a public utility to a local government pursuant to the provisions of Subsection 54-18-301(2)(a), provided the action is filed by the local government before the public utility files an application for a land use permit as set forth in Subsection 54-18-304(1)(a); or

(v) a modification proposed by a local government to a utility's proposed corridor that is identified in the public utility's notice of intent required pursuant to Subsection 54-18-301(3);
(c) a local government has required construction of a facility in a manner that will not permit the utility to provide service to its customers in a safe, reliable, adequate, or efficient manner;
(d) a local government has prohibited construction of a facility which is needed to provide safe, reliable, adequate, and efficient service to the customers of the public utility;
(e) a local government has not made a final decision on the public utility's application for a permit, authorization, approval, exception, or waiver with respect to a facility within 60 days of the date the public utility applied to the local government for the permit, authorization, approval, exception, or waiver;
(f) a facility is located or proposed to be located in more than one local government jurisdiction and the decisions of the local governments regarding the facility are inconsistent; or
(g) a facility is proposed to be located within a local government jurisdiction to serve customers exclusively outside the jurisdiction of the local government and there is a dispute regarding the apportionment of the actual excess cost of the facility between the local government and the public utility.

(2)
(a) If an action is filed by a local government pursuant to Subsection (1)(b)(iv) or (v) seeking a modification to a target study area or a proposed corridor, the local government shall provide written notice of the action to any potentially affected landowner, as defined in Section 54-18-102, or affected entity, as defined in Section 54-18-102.
(b) A potentially affected landowner, as defined in Section 54-18-102, or affected entity, as defined in Section 54-18-102, shall have a right to intervene as a party in the proceeding.

Amended by Chapter 340, 2011 General Session

54-14-304 Initial hearing.

(1) The board shall convene an initial hearing within 50 days after the date review is initiated.
(2) At the initial hearing, the board shall:
(a) determine how the review will take place, including whether it will be conducted as a formal or informal adjudicative proceeding; and
(b) set a schedule for the review proceeding.
(3) The board shall hold a hearing on the merits within 60 days after the initial hearing.

Amended by Chapter 89, 2013 General Session

54-14-305 Written decisions of board.

(1) The board shall issue a written decision on the review expeditiously and, in any event, not later than 75 days following the initial hearing.
(2) The written decision shall:
(a) specify whether the facility should be constructed and, if so, whether any requirements or conditions imposed by the local government may not be imposed because they impair the ability of the public utility to provide safe, reliable, and adequate service to its customers; and
(b) resolve any dispute regarding:
(i) the standard cost or estimated excess cost of the facility;
(ii) the date on which construction of the facility should commence in order to avoid a significant risk of impairment of safe, reliable, and adequate service to customers of the public utility;

(iii) whether the public utility has sought a permit, authorization, approval, exception, or waiver with respect to a facility sufficiently in advance of the date construction should commence, based upon reasonably foreseeable conditions, to allow the local government reasonable time to pay for any estimated excess cost;

(iv) apportionment of the actual excess cost of the facility between the local government and the public utility under Subsection 54-14-303(1)(g); or

(v) the proposed location and siting of a facility subject to Chapter 18, Siting of High Voltage Power Line Act, and in accordance with Section 54-14-102.

(3)

(a) Notwithstanding Subsection (6), the written decision of the board may designate the facility route for a high voltage transmission line pursuant to a dispute described under Section 54-14-304.

(b) The public utility is entitled to recover from its ratepayers any actual excess costs apportioned to it under Subsection (2)(b)(iv).

(4) If the board determines that a facility that a local government has prohibited should be constructed, the written decision shall specify any general location parameters required to provide safe, reliable, adequate, and efficient service to the customers of the public utility.

(5) The written decision shall leave to the local government any issue that does not affect the provision of safe, reliable, adequate, and efficient service to customers of the public utility or that does not involve an estimated excess cost.

(6) With respect to local government requirements or conditions that impose an estimated excess cost but do not impair the provision of safe, reliable, and adequate service to the customers of the public utility, the written decision shall leave each siting issue to the local government except determination of the estimated excess cost and determination of when the construction of the facility should commence.

(7)

(a) In determining when the construction of the facility should commence, the board shall consider whether the public utility sought a permit, authorization, approval, exception, or waiver from the local government in a timely manner based upon reasonably foreseeable conditions.

(b) If the board determines that the public utility did not seek a permit, authorization, approval, exception, or waiver in a timely manner, the board shall allow sufficient time for the local government to pay any actual excess cost that may be imposed as a result of requirements or conditions the local government has imposed that do not impair the provision of safe, reliable, and adequate service to customers of the public utility.

(c) There is a presumption that the utility has sought a permit, authorization, approval, exception, or waiver in a timely manner if the utility has complied with:

(i) the notice and filing requirements of Chapter 18, Siting of High Voltage Power Line Act; or

(ii) the timing requirements imposed by a local government land use ordinance.

Amended by Chapter 89, 2013 General Session

54-14-306 Action required of local government following board decision.

(1) If the board decides that a facility permitted to be constructed by a local government is subject to requirements or conditions that impose an estimated excess cost but do not impair the provision of safe, reliable, and adequate service to customers of the public utility, the local government shall, within 20 days following the decision of the board, determine whether it will impose the requirement or conditions imposing an estimated excess cost or issue the permit,

authorization, approval, exception, or waiver without the requirements or conditions imposing an estimated excess cost.

(2) If the board decides that a facility should be constructed that the local government has prohibited, the local government shall, within 60 days following the decision of the board, issue the permit, authorization, approval, exception, or waiver consistent with the decision of the board.

(3) The local government may impose requirements or conditions pursuant to its zoning, subdivision, or building code regulations if:

(a) the requirements or conditions do not impair safe, reliable, and adequate service to the customers of the utility; and

(b) the local government enters into an agreement with the public utility within the 20-day time limit specified by Subsection (1) or the 60-day time limit specified by Subsection (2) to pay for the actual excess cost to the public utility, except any actual excess costs specified in Subsection 54-14-201(2)(a) or (2)(b), at least 30 days before the date construction of the facility should commence.

Enacted by Chapter 197, 1997 General Session

54-14-307 Stay of board's decision pending review or appeal.

(1) A petition for review, rehearing, or reconsideration or a petition for judicial review does not stay or suspend the effectiveness of a written decision of the board.

(2) Any party seeking to stay the effectiveness of a decision of the board shall seek a stay under Section 63G-4-405.

Amended by Chapter 382, 2008 General Session

Superseded 7/1/2024

54-14-308 Judicial review in formal adjudicative proceedings.

The Court of Appeals has jurisdiction to review any decision of the board in a formal adjudicative proceeding.

Enacted by Chapter 197, 1997 General Session

Effective 7/1/2024

54-14-308 Judicial review in formal adjudicative proceedings.

The Court of Appeals has jurisdiction to review any decision of the board in a formal adjudicative proceeding as described in Sections 63G-4-403 and 78A-4-103.

Amended by Chapter 158, 2024 General Session

Chapter 15
Net Metering of Electricity

54-15-101 Title.

This chapter is known as "Net Metering of Electricity."

Enacted by Chapter 6, 2002 General Session

54-15-102 Definitions.

As used in this chapter:

(1) "Annualized billing period" means:
- (a) a 12-month billing cycle beginning on April 1 of one year and ending on March 31 of the following year; or
- (b) an additional 12-month billing cycle as defined by an electrical corporation's net metering tariff or rate schedule.

(2) "Customer-generated electricity" means electricity that:
- (a) is generated by a customer generation system for a customer participating in a net metering program;
- (b) exceeds the electricity the customer needs for the customer's own use; and
- (c) is supplied to the electrical corporation administering the net metering program.

(3) "Customer generation system":
- (a) means an eligible facility that is used to supply energy to or for a specific customer that:
  - (i) has a generating capacity of:
    - (A) not more than 25 kilowatts for a residential facility; or
    - (B) not more than two megawatts for a non-residential facility, unless the governing authority approves a greater generation capacity;
  - (ii) is located on, or adjacent to, the premises of the electrical corporation's customer, subject to the electrical corporation's service requirements;
  - (iii) operates in parallel and is interconnected with the electrical corporation's distribution facilities;
  - (iv) is intended primarily to offset part or all of the customer's requirements for electricity; and
  - (v) is controlled by an inverter; and
- (b) includes an electric generator and its accompanying equipment package.

(4) "Eligible facility" means a facility that uses energy derived from one of the following to generate electricity:
- (a) solar photovoltaic and solar thermal energy;
- (b) wind energy;
- (c) hydrogen;
- (d) organic waste;
- (e) hydroelectric energy;
- (f) waste gas and waste heat capture or recovery;
- (g) biomass and biomass byproducts, except for the combustion of:
  - (i) wood that has been treated with chemical preservatives such as creosote, pentachlorophenol, or chromated copper arsenate; or
  - (ii) municipal waste in a solid form;
- (h) forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and to reduce wildfire risk;
- (i) agricultural residues;
- (j) dedicated energy crops;
- (k) landfill gas or biogas produced from organic matter, wastewater, anaerobic digesters, or municipal solid waste; or
- (l) geothermal energy.

(5) "Equipment package" means a group of components connecting an electric generator to an electric distribution system, including all interface equipment and the interface equipment's controls, switchgear, inverter, and other interface devices.
(6) "Excess customer-generated electricity" means the amount of customer-generated electricity in excess of the customer's consumption from the customer generation system during a monthly billing period, as measured at the electrical corporation's meter.
(7) "Fuel cell" means a device in which the energy of a reaction between a fuel and an oxidant is converted directly and continuously into electrical energy.
(8) "Governing authority" means:
(a) for a distribution electrical cooperative, its board of directors; and
(b) for each other electrical corporation, the Public Service Commission.
(9) "Inverter" means a device that:
(a) converts direct current power into alternating current power that is compatible with power generated by an electrical corporation; and
(b) has been designed, tested, and certified to UL1741 and installed and operated in accordance with the latest revision of IEEE1547, as amended.
(10) "Net electricity" means the difference, as measured at the meter owned by the electrical corporation between:
(a) the amount of electricity that an electrical corporation supplies to a customer participating in a net metering program; and
(b) the amount of customer-generated electricity delivered to the electrical corporation.
(11) "Net metering" means measuring the amount of net electricity for the applicable billing period.
(12) "Net metering program" means a program administered by an electrical corporation whereby a customer with a customer generation system may:
(a) generate electricity primarily for the customer's own use;
(b) supply customer-generated electricity to the electrical corporation; and
(c) if net metering results in excess customer-generated electricity during a billing period, receive a credit as provided in Section 54-15-104.
(13) "Switchgear" means the combination of electrical disconnects, fuses, or circuit breakers:
(a) used to:
(i) isolate electrical equipment; and
(ii) de-energize equipment to allow work to be performed or faults downstream to be cleared; and
(b) that is:
(i) designed, tested, and certified to UL1741; and
(ii) installed and operated in accordance with the latest revision of IEEE1547, as amended.

Amended by Chapter 53, 2014 General Session

54-15-103 Net metering program -- Metering equipment -- Interconnection agreement.
(1) Each electrical corporation shall:
(a) except as provided in Subsection (2), make a net metering program available to the electrical corporation's customers; and
(b) allow customer generation systems to be interconnected to the electrical corporation's facilities using, except as provided in Subsection (4), a kilowatt-hour meter capable of net metering.
(2) An electrical corporation may discontinue making a net metering program available to customers not already participating in the program if:

(a) the cumulative generating capacity of customer generation systems in the program equals at least .1% of the electrical corporation's peak demand during 2007; or
(b) the electrical corporation serves fewer than 1,000 customers in the state.
(3)
(a) Notwithstanding Subsection (2)(a), the governing authority may establish a higher amount of generating capacity from customer generation systems than .1% of the electrical corporation's peak demand during 2007 before a net metering program may be discontinued under Subsection (2).
(b) Before acting under Subsection (3)(a), the governing authority shall provide public notice of its proposed action and an opportunity for public comment.
(4)
(a) Notwithstanding Subsection (1)(b), an electrical corporation may require a customer participating in the electrical corporation's net metering program to use metering equipment other than a standard kilowatt-hour meter if the governing authority, after appropriate notice and opportunity for public comment:
(i) determines that the use of other metering equipment is necessary and appropriate to monitor the flow of electricity from and to the electrical corporation; and
(ii) approves the requirement for other metering equipment, after considering the benefits and costs associated with the other metering equipment.
(b) If the governing authority approves the requirement for other metering equipment under Subsection (4)(a), the governing authority shall determine how the cost of purchasing and installing the other metering equipment is to be allocated between the electrical corporation and the customer.
(5) An electrical corporation may require a customer to enter into an interconnection agreement before connecting the customer generation system to the electrical corporation's facilities.

Amended by Chapter 244, 2008 General Session

54-15-104 Charges or credits for net electricity.
(1) Each electrical corporation with a customer participating in a net metering program shall measure net electricity during each monthly billing period, in accordance with normal metering practices.
(2) If net metering does not result in excess customer-generated electricity during the monthly billing period, the electrical corporation shall bill the customer for the net electricity, in accordance with normal billing practices.
(3) Subject to Subsection (4), if net metering results in excess customer-generated electricity during the monthly billing period:
(a)
(i) the electrical corporation shall credit the customer for the excess customer-generated electricity based on the meter reading for the billing period at a value that is at least avoided cost, or as determined by the governing authority; and
(ii) all credits that the customer does not use during the annualized billing period expire at the end of the annualized billing period; and
(b) as authorized by the governing authority, the electrical corporation may bill the customer for customer charges that otherwise would have accrued during that billing period in the absence of excess customer-generated electricity.
(4) At the end of an annualized billing period, an electrical corporation's avoided cost value of remaining unused credits described in Subsection (3)(a) shall be granted:

(a) to the electrical corporation's low-income assistance programs as determined by the governing authority; or
(b) for another use as determined by the governing authority.

Amended by Chapter 324, 2015 General Session

54-15-105.1 Determination of costs and benefits -- Determination of just and reasonable charge, credit, or ratemaking structure.

The governing authority shall:
(1) determine, after appropriate notice and opportunity for public comment, whether costs that the electrical corporation or other customers will incur from a net metering program will exceed the benefits of the net metering program, or whether the benefits of the net metering program will exceed the costs; and
(2) determine a just and reasonable charge, credit, or ratemaking structure, including new or existing tariffs, in light of the costs and benefits.

Enacted by Chapter 53, 2014 General Session

54-15-106 Customer to provide equipment necessary to meet certain requirements -- Governing authority may adopt additional reasonable requirements -- Testing and inspection of interconnection.

(1) Each customer participating in a net metering program shall provide at the customer's expense all equipment necessary to meet:
(a) applicable local and national standards regarding electrical and fire safety, power quality, and interconnection requirements established by the National Electrical Code, the National Electrical Safety Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories; and
(b) any other utility interconnection requirements as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(2) After appropriate notice and opportunity for public comment, the governing authority may by rule adopt additional reasonable safety, power quality, and interconnection requirements for customer generation systems that the governing authority considers to be necessary to protect public safety and system reliability.
(3)
(a) If a customer participating in a net metering program complies with requirements referred to under Subsection (1) and additional requirements established under Subsection (2), an electrical corporation may not require that customer to:
(i) perform or pay for additional tests; or
(ii) purchase additional liability insurance.
(b) An electrical corporation may not be held directly or indirectly liable for permitting or continuing to permit an interconnection of a customer generation system to the electrical corporation's system or for an act or omission of a customer participating in a net metering program for loss, injury, or death to a third party.
(4) An electrical corporation may test and inspect an interconnection at times that the electrical corporation considers necessary to ensure the safety of electrical workers and to preserve the integrity of the electric power grid.

(5) The electrical function, operation, or capacity of a customer generation system, at the point of connection to the electrical corporation's distribution system, may not compromise the quality of service to the electrical corporation's other customers.

Amended by Chapter 53, 2014 General Session

54-15-107 Application to out-of-state electrical corporation.

An electrical corporation with fewer than 5,000 customers in this state that is headquartered in another state is considered to be in compliance with this chapter if the electrical corporation offers net metering to its customers in Utah in accordance with a tariff, schedule, or other requirement of the appropriate authority in the state in which the electrical corporation's headquarters are located.

Enacted by Chapter 244, 2008 General Session

54-15-108 Damages and fines for connecting a customer generation system to more than one customer.

If an independent energy producer that is supplying energy to a customer described in Subsection 54-2-201(3)(a) violates the limitation described in Subsection 54-2-201(3)(b)(i), the commission may:

(1) award damages to an electrical corporation for actual and consequential damages to the electrical corporation; and

(2) assess a fine against the independent energy producer or person responsible for the violation.

Amended by Chapter 267, 2016 General Session

Chapter 17
Energy Resource Procurement Act

Part 1
General Provisions

54-17-101 Title.

This chapter is known as the "Energy Resource Procurement Act."

Enacted by Chapter 11, 2005 General Session

54-17-102 Definitions.

As used in this chapter:

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

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

(a) could be constructed or owned by:

(i) an affected electrical utility; or

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

(b) may be a purchase of:

(i) electricity;
(ii) electric generating capacity; or
(iii) electricity and electric generating capacity.
(3) "Dispatchability" means the extent to which an energy resource is dispatchable.
(4) "Dispatchable" means available for use on demand and generally available to be delivered at a time and quantity of the operator's choosing.
(5) "Integrated resource plan" means a plan that contains:
(a) the demand and energy forecast by the affected electrical utility for at least a ten-year period;
(b) the affected electrical utility's options for meeting the requirements shown in the affected electrical utility's load and resource forecast in an economic and reliable manner, including:
(i) demand-side and supply-side options; and
(ii) a brief description and summary cost-benefit analysis, if available, of each option that was considered;
(c) the affected electrical utility's assumptions and conclusions with respect to the effect of the plan on the cost and reliability of energy service;
(d) a description of the external environmental and economic consequences of the plan to the extent practicable; and
(e) any other data and analyses as the commission may require.
(6) "Intermittent resource" means an energy resource that relies on a variable fuel source that interrupts energy generation, resulting in periods of non-production or reduced production.
(7) "Proven dispatchable generation resource" means a significant energy resource that has demonstrated the capability to provide dispatchable energy.
(8)
(a) "Risk" means the probability that an energy resource will produce negative consequences that outweigh anticipated positive results and undermine the public interest.
(b) "Risk" includes the probability that:
(i) overreliance on intermittent resources will create instability or inadequacy in meeting electricity demand;
(ii) the energy resource will be unable to provide a consistent and resilient supply of electricity to consumers; and
(iii) electricity costs will become unsustainable for consumers.
(9) "Significant energy resource" for an affected electrical utility means a resource that consists of:
(a) a total of 100 megawatts or more of new generating capacity that has a dependable life of 10 or more years;
(b) a purchase of the following if the contract is for a term of 10 or more years and not less than 100 megawatts:
(i) electricity;
(ii) electric generating capacity; or
(iii) electricity and electrical generating capacity;
(c) the purchase or lease by an affected electrical utility from an affiliated company of:
(i) a generating facility;
(ii) electricity;
(iii) electrical generating capacity; or
(iv) electricity and electrical generating capacity;
(d) a contract with an option for the affected electrical utility or an affiliate to purchase a resource that consists of not less than 100 megawatts or more of new generating capacity that has a remaining dependable life of 10 or more years; or

(e) a type of resource designated by the commission as a significant energy resource in rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, after considering the affected electrical utility's integrated resource plan and action plan.

(10) "Solicitation" means a request for proposals or other invitation for persons to submit a bid or proposal through an open bid process for construction or acquisition of a significant energy resource.

Amended by Chapter 214, 2024 General Session

54-17-103 Rulemaking.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission:
(a) shall make rules when required by this chapter; and
(b) in addition to the rules required under Subsection (1)(a), may make rules necessary for the implementation of this chapter.

(2) Notwithstanding a requirement that the commission make rules, the commission may take action under this chapter before the commission makes a required rule including:
(a) approving a solicitation process under Part 2, Solicitation Process;
(b) approving a significant energy resource under Section 54-17-302;
(c) issuing an order under Section 54-17-304 regarding whether an affected electrical utility should proceed with implementing a significant energy resource decision;
(d) approving an energy resource under Section 54-17-402; or
(e) issuing an order under Section 54-17-404 regarding whether an energy utility should proceed with implementing a resource decision.

Amended by Chapter 382, 2008 General Session

Part 2
Solicitation Process

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

(1)
(a) An affected electrical utility shall comply with this chapter to acquire or construct a significant energy resource after February 25, 2005.
(b) Notwithstanding Subsection (1)(a), this chapter does not apply to a significant energy resource for which the affected electrical utility has issued a solicitation before February 25, 2005.

(2)
(a) Except as provided in Subsection (3), to acquire or construct a significant energy resource, an affected electrical utility shall conduct a solicitation process that is approved by the commission.
(b) To obtain the approval of the commission of a solicitation process, the affected electrical utility shall file with the commission a request for approval that includes:
(i) a description of the solicitation process the affected electrical utility will use;
(ii) a complete proposed solicitation; and

(iii) any other information the commission requires by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) In ruling on the request for approval of a solicitation process, the commission shall determine whether the solicitation process:

(i) complies with this chapter and rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

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

(A) the dispatchability of the significant energy resource;

(B) the state's desire to have proven dispatchable generation resources operating within the state to ensure adequate resources to reliably meet the state's energy needs;

(C) whether the proposal is consistent with the state energy policy described in Section 79-6-301;

(D) whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of an affected electrical utility located in this state, including any lowered costs resulting from the ability to sell excess energy generated in an interstate energy market;

(E) long-term and short-term impacts;

(F) risk;

(G) reliability;

(H) financial impacts on the affected electrical utility; and

(I) other factors determined by the commission to be relevant.

(d) Before approving a solicitation process under this section the commission:

(i) may hold a public hearing; and

(ii) shall provide an opportunity for public comment.

(e) As part of the commission's review of a solicitation process, the commission may provide the affected electrical utility guidance on any additions or changes to the commission's proposed solicitation process.

(f) Unless the commission determines that additional time to analyze a solicitation process is warranted and is in the public interest, within 60 days of the day on which the affected electrical utility files a request for approval of the solicitation process, the commission shall:

(i) approve a proposed solicitation process;

(ii) suggest modifications to a proposed solicitation process; or

(iii) reject a proposed solicitation process.

(3) Notwithstanding Subsection (2), an affected electrical utility may acquire or construct a significant energy resource without conducting a solicitation process if it obtains a waiver of the solicitation requirement in accordance with Section 54-17-501.

(4) In accordance with the commission's authority under Subsection 54-12-2(2), the commission shall determine:

(a) whether this chapter or another competitive bidding procedure shall apply to a purchase of a significant energy resource by an affected electrical utility from a small power producer or cogenerator; and

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

Amended by Chapter 214, 2024 General Session

54-17-202 Requirements for solicitation.

(1) The commission shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, outlining the requirements for a solicitation process. The rules required by this Subsection (1) shall include:
(a) the type of screening criteria an affected electrical utility may use in a solicitation process including the risks an affected electrical utility may consider;
(b) the required disclosures by an affected electrical utility if a solicitation includes a benchmark option;
(c) the required disclosures by an affected electrical utility related to the methodology the affected electrical utility uses to evaluate bids; and
(d) the participation of an independent evaluator in a manner consistent with Section 54-17-203.
(2) If an affected electrical utility is subject to regulation in more than one state regarding the acquisition, construction, or cost recovery of a significant energy resource, in making the rules required by Subsection (1), the commission may consider the impact of the multistate regulation including requirements imposed by other states as to:
(a) the solicitation process;
(b) cost recovery of resources; and
(c) methods by which the affected electrical utility may be able to mitigate the potential for cost disallowances.

Amended by Chapter 382, 2008 General Session

54-17-203 Independent evaluator.
(1)
(a) The commission shall:
(i) appoint an independent evaluator to monitor any solicitation conducted by an affected electrical utility under this chapter; and
(ii) oversee or direct the division to oversee the independent evaluator in monitoring any solicitation conducted by an affected electrical utility under this chapter.
(b) The commission, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall make rules setting the qualifications of an independent evaluator.
(2) The commission shall determine the method used to pay the fees and expenses for the independent evaluator which may include:
(a) the payment of a bid fee by bidders to a solicitation; or
(b)
(i) requiring the affected electrical utility to pay the fees and expenses; and
(ii) permitting an affected electrical utility to recover the amounts paid under this Subsection (2)(b).
(3)
(a) The independent evaluator may not make the decision as to which bid should be awarded under the solicitation.
(b) The independent evaluator shall:
(i) actively monitor the solicitation process for fairness and compliance with commission rules;
(ii) report regularly to:
(A) the commission; and
(B) others as directed by the commission;
(iii) develop one or more reports addressing:
(A) the solicitation process;
(B) any concerns of the independent evaluator related to the solicitation process; and

(C) the ultimate results of the solicitation process, including the opinions and conclusions of the independent evaluator;
(iv) provide ongoing input regarding issues, concerns, and improvements in the solicitation process with the objective of correcting ongoing deficiencies in the solicitation process to the following:
(A) the commission;
(B) the affected electrical utility; and
(C) others as directed by the commission;
(v) render an opinion as to whether:
(A) the solicitation process is:
(I) fair; and
(II) in compliance with this part; and
(B) any modeling used by the affected electrical utility to evaluate bids is sufficient;
(vi) testify in any proceeding under Section 54-17-302; and
(vii) perform other functions and provide other input and reports as the commission may direct, including periodic presentations to interested parties regarding the solicitation process.

Amended by Chapter 382, 2008 General Session

Part 3
Resource Plans and Significant Energy Resource Approval

54-17-301 Review of integrated resource plan action plans.
(1) An affected electrical utility shall file with the commission any action plan developed as part of the affected electrical utility's integrated resource plan to enable the commission to review and provide guidance to the affected electrical utility.
(2)
(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules providing a process for its review of an action plan.
(b) The rules required under Subsection (2)(a) shall provide sufficient flexibility to permit changes in an action plan between the periodic filings of the affected electrical utility's integrated resource plan.

Amended by Chapter 382, 2008 General Session

54-17-302 Approval of a significant energy resource decision required.
(1) If pursuant to Part 2, Solicitation Process, an affected electrical utility is required to conduct a solicitation for a significant energy resource or obtains a waiver of the requirement to conduct a solicitation under Section 54-17-501, but does not obtain a waiver of the requirement to obtain approval of the significant energy resource decision under Section 54-17-501, the affected electrical utility shall obtain approval of the affected electrical utility's significant energy resource decision:
(a) after the completion of the solicitation process, if the affected electrical utility is required to conduct a solicitation; and
(b) before an affected electrical utility may construct or enter into a binding agreement to acquire the significant energy resource.

(2)
(a) To obtain the approval required by Subsection (1), the affected electrical utility shall file a request for approval with the commission.
(b) The request for approval required by this section shall include any information required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(3) In ruling on a request for approval of a significant energy resource decision, the commission shall determine whether the significant energy resource decision:
(a) is reached in compliance with this chapter and rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
(b)
(i) is reached in compliance with the solicitation process approved by the commission in accordance with Part 2, Solicitation Process; or
(ii) is reached after the waiver of the solicitation process as provided in Subsection 54-17-201(3); and
(c) is in the public interest, taking into consideration:
(i) the dispatchability of the significant energy resource;
(ii) the state's desire to have proven dispatchable generation resources operating within the state to ensure adequate resources to reliably meet the state's energy needs;
(iii) whether the proposal is consistent with the state energy policy described in Section 79-6-301;
(iv) whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of an affected electrical utility located in this state, including any lowered costs resulting from the ability to sell excess energy generated in an interstate energy market;
(v) long-term and short-term impacts;
(vi) risk;
(vii) reliability;
(viii) financial impacts on the affected electrical utility; and
(ix) other factors determined by the commission to be relevant.
(4) The commission may not approve a significant energy resource decision under this section before holding a public hearing.
(5) Unless the commission determines that additional time to analyze a significant energy resource decision is warranted and is in the public interest, within 120 days of the day on which the affected electrical utility files a request for approval, the commission shall:
(a) approve the significant energy resource decision;
(b) approve the significant energy resource decision subject to conditions imposed by the commission; or
(c) disapprove the significant energy resource decision.
(6) The commission shall include in the commission's order under this section:
(a) findings as to the total projected costs for construction or acquisition of an approved significant energy resource; and
(b) the basis upon which the findings described in Subsection (6)(a) are made.
(7) Notwithstanding any other provision of this part, an affected electrical utility may acquire a significant energy resource without obtaining approval pursuant to this section if it obtains a waiver of the requirement for approval in accordance with Section 54-17-501.

(8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules regarding the process for approval of a significant energy resource decision under this section.

Amended by Chapter 214, 2024 General Session

54-17-303 Cost recovery.

(1)

(a) Except as otherwise provided in this section, and excluding cost recovery for costs associated with proven dispatchable generation resources, which is governed by Section 54-17-1002, if the commission approves a significant energy resource decision under Section 54-17-302, the commission shall, in a general rate case or other appropriate commission proceeding, include in the affected electrical utility's retail electric rates the state's share of costs:

(i) relevant to the proceeding;

(ii) incurred by the affected electrical utility in constructing or acquiring the approved significant energy resource; and

(iii) up to the projected costs specified in the commission's order issued under Section 54-17-302.

(b)

(i) The commission shall, in a general rate case or other appropriate commission proceeding, include in the affected electrical utility's retail electric rates the state's share of the incremental cost relevant to the proceeding that were prudently incurred by the affected electrical utility to identify, evaluate, and submit a reasonable benchmark option, whether or not the benchmark option is selected or becomes operational.

(ii) A recoverable cost under Subsection (1)(b)(i) shall be included in the affected electrical utility's project costs for the purpose of evaluating the project's cost-effectiveness.

(iii) A recoverable cost under Subsection (1)(b)(i) may not be added to the cost or otherwise considered in the evaluation of a project proposed by any person other than the affected electrical utility for the purpose of evaluating that person's proposal.

(c) Except to the extent that the commission enters an order under Section 54-17-304, an increase from the projected costs specified in the commission's order issued under Section 54-17-302 shall be subject to review by the commission as part of a rate hearing under Section 54-7-12.

(2)

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

(i) the commission's approval of the significant energy resource decisions under Section 54-17-302; or

(ii) a commission order to proceed under Section 54-17-304.

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

(3) Notwithstanding any other provision of this chapter, the commission may disallow some or all of the costs incurred by an affected electrical utility in connection with an approved significant energy resource decision upon a finding by the commission that the affected electrical utility

is responsible for a material misrepresentation or concealment in connection with an approval process under this chapter.

Amended by Chapter 214, 2024 General Session

54-17-304 Order to proceed.

(1)
(a) In the event of a change in circumstances or projected costs, an affected electrical utility may seek a commission review and determination of whether the affected electrical utility should proceed with the implementation of an approved significant energy resource decision.
(b) In making a determination under this Subsection (1), the commission shall use the standards identified in Subsection 54-17-302(3)(c).
(c) Before making a determination under this Subsection (1) the commission:
(i) may hold a public hearing; and
(ii) shall provide an opportunity for public comment.

(2) Unless the commission determines that additional time is warranted and is in the public interest, within 60 days of the day on which the affected electrical utility files a request for commission review and determination under this section, the commission shall:
(a) issue an order:
(i) determining that the affected electrical utility should proceed with the implementation of the significant energy resource decision;
(ii) making findings as to the total projected costs for construction or acquisition of the approved significant energy resource; and
(iii) stating the basis upon which the findings described in Subsection (2)(a)(ii) are made; or
(b) issue an order determining that the affected electrical utility should not proceed with the implementation of the significant energy resource decision.

(3) If the commission determines that the affected electrical utility should proceed with the implementation of the approved significant energy resource decision, the commission shall, in a general rate case or other appropriate commission proceeding, include in the affected electrical utility's retail electric rates the state's share of costs:
(a) relevant to that proceeding;
(b) incurred by the affected electrical utility in constructing or acquiring the approved significant energy resource; and
(c) up to the projected costs as specified in the commission's order issued under Subsection (2)(a).

(4) If the commission determines that the affected electrical utility should not proceed with the implementation of the approved significant energy resource decision, the commission shall, in a general rate case or other appropriate commission proceeding, include in the affected electrical utility's retail electric rates the state's share of costs:
(a) relevant to that proceeding; and
(b) incurred by the affected electrical utility in constructing or acquiring the approved significant energy resource before issuance of a determination not to proceed, including any prudently incurred costs of terminating the approved significant energy resource decision.

(5) A commission order under this section not to proceed with the implementation of a significant energy resource may not prejudice:
(a) the right of an affected electrical utility to:
(i) continue to implement the significant energy resource decision; and

(ii) seek recovery of costs incurred after a determination not to proceed in a future rate proceeding; or

(b) the right of any other party to support or oppose recovery of costs sought under Subsection (5)(a)(ii).

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules regarding the process for the commission's review and determination on a request for an order to proceed under this section.

Amended by Chapter 382, 2008 General Session

Part 4
Voluntary Request for Resource Decision Review

54-17-401 Definitions -- Rules.

(1) As used in this part:

(a) "Energy utility" means one of the following with 200,000 retail customers in the state:

(i) an electrical corporation; or

(ii) a gas corporation.

(b) "Resource decision" means a decision, other than a decision to construct or acquire a significant energy resource, involving:

(i) an energy utility's acquisition, management, or operation of energy production, processing, transmission, or distribution facilities or processes including:

(A) a facility or process for the efficient, reliable, or safe provision of energy to retail customers;

(B) an energy efficiency and conservation program; or

(C) rural gas infrastructure development; or

(ii) a decision determined by the commission to be appropriate for review under this part.

(c) "Rural gas infrastructure development" means the acquisition, planning, development, extension, expansion, and construction of natural gas utility facilities to serve previously unserved rural areas of the state.

(2) The commission may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to specify the nature of resource decisions subject to approval under Section 54-17-402.

Amended by Chapter 16, 2020 General Session

54-17-402 Request for review of resource decision.

(1) Beginning on February 25, 2005, before implementing a resource decision, an energy utility may request that the commission approve all or part of a resource decision in accordance with this part.

(2)

(a) To obtain the approval permitted by Subsection (1), the energy utility shall file a request for approval with the commission.

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

(c) A request for approval of natural gas infrastructure development shall include:
(i) a description of the proposed rural gas infrastructure development project;
(ii) an explanation of projected benefits from the proposed rural gas infrastructure development project;
(iii) the estimated costs of the rural gas infrastructure development project; and
(iv) any other information the commission requires.

(3) In ruling on a request for approval of a resource decision, the commission shall determine whether the decision:
(a) is reached in compliance with this chapter and rules made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
(b) is in the public interest, taking into consideration:
(i)
(A) the dispatchability of the energy resource;
(B) the state's desire to have proven dispatchable generation resources operating within the state to ensure adequate resources to reliably meet the state's energy needs and to make needed dispatchable generation from proven dispatchable energy generation resources available to the bulk electric system to support reliability;
(C) whether the proposal is consistent with the state energy policy described in Section 79-6-301;
(D) whether it will most likely result in the acquisition, production, and delivery of utility services at the lowest reasonable cost to the retail customers of an energy utility located in this state, including any lowered costs resulting from the ability to sell excess energy generated in an interstate energy market;
(E) long-term and short-term impacts;
(F) risk;
(G) reliability;
(H) financial impacts on the energy utility; and
(I) other factors determined by the commission to be relevant; or
(ii) for a request for approval of rural gas infrastructure development:
(A) the potential benefits to previously unserved rural areas;
(B) the potential number of new customers;
(C) natural gas consumption; and
(D) revenues, costs, and other factors determined by the commission to be relevant.

(4) In a decision relating to a request for approval of rural gas infrastructure development, the commission may determine that spreading all or a portion of the costs of the rural gas infrastructure development to the larger customer base is in the public interest.

(5)
(a) If the commission approves a proposed resource decision only in part, the commission shall explain in the order issued under this section why the commission does not approve the resource decision in total.
(b) Recovery of expenses incurred in connection with parts of a resource decision that are not approved is subject to the review of the commission as part of a rate hearing under Section 54-7-12.

(6) The commission may not approve a resource decision in whole or in part under this section before holding a public hearing.

(7) Unless the commission determines that additional time to analyze a resource decision is warranted and is in the public interest, within 180 days of the day on which the energy utility files a request for approval, the commission shall:

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

Amended by Chapter 214, 2024 General Session

54-17-403 Cost recovery.
(1)
(a) Except as otherwise provided in this section, and excluding cost recovery for costs associated with proven dispatchable generation resources, which is governed by Section 54-17-1002, if the commission approves any portion of an energy utility's resource decision under Section 54-17-402, the commission shall, in a general rate case or other appropriate commission proceeding, include in the energy utility's retail rates the state's share of costs:
(i) relevant to that proceeding;
(ii) incurred by the energy utility in implementing the approved resource decision; and
(iii) up to the projected costs specified in the commission's order issued under Section 54-17-402.
(b) Except to the extent that the commission issues an order under Section 54-17-404, any increase from the projected costs specified in the commission's order issued under Section 54-17-402 shall be subject to review by the commission as part of a rate hearing under Section 54-7-12.
(c) If the commission approves a request for approval of rural gas infrastructure development under Section 54-17-402, the commission may approve the inclusion of rural gas infrastructure development costs within the gas corporation's base rates if:
(i) the inclusion of those costs will not increase the base distribution non-gas revenue requirement by more than 2% in any three-year period;
(ii) the distribution non-gas revenue requirement increase related to the infrastructure development costs under Subsection (1)(c)(i) does not exceed 5% in the aggregate; and
(iii) the applicable distribution non-gas revenue requirement is the annual revenue requirement determined in the gas corporation's most recent rate case.
(2)
(a) Subsequent to the commission issuing an order described in Subsection (2)(a)(i) or (ii), the commission may disallow some or all costs incurred in connection with an approved resource decision if the commission finds that an energy utility's actions in implementing an approved resource decision are not prudent because of new information or changed circumstances that occur after:
(i) the commission approves the resource decision under Section 54-17-402; or
(ii) the commission issues an order to proceed under Section 54-17-404.
(b) In making a determination of prudence under Subsection (2)(a), the commission shall use the standards identified in Section 54-4-4.
(3) Notwithstanding any other provision of this chapter, the commission may disallow some or all of the costs incurred by an energy utility in connection with an approved resource decision upon a

finding by the commission that the energy utility is responsible for a material misrepresentation or concealment in connection with an approval process under this chapter.

Amended by Chapter 214, 2024 General Session

54-17-404 Order to proceed.

(1)
(a) In the event of a change in circumstances or projected costs, an energy utility may seek a commission review and determination of whether the energy utility should proceed with the implementation of an approved resource decision.
(b) In making a determination under this Subsection (1), the commission shall use the standards identified in Subsection 54-17-402(3)(b).
(c) Before making a determination under this Subsection (1) the commission:
(i) may hold a public hearing; and
(ii) shall provide an opportunity for public comment.

(2) Unless the commission determines that additional time is warranted and is in the public interest, within 60 days of the day on which the energy utility files a request for commission review and determination under this section, the commission shall:
(a) issue an order:
(i) determining that the energy utility should proceed with the implementation of the resource decision;
(ii) making findings as to the total projected costs of the approved resource decision; and
(iii) stating the basis upon which the findings described in Subsection (2)(a)(ii) are made; or
(b) issue an order determining that the energy utility should not proceed with the implementation of the resource decision.

(3) If the commission determines that the energy utility should proceed with the implementation of the approved resource decision, the commission shall, in a general rate case or other appropriate commission proceeding, include in the energy utility's retail rates the state's share of costs:
(a) relevant to that proceeding;
(b) incurred by the energy utility in implementing the approved resource decision; and
(c) up to the projected costs as specified in the commission's order issued under Subsection (2)(a).

(4) If the commission determines that the energy utility should not proceed with the implementation of the approved resource decision, the commission shall, in a general rate case or other appropriate commission proceeding, include in the energy utility's retail rates the state's share of costs:
(a) relevant to that proceeding; and
(b) incurred by the energy utility in implementing the approved resource decision before issuance of a determination not to proceed, including any prudently incurred costs of terminating the approved resource decision.

(5) A commission order under this section not to proceed with the implementation of a resource decision may not prejudice:
(a) the right of an energy utility to:
(i) continue to implement the resource decision; and
(ii) seek recovery of costs incurred after a determination not to proceed in a future rate proceeding; or

(b) the right of any other party to support or oppose the recovery sought under Subsection (5)(a)(ii).

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules regarding the process for the commission's review and determination on a request for an order to proceed under this section.

Amended by Chapter 382, 2008 General Session

Part 5
Waiver of Energy Resource Procurement Requirements

54-17-501 Waiver of requirement for solicitation or approval.

(1) An affected electrical utility may obtain a waiver of the requirement that it conduct a solicitation process under Part 2, Solicitation Process, or the requirement that it obtain approval of a significant energy resource decision under Part 3, Resource Plans and Significant Energy Resource Approval, if the commission determines that waiving the requirement is in the public interest because there exists:

(a) a clear emergency;

(b) a time-limited commercial or technical opportunity that provides value to the customers of the affected electrical utility; or

(c) any other factor that makes waiving the requirement in the public interest.

(2) To obtain a finding from the commission under Subsection (1), the affected electrical utility shall, as soon as practicable after learning of the existence of a circumstance specified in Subsection (1):

(a) file a verified application with the commission; and

(b) serve an electronic and paper copy of the verified application, including all associated exhibits and attachments, on each person reflected on a list to be maintained and published by the commission on its Internet website that has requested service of waiver requests and has signed a generic protective order issued by the commission limiting the use of information contained in or attached to a waiver request.

(3) A verified application filed pursuant to Subsection (2) shall:

(a) identify any waiver requested;

(b) explain the basis for each waiver requested;

(c) specify any time sensitivity associated with the verified application;

(d) explain why the waiver requested is in the public interest; and

(e) contain other information required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) Upon receipt of a verified application filed under Subsection (2), the commission shall, before the end of the next business day, provide public notice of a technical conference to be held no sooner than three business days and no later than seven calendar days following the day on which the verified application is filed and served.

(5)

(a) At the technical conference held under Subsection (4), the affected electrical utility shall provide adequate support for its verified application and shall respond to questions of the commission, an independent evaluator if one is participating, and any other interested person.

(b) The commission shall prepare and retain a transcript of the technical conference.

(6) No less than three business days and no more than seven calendar days following the technical conference, the independent evaluator and any interested person may file and serve comments concerning the verified application.

(7) The commission shall issue a written decision either granting, granting with conditions, or denying each waiver requested no later than seven calendar days following the deadline for the independent evaluator and any interested person to file comments under Subsection (6).

(8)

(a) If confidential or trade secret information is provided or used in the verified application, in the technical conference, in comments filed on the verified application or otherwise in the process, that information shall be clearly identified by the providing person as confidential and shall be provided on a confidential basis subject to the terms of a protective order issued by the commission.

(b)

(i) The commission shall issue a generic protective order to govern access to and use of confidential information in connection with a request for waiver under this part.

(ii) Upon request by the affected electrical utility or any interested person, the commission may issue a supplemental protective order in connection with any verified application.

(c)

(i) The generic protective order and any supplemental protective order restrict use of confidential information to the proceeding on the verified application, however, use of the confidential information in the proceeding is not considered a competitive purpose under Subsection (8)(c)(ii).

(ii) The generic protective order and any supplemental protective order shall forbid the use of confidential information for competitive purposes.

(d) An interested person may gain access to and use confidential information in accordance with the terms of a protective order issued by the commission.

(9) Notwithstanding the time frames in Subsections (4), (6), and (7), the commission:

(a) shall take action or schedule proceedings as soon as reasonably practicable in light of the circumstances and urgency demonstrated by the verified application and any subsequent information provided during the process; and

(b) may shorten or lengthen the time frames if the commission determines that changing them is warranted and in the public interest, except that a time frame may not be lengthened solely because an independent evaluator is not available to participate or to complete a recommendation.

(10) If an affected electrical utility is granted a waiver to acquire or construct a significant energy resource in accordance with this section:

(a) the provisions of Sections 54-17-303 and 54-17-304 do not apply to the significant energy resource decision;

(b) any cost recovery that an affected electrical utility seeks in connection with that significant energy resource is subject to a future prudence review by the commission under Subsection 54-4-4(4); and

(c) the waiver grant does not create any presumption that the affected electrical utility's action in acquiring or constructing a significant energy resource was prudent.

(11)

(a) Subject to Subsection (11)(b), the commission shall use reasonable efforts to have an independent evaluator available to participate in any application for a waiver under this part.

(b) The commission may decline to use an independent evaluator in the consideration of a waiver application if the commission determines the use of an independent evaluator is:

(i) not appropriate under the circumstances;
(ii) not available under terms or conditions the commission considers reasonable; or
(iii) not available to participate or complete a recommendation within any time frame established under Subsection (4), (6), (7), or (9).

(c) The validity of an order entered under this part is not affected by:
(i) the unavailability of an independent evaluator; or
(ii) the failure of an independent evaluator to participate or complete a recommendation within any time frame established under Subsection (4), (6), (7), or (9).

(12) The commission shall issue a generic protective order as provided in Subsections (2)(b) and (8)(b).

(13) By September 1, 2007, the commission shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules concerning the process for obtaining a waiver of the solicitation or approval process consistent with this section.

Amended by Chapter 382, 2008 General Session

54-17-502 Clean energy source -- Solicitation -- Consultant.

(1) Sections 54-17-102 through 54-17-404 do not apply to a significant energy resource that is a clean energy source as defined in Section 54-17-601 if the nameplate capacity of the clean energy source does not exceed 300 megawatts or, if applicable, the quantity of capacity that is the subject of a contract for the purchase of electricity from a clean energy source does not exceed 300 megawatts.

(2)
(a)
(i) An affected electrical utility shall issue a public solicitation of bids for a clean energy source up to 300 megawatts in size by January 31 of each year in which it reasonably anticipates that it will need to acquire or commence construction of a clean energy resource.
(ii) A solicitation for a clean energy source issued by January 31, 2008 for up to 99 megawatts satisfies the requirement of this Subsection (2) for the year 2008 if:
(A) not later than 30 days after the day on which this section takes effect, the affected electrical utility amends the solicitation or initiates a new solicitation to seek bids for clean energy source projects up to 300 megawatts in size; and
(B) within 60 days after the day on which this section takes effect and as soon as practicable, the commission retains a consultant in accordance with Subsection (3).

(b) A consultant hired under Subsection (2)(a)(ii)(B) shall perform the consultant's duties under Subsection (3) in relation to the status of the solicitation process at the time the consultant is retained and may not unreasonably delay the solicitation process.

(c) For a solicitation issued after January 31, 2008:
(i) the affected electrical utility shall develop a reasonable process for pre-approval of bidders; and
(ii) in addition to publicly issuing the solicitation in Subsection (2)(a)(i), the affected electrical utility shall send copies of the solicitation to each potential bidder who is pre-approved.

(d) The affected electrical utility shall evaluate in good faith each bid that is received and negotiate in good faith with each bidder whose bid appears to be cost effective, as defined in Section 54-17-602.

(e) Beginning on August 1, 2008, and on each August 1 thereafter, the affected electrical utility shall file a notice with the commission indicating whether it reasonably anticipates that it will

need to acquire or commence construction of a clean energy resource during the following year.

(3)

(a) If the commission receives a notice under Subsection (2)(e) that the affected electrical utility reasonably anticipates that it will need to acquire or commence construction of a clean energy source during the following year, the commission shall promptly retain a consultant to:

(i) validate that the affected electrical utility is following the bidder pre-approval process developed pursuant to Subsection (2)(c) and make recommendations for changes to the pre-approval process for future solicitations;

(ii) monitor and document all material aspects of the bids, bid evaluations, and bid negotiations between the affected electrical utility and any bidders in the solicitation process;

(iii) maintain adequate documentation of each bid, including the solicitation, evaluation, and negotiation processes and the reason for the conclusion of negotiations, which documentation shall be transmitted to the commission at the conclusion of all negotiations in the solicitation; and

(iv) be available to testify under oath before the commission in any relevant proceeding concerning all aspects of the public solicitation process.

(b) The commission and the consultant shall use all reasonable efforts to not delay the solicitation process.

(4) Documentation provided to the commission by the consultant shall be available to the affected electrical utility, any bidder, or other interested person under terms and conditions and at times determined appropriate by the commission.

(5)

(a) The commission and the consultant shall execute a contract approved by the commission with terms and conditions approved by the commission.

(b) Unless otherwise provided by contract, an invoice for the consultant's services shall be sent to the Division of Public Utilities for review and approval.

(c) After approval under Subsection (5)(b), the invoice shall be forwarded to the affected electrical utility for payment to the consultant.

(d) The affected electrical utility may, in a general rate case or other appropriate commission proceeding, include, and the commission shall allow, recovery by the affected electrical utility of any amount paid by the affected electrical utility for the consultant.

(6)

(a) Nothing in this section precludes an affected electrical utility from constructing or acquiring any clean energy source project outside the solicitation process provided for in this section, including purchasing electricity from any clean energy source project that chooses to self-certify as a qualifying facility under the federal Public Utility Regulatory Policies Act of 1978.

(b) An affected electrical utility that constructs a clean energy source outside the solicitation process of this section or Section 54-17-201 shall file a notice with the commission at least 60 days before the date of commencement of construction, indicating the size and location of the clean energy source.

(c) The date of commencement of construction under Subsection (6)(b) is the date of any directive from an affected electrical utility to the person responsible for the construction of the clean energy source authorizing or directing the person to proceed with construction.

(d) For an affected electrical utility whose rates are regulated by the commission, the utility has the burden of proving in a rate case or other appropriate commission proceeding the prudence, reasonableness, and cost-effectiveness of construction under this Subsection

(6), including the method used to evaluate the risks and value of any bid submitted in the solicitation under this section.

(7) Nothing in this section requires an affected electrical utility to enter into any transaction that it reasonably believes is not cost effective or otherwise is not in the public interest.

Amended by Chapter 53, 2024 General Session

Part 6
Carbon Emission Reductions for Electrical Corporations

54-17-601 Definitions.

As used in this part:

(1) "Adjusted retail electric sales" means the total kilowatt-hours of retail electric sales of an electrical corporation to customers in this state in a calendar year, reduced by:

(a) the amount of those kilowatt-hours attributable to electricity generated or purchased in that calendar year from qualifying zero carbon emissions generation and qualifying carbon sequestration generation;

(b) the amount of those kilowatt-hours attributable to electricity generated or purchased in that calendar year from generation located within the geographic boundary of the Western Electricity Coordinating Council that derives its energy from one or more of the following but that does not satisfy the definition of a clean energy source or that otherwise has not been used to satisfy Subsection 54-17-602(1):

(i) wind energy;

(ii) solar photovoltaic and solar thermal energy;

(iii) wave, tidal, and ocean thermal energy;

(iv) except for combustion of wood that has been treated with chemical preservatives such as creosote, pentachlorophenol or chromated copper arsenate, biomass and biomass byproducts, including:

(A) organic waste;

(B) forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and to reduce wildfire risk;

(C) agricultural residues;

(D) dedicated energy crops; and

(E) landfill gas or biogas produced from organic matter, wastewater, anaerobic digesters, or municipal solid waste;

(v) geothermal energy;

(vi) hydroelectric energy; or

(vii) waste gas and waste heat capture or recovery; and

(c) the number of kilowatt-hours attributable to reductions in retail sales in that calendar year from demand side management as defined in Section 54-7-12.8, with the kilowatt-hours for an electrical corporation whose rates are regulated by the commission and adjusted by the commission to exclude kilowatt-hours for which a renewable energy certificate is issued under Subsection 54-17-603(4)(b).

(2) "Amount of kilowatt-hours attributable to electricity generated or purchased in that calendar year from qualifying carbon sequestration generation," for qualifying carbon sequestration generation, means the kilowatt-hours supplied by a facility during the calendar year multiplied

by the ratio of the amount of carbon dioxide captured from the facility and sequestered to the sum of the amount of carbon dioxide captured from the facility and sequestered plus the amount of carbon dioxide emitted from the facility during the same calendar year.

(3) "Banked renewable energy certificate" means a bundled or unbundled renewable energy certificate that is:

(a) not used in a calendar year to comply with this part or with a renewable energy program in another state; and

(b) carried forward into a subsequent year.

(4) "Bundled renewable energy certificate" means a renewable energy certificate for qualifying electricity that is acquired:

(a) by an electrical corporation by a trade, purchase, or other transfer of electricity that includes the renewable energy attributes of, or certificate that is issued for, the electricity; or

(b) by an electrical corporation by generating the electricity for which the renewable energy certificate is issued.

(5) "Clean energy source" means:

(a) an electric generation facility or generation capability or upgrade that becomes operational on or after January 1, 1995, that derives its energy from one or more of the following:

(i) wind energy;

(ii) solar photovoltaic and solar thermal energy;

(iii) wave, tidal, and ocean thermal energy;

(iv) except for combustion of wood that has been treated with chemical preservatives such as creosote, pentachlorophenol or chromated copper arsenate, biomass and biomass byproducts, including:

(A) organic waste;

(B) forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and to reduce wildfire risk;

(C) agricultural residues;

(D) dedicated energy crops; and

(E) landfill gas or biogas produced from organic matter, wastewater, anaerobic digesters, or municipal solid waste;

(v) geothermal energy located outside the state;

(vi) waste gas and waste heat capture or recovery, including methane gas from:

(A) an abandoned coal mine; or

(B) a coal degassing operation associated with a state-approved mine permit;

(vii) efficiency upgrades to a hydroelectric facility, without regard to the date upon which the facility became operational, if the upgrades become operational on or after January 1, 1995;

(viii) compressed air, if:

(A) the compressed air is taken from compressed air energy storage; and

(B) the energy used to compress the air is a clean energy source;

(ix) municipal solid waste; or

(x) energy derived from nuclear fuel;

(b) any of the following:

(i) up to 50 average megawatts of electricity per year per electrical corporation from a certified low-impact hydroelectric facility, without regard to the date upon which the facility becomes operational, if the facility is certified as a low-impact hydroelectric facility on or after January 1, 1995, by a national certification organization;

(ii) geothermal energy if located within the state, without regard to the date upon which the facility becomes operational; or

(iii) hydroelectric energy if located within the state, without regard to the date upon which the facility becomes operational;

(c) hydrogen gas derived from any source of energy described in Subsection (5)(a) or (b);

(d) if an electric generation facility employs multiple energy sources, that portion of the electricity generated that is attributable to energy sources described in Subsections (5)(a) through (c); and

(e) any of the following located in the state and owned by a user of energy:

(i) a demand side management measure, as defined by Subsection 54-7-12.8(1), with the quantity of renewable energy certificates to which the user is entitled determined by the equivalent energy saved by the measure;

(ii) a solar thermal system that reduces the consumption of fossil fuels, with the quantity of renewable energy certificates to which the user is entitled determined by the equivalent kilowatt-hours saved, except to the extent the commission determines otherwise with respect to net-metered energy;

(iii) a solar photovoltaic system that reduces the consumption of fossil fuels with the quantity of renewable energy certificates to which the user is entitled determined by the total production of the system, except to the extent the commission determines otherwise with respect to net-metered energy;

(iv) a hydroelectric or geothermal facility with the quantity of renewable energy certificates to which the user is entitled determined by the total production of the facility, except to the extent the commission determines otherwise with respect to net-metered energy;

(v) a waste gas or waste heat capture or recovery system, other than from a combined cycle combustion turbine that does not use waste gas or waste heat, with the quantity of renewable energy certificates to which the user is entitled determined by the total production of the system, except to the extent the commission determines otherwise with respect to net-metered energy; and

(vi) the station use of solar thermal energy, solar photovoltaic energy, hydroelectric energy, geothermal energy, waste gas, or waste heat capture and recovery.

(6) "Electrical corporation":

(a) is as defined in Section 54-2-1; and

(b) does not include a person generating electricity that is not for sale to the public.

(7) "Qualifying carbon sequestration generation" means a fossil-fueled generating facility located within the geographic boundary of the Western Electricity Coordinating Council that:

(a) becomes operational or is retrofitted on or after January 1, 2008; and

(b) reduces carbon dioxide emissions into the atmosphere through permanent geological sequestration or through another verifiably permanent reduction in carbon dioxide emissions through the use of technology.

(8) "Qualifying electricity" means electricity generated on or after January 1, 1995, from a clean energy source if:

(a)

(i) the renewable energy source is located within the geographic boundary of the Western Electricity Coordinating Council; or

(ii) the qualifying electricity is delivered to the transmission system of an electrical corporation or a delivery point designated by the electrical corporation for the purpose of subsequent delivery to the electrical corporation; and

(b) the renewable energy attributes of the electricity are not traded, sold, transferred, or otherwise used to satisfy another state's renewable energy program.

(9) "Qualifying zero carbon emissions generation":

(a) means a generation facility located within the geographic boundary of the Western Electricity Coordinating Council that:
(i) becomes operational on or after January 1, 2008; and
(ii) does not produce carbon as a byproduct of the generation process;
(b) includes generation powered by nuclear fuel; and
(c) does not include renewable energy sources used to satisfy the requirement established under Subsection 54-17-602(1).
(10) "Renewable energy certificate" means a certificate issued under Section 54-17-603.
(11) "Unbundled renewable energy certificate" means a renewable energy certificate associated with:
(a) qualifying electricity that is acquired by an electrical corporation or other person by trade, purchase, or other transfer without acquiring the electricity for which the certificate was issued; or
(b) activities listed in Subsection (5)(e).

Amended by Chapter 53, 2024 General Session

54-17-602 Target amount of qualifying electricity -- Renewable energy certificate -- Cost-effectiveness -- Cooperatives.
(1)
(a) To the extent that it is cost effective to do so, beginning in 2025 the annual retail electric sales in this state of each electrical corporation shall consist of qualifying electricity or renewable energy certificates in an amount equal to at least 20% of adjusted retail electric sales.
(b) The amount under Subsection (1)(a) is computed based upon adjusted retail electric sales for the calendar year commencing 36 months before the first day of the year for which the target calculated under Subsection (1)(a) applies.
(c) Notwithstanding Subsections (1)(a) and (b), an increase in the annual target from one year to the next may not exceed the greater of:
(i) 17,500 megawatt-hours; or
(ii) 20% of the prior year's amount under Subsections (1)(a) and (b).
(2)
(a) Cost-effectiveness under Subsection (1) for other than a cooperative association is determined in comparison to other viable resource options using the criteria provided by Subsection 54-17-201(2)(c)(ii).
(b) For an electrical corporation that is a cooperative association, cost-effectiveness is determined using criteria applicable to the cooperative association's acquisition of a significant energy resource established by the cooperative association's board of directors.
(3) This section does not require an electrical corporation to:
(a) substitute qualifying electricity for electricity from a generation source owned or contractually committed, or from a contractual commitment for a power purchase;
(b) enter into any additional electric sales commitment or any other arrangement for the sale or other disposition of electricity that is not already, or would not be, entered into by the electrical corporation; or
(c) acquire qualifying electricity in excess of its adjusted retail electric sales.
(4) For the purpose of Subsection (1), an electrical corporation may combine the following:
(a) qualifying electricity from a renewable energy source owned by the electrical corporation;
(b) qualifying electricity acquired by the electrical corporation through trade, power purchase, or other transfer; and

(c) a bundled or unbundled renewable energy certificate, including a banked renewable energy certificate.

(5) For an electrical corporation whose rates the commission regulates, the following rules concerning renewable energy certificates apply:

(a) a banked renewable energy certificate with an older issuance date shall be used before any other banked renewable energy certificate issued at a later date is used; and

(b) the total of all unbundled renewable energy certificates, including unbundled banked renewable energy certificates, may not exceed 20% of the amount of the annual target provided for in Subsection (1).

(6) An electrical corporation that is a cooperative association may count towards Subsection (1) any of the following:

(a) electric production allocated to this state from hydroelectric facilities becoming operational after December 31, 2007, if the facilities are located in any state in which the cooperative association, or a generation and transmission cooperative with which the cooperative association has a contract, provides electric service;

(b) qualifying electricity generated or acquired or renewable energy certificates acquired for a program that permits a retail customer to voluntarily contribute to a clean energy source; and

(c) notwithstanding Subsection 54-17-601(7), an unbundled renewable energy certificate purchased from a renewable energy source located outside the geographic boundary of the Western Electricity Coordinating Council if the electricity on which the unbundled renewable energy certificate is based would be considered qualifying electricity if the renewable energy source was located within the geographic boundary of the Western Electricity Coordinating Council.

(7) The use of the renewable attributes associated with qualifying electricity to satisfy any federal renewable energy requirement does not preclude the electricity from being qualifying electricity for the purpose of this chapter.

Amended by Chapter 53, 2024 General Session

54-17-603 Renewable energy certificate -- Issuance -- Use to satisfy other requirements.

(1) The commission shall establish a process for issuance or recognition of a renewable energy certificate.

(2) The commission process under Subsection (1) shall provide for the issuance, monitoring, accounting, transfer, and use of a renewable energy certificate, including in electronic form.

(3) The commission may:

(a) consult with another state or a federal agency and any regional system or trading program to fulfill Subsection (1); and

(b) allow use of a renewable energy certificate that is issued, monitored, accounted for, or transferred by or through a regional system or trading program, including the Western Renewable Energy Generation Information System, to fulfill this part's provisions.

(4) A renewable energy certificate shall be issued for:

(a) qualifying electricity generated on and after January 1, 1995; and

(b) the activities of an energy user described in Subsections 10-19-102(11)(e) and 54-17-601(10)(e) on and after January 1, 1995.

(5) The person requesting a renewable energy certificate shall affirm that the renewable energy attributes of the electricity have not been traded, sold, transferred, or otherwise used to satisfy another state's renewable energy requirements.

(6)

(a) For the purpose of satisfying Subsection 54-17-602(1) and the issuance of a renewable energy certificate under this section, a renewable energy source located in this state that derives its energy from solar photovoltaic or solar thermal energy shall be credited for 2.4 kilowatt-hours of qualifying electricity for each 1.0 kilowatt-hour generated.
(b) Notwithstanding Subsection (6)(a), the acquisition or construction by an electrical corporation of a renewable energy source that derives its energy from solar photovoltaic or solar thermal energy shall comply with the cost-effectiveness criteria of Subsection 54-17-201(2)(c)(ii).
(7) A renewable energy certificate issued under this section:
(a) does not expire; and
(b) may be banked.
(8) The commission may recognize a renewable energy certificate that is issued, monitored, accounted for, or transferred by or through another state or a regional system or trading program, including the Western Renewable Energy Generation Information System, if the renewable energy certificate is for qualifying electricity.
(9) A renewable energy certificate:
(a) may be used only once to satisfy Subsection 54-17-602(1);
(b) may be used for the purpose of Subsection 54-17-602(1) and the qualifying electricity on which the renewable energy certificate is based may be used to satisfy any federal renewable energy requirement; and
(c) may not be used if it has been used to satisfy any other state's renewable energy requirement.
(10) The commission shall establish procedures and reasonable rates permitting an electrical corporation that is a purchasing utility under Section 54-12-2 to acquire or retain a renewable energy certificate associated with the purchase of power from an independent energy producer.

Amended by Chapter 140, 2009 General Session

54-17-604 Plans and reports.

(1) An electrical corporation shall develop and maintain a plan for implementing Subsection 54-17-602(1), consistent with the cost-effectiveness criteria of Subsection 54-17-201(2)(c)(ii).
(2)
(a) A progress report concerning a plan under Subsection (1) for other than a cooperative association shall be filed with the commission by January 1 of each of the years 2010, 2015, 2020, and 2024.
(b) For an electrical corporation that is a cooperative association, a progress report shall be filed with the cooperative association's board of directors by January 1 of each of the years 2010, 2015, 2020, and 2024.
(3) The progress report under Subsection (2) shall contain:
(a) the actual and projected amount of qualifying electricity through 2025;
(b) the source of qualifying electricity;
(c)
(i) an analysis of the cost-effectiveness of clean energy sources for other than a cooperative association; or
(ii) an estimate of the cost of achieving the target for an electrical corporation that is a cooperative association;
(d) a discussion of conditions impacting the clean energy source and qualifying electricity markets;
(e) any recommendation for a suggested legislative or program change; and

(f) for other than a cooperative association, any other information requested by the commission or considered relevant by the electrical corporation.

(4) The plan and progress report required by Subsections (1) and (2) may include procedures that will be used by the electrical corporation to identify and select any clean energy resource and qualifying electricity that satisfy the criteria of Subsection 54-17-201(2)(c)(ii).

(5) By July 1, 2026, each electrical corporation shall file a final progress report demonstrating:

(a) how Subsection 54-17-602(1) is satisfied for the year 2025; or

(b) the reason why Subsection 54-17-602(1) is not satisfied for the year 2025, if it is not satisfied.

(6) By January 1 of each of the years 2011, 2016, 2021, and 2025, the Division of Public Utilities shall submit to the Legislature a report containing a summary of any progress report filed under Subsections (2) through (5).

(7) The summary required by Subsection (6) shall include any recommendation for legislative changes.

(8)

(a) By July 1, 2027, the commission shall submit to the Legislature a report summarizing the final progress reports and recommending any legislative changes.

(b) The 2027 summary may contain a recommendation to the Legislature concerning any action to be taken with respect to an electrical corporation that does not satisfy Subsection 54-17-602(1) for 2025.

(c) The commission shall provide an opportunity for public comment and take evidence before recommending any action to be taken with respect to an electrical corporation that does not satisfy Subsection 54-17-602(1) for 2025.

(9) If a recommendation containing a penalty for failure to satisfy Subsection 54-17-602(1) is made under Subsection (8), the proposal shall require that any amount paid by an electrical corporation as a penalty be utilized to fund demand-side management for the retail customers of the electrical corporation paying the penalty.

(10) A penalty may not be proposed under this section if an electrical corporation's failure to satisfy Subsection 54-17-602(1) is due to:

(a) a lack of cost-effective means to satisfy the requirement; or

(b) force majeure.

(11) By July 1, 2026, an electrical corporation that is a cooperative association shall file a final progress report demonstrating:

(a) how Subsection 54-17-602(1) is satisfied for the year 2025; or

(b) the reason why Subsection 54-17-602(1) is not satisfied for the year 2025 if it is not satisfied.

(12) The plan and any progress report file under this section by an electrical corporation that is cooperative association shall be publicly available at the cooperative association's office or posted on the cooperative association's website.

Amended by Chapter 53, 2024 General Session

54-17-605 Recovery of costs for clean energy activities.

(1) In accordance with other law, the commission shall include in the retail electric rates of an electrical corporation whose rates the commission regulates the state's share of any of the costs listed in Subsection (2) that are relevant to the proceeding in which the commission is considering the electrical corporation's rates:

(a) if the costs are prudently incurred by the electrical corporation in connection with:

(i) the acquisition of a renewable energy certificate;

(ii) the acquisition of qualifying electricity for which a renewable energy certificate will be issued after the acquisition; and
(iii) the acquisition, construction, and use of a clean energy source; and
(b) to the extent any qualifying electricity or clean energy source under Subsection (1)(a) satisfies the cost-effectiveness criteria of Subsection 54-17-201(2)(c)(ii).

(2) The following are costs that may be recoverable under Subsection (1):
(a) a cost of siting, acquisition of property rights, equipment, design, licensing, permitting, construction, owning, operating, or otherwise acquiring a clean energy source and any associated asset, including transmission;
(b) a cost to acquire qualifying electricity through trade, power purchase, or other transfer;
(c) a cost to acquire a bundled or unbundled renewable energy certificate, if any net revenue from the sale of a renewable energy certificate allocable to this state is also included in rates;
(d) a cost to interconnect a clean energy source to the electrical corporation's transmission and distribution system;
(e) a cost associated with using a physical or financial asset to integrate, firm, or shape a clean energy source on a firm annual basis to meet a retail electricity need; and
(f) any cost associated with transmission and delivery of qualifying electricity to a retail electricity consumer.

(3)
(a) The commission may allow an electrical corporation to use an adjustment mechanism or reasonable method other than a rate case under Sections 54-4-4 and 54-7-12 to allow recovery of costs identified in Subsection (2).
(b) If the commission allows the use of an adjustment mechanism, both the costs and any associated benefit shall be reflected in the mechanism, to the extent practicable.
(c) This Subsection (3) creates no presumption for or against the use of an adjustment mechanism.

(4)
(a) The commission may permit an electrical corporation to include in its retail electric rates the state's share of costs prudently incurred by the electrical corporation in connection with a clean energy source, whether or not the clean energy source ultimately becomes operational, including costs of:
(i) siting;
(ii) property acquisition;
(iii) equipment;
(iv) design;
(v) licensing;
(vi) permitting; and
(vii) other reasonable items related to the clean energy source.
(b) Subsection (4)(a) creates no presumption concerning the prudence or recoverability of the costs identified.
(c) To the extent deferral is consistent with other applicable law, the commission may allow an electrical corporation to defer costs recoverable under Subsection (4)(a) until the recovery of the deferred costs can be considered in a rate proceeding or an adjustment mechanism created under Subsection (3).
(d) An application to defer costs shall be filed within 60 days after the day on which the electrical corporation determines that the clean energy source project is impaired under generally accepted accounting principles and will not become operational.

(e) Notwithstanding the opportunity to defer costs under Subsection (4)(c), a cost incurred by an electrical corporation for siting, property acquisition, equipment, design, licensing, and permitting of a clean energy source that the electrical corporation proposes to construct shall be included in the electrical corporation's project costs for the purpose of evaluating the project's cost-effectiveness.
(f) A deferred cost under Subsection (4)(a) may not be added to, or otherwise considered in the evaluation of, the cost of a project proposed by any person other than the electrical corporation for the purpose of evaluating that person's proposal.

Amended by Chapter 53, 2024 General Session

54-17-606 Commission rules.
The commission shall make rules as necessary to implement this part.

Enacted by Chapter 374, 2008 General Session

54-17-607 Procedure and appeals under this chapter.
(1) The governing authority, as defined in Section 54-15-102, has primary jurisdiction concerning issues of interpretation, implementation, and administration of this chapter.
(2) An appeal of a commission order under this chapter is governed by Chapter 7, Hearings, Practice, and Procedure.

Enacted by Chapter 374, 2008 General Session

Part 7
Carbon Sequestration

54-17-701 Rules for carbon capture and geological storage.
(1) By January 1, 2011, the Division of Water Quality and the Division of Air Quality, on behalf of the Board of Water Quality and the Board of Air Quality, respectively, in collaboration with the commission and the Division of Oil, Gas, and Mining and the Utah Geological Survey, shall present recommended rules to the Legislature's Rules Review and General Oversight Committee for the following in connection with carbon capture and accompanying geological sequestration of captured carbon:
(a) site characterization approval;
(b) geomechanical, geochemical, and hydrogeological simulation;
(c) risk assessment;
(d) mitigation and remediation protocols;
(e) issuance of permits for test, injection, and monitoring wells;
(f) specifications for the drilling, construction, and maintenance of wells;
(g) issues concerning ownership of subsurface rights and pore space;
(h) allowed composition of injected matter;
(i) testing, monitoring, measurement, and verification for the entirety of the carbon capture and geologic sequestration chain of operations, from the point of capture of the carbon dioxide to the sequestration site;
(j) closure and decommissioning procedure;

(k) short- and long-term liability and indemnification for sequestration sites;
(l) conversion of enhanced oil recovery operations to carbon dioxide geological sequestration sites; and
(m) other issues as identified.
(2) The entities listed in Subsection (1) shall report to the Legislature's Rules Review and General Oversight Committee any proposals for additional statutory changes needed to implement rules contemplated under Subsection (1).
(3) On or before July 1, 2009, the entities listed in Subsection (1) shall submit to the Legislature's Public Utilities, Energy, and Technology and Natural Resources, Agriculture, and Environment Interim Committees a progress report on the development of the recommended rules required by this part.
(4) The recommended rules developed under this section apply to the injection of carbon dioxide and other associated injectants in allowable types of geological formations for the purpose of reducing emissions to the atmosphere through long-term geological sequestration as required by law or undertaken voluntarily or for subsequent beneficial reuse.
(5) The recommended rules developed under this section do not apply to the injection of fluids through the use of Class II injection wells as defined in 40 C.F.R. 144.6(b) for the purpose of enhanced hydrocarbon recovery.
(6) Rules recommended under this section shall:
(a) ensure that adequate health and safety standards are met;
(b) minimize the risk of unacceptable leakage from the injection well and injection zone for carbon capture and geologic sequestration; and
(c) provide adequate regulatory oversight and public information concerning carbon capture and geologic sequestration.

Amended by Chapter 178, 2024 General Session

Part 8
Renewable Energy Contracts

54-17-801 Definitions.

As used in this part:
(1) "Clean energy contract" means a contract under this part for the delivery of electricity from one or more clean energy facilities to a contract customer requiring the use of a qualified utility's transmission or distribution system to deliver the electricity from a clean energy facility to the contract customer.
(2)
(a) "Clean energy facility" means a clean energy source as defined in Section 54-17-601 that:
(i) is located in the state; or
(ii)
(A) is located outside the state; and
(B) provides energy from baseload clean resources.
(b) "Clean energy facility" does not include an electric generating facility for which the electric generating facility's costs are included in a qualified utility's rates as a facility that provides electric service to the qualified utility's system.

(3) "Clean energy tariff" means a tariff offered by a qualified utility that allows the qualified utility to procure clean generation on behalf of and to serve its customers.
(4) "Contract customer" means a person who executes or will execute a clean energy contract with a qualified utility.
(5) "Qualified utility" means an electric corporation that serves more than 200,000 retail customers in the state.

Amended by Chapter 53, 2024 General Session

54-17-802 Contracts for the purchase of electricity from a clean energy facility.
(1) Within a reasonable time after receiving a request from a contract customer and subject to reasonable credit requirements, a qualified utility shall enter into a clean energy contract with the requesting contract customer to supply some or all of the contract customer's electric service from one or more clean energy facilities selected by the contract customer.
(2) Subject to a contract customer agreeing to pay the qualified utility for all incremental costs associated with metering facilities, communication facilities, and administration, a clean energy contract may provide for electricity to be delivered to a contract customer:
  (a) from one clean energy facility to a contract customer's single metered delivery location;
  (b) from multiple clean energy facilities to a contract customer's single metered delivery location; or
  (c) from one or more clean energy facilities to a single contract customer's multiple metered delivery locations.
(3)
  (a) A single contract customer may aggregate multiple metered delivery locations to satisfy the minimum megawatt limit under Subsection (4).
  (b) Multiple contract customers may not aggregate their separate metered delivery locations to satisfy the minimum megawatt limit under Subsection (4).
(4) The amount of electricity provided to a contract customer under a clean energy contract may not be less than 2.0 megawatts.
(5) The amount of electricity provided in any hour to a contract customer under a clean energy contract may not exceed the contract customer's metered kilowatt-hour load in that hour at the metered delivery locations under the contract.
(6) A clean energy contract that meets the requirements of Subsection (4) may provide for one or more increases in the amount of electricity to be provided under the contract even though the amount of electricity to be provided by the increase is less than the minimum amount required under Subsection (4).
(7) The total amount of electricity to be generated by clean energy facilities and delivered to contract customers at any one time under all clean energy contracts may not exceed 300 megawatts, unless the commission approves in advance a higher amount.
(8) Electricity generated by a clean energy facility and delivered to a contract customer under a clean energy contract may not be included in a net metering program under Chapter 15, Net Metering of Electricity.

Amended by Chapter 53, 2024 General Session

54-17-803 Ownership of a clean energy facility -- Joint ownership -- Ownership of environmental attributes.
(1) A clean energy facility may be owned:

(a) by a person who will be a contract customer receiving electricity from the clean energy facility;
(b) by a qualified utility;
(c) by a person other than a contract customer or qualified utility; or
(d) jointly by any combination of Subsections (1)(a), (b), and (c), whether in equal shares or otherwise.

(2) A qualified utility may be a joint owner of a clean energy facility only if:
(a) the qualified utility consents to being a joint owner; and
(b) the joint ownership agreement requires the qualified utility to recover from contract customers receiving electricity from the clean energy facility all of the qualified utility's costs associated with its ownership of the clean energy facility, including administrative, acquisition, operation, and maintenance costs, unless the commission, in an order issued in a separate regulatory proceeding:
(i) authorizes the qualified utility to recover some of those costs from customers other than contract customers;
(ii) determines that the rate to be paid for electricity from the clean energy facility by customers other than contract customers is cost effective; and
(iii) approves the inclusion of the rate determined under Subsection (2)(b)(ii) in general rates or through a commission approved cost recovery mechanism.

(3) To the extent that any electricity from a clean energy facility to be delivered to a contract customer is owned by a person other than the contract customer:
(a) the qualified utility shall, by contract with the owner of the electricity to be sold from the clean energy facility, purchase electricity for resale to one or more contract customers;
(b) the qualified utility shall sell that electricity to the contract customer or customers under clean energy contracts with the same duration and pricing as the contract between the qualified utility and the owner of the electricity to be sold from the clean energy facility; and
(c) the qualified utility's contract with the owner of the electricity to be sold from the clean energy facility shall provide that the qualified utility's obligation to purchase electricity under that contract ceases if the contract customer defaults in its obligation to purchase and pay for the electricity under the contract with the qualified utility.

(4) The right to any environmental attribute associated with a clean energy facility shall remain the property of the clean energy facility's owner, except to the extent that a contract to which the owner is a party provides otherwise.

Amended by Chapter 53, 2024 General Session

54-17-804 Exemption from certificate of convenience and necessity requirements.

(1) A qualified utility is not required to comply with Section 54-4-25 with respect to a clean energy facility that is the subject of a clean energy contract if:
(a) each contract necessary for the commission to determine compliance with this part is filed with the commission; and
(b) the commission determines that each contract relating to the clean energy facility complies with this part.

(2) In making its determination under Subsection (1)(b), the commission may process and consider together multiple clean energy contracts between the same contract customer and the qualified utility providing for the delivery of electricity from a clean energy facility to the contract customer's multiple metered delivery locations.

Amended by Chapter 53, 2024 General Session

54-17-805 Costs associated with delivering electricity from a clean energy facility to a contract customer.

(1) To the extent that a clean energy contract provides for the delivery of electricity from a clean energy facility owned by the contract customer, the clean energy contract shall require the contract customer to pay for the use of the qualified utility's transmission or distribution facilities at the qualified utility's applicable rates, which may include transmission costs at the qualified utility's applicable rate approved by the Federal Energy Regulatory Commission.

(2) To the extent that a clean energy contract provides for the delivery of electricity from a clean energy facility owned by a person other than the qualified utility or the contract customer, the clean energy contract shall require the contract customer to bear all reasonably identifiable costs that the qualified utility incurs in delivering the electricity from the clean energy facility to the contract customer, including all costs to procure and deliver electricity and for billing, administrative, and related activities, as determined by the commission.

(3) A qualified utility that enters a clean energy contract shall charge a contract customer for all metered electric service delivered to the contract customer, including generation, transmission, and distribution service, at the qualified utility's applicable tariff rates, excluding:

(a) any kilowatt hours of electricity delivered from the clean energy facility, based on the time of delivery, adjusted for transmission losses;

(b) any kilowatts of electricity delivered from the clean energy facility that coincide with the contract customer's monthly metered kilowatt demand measurement, adjusted for transmission losses;

(c) any transmission and distribution service that the contract customer pays for under Subsection (1) or (2); and

(d) any transmission service that the contract customer provides under Subsection (2) to deliver generation from the clean energy facility.

Amended by Chapter 53, 2024 General Session

54-17-806 Qualified utility clean energy tariff.

(1) The commission may authorize a qualified utility to implement a clean energy tariff in accordance with this section if the commission determines the tariff that the qualified utility proposes is reasonable and in the public interest.

(2) The commission may authorize a tariff under Subsection (1) to apply to:

(a) a qualified utility customer with an aggregated electrical load of at least five megawatts; or

(b) a combination of qualified utility customers who are separately metered if:

(i) the aggregated electrical load of the qualified utility customers is at least five megawatts; and

(ii) each of the qualified utility customers is located within a project area, as defined in Section 11-58-102.

(3) A customer who agrees to take service that is subject to the clean energy tariff under this section shall pay:

(a) the customer's normal tariff rate;

(b) an incremental charge in an amount equal to the difference between the cost to the qualified utility to supply clean generation to the clean energy tariff customer and the qualified utility's avoided costs as defined in Subsection 54-2-1(1), or a different methodology recommended by the qualified utility; and

(c) an administrative fee in an amount approved by the commission.

(4) The commission shall allow a qualified utility to recover the qualified utility's prudently incurred cost of clean generation procured pursuant to the tariff established in this section that is not otherwise recovered from the proceeds of the tariff paid by customers agreeing to service that is subject to the clean energy tariff.

Amended by Chapter 53, 2024 General Session

54-17-807 Solar photovoltaic or thermal solar energy facilities.

(1) As used in this section, "acquire" means to purchase, construct, or purchase the output from a photovoltaic or thermal solar energy resource.

(2)

(a) In accordance with this section, a qualified utility may file an application with the commission for approval to acquire a photovoltaic or thermal solar energy resource using rate recovery based on a competitive market price, except as provided in Subsection (2)(b).

(b) A qualified utility may not, under this section, acquire a photovoltaic or thermal solar energy resource with a generating capacity that is two megawatts or less per meter if that resource is located on the customer's side of the meter.

(3) The energy resource acquired pursuant to this section may be owned solely or jointly by a qualified utility or another entity:

(a) to provide clean energy to a contract customer as provided in Section 54-17-803;

(b) to serve energy to a qualified utility customer as provided in Section 54-17-806;

(c) to serve energy to any customers of the qualified utility if the proposed energy resource's nameplate capacity does not exceed 300 megawatts or, if applicable, the quantity of capacity that is the subject of a contract for the purchase of electricity does not exceed 300 megawatts, so long as the qualified utility proceeds under and complies with Part 4, Voluntary Request for Resource Decision Review; or

(d) to serve energy to any customers of the qualified utility if the proposed energy resource's nameplate capacity exceeds 300 megawatts or, if applicable, the quantity of capacity that is the subject of a contract for the purchase of electricity exceeds 300 megawatts, so long as the qualified utility complies with this chapter.

(4) Except as provided in Subsections (3)(c) and (d), the following do not apply to an application submitted under Subsection (2):

(a) Part 1, General Provisions;

(b) Part 2, Solicitation Process;

(c) Part 3, Resource Plans and Significant Energy Resource Approval;

(d) Part 4, Voluntary Request for Resource Decision Review; and

(e) Section 54-17-502.

(5) The application described in Subsection (2) shall include:

(a) a proposed solicitation process for the energy resource;

(b) the criteria proposed to be used to evaluate the responses to the solicitation:

(i) as determined by the customer, if the energy resource is sought to serve a customer pursuant to Subsection (3)(a) or (b); or

(ii) as proposed by the qualified utility, if the energy resource is sought to serve the customers of the qualified utility pursuant to Subsection (3)(c) or (d); and

(c) any other information the commission may require.

(6)

(a) Before approving a solicitation process under this section for an energy resource to serve customers of the qualified utility pursuant to Subsection (3)(c) or (d), the commission shall:

(i) hold a public hearing; and
(ii) provide an opportunity for public comment.
(b) The commission may approve a solicitation process under this section only if the commission determines that the solicitation and evaluation processes to be used will create a level playing field in which the qualified utility and other bidders can compete fairly, including with respect to interconnection and transmission requirements imposed on bidders by the solicitation within the control of the commission and the qualified utility, excluding its federally regulated transmission function, and will otherwise serve the public interest.
(7)
(a) Upon completion of the solicitation process approved under Subsection (6), the qualified utility may seek approval from the commission to acquire the energy resource identified through the solicitation process as the winning bid.
(b) Before approving acquisition of an energy resource acquired pursuant to this section, the commission shall:
(i) hold a public hearing;
(ii) provide an opportunity for public comment;
(iii) determine whether the solicitation and evaluation processes complied with this section, commission rules, and the commission's order approving the solicitation process; and
(iv) determine whether the acquisition of the energy resource is just and reasonable, and in the public interest.
(c) The commission may approve a qualified utility's ownership of an energy resource or a power purchase agreement containing a purchase option under Subsection (3)(c) or (d) with rate recovery based on a competitive market price only if the commission determines that the qualified utility's bid is the lowest cost ownership option for the qualified utility.
(d) If the commission approves a qualified utility's acquisition of an energy resource under Subsection (3), including entering into a power purchase agreement containing a purchase option, using rate recovery based on a competitive market price:
(i) the prices approved by the commission shall constitute competitive market prices for purposes of this section; and
(ii) assets owned by the qualified utility and used to provide service as approved under this section are not public utility property.
(8) If upon completion of a solicitation process approved under Subsection (6) the qualified utility proposes not to acquire an energy resource, the qualified utility shall file with the commission a report explaining its reasons for not acquiring the lowest cost resource bid into the solicitation, along with any other information the commission requires.
(9) Within six months after a competitive market price for a solar energy resource acquired under Subsection (3)(c) or (d) has been identified pursuant to this section, or for such longer period as the commission may determine to be in the public interest, a qualified utility may file an application with the commission seeking approval to acquire another energy resource similar to the energy resource for which a competitive market price was established without going through a new solicitation process. The commission may approve the application if the qualified utility demonstrates a need to acquire the energy resource, that the competitive market price remains reasonable, and that the acquisition is in the public interest.
(10) No later than 180 days before the end of the term approved by the commission for an energy resource acquired under this section and owned by the qualified utility, the qualified utility shall file with the commission a request for determination of an appropriate disposition of the energy resource asset, except that the qualified utility is permitted to retain the benefits or proceeds and shall be required to assume the costs and risks of ownership of the energy resource.

(11) The commission shall adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
(a) addressing the content and filing of an application under this section;
(b) to establish the solicitation process and criteria to be used to identify the competitive market price and select an energy resource; and
(c) addressing other factors determined by the commission to be relevant to protect the public interest and to implement this section.

Amended by Chapter 53, 2024 General Session

Part 9
Community Renewable Energy Act

54-17-901 Community Clean Energy Act.
This part is known as the "Community Clean Energy Act."

Amended by Chapter 53, 2024 General Session

54-17-902 Definitions.
As used in this part:
(1)
(a) "Auxiliary services" means those services necessary to safely and reliably:
(i) interconnect and transmit electric power from any clean energy resource constructed or acquired for a community clean energy program; and
(ii) integrate and supplement electric power from any clean energy resource.
(b) "Auxiliary services" shall include applicable Federal Energy Regulatory Commission requirements governing transmission and interconnection services.
(2) "Clean electric energy supply" means incremental clean energy resources that are developed to meet the annual electric energy consumption of participating customers within a participating community.
(3) "Clean energy resource" means:
(a) electric energy generated by a source that is naturally replenished and includes one or more of the following:
(i) wind;
(ii) solar photovoltaic or thermal solar technology;
(iii) a geothermal resource; or
(iv) a hydroelectric plant including a pumped storage hydropower facility;
(b) use of an energy efficient and sustainable technology the commission has approved for implementation that:
(i) increases efficient energy usage;
(ii) is capable of being used for demand response;
(iii) facilitates the use and development of clean generation resources through electrical grid management or energy storage; or
(iv) uses carbon capture utilization and sequestration; or
(c) energy derived from nuclear fuel.
(4) "Commission" means the Public Service Commission created in Section 54-1-1.

(5) "Community clean energy program" means the program approved by the commission under Section 54-17-904 that allows a qualified utility to provide electric service from one or more clean energy resources to a participating customer within a participating community.
(6) "County" means the unincorporated area of a county.
(7) "Division" means the Division of Public Utilities created in Section 54-4a-1.
(8)
(a) "Initial opt-out period" means the period of time immediately after the community clean energy program's commencement, as established by the commission by rule made pursuant to Section 54-17-909, during which a participating customer may elect to leave the program without penalty.
(b) "Initial opt-out period" may not be shorter than three typical billing cycles of the qualified utility.
(9) "Municipality" means a city or a town as defined in Section 10-1-104.
(10) "Office" means the Office of Consumer Services created in Section 54-10a-101.
(11) "Ongoing costs" means the costs allocated to the state for transmission and distribution facilities, retail services, and generation assets that are not replaced assets.
(12) "Participating community" means a municipality or a county:
(a) whose residents are served by a qualified utility; and
(b) the municipality or county meets the requirements in Section 54-17-903.
(13) "Participating customer" means:
(a) a customer of a qualified utility located within the boundary of a municipality or county where a community clean energy program has been approved by the commission; and
(b) the customer has not exercised the right to not participate in the community clean energy program as provided in Section 54-17-905.
(14) "Qualified utility" means the same as that term is defined in Section 54-17-801.
(15) "Replaced asset" means an existing thermal energy resource:
(a) that was built or acquired, in whole or in part, by a qualified utility to serve the qualified utility's customers, including customers within a participating community;
(b) that was built or acquired prior to commission approval and the effective date of the community clean energy program; and
(c) to the extent the asset is no longer used to serve participating customers.

Amended by Chapter 53, 2024 General Session
Amended by Chapter 211, 2024 General Session

54-17-903 Program requirement for a municipality or county.
(1)
(a) As used in this section, "renewable energy resource" means the same as the term "clean energy resource" is defined in Section 54-17-902.
(b) Customers of a qualified utility may be served by the community clean energy program described in this part if the municipality or county satisfies the requirements of Subsection (2).
(2) The municipality or county in which the customer resides shall:
(a) enter into an agreement with a qualified utility:
(i) with the stipulation of payment by the municipality or county to the qualified utility for the costs of:
(A) third-party expertise contracted for by the division and the office, for assistance with activities associated with initial approval of the community clean energy program; and
(B) providing notice to the municipality's or county's customers as provided in Section 54-17-905;

(ii) determining the obligation for the payment of any termination charges under Subsection 54-17-905(3) that are not paid by a participating customer and not included in participating customer rates under Subsections 54-17-904(2) and (4); and
(iii) identifying any initially proposed replaced asset;
(b) adopt a local ordinance that:
(i) establishes participation in the clean energy program; and
(ii) is consistent with the terms of the agreement entered into with the qualified utility under Subsection (2)(a); and
(c) comply with any other terms or conditions required by the commission.
(3) The local ordinance required in Subsection (2)(b) shall be adopted by the municipality or county within 90 days after the date of the commission order approving the community clean energy program.

Amended by Chapter 53, 2024 General Session
Amended by Chapter 211, 2024 General Session

54-17-904 Authority of commission to approve a community clean energy program.
(1) After the commission has adopted administrative rules as required under Section 54-17-909, a qualified utility may file an application with the commission for approval of a community clean energy program.
(2) The application shall include:
(a) the names of each municipality and county to be served by the community clean energy program;
(b) a map of the geographic boundaries of each municipality and county;
(c) the number of customers served by the qualified utility within those boundaries;
(d) projected rates for participating customers that take into account:
(i) the estimated number of customers expected to participate in the program;
(ii) the quantifiable costs and benefits to the qualified utility and all of the qualified utility's customers in their capacity as ratepayers of the qualified utility, excluding costs or benefits that do not directly affect the qualified utility, including as applicable:
(A) replaced assets;
(B) auxiliary services; and
(C) new clean energy resources used to serve the community clean energy program; and
(iii) the ongoing costs at the time of the application;
(e) the agreement entered into with the qualified utility under Section 54-17-903;
(f) a proposed plan established by the participating community addressing low-income programs and assistance;
(g) a proposed solicitation process for the acquisition of clean energy resources as provided in Section 54-17-908; and
(h) any other information the commission may require by rule.
(3) The commission may approve an application for a community clean energy program if the commission finds:
(a) the application meets all of the requirements in this section and administrative rules adopted by the commission in accordance with Sections 54-17-908 and 54-17-909 to implement this part; and
(b) the community clean energy program is in the public interest.
(4) The rates approved by the commission for participating customers:

(a) shall be based on the factors included in Subsection (2)(d) and any other factor determined by the commission to be in the public interest;
(b) may not result in any shift of costs or benefits to any nonparticipating customer, or any other customer of the qualified utility beyond the participating community boundaries; and
(c) shall take into account any quantifiable benefits to the qualified utility, and the qualified utility's customers, including participating customers in their capacity as ratepayers of the qualified utility, excluding costs or benefits that do not directly affect the qualified utility's costs of service.

(5)
(a) Each municipality or county included in the application shall be a party to the regulatory proceeding.
(b) A municipality or county identified in the application shall provide information to all relevant parties in accordance with the commission's rules for discovery, notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act.

(6) The community clean energy program may not be implemented until after the municipality or county adopts the ordinance required in Section 54-17-903.

Amended by Chapter 53, 2024 General Session

54-17-905 Customer participation -- Election not to participate.

(1)
(a) After commission approval of a community clean energy program and adoption of the ordinance by the participating community as required in Section 54-17-903, a qualified utility shall provide notice to each of its customers within the participating community that includes:
(i) the projected rates and terms of participation in the community clean energy program approved by the commission;
(ii) an estimated comparison to otherwise applicable existing rates;
(iii) an explanation that the customer may elect to not participate in the community clean energy program by notifying the qualified utility; and
(iv) any other information required by the commission.
(b) The qualified utility shall provide the notice required under Subsection (1)(a) to each customer:
(i) no less than twice within the period of 60 days immediately preceding the date required to opt out of the community clean energy program; and
(ii) separately from the customer's monthly billing.
(c) The qualified utility shall provide the information required under Subsection (1)(a) in person to each customer with an electric load of one megawatt or greater measured at a single meter.

(2)
(a) An existing customer of the qualified utility may elect to not participate in the community clean energy program and continue to pay applicable existing rates by giving notice to the qualified utility in the manner and within the time period determined by the commission.
(b) After implementation of the community clean energy program:
(i) a customer that previously elected not to participate in the program may become a participating customer as allowed by commission rules and by giving notice to the qualified utility in the manner required by the commission; and
(ii) a customer of the qualified utility that begins taking electric service within a participating community after the date of implementation of the community clean energy program shall:
(A) be given notice as determined by the commission; and

(B) shall become a participating customer unless the person elects not to participate by giving notice to the qualified utility in the manner and within the time period determined by the commission.

(3)

(a) A customer that does not opt out of the community clean energy program under Subsection (2) may later discontinue participation in the community clean energy program as allowed by the commission as described in Subsection (3)(b) or (c).

(b)

(i) During the initial opt-out period, a participating customer may elect to leave the program by giving notice to the qualified utility in the manner determined by the commission.

(ii) A participating customer that opts out as described in Subsection (3)(b)(i) is not subject to a termination charge.

(c) After the community clean energy program's initial opt-out period, a participating customer may elect to leave the program by:

(i) giving notice to the qualified utility in the manner determined by the commission; and

(ii) paying a termination charge as determined by the commission that may include the cost of clean energy resources acquired or constructed for the community clean energy program that are not being utilized by participating customers as necessary to prevent shifting costs to other customers of the qualified utility.

(4)

(a) A customer of a qualified utility that is annexed into the boundaries of a participating community after the effective date of the community clean energy program shall be given notice as provided in Subsection (1) advising the customer of the option to opt out of the program.

(b) A participating customer located in a portion of a county that is annexed into a municipality that is not a participating community shall continue to be included in the clean energy program if the customer remains a customer of the qualified utility.

(c) If a participating customer is annexed into a municipality that provides electric service to the municipality's residents:

(i) the customer may continue to be served by the qualified utility under the community clean energy program if the qualified utility enters into an agreement with the municipality under Section 54-3-30; or

(ii) the municipality shall pay the termination charge for each participating customer that is no longer served by the qualified utility.

(5) A residential customer that is participating in the net metering program under Title 54, Chapter 15, Net Metering of Electricity, may not be a participating customer under this part.

(6)

(a) The cost of providing notice under Subsection (1) shall be paid by the participating communities.

(b) All other notices required under this section shall be paid for as program costs and recovered through participating customers' rates.

Amended by Chapter 53, 2024 General Session

54-17-906 Customer billing.

The qualified utility shall:

(1) include information on its monthly bills to participating customers identifying the community clean energy program cost; and

(2) provide notice to participating customers of any change in rate for participation in the community clean energy program.

Amended by Chapter 53, 2024 General Session

54-17-907 Rate adjustment filing -- Modification of rates for participating customers.

(1)
  (a) The qualified utility may make a rate adjustment filing, not more than annually, with the commission to adjust rates for participating customers to reflect any changes in the quantifiable costs and benefits of the community renewable energy program.
  (b) The rate adjustment filing may not include any changes to ongoing costs.
(2) The commission shall determine the content and filing requirements for the filing by administrative rules as described in Section 54-17-909.
(3) The commission shall determine rate changes which shall become effective within 90 days after the date of the filing, unless otherwise determined by the commission for good cause.

Enacted by Chapter 471, 2019 General Session

54-17-908 Acquisition of clean energy resources.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules outlining a competitive solicitation process for the acquisition of clean assets acquired by the qualified utility for purposes of this act.
(2) The solicitation rules shall include the following provisions:
  (a) solar photovoltaic or thermal solar energy facilities may be acquired under the provisions of Section 54-17-807;
  (b) clean energy resources developed under this part shall be constructed or acquired subject to an option by the qualified utility to own the clean energy resource so long as including the option in a solicitation is in the interest of participating customers and other customers of the qualified utility; and
  (c) any other requirement determined by the commission to be in the public interest.
(3) Upon completion of a solicitation under this section and the rules adopted by the commission to implement this section, the commission may approve cost recovery for a clean energy resource for the community clean energy program if approval of the clean energy resource:
  (a) complies with the provisions of this part;
  (b) does not result in shifting of costs or benefits to other customers of the qualified utility; and
  (c) is in the public interest.

Amended by Chapter 53, 2024 General Session

54-17-909 Commission rulemaking authority.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall adopt rules to implement this part, including:
(1) establishing the initial opt-out period;
(2) the terms and conditions of the agreement under Section 54-17-903;
(3) the content and filing of an application under Section 54-17-904;
(4) the notice requirements under Section 54-17-905;
(5) the standards for determining when a termination charge is applicable and the amount and timing of a termination charge under Subsection 54-17-905(3);

(6) the content and filing requirements for the annual filing under Subsection 54-17-907(2);
(7) the solicitation requirements under Section 54-17-908; and
(8) any other requirements determined by the commission necessary to protect the public interest and to implement this part.

Enacted by Chapter 471, 2019 General Session

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

(1) As used in this section:
(a) "Allocation agreement" means a multi-state agreement that allocates the costs and benefits from energy resources serving multiple states to each participating state.
(b) "Division" means the Division of Public Utilities established in Section 54-4a-1.
(c) "Excess proven dispatchable generation capacity" means electric generation capacity from a proven dispatchable generating resource located in the state that is subject to an allocation agreement, where excess capacity becomes available as another state transitions away from the use of proven dispatchable generation resources.
(d) "Office" means the Office of Energy Development created in Section 79-6-401.
(2) If the affected electrical utility becomes aware that the affected electrical utility will have excess proven dispatchable generation capacity at an in-state proven dispatchable generation resource, the affected electrical utility shall provide notice to:
(a) the commission;
(b) the division;
(c) the office;
(d) the president of the Senate; and
(e) the speaker of the House of Representatives.
(3) An affected electrical utility that becomes aware of excess proven dispatchable generation capacity shall provide the notice described in Subsection (2):
(a) by July 1, 2024, for any excess capacity the utility is aware of on or before May 1, 2024; or
(b) within 60 days after the day the utility becomes aware of the excess capacity, for any excess capacity the utility becomes aware of after May 1, 2024.
(4) An affected electrical utility may not offer excess proven dispatchable generation capacity for sale outside of the state unless the affected electrical utility has complied with Subsection (2).
(5)
(a) After receiving the notice described in Subsection (2), the division shall immediately begin negotiations through an allocation agreement process for excess proven dispatchable generation capacity.
(b) The division shall provide regular updates on the status of negotiations under Subsection (5)(a) to the president of the Senate, the speaker of the House of Representatives, and other relevant stakeholders as determined by the commission.
(6) When reviewing an affected electrical utility's application seeking approval of an agreement to allocate another state's existing share of excess proven dispatchable generation capacity, the commission shall consider:
(a) the state energy policy described in Section 79-6-301;
(b) recommendations made by the president of the Senate, the speaker of the House of Representatives, and the office;
(c) current and forecasted electricity needs within the state and the region;
(d) the potential impact on long-term electricity costs for ratepayers in the state;

(e) the potential to resell excess electricity on interstate energy markets to lower costs for state ratepayers;
(f) the additional operating costs borne by the state as the sole purchaser of capacity or energy from the proven dispatchable generation resource;
(g) opportunities to coordinate with neighboring states with similar energy policies and goals;
(h) that any excess capacity allocated and approved in rates under an agreement described in Subsection (5) shall be operated in a manner that prioritizes the interests of ratepayers in the state;
(i) that all revenues from the sale of excess capacity that is allocated and approved in rates under an agreement described in Subsection (5) shall be credited to ratepayers in the state; and
(j) any other factors the commission determines relevant.

Enacted by Chapter 214, 2024 General Session

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

(1) Notwithstanding any other provision of law, the recovery of costs associated with the acquisition, expansion, maintenance, retrofitting, fueling, or operation of a proven dispatchable generation resource, as well as the reasonable legal fees and costs associated with efforts to preserve the continued operation of a proven dispatchable generation resource, is governed by this section.
(2) To recover costs described in Subsections (3) and (5), an affected electrical utility is required to demonstrate, to the commission's satisfaction:
(a) the amount sought to be recovered that is attributable to the state;
(b) a detailed description of the actions taken by the affected electrical utility resulting in the costs sought to be recovered;
(c) that the actions taken by the affected electrical utility resulting in the costs sought to be recovered were:
(i) reasonable when considering available dispatchable resources; and
(ii) necessary to acquire, operate, and maintain dispatchable resources; and
(d) that the recovery of costs for the actions taken by the affected electrical utility is in the public interest.
(3) Subject to requirements of Subsection (2), the commission shall allow an affected electrical utility to recover through the affected electrical utility's rates, as established in a general rate case or other appropriate commission proceeding, the reasonable costs associated with:
(a) any commission approved significant energy resource decision relating to a proven dispatchable generation resource within the state;
(b) any commission approved voluntary resource decision relating to a proven dispatchable generation resource within the state;
(c) costs necessary to acquire, expand, retrofit, or maintain proven dispatchable generation resources located within the state to comply with federal law or ensure the efficient operation of those resources;
(d) costs to obtain needed generation due to a federal decision or mandate requiring the closure, retirement, or decommission of a proven dispatchable generation resource within the state until permanent replacement generation can be obtained or constructed;
(e) stranded costs due to any federal decision or mandate to close, retire, or decommission proven dispatchable generation resources located within the state; and

(f) reasonable legal fees and costs arising out of efforts to preserve the continued operation of proven dispatchable generation resources that are either located within the state or that provide generation to the state.

(4) An affected electrical utility may recover fuel-related costs associated with acquiring and transporting fuel necessary for operating a proven dispatchable generation resource located within the state if the affected electrical utility demonstrates to the commission's satisfaction that:

(a) any fuel purchase for the proven dispatchable generation resource is at a cost less than or equal to the lower of:

(i) the current market price for that fuel in the general geographic area from which the resource is extracted; or

(ii) the cost to purchase that fuel from an affiliate company of the affected electrical utility;

(b) any fuel transportation costs are reasonable in comparison to current fuel transportation market rates;

(c) the term of collective fuel supply contracts entered into by the affected electrical utility is reasonable to ensure necessary fuel supply for the affected electrical utility; and

(d) that the cost for the affected electrical utility to maintain a reasonable stockpile of fuel for up to one year for the proven dispatchable generation resource is reasonable according to prudent utility practice.

(5)

(a) An affected electrical utility:

(i) may recover reasonable ongoing operating costs incurred in connection with the operation of a proven dispatchable generation resource located within the state; and

(ii) has a presumption that the ongoing operating costs described in Subsection (5)(a)(i) are reasonable as determined by the commission in a general rate case or other appropriate commission proceeding.

(b) A party may submit evidence in a commission proceeding to challenge the reasonableness of the affected electrical utility's operating costs.

(c) If an affected electrical utility's operating costs are unchallenged or the commission determines after a commission proceeding that a challenging party has failed to demonstrate that the affected electrical utility's operating costs are not reasonable, the affected electrical utility is entitled to recover operating costs associated with a proven dispatchable generation resource in rates.

(d) If the commission determines, after hearing evidence from a challenging party, that the affected electrical utility's operating costs are not reasonable, the commission shall establish reasonable rates that allow the affected electrical utility to recover only reasonable operating costs associated with a proven dispatchable generation resource.

(6)

(a) Upon filing of a request for recovery under this section from an affected electrical utility that is expected to result in a rate increase, the commission shall provide a written notice of the request to the Executive Appropriations Committee and the Public Utilities, Energy, and Technology Interim Committee.

(b) Upon receiving the notice described in Subsection (6)(a), the Executive Appropriations Committee may review the affected utility's request for cost recovery and determine whether to direct committee staff, or an otherwise qualified third party to intervene and advocate on behalf of the Legislature.

Enacted by Chapter 214, 2024 General Session

Chapter 18
Siting of High Voltage Power Line Act

Part 1
General Provisions

54-18-101 Title.

This chapter is known as the "Siting of High Voltage Power Line Act."

Enacted by Chapter 316, 2009 General Session

54-18-102 Definitions.

As used in this chapter:

(1) "Affected entity" means an entity as defined in Sections 10-9a-103 and 17-27a-103.

(2) "Affected landowner" means an owner of a property interest, as reflected in the most recent county or city tax records as receiving a property tax notice, whose property is located within a proposed corridor.

(3)

(a) "Construction" means the excavation, construction, and installation of a high voltage electric power line or upgraded high voltage transmission line.

(b) "Construction" does not include:

(i) the temporary use of sites; or

(ii) studies and tests for:

(A) requirements of this chapter;

(B) state regulations;

(C) federal regulations;

(D) securing geological and survey data; or

(E) any other actions taken by a public utility reasonably necessary to determine the location of a target study area or proposed corridor.

(4) "High voltage power line" means:

(a) an electrical high voltage power line with a nominal voltage of 230 kilovolts or more; and

(b) an upgraded high voltage power line.

(5) "Land use application" has the same meaning as provided in Sections 10-9a-103 and 17-27a-103.

(6) "Land use authority" has the same meaning as provided in Sections 10-9a-103 and 17-27a-103.

(7) "Land use permit" has the same meaning as Sections 10-9a-103 and 17-27a-103.

(8) "Legislative body" has the same meaning as provided in Sections 10-9a-103 and 17-27a-103.

(9) "Proposed corridor" means the transmission line route within a target study area selected by the public utility as the public utility's proposed alignment for a high voltage power line.

(10) "Proposed route" means the right-of-way needed for construction of the high voltage power line.

(11) "Public utility" has the same meaning as provided in Section 54-2-1.

(12) "Target study area" means the geographic area for a new high voltage transmission line or an upgraded high voltage power line as proposed by a public utility.

(13) "Upgraded high voltage power line" means increasing the voltage of an existing transmission line to 230 kilovolts or more.

Enacted by Chapter 316, 2009 General Session

Part 2
Public Utility Duties for High Voltage Power Lines

54-18-201 Public utility to obtain approval for high voltage power lines.

(1) Except as provided in Subsections (2) and (3), a public utility shall comply with the requirements of this chapter before beginning construction or operation of:
  (a) a high voltage power line; or
  (b) an upgraded high voltage power line.
(2) A public utility is not subject to the provisions of this chapter if the public utility has on or before May 12, 2009:
  (a) filed an application for or obtained a certificate of convenience and necessity for a high voltage power line in accordance with the provisions of Section 54-4-25; or
  (b) has initiated the acquisition of right-of-way for the construction of the high voltage transmission line.
(3) A transmission line that is subject to federal permitting is not subject to the provisions of this chapter.

Enacted by Chapter 316, 2009 General Session

Part 3
Notification - Process for Obtaining Land Use Permit - Appeal

54-18-301 Notice of intent to file -- Content -- Prefiling procedures.

(1) If a public utility conducts any field work in preparation of establishing a target study area before a notice of intent is filed in accordance with Subsection (2)(a), the public utility shall first notify the local land use authority of the public utility's work.
(2)
  (a) At least 90 days before the day on which a public utility files a land use application in a city or county that requires a permit for the construction of a high voltage power line or an upgraded high voltage power line, the public utility shall submit a notice of intent to the land use authority of each affected entity.
  (b) The notice of intent described in Subsection (2)(a) shall include:
    (i) the name and mailing address of the public utility, including:
      (A) the name of a contact person; and
      (B) an address and telephone number for the contact person;
    (ii) the purpose and need for the high voltage power line;
    (iii) a map showing the target study area;
    (iv) a description of environmentally sensitive areas in the target study area;
    (v) the timing of construction; and
    (vi) a list of affected entities.

(c) The land use authority of an affected entity may provide written comments to the public utility within 30 days after the day on which the notice of intent is mailed under Subsection (2)(a).

(3) At least 60 days before filing a conditional use permit application with a local land use authority, the public utility shall send a notice to:

(a) an affected entity;

(b) the land use authority of an affected entity; and

(c) an affected landowner.

(4) The notice required under Subsection (3) shall include:

(a) the name and mailing address of the public utility, including:

(i) the name of a contact person; and

(ii) an address and telephone number for the contact person;

(b) a description of the proposed corridor, including:

(i) location maps of:

(A) the target study area; and

(B) the public utility's proposed corridor within the target study area;

(ii) the width of the proposed route needed for the high voltage power line;

(iii) a description of the website described in Subsection (6); and

(iv) an explanation of:

(A) the land use application process;

(B) how an affected landowner may participate in a land use authority's land use application process; and

(C) the rights of an affected land owner under Title 78B, Chapter 6, Part 5, Eminent Domain.

(5)

(a) For purposes of Subsection (3), a county, at the public utility's request, shall provide a certified list of the most recent county tax records showing all affected landowners within 30 days after the day on which the public utility submits the request.

(b) A public utility may not be required to restart the notification process if:

(i) the county information provided under Subsection (5)(a) is insufficient or incorrect; and

(ii) the public utility fails to send an affected landowner a notice of intent based on the insufficient or incorrect information.

(6) Within one week of filing the notice of intent with a land use authority in accordance with Subsection (2), the public utility shall:

(a)

(i) create and update a website to dispense information about the proposed high voltage power line; and

(ii) on the website:

(A) designate a public utility point of contact; and

(B) explain how the public utility will respond to requests for information from the public and public officials; and

(b)

(i) publish a public notice in a daily or weekly newspaper of general circulation at least once per week for two weeks in each county where the target study area is located disclosing that the public utility has filed a notice of intent with an affected entity; and

(ii) describe in the public notice:

(A) the proposed high voltage power line, including a map of the target study area; and

(B) how readers may obtain more information from the website or locations listed in Subsection (3).

Enacted by Chapter 316, 2009 General Session

54-18-302 Public workshops.

After a public utility files the notice of intent in accordance with Subsection 54-18-301(3) and before it files a land use application, the public utility shall:

(1) conduct informal public workshops at locations along the proposed corridor to provide information about:
  (a) the high voltage power line; and
  (b) the process for obtaining a land use permit; and
(2) provide notice of the public workshops at least 14 days before a public workshop to:
  (a) a newspaper of general circulation in the target study area;
  (b) radio stations in the target study area; and
  (c) an affected entity.

Enacted by Chapter 316, 2009 General Session

54-18-303 Application for land use permit.

(1) Before a public utility may file a land use application for a proposed high voltage power line, the public utility shall, in accordance with Subsection (2), identify a proposed corridor in the public utility's land use application after:
  (a) providing a notice of intent in accordance with Section 54-18-301; and
  (b) conducting the public workshops in accordance with Section 54-18-302.
(2) If a public utility files a land use application for a high voltage power line, the public utility shall comply with the land use application requirements created by a legislative body and land use authority in accordance with Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act, and Title 17, Chapter 27a, County Land Use, Development, and Management Act.
(3) A local government may request cost information for modifications to the utility's proposed corridor in accordance with the provisions of Title 54, Chapter 14, Utility Facility Review Board Act.

Enacted by Chapter 316, 2009 General Session

54-18-304 Review of land use application.

(1)
  (a) A land use authority shall grant or deny a public utility's land use permit within 60 days after filing in accordance with the provisions of Title 10, Chapter 9a, Municipal Land Use, Development, and Management Act, and Title 17, Chapter 27a, County Land Use, Development, and Management Act.
  (b) The Utility Facility Review Board may review a land use authority's land use permit decision in accordance with Title 54, Chapter 14, Part 3, Utility Facility Review Board.
(2) Notwithstanding Subsection (1), if a public utility does not satisfy the notice of intent requirements in accordance with Section 54-18-301 and public workshop requirements in accordance with Section 54-18-302, a land use authority may withhold a decision on a public utility's land use permit until the public utility satisfies the notification and public workshop requirements.

Enacted by Chapter 316, 2009 General Session

54-18-305 Appeal of high voltage power line route.

This chapter does not affect a public utility's or local government's right to appeal a high voltage power line route to the Utility Facility Review Board in accordance with the provisions of Chapter 14, Utility Facility Review Board Act.

Amended by Chapter 89, 2013 General Session

Chapter 19
Regulation of Internet Protocol Services

54-19-101 Title.

This chapter is known as "Regulation of Internet Protocol Services."

Enacted by Chapter 241, 2012 General Session

54-19-102 Definitions.

As used in this section:

(1) "Internet protocol-enabled service" means any service, functionality, or application that uses Internet protocol or a successor protocol that enables an end-user to send or receive voice, data, or video communications.

(2) "Voice over Internet protocol service" means any service that:

(a) enables real time, two-way voice communication originating from or terminating at the user's location in Internet protocol or a successor protocol;

(b) uses a broadband connection from the user's location; and

(c) permits a user to receive a telephone call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

Enacted by Chapter 241, 2012 General Session

54-19-103 Authority over Internet protocol-enabled services and voice over Internet protocol services.

(1) A state agency and political subdivision of the state may not, directly or indirectly, regulate Internet protocol-enabled service or voice over Internet protocol service.

(2) The regulatory prohibition in Subsection (1) does not:

(a) affect or limit the enforcement of criminal or civil laws, including consumer protection and unfair or deceptive trade practice laws, that apply to the conduct of business;

(b) affect, limit, or prohibit the current or future assessment of:

(i) a tax;

(ii) a 911 fee;

(iii) a universal service fund fee;

(iv) a telecommunication relay fee; or

(v) a public utility regulatory fee;

(c) affect or modify:

(i) a right or obligation of any telecommunications carrier under 47 U.S.C. Sec. 251 and 47 U.S.C. Sec. 252;
(ii) any commission obligation to implement or enforce federal law;
(iii) a duty or power of the commission, under 47 U.S.C. Sec. 251 and 47 U.S.C. Sec. 252, including arbitration and enforcement of an interconnection agreement;
(iv) any obligation for the provision of video service by any person; or
(v) the application of Section 54-8b-2.1; or
(d) affect the authority of the state or a political subdivision of the state to manage the use of a public right of way, including any requirement for the joint use of utility poles or other structures in the right of way.

Enacted by Chapter 241, 2012 General Session

Chapter 20
Sustainable Transportation and Energy Plan Act

54-20-101 Title.
This chapter is known as the "Sustainable Transportation and Energy Plan Act."

Enacted by Chapter 393, 2016 General Session

54-20-102 Definitions.
As used in this chapter:
(1) "Demand side management" means the same as that term is defined in Section 54-7-12.8.
(2) "Pilot program period" means a period of five years during which the sustainable transportation and energy plan is effective:
(a) for a large-scale electric utility, beginning on January 1, 2017; or
(b) for a large-scale natural gas utility, beginning on July 1, 2019.
(3) "Sustainable transportation and energy plan" means the programs approved by the commission and undertaken by a large-scale electric utility or large-scale natural gas utility during the pilot program period, including:
(a) a natural gas vehicle rate or natural gas clean air program described in Section 54-4-13.1;
(b) the electric vehicle incentive program described in Section 54-20-103;
(c) the clean coal technology program described in Section 54-20-104; and
(d) the innovative technology programs described in Section 54-20-105.

Amended by Chapter 460, 2019 General Session

54-20-103 Electric vehicle incentive program.
(1) The commission shall, before July 1, 2017, authorize a large-scale electric utility to establish a program that promotes customer choice in electric vehicle charging equipment and service that includes:
(a) an incentive to a large-scale electric utility customer to install or provide electric vehicle infrastructure;
(b) time of use pricing for electric vehicle charging;

(c) any measure that the commission determines is in the public interest that incentivizes the competitive deployment of electric vehicle charging infrastructure.

(2) The commission may review the expenditures made by a large-scale electric utility for the program described in Subsection (1) in order to determine if the large-scale electric utility made the expenditures prudently in accordance with the purposes of the program.

(3) A large-scale electric utility proposing a program for approval by the commission under this section shall, before submitting the program to the commission for approval, seek input from:

(a) the Division of Public Utilities;

(b) the Office of Consumer Services;

(c) the Division of Air Quality; and

(d) any person that files a request for notice with the commission.

Enacted by Chapter 393, 2016 General Session

54-20-104 Clean coal technology program.

(1) Subject to Subsection (2), the commission shall authorize, before July 1, 2017, and, subject to funding, approve a program that authorizes a large-scale electric utility to investigate, analyze, and research clean coal technology.

(2) The commission may review the expenditures made by a large-scale electric utility for a program described in Subsection (1) in order to determine if the large-scale electric utility made the expenditures prudently in accordance with the purposes of the program.

Enacted by Chapter 393, 2016 General Session

54-20-105 Innovative utility programs.

(1) The commission may authorize, subject to funding available under Subsection 54-7-12.8(6)(b)(ii)(B), a large-scale electric utility to implement programs that the commission determines are in the interest of large-scale electric utility customers to provide for the investigation, analysis, and implementation of:

(a) an economic development incentive rate;

(b) a solar generation incentive;

(c) a battery storage or electric grid related project;

(d) a commercial line extension pilot program;

(e) a program to curtail emissions from thermal generation plant in the Salt Lake non-attainment area during a non-attainment event as defined by the Division of Air Quality;

(f) an additional electric vehicle incentive program incremental to the program described in Section 54-20-103;

(g) an additional clean coal program incremental to the program described in Section 54-20-104;

(h) an acquisition of electric infrastructure behind the large-scale electric utility's meter; and

(i) any other technology program.

(2) The commission may review the expenditures made by a large-scale electric utility for a program described in Subsection (1) in order to determine if the large-scale electric utility made the expenditures prudently in accordance with the purposes of the program.

(3)

(a) The commission may authorize a large-scale natural gas utility to implement and fund programs that the commission determines are in the public interest of large-scale natural gas utility customers to provide for the investigation, analysis, and implementation of:

(i) an economic development incentive rate;

(ii) research and development of other efficiency technologies;
(iii) an acquisition of nonresidential natural gas infrastructure behind the large-scale natural gas utility's meter;
(iv) the development of communities that can reduce greenhouse gases and NOx emissions;
(v) a natural gas renewable energy project;
(vi) a commercial line extension program; or
(vii) any other technology program.

(b) A large-scale natural gas utility proposing a program under this Subsection (3) shall, before submitting the program to the commission for approval, seek input from:
(i) the Division of Public Utilities;
(ii) the Office of Consumer Services; and
(iii) a person that files a request for notice with the commission.

(c) In determining whether a project is in the public interest, the commission shall consider the following factors:
(i) to what extent the use of renewable natural gas is facilitated or expanded by the proposed project;
(ii) potential air quality improvements associated with the proposed project;
(iii) whether the proposed project could be provided by the private sector or would be viable without the proposed incentives;
(iv) whether any proposed incentives were offered to all similarly situated potential partners and recipients; and
(v) potential benefits to ratepayers.

(d) Upon commission approval, the commission may authorize the large-scale natural gas utility to allocate on an annual basis up to $10,000,000 to a specific sustainable transportation and energy plan as described in Subsections (3)(a)(i) through (vii) or a specific natural gas clean air program as provided in Section 54-4-13.1.

(e) A large-scale natural gas utility shall establish a balancing account that includes:
(i) funds allocated for projects that have been approved by the commission under Subsection (3)(a); and
(ii) a carrying charge in an amount determined by the commission.

(4) The commission may review the expenditures made by a large-scale natural gas utility for a program described in Subsection (3) and approved by the commission in order to determine if the large-scale natural gas utility made the expenditures prudently in accordance with the purposes of the program.

(5) The commission may authorize and establish funding for a conservation, efficiency, or new technology program in addition to the programs described in this chapter if the conservation, efficiency, or new technology program is cost-effective and in the public interest.

(6) A large-scale electric utility or a large-scale natural gas utility that establishes and operates a natural gas clean air program described in Section 54-4-13.1, a sustainable transportation and energy plan under Section 54-7-12.8, or any plan or program under this chapter, shall submit a written report annually, on or before June 1, to the Public Utilities, Energy and Technology Interim Committee about each plan or program active during the previous calendar year, including status, operation, funding, disposition of funds, plan or program benefits, and the impact on rates.

Amended by Chapter 460, 2019 General Session

54-20-106 Extension of pilot program.

Before the first day of the legislative session in the final year of the pilot program period, the commission shall submit a report and recommendation to the Legislature regarding whether, in the discretion of the commission, the Legislature should, for the sustainable transportation and energy plan:
(1) extend the plan or a portion of the plan as a ratepayer funded program;
(2) implement the plan or a portion of the plan as a state funded program; or
(3) discontinue the plan or a portion of the plan.

Enacted by Chapter 393, 2016 General Session

54-20-107 Other programs.
The commission may authorize a large-scale electric utility or a large-scale natural gas utility to establish a program in addition to the programs described in this chapter if the commission determines that the program is cost-effective and in the public interest.

Amended by Chapter 460, 2019 General Session

Chapter 21
Small Wireless Facilities Deployment Act

Part 1
General Provisions

54-21-101 Definitions.
As used in this chapter:
(1) "Antenna" means communications equipment that transmits or receives an electromagnetic radio frequency signal used in the provision of a wireless service.
(2) "Applicable codes" means the International Building Code, the International Fire Code, the National Electrical Code, the International Plumbing Code, and the International Mechanical Code, as adopted and amended under Title 15A, State Construction and Fire Codes Act.
(3) "Applicable standards" means the structural standards for antenna supporting structures and antenna, known as ANSI/TIA-222, from the American National Standards Institute and the Telecommunications Industry Association.
(4) "Applicant" means a wireless provider who submits an application.
(5) "Application" means a request submitted by a wireless provider to an authority for a permit to:
(a) collocate a small wireless facility in a right-of-way; or
(b) install, modify, or replace a utility pole or a wireless support structure.
(6)
(a) "Authority" means:
(i) the state;
(ii) a state agency;
(iii) a county;
(iv) a municipality;
(v) a town;
(vi) a metrotownship;
(vii) a subdivision of an entity described in Subsections (6)(a)(i) through (vi); or

(viii) a special district or entity established to provide a single public service within a specific geographic area, including:
(A) a public utility district; or
(B) an irrigation district.
(b) "Authority" does not include a state court having jurisdiction over an authority.
(7) "Authority pole" means a utility pole owned, managed, or operated by, or on behalf of, an authority.
(8) "Authority wireless support structure" means a wireless support structure owned, managed, or operated by, or on behalf of, an authority.
(9) "Category one authority" means a single authority with a population of 65,000 or greater.
(10) "Category two authority" means a single authority with a population of less than 65,000.
(11) "Collocate" means to install, mount, maintain, modify, operate, or replace a small wireless facility:
(a) on a wireless support structure or utility pole; or
(b) for ground-mounted equipment, adjacent to a wireless support structure or utility pole.
(12) "Communications service" means:
(a) a cable service, as defined in 47 U.S.C. Sec. 522(6);
(b) a telecommunications service, as defined in 47 U.S.C. Sec. 153(53);
(c) an information service, as defined in 47 U.S.C. Sec. 153(24); or
(d) a wireless service.
(13) "Communications service provider" means:
(a) a cable operator, as defined in 47 U.S.C. Sec. 522(5);
(b) a provider of information service, as information service is defined in 47 U.S.C. Sec. 153(24);
(c) a telecommunications carrier, as defined in 47 U.S.C. Sec. 153(51); or
(d) a wireless provider.
(14) "Decorative pole" means an authority pole:
(a) that is specially designed and placed for an aesthetic purpose; and
(b)
(i) on which a nondiscriminatory rule or code prohibits an appurtenance or attachment, other than:
(A) a small wireless facility;
(B) a specialty designed informational or directional sign; or
(C) a temporary holiday or special event attachment; or
(ii) on which no appurtenance or attachment has been placed, other than:
(A) a small wireless facility;
(B) a specialty designed informational or directional sign; or
(C) a temporary holiday or special event attachment.
(15) "Design district" means an area:
(a) that is zoned or otherwise designated by municipal ordinance or code; and
(b) for which the authority maintains and enforces unique design and aesthetic standards on a uniform and nondiscriminatory basis.
(16) "FCC" means the Federal Communications Commission of the United States.
(17) "Fee" means a one-time, nonrecurring charge.
(18) "Gross revenue" means the same as gross receipts from telecommunications service is defined in Section 10-1-402.
(19) "Historic district" means a group of buildings, properties, or sites that are:
(a) in accordance with 47 C.F.R. Part 1, Appendix C:
(i) listed in the National Register of Historic Places; or

(ii) formally determined eligible for listing in the National Register of Historic Places by the Keeper of the National Register; or

(b) in an historic district or area created under Section 10-9a-503.

(20) "Nondiscriminatory" means treating similarly situated entities the same absent a reasonable, and competitively neutral basis, for different treatment.

(21) "Micro wireless facility" means a type of small wireless facility:

(a) that, not including any antenna, is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height;

(b) on which any exterior antenna is no longer than 11 inches; and

(c) that only provides Wi-Fi service.

(22) "Permit" means a written authorization an authority requires for a wireless provider to perform an action or initiate, continue, or complete a project.

(23) "Rate" means a recurring charge.

(24)

(a) "Right-of-way" means the area on, below, or above a public:

(i) roadway;

(ii) highway;

(iii) street;

(iv) sidewalk;

(v) alley; or

(vi) property similar to property listed in Subsections (24)(a)(i) through (v).

(b) "Right-of-way" does not include:

(i) the area on, below, or above a federal interstate highway; or

(ii) a fixed guideway, as defined in Section 59-12-102.

(25) "Small wireless facility" means a type of wireless facility:

(a) on which each wireless provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and

(b) for which all wireless equipment associated with the wireless facility, whether ground-mounted or pole-mounted, is cumulatively no more than 28 cubic feet in volume, not including any:

(i) electric meter;

(ii) concealment element;

(iii) telecommunications demarcation box;

(iv) grounding equipment;

(v) power transfer switch;

(vi) cut-off switch;

(vii) vertical cable run for the connection of power or other service;

(viii) wireless provider antenna; or

(ix) coaxial or fiber-optic cable that is immediately adjacent to or directly associated with a particular collocation, unless the cable is a wireline backhaul facility.

(26) "Substantial modification" means:

(a) a proposed modification or replacement to an existing wireless support structure that will substantially change the physical dimensions of the wireless support structure under the substantial change standard established in 47 C.F.R. Sec. 1.40001(7); or

(b) a proposed modification in excess of the site dimensions specified in 47 C.F.R. Part 1, Appendix C, Sec. III.B.

(27) "Technically feasible" means that by virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or the small wireless facility's design or site location, can

be implemented without a significant reduction or impairment to the functionality of the small wireless facility.

(28)

(a) "Utility pole" means a pole or similar structure that:

(i) is in a right-of-way; and

(ii) is or may be used, in whole or in part, for:

(A) wireline communications;

(B) electric distribution;

(C) lighting;

(D) traffic control;

(E) signage;

(F) a similar function to a function described in Subsections (28)(a)(ii)(A) through (E); or

(G) the collocation of a small wireless facility.

(b) "Utility pole" does not include:

(i) a wireless support structure;

(ii) a structure that supports electric transmission lines; or

(iii) a municipally owned structure that supports electric lines used for the provision of municipal electric service.

(29)

(a) "Wireless facility" means equipment at a fixed location that enables wireless communication between user equipment and a communications network, including:

(i) equipment associated with wireless communications; and

(ii) regardless of the technological configuration, a radio transceiver, an antenna, a coaxial or fiber-optic cable, a regular or backup power supply, or comparable equipment.

(b) "Wireless facility" does not include:

(i) the structure or an improvement on, under, or within which the equipment is collocated; or

(ii) a coaxial or fiber-optic cable that is:

(A) between wireless structures or utility poles;

(B) not immediately adjacent to or directly associated with a particular antenna; or

(C) a wireline backhaul facility.

(30)

(a) "Wireless infrastructure provider" means a person that builds or installs wireless communication transmission equipment, a wireless facility, or a wireless support structure.

(b) "Wireless infrastructure provider" includes a person authorized to provide a telecommunications service in the state.

(c) "Wireless infrastructure provider" does not include a wireless service provider.

(31) "Wireless provider" means a wireless infrastructure provider or a wireless service provider.

(32)

(a) "Wireless service" means any service using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public using a wireless facility.

(b) "Wireless service" includes the use of Wi-Fi.

(33) "Wireless service provider" means a person who provides a wireless service.

(34)

(a) "Wireless support structure" means an existing or proposed structure that is:

(i) in a right-of-way; and

(ii) designed to support or capable of supporting a wireless facility, including a:

(A) monopole;

(B) tower, either guyed or self-supporting;

(C) billboard; or
(D) building.
(b) "Wireless support structure" does not include a:
(i) structure designed solely for the collocation of a small wireless facility;
(ii) utility pole;
(iii) municipally owned structure that supports electric lines used for the provision of municipal electric service; or
(iv) structure owned by an energy services interlocal entity, as described in Subsection 11-13-203(4), that uses electric lines that are used for the provision of electrical service.
(35) "Wireline backhaul facility" means a facility used to transport communications by wire from a wireless facility to a communications network.
(36)
(a) "Written" or "in writing" means a tangible or electronic record of a communication or representation.
(b) "Written" or "in writing" includes a communication or representation that is handwritten, typewritten, printed, photostated, photographed, or electronic.

Enacted by Chapter 299, 2018 General Session

54-21-102 Scope.

Nothing in this chapter:
(1) permits an entity to provide a service regulated under 47 U.S.C. Secs. 521 through 573, in a right-of-way without compliance with all applicable legal obligations;
(2) imposes a new requirement on the activity of a cable provider in a right-of-way for a cable service provided in this state;
(3) governs:
(a) a pole that an electrical corporation owns or a wireless support structure that an electrical corporation owns; or
(b) the attachment of a small wireless facility to a pole that an electrical corporation owns or to a wireless support structure that an electrical corporation owns; or
(4) confers on an authority any new jurisdiction over an electrical corporation.

Enacted by Chapter 299, 2018 General Session

54-21-103 Local authority jurisdiction.

(1) Subject to Subsection (2), the provisions of this chapter, and applicable federal law, an authority may continue to exercise zoning, land use, planning, and permitting authority within the authority's territorial boundaries, including with respect to wireless support structures and utility poles.
(2) An authority may exercise the authority's police-power-based regulations for the management of a public right-of-way:
(a) on a nondiscriminatory basis to all users of the right-of-way;
(b) to the extent of the authority's jurisdiction; and
(c) consistent with state and federal law.
(3) An authority may impose a regulation based on the authority's police power in the management of an activity of a wireless provider in a public right-of-way, if:
(a) to the extent the authority enforces the regulation, the authority enforces the regulation on a nondiscriminatory basis; and

(b) the purpose of the regulation is to protect the health, safety, and welfare of the public.

(4) An authority may adopt design standards for the installation and construction of a small wireless facility or utility pole in a public right-of-way that:

(a) are reasonable and nondiscriminatory; and

(b) include additional installation and construction details that do not conflict with this chapter, including a requirement that:

(i) an industry standard pole load analysis be completed and submitted to an authority, indicating that the utility pole, to which the small wireless facility is to be attached, will safely support the load; or

(ii) small wireless facility equipment, on new and existing utility poles, be placed higher than eight feet above ground level.

(5)

(a) A wireless provider shall comply with an authority's design standards described in Subsection (4), if any, in place on the day on which the wireless provider files a permit application in relation to work for which the authority approves the permit application.

(b) An authority's obligations under this chapter may not be tolled or extended pending the adoption or modification of design standards.

(6) A wireless provider may not install a new utility pole in a public right-of-way without the authority's discretionary, nondiscriminatory, and written consent, if the public right-of-way is adjacent to a street or thoroughfare that is:

(a) not more than 60 feet wide, as depicted in the official plat records; and

(b) adjacent to single-family residential lots, other multifamily residences, or undeveloped land that is designated for residential use by zoning or deed restrictions.

(7) Nothing in this chapter authorizes the state or any political subdivision, including an authority, to:

(a) require the deployment of a wireless facility; or

(b) regulate a wireless service.

(8) Except as provided in this chapter or otherwise specifically authorized by state law, an authority may not impose or collect a tax, fee, or charge on a communications service provider authorized to operate in a right-of-way for the provision of communications service over the communications service provider's communications facilities in the right-of-way.

Enacted by Chapter 299, 2018 General Session

Part 2
Use of Right-of-way for Small Wireless Facilities and Utility Poles

54-21-201 Applicability.

This part only applies to a wireless provider deploying, within a right-of-way:

(1) a small wireless facility; or

(2) a utility pole associated with a small wireless facility.

Enacted by Chapter 299, 2018 General Session

54-21-202 Prohibition on exclusive use.

An authority may not enter into an exclusive arrangement with any person for:

(1) use of a right-of-way for the collocation of a small wireless facility; or
(2) the installation, operation, marketing, modification, maintenance, or replacement of a utility pole.

Enacted by Chapter 299, 2018 General Session

54-21-203 Right-of-way rates and fees.

(1) An authority may charge a wireless provider a rate or fee for the use of a right-of-way to collocate a small wireless facility, or to install, operate, modify, maintain, or replace a utility pole associated with the wireless provider's collocation of a small wireless facility, if the authority:
  (a) charges all other similarly situated wireless providers for use of the right-of-way; and
  (b) charges only the rate or fee in accordance with Part 5, Rates and Fees.
(2) An authority may, on a nondiscriminatory basis, refrain from charging a rate or fee to a wireless provider for the use of a right-of-way.

Enacted by Chapter 299, 2018 General Session

54-21-204 Wireless provider right of access.

(1) Subject to the provisions of this part, along, across, upon, or under a right-of-way, a wireless provider may, as a permitted use under the authority's zoning regulation and subject only to administrative review:
  (a) collocate a small wireless facility; or
  (b) install, operate, modify, maintain, or replace:
    (i) a utility pole associated with the wireless provider's collocation of a small wireless facility; or
    (ii) equipment described in Subsections 54-21-101(25)(b)(i) through (ix) required for a wireless provider's collocation of a small wireless facility.
(2) A small wireless facility or utility pole under Subsection (1) may not:
  (a) obstruct or hinder the usual travel or public safety on a right-of-way; or
  (b) obstruct, damage, or interfere with:
    (i) another utility facility in a right-of-way; or
    (ii) a utility's use of the utility's facility in a right-of-way.
(3) Construction and maintenance by the wireless provider shall comply with all applicable legal obligations for the protection of underground and overhead utility facilities.

Enacted by Chapter 299, 2018 General Session

54-21-205 Height limitations in a right-of-way.

(1) A new or modified utility pole that has a collocated small wireless facility, and that is installed in a right-of-way, may not exceed 50 feet above ground level.
(2) An antenna of a small wireless facility may not extend more than 10 feet above the top of a utility pole existing on or before September 1, 2018.

Enacted by Chapter 299, 2018 General Session

54-21-206 Decorative poles.

If necessary to collocate a small wireless facility, a wireless provider may replace a decorative pole, if the replacement pole reasonably conforms to the design aesthetic of the displaced decorative pole.

Enacted by Chapter 299, 2018 General Session

54-21-207 Underground district.

A wireless provider shall comply with an authority's prohibition on a communications service provider installing a structure in the right-of-way in an area designated solely for underground or buried cable and utility facilities, if:

(1) the prohibition is reasonable and nondiscriminatory; and

(2) the authority:

(a)

(i) requires that all cable and utility facilities, other than an authority pole and attachment, be placed underground; and

(ii) establishes the requirement in Subsection (2)(a)(i) more than 90 days before the day on which the applicant submits the application;

(b) does not prohibit the replacement of an authority pole in the designated area; and

(c) permits a wireless provider to seek a waiver, that is administered in a nondiscriminatory manner, of the undergrounding requirement for the placement of a new utility pole to support a small wireless facility.

Enacted by Chapter 299, 2018 General Session

54-21-208 Historic and design districts.

(1) Subject to the permit process described in Section 54-21-302, an authority may require a reasonable, technically feasible, nondiscriminatory, or technologically neutral design or concealment measure in an historic district, unless the facility is excluded from evaluation for effects on historic properties under 47 C.F.R. Sec. 1.1307(a)(4).

(2) A design or concealment measure described in Subsection (1) may not:

(a) have the effect of prohibiting a provider's technology; or

(b) be considered a part of the small wireless facility for purposes of the size parameters in the definition of a small wireless facility.

(3)

(a) A wireless provider shall obtain advance approval from an authority before collocating a new small wireless facility or installing a new utility pole in an area that is zoned or otherwise designated as an historic district or a design district.

(b) As a condition for approval of a new small wireless facility or a new utility pole in an historic district or a design district, an authority may require reasonable design or concealment measures for the new small wireless facility or the new utility pole.

(4) A wireless provider shall comply with an authority's reasonable and nondiscriminatory design and aesthetic standards requiring the use of certain camouflage measures in connection with a new small wireless facility in an historic district or a design district, if the camouflage measures are technically and economically feasible consistent with this chapter.

(5) This section does not limit an authority's ability to enforce historic preservation zoning regulations consistent with:

(a) the preservation of local zoning authority under 47 U.S.C. Sec. 332(c)(7);

(b) the requirements for facility modifications under:

(i) 47 U.S.C. Sec. 1455(a); or

(ii) the National Historic Preservation Act of 1966, 16 U.S.C. Sec. 470 et seq.;

(c) the regulations adopted to implement the laws described in Subsections (5)(a) and (b); and

(d) Section 10-9a-503.

Enacted by Chapter 299, 2018 General Session

54-21-209 Manner of regulation.

(1) An authority shall manage a wireless provider's use of a right-of-way in a nondiscriminatory manner with regard to any other user of the right-of-way.
(2) Any term or condition an authority imposes on a right-of-way user may not:
(a) be unreasonable or discriminatory; or
(b) violate an applicable legal obligation or law.

Enacted by Chapter 299, 2018 General Session

54-21-210 Damage and repair.

(1) If a wireless provider's activity causes damage to a right-of-way, the wireless provider shall repair the right-of-way to substantially the same condition as before the damage.
(2) If a wireless provider fails to make a repair required by an authority under Subsection (1) within a reasonable time after written notice, the authority may:
(a) make the required repair; and
(b) charge the wireless provider the reasonable, documented, actual cost for the repair.
(3) If the damage described in Subsection (1) causes an urgent safety hazard, an authority may:
(a) immediately make the necessary repair; and
(b) charge the wireless provider the reasonable, documented, actual cost for the repair.

Enacted by Chapter 299, 2018 General Session

Part 3
Permitting Process for Small Wireless Facilities

54-21-301 Applicability -- General.

(1) This part applies to:
(a) the collocation of a small wireless facility in a right-of-way;
(b) the collocation of a small wireless facility on a wireless support structure in a right-of-way; and
(c) the installation, modification, or replacement of a utility pole associated with a small wireless facility in a right-of-way.
(2) Except as provided in this chapter, an authority may not prohibit, regulate, or charge for the collocation of a small wireless facility.

Enacted by Chapter 299, 2018 General Session

54-21-302 Permitting process, requirements, and limitations.

(1) An authority may require an applicant to obtain a permit to:
(a) collocate a small wireless facility in a right-of-way; or
(b) install a new, modified, or replacement utility pole associated with a small wireless facility in a right-of-way, as provided in Section 54-21-204.
(2) If an authority establishes a permitting process under Subsection (1), the authority:

(a) shall ensure that a required permit is of general applicability;
(b) may not require:
(i) directly or indirectly, that an applicant perform a service or provide a good unrelated to the permit, including reserving fiber, conduit, or pole space for the authority;
(ii) an applicant to provide more information to obtain a permit than a communications service provider that is not a wireless provider or a utility, except to the extent the applicant is required to include construction or engineering drawings or other information to demonstrate the applicant's application should be not denied under Subsection (7);
(iii) the placement of a small wireless facility on a specific utility pole or category of poles;
(iv) multiple antenna systems on a single utility pole; or
(v) a minimum separation distance, limiting the placement of a small wireless facility; and
(c) may require an applicant to attest that the small wireless facility will be operational for use by a wireless service provider within 270 days after the day on which the authority issues the permit, except in the case that:
(i) the authority and the applicant agree to extend the 270-day period; or
(ii) lack of commercial power or communications transport infrastructure to the site delays completion.
(3) Within 30 days after the day on which an authority receives an application for the collocation of a small wireless facility or for a new, modified, or replacement utility pole, the authority shall:
(a) determine whether the application is complete; and
(b) notify the applicant in writing of the authority's determination of whether the application is complete.
(4) If an authority determines, within the applicable time period described in Subsection (3), that an application is incomplete:
(a) the authority shall specifically identify the missing information in the written notification sent to the applicant under Subsection (3)(b); and
(b) the processing deadline in Subsection (6) is tolled:
(i) from the day on which the authority sends the applicant the written notice to the day on which the authority receives the applicant's missing information; or
(ii) as the applicant and the authority agree.
(5) An application for a small wireless facility expires if:
(a) the authority notifies the wireless provider that the wireless provider's application is incomplete, in accordance with Subsection (4); and
(b) the wireless provider fails to respond within 90 days after the day on which the authority notifies the wireless provider under Subsection (5)(a).
(6)
(a) An authority shall:
(i) process an application on a nondiscriminatory basis; and
(ii) approve or deny an application:
(A) for the collocation of a small wireless facility, within 60 days after the day on which the authority receives the complete application; and
(B) for a new, modified, or replacement utility pole, within 105 days after the day on which the authority receives the complete application.
(b) If an authority fails to approve or deny an application within the applicable time period described in Subsection (6)(a)(ii), the application is approved.
(c) Notwithstanding Subsections (6)(a) and (b), an authority may extend the applicable period described in Subsection (6)(a)(ii) for a single additional period of 10 business days, if the authority notifies the applicant before the day on which approval or denial is originally due.

(7) An authority may deny an application to collocate a small wireless facility or to install, modify, or replace a utility pole that meets the height limitations under Section 54-21-205, only if the action requested in the application:
(a) materially interferes with the safe operation of traffic control equipment;
(b) materially interferes with a sight line or a clear zone for transportation or pedestrians;
(c) materially interferes with compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 et seq., or a similar federal or state standard regarding pedestrian access or movement;
(d) fails to comply with applicable laws or legal obligations;
(e) creates a public health or safety hazard; or
(f) obstructs or hinders the usual travel or public safety of the right-of-way.
(8)
(a) If an authority denies an application under Subsection (7), the authority shall:
(i) document the basis for the denial, including any specific law on which the denial is based; and
(ii) send the documentation described in Subsection (8)(a)(i) to the applicant on or before the day on which the authority denies the application.
(b) Within 30 days after the day on which an authority denies an application, the applicant may, without paying an additional application fee:
(i) cure any deficiency the authority identifies in the applicant's application; and
(ii) resubmit the application.
(c)
(i) An authority shall approve or deny an application revised in accordance with Subsection (8)(b) within 30 days after the day on which the authority receives the revised application.
(ii) A review of an application revised in accordance with Subsection (8)(b) is limited to the deficiencies documented as the basis for denial unless the applicant has changed another portion of the application.
(9)
(a) Subject to Subsections (9)(b) and (c), if an applicant seeks to:
(i) collocate multiple small wireless facilities within a single authority, the authority shall allow the applicant, at the applicant's discretion, to file a consolidated application for the collocation of up to 25 small wireless facilities, if all of the small wireless facilities in the consolidated application are:
(A) substantially the same type; and
(B) proposed for collocation on substantially the same types of structures; or
(ii) install, modify, or replace multiple utility poles within a single authority, the authority shall allow the applicant, at the applicant's discretion, to file a consolidated application for the installation, modification, or replacement of up to 25 utility poles.
(b) An applicant may not file within a 30-day period:
(i) with a category one authority, more than:
(A) three consolidated applications; or
(B) multiple applications that collectively seek permits for a combined total of more than 75 small wireless facilities and utility poles; or
(ii) with a category two authority, more than:
(A) one consolidated application; or
(B) multiple applications that collectively seek permits for a combined total of more than 25 small wireless facilities and utility poles.

(c) A consolidated application described in Subsection (9)(a) may not combine applications solely for collocation of small wireless facilities on existing utility poles with applications for the installation, modification, or replacement of a utility pole.
(d) If an authority denies the application for one or more utility poles, or one or more small wireless facilities, in a consolidated application, the authority may not use the denial as a basis to delay the application process of any other utility pole or small wireless facility in the same consolidated application.
(10) A wireless provider shall complete the installation or collocation for which a permit is granted under this part within 270 days after the day on which the authority issues the permit, unless:
(a) the authority and the applicant agree to extend the one-year period; or
(b) lack of commercial power or communications facilities at the site delays completion.
(11) Approval of an application authorizes the applicant to:
(a) collocate or install a small wireless facility or utility pole, as requested in the application; and
(b) subject to applicable relocation requirements and the applicant's right to terminate at any time, operate and maintain for a period of at least 10 years:
(i) any small wireless facility covered by the permit; and
(ii) any utility pole covered by the permit.
(12) If there is no basis for denial under Subsection (7), an authority shall grant the renewal of an application under this section for an equivalent duration.
(13) An authority may not institute, either expressly or de facto, a moratorium on filing, receiving, or processing an application, or issuing a permit or another approval, if any, for:
(a) the collocation of a small wireless facility; or
(b) the installation, modification, or replacement of a utility pole to support a small wireless facility.
(14) The approval of the installation, placement, maintenance, or operation of a small wireless facility, in accordance with this chapter, does not authorize:
(a) the provision of a communications service in the right-of-way; or
(b) the installation, placement, or operation of a facility, other than the approved small wireless facility, in the right-of-way.

Enacted by Chapter 299, 2018 General Session

54-21-303 Exceptions to permitting.
(1) Except as provided in Subsection (2), an authority may not require a wireless provider to submit an application, obtain a permit, or pay a rate for:
(a) routine maintenance;
(b) the replacement of a small wireless facility with a small wireless facility that is substantially similar or smaller in size; or
(c) the installation, placement, maintenance, operation, or replacement of a micro wireless facility that is strung on a cable between existing utility poles, in compliance with the National Electrical Safety Code.
(2)
(a) An authority may require a wireless provider to obtain a permit in accordance with Section 72-7-102 for work that requires excavation or closing of sidewalks or vehicular lanes in a public right-of-way.
(b) If an authority requires a permit under Subsection (2)(a), the authority shall process and approve the permit within the same time period the authority processes and approves a permit for all other types of entities.

(3)
(a) An authority may require advance notice of an activity described in Subsection (1).
(b) A wireless provider may replace or upgrade a utility pole only with the approval of the utility pole's owner.

Enacted by Chapter 299, 2018 General Session

Part 4
Access to Authority Poles Within a Right-of-way

54-21-401 Applicability.
This part applies to activities of a wireless provider within a right-of-way.

Enacted by Chapter 299, 2018 General Session

54-21-402 Prohibition on exclusive use.
(1) A person owning, managing, or controlling an authority pole in a right-of-way may not enter into an exclusive arrangement with a person for the right to collocate a small wireless facility to the authority pole.
(2) A person who purchases or otherwise acquires an authority pole is subject to the requirements of this part.
(3) An authority shall allow the collocation of a small wireless facility on an authority pole in a right-of-way:
(a) as provided in this chapter; and
(b) subject to the permitting process in Part 3, Permitting Process for Small Wireless Facilities.

Enacted by Chapter 299, 2018 General Session

54-21-403 Rates.
The rate to collocate a small wireless facility on an authority pole:
(1) shall be nondiscriminatory, regardless of the service provided by the collocating person; and
(2) is provided in Part 5, Rates and Fees.

Enacted by Chapter 299, 2018 General Session

Part 5
Rates and Fees

54-21-501 Applicability.
This part governs an authority's rates and fees for the placement in a right-of-way of:
(1) a small wireless facility; or
(2) a utility pole associated with a small wireless facility.

Enacted by Chapter 299, 2018 General Session

54-21-502 Right-of-way rates.

(1) Except as described in Subsection (2), an authority may not require a wireless provider to pay any rate, fee, or compensation to the authority, or to any other person, beyond what is expressly authorized in this chapter, for the right to use or occupy a right-of-way:
  (a) for the collocation of a small wireless facility on a utility pole in the right-of-way; or
  (b) for the installation, operation, modification, maintenance, or replacement of a utility pole in the right-of-way.

(2)
  (a) An authority may charge a wireless provider a rate for the right to use or occupy a right-of-way as described in Subsection (1), if, except as provided in Subsection 54-21-601(6), the rate is:
    (i) fair and reasonable;
    (ii) competitively neutral;
    (iii) nondiscriminatory;
    (iv) directly related to the wireless provider's actual use of the right-of-way; and
    (v) not more than the greater of:
      (A) 3.5% of all gross revenue related to the wireless provider's use of the right-of-way for small wireless facilities; or
      (B) $250 annually for each small wireless facility.
  (b) A wireless provider subject to a rate under this Subsection (2) shall remit payments to the authority on a monthly basis.
  (c) A rate charged in accordance with Subsection (2)(a)(v) is presumed to be fair and reasonable.

(3) Notwithstanding Subsection (2), an authority may not require a wireless provider to pay an additional rate, fee, or compensation for the right to use or occupy a right-of-way as described in Subsection (1), if the wireless provider is subject to the municipal telecommunications license tax under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

Enacted by Chapter 299, 2018 General Session

54-21-503 Application fees.

(1) An authority may charge an application fee, if:
  (a) a similar fee is required for similar types of commercial development or construction within the authority's jurisdiction;
  (b) the costs to be recovered by an application fee are not already recovered by existing fees, rates, licenses, or taxes paid by the wireless provider; and
  (c) the fee does not include:
    (i) travel expenses incurred by a third party in review of an application; or
    (ii) payment or reimbursement of a third-party rate or fee charged on a contingency basis or a result-based arrangement.

(2) Subject to Subsection (3), an application fee for collocation of a small wireless facility is limited to the cost of granting a building permit for similar types of commercial development or construction within the authority's jurisdiction.

(3) An application fee for the collocation of a small wireless facility on an existing or replacement utility pole may not exceed $100 for each small wireless facility on the same application.

(4) If the activity is a permitted use described in Section 54-21-204, an application fee may not exceed $250 per application to install, modify, or replace a utility pole associated with a small wireless facility.

(5) If the activity is not a permitted use described in Section 54-21-204, an application fee may not exceed $1,000 per application to:
(a) install, modify, or replace a utility pole; or
(b) install, modify, or replace a new utility pole associated with a small wireless facility.

Enacted by Chapter 299, 2018 General Session

54-21-504 Authority pole collocation rate.

The rate to collocate a small wireless facility on an authority pole is $50 per year, per authority pole.

Enacted by Chapter 299, 2018 General Session

Part 6
Implementation

54-21-601 General.

(1) An authority may, to the extent allowed by law and consistent with this chapter, establish rates, fees, and other terms that comply with this chapter by:
(a) implementing an ordinance; or
(b) if applicable, executing an agreement with a wireless provider.
(2) In the absence of an ordinance or agreement that fully complies with this chapter, a wireless provider may install and operate a small wireless facility or a utility pole associated with a small wireless facility:
(a) subject to Section 54-21-602; and
(b) under the requirements of this chapter.
(3) An authority may establish an ordinance or require an agreement to implement this chapter.
(4)
(a) Subject to Subsection (4)(b), an authority may require a wireless provider to agree to reasonable and nondiscriminatory indemnification, insurance, or bonding requirements before a wireless provider collocates a small wireless facility in a right-of-way.
(b) An authority may not impose on a wireless provider an indemnification requirement described in Subsection (4)(a) that requires the wireless provider to indemnify the authority for the authority's negligence.
(5) An authority's obligations under this chapter may not be tolled or extended pending the implementation of an ordinance or negotiation of an agreement to implement this chapter.
(6)
(a) Nothing in this section prohibits an authority from entering into a written, nondiscriminatory agreement with one or more wireless providers to jointly test certain traffic-related functions, or other technology related to research, using specified assets of the authority or the wireless providers.
(b) An agreement described in Subsection (6)(a) may:
(i) waive certain fees the participating wireless provider would otherwise be required to pay to the authority; or
(ii) allow the participating wireless provider to pay certain fees in cash, in-kind compensation, or in a combination of cash and in-kind compensation.

Enacted by Chapter 299, 2018 General Session

54-21-602 Noncompliant agreements and ordinances.

(1) An agreement or ordinance that does not fully comply with this chapter and applies to a small wireless facility or a utility pole that is operational or installed before May 11, 2018:
  (a) may not be renewed or extended unless the agreement is modified to fully comply with this chapter; and
  (b) is invalid and unenforceable beginning November 8, 2018, unless the agreement or ordinance is modified before November 8, 2018, to fully comply with this chapter.
(2) An agreement or ordinance entered into or passed before May 11, 2018, that does not fully comply with this chapter and applies to a small wireless facility or a utility pole that was not operational or installed before May 11, 2018, is invalid and unenforceable:
  (a) beginning May 11, 2018; and
  (b) until the agreement or ordinance is modified to fully comply with this chapter.
(3) If an agreement or ordinance is invalid in accordance with this section, until an agreement or ordinance that fully complies with this chapter is entered or adopted:
  (a) a small wireless facility or a utility pole that is operational or installed before May 11, 2018, may remain installed and operate under the requirements of this chapter; and
  (b) a small wireless facility or utility pole may become operational or be installed in the right-of-way on or after May 11, 2018, under the requirements of this chapter.

Enacted by Chapter 299, 2018 General Session

54-21-603 Relocation.

(1) Notwithstanding any provision to the contrary, an authority may require a wireless provider to relocate or adjust a small wireless facility in a public right-of-way:
  (a) in a timely manner; and
  (b) without cost to the authority owning the public right-of-way.
(2) The reimbursement obligations under Section 72-6-116(3)(b) do not apply to the relocation of a small wireless facility.

Enacted by Chapter 299, 2018 General Session

Chapter 22
Stray Current or Voltage Remediation Act

Part 1
General Provisions

54-22-101 Title -- Legislative findings.

(1) This chapter is known as the "Stray Current or Voltage Remediation Act."
(2) The Legislature finds that:

(a) to protect livestock and livestock operations, it is necessary and appropriate to establish an actionable level of stray current and voltage that is safely below any level that is capable of harming livestock or adversely affecting the behavior, health, or productivity of livestock;
(b) the efficient, effective, and safe generation, transmission, and distribution of electrical energy by electric entities is critical to the well-being of the citizens and the economy of the state;
(c) permitting an electric entity to face liability based on a level of stray current or voltage that is incapable of adversely affecting livestock seriously threatens the efficient, effective, and safe generation, transmission, and distribution of electrical energy in the state, as well as the continuing viability of economic activity that depends on electrical energy;
(d) to guarantee the sufficient availability of efficient, effective, and safe electrical energy in the state, which requires the continuing operation of electric entities, it is necessary and appropriate for the Legislature to establish a uniform actionable level for an electric entity with respect to stray current and voltage and livestock; and
(e) because the actionable level is set sufficiently below any level that is capable of adversely affecting the behavior, health, or productivity of livestock, any potential of harm to livestock from stray current or voltage below this level is highly remote and unexpected.

Enacted by Chapter 230, 2018 General Session

54-22-102 Definitions.

(1) "Actionable level" means stray current or voltage that is:
(a) a steady-state, root mean square, alternating current (AC) of 2.0 milliamps or more through a 500 ohm resistor connected between livestock contact points, as measured by a digital true root mean square meter;
(b) a steady-state, root mean square AC voltage of 1.0 volt or more across, in parallel with, a 500 ohm resistor connected between livestock contact points, as measured by a true root mean square meter;
(c) a steady-state direct current (DC) of 2.8 milliamps or more through a 500 ohm resistor connected between livestock contact points, as measured by a digital meter; or
(d) a steady-state DC voltage of 1.4 volts or more across a 500 ohm resistor connected between livestock contact points, as measured by a digital meter.
(2) "Electric entity" means:
(a) an electrical corporation, independent energy producer, qualifying power producer, interlocal entity, public agency, or person engaged in generating, furnishing, transmitting, distributing, or marketing electrical power for public or private use; and
(b) an agent, affiliate, employee, or independent contractor of a person described in Subsection (2)(a).
(3) "Interlocal entity" means the same as that term is defined in Section 11-13-103.
(4) "Livestock" means cattle, swine, sheep, equine, or poultry.
(5) "Livestock contact points" means two electrically conductive points that livestock may simultaneously contact.
(6) "Livestock operator" means a person who through an agreement with the owner of livestock has authority and is responsible to oversee the care and well being of the livestock.
(7) "Public agency" means the same as that term is defined in Section 11-13-103.
(8) "Qualified testing professional" means an electrical engineer who has:
(a) graduated with an engineering degree from an accredited university;
(b) completed no fewer than 40 hours of relevant stray current or voltage training, with electric utility experience; and

(c) been involved in at least one prior investigation involving the measurement or testing of stray current or voltage.

(9) "Root mean square" means:

(a) a measure of the effective energy value of a wave or cycle; and

(b) for regularly shaped alternating current sine waves, a value of 0.707 multiplied by the peak value of the sine wave.

(10) "Steady-state" means:

(a) for alternating current and AC voltage, a one minute average of root mean square amperage or voltage values, excluding transients; and

(b) for direct current and DC voltage, a one minute average of amperage or voltage values excluding transients.

(11) "Transient" means a current or voltage impulse:

(a) lasting less than five thousandths of a second; and

(b) found on all types of electrical, data, and communications circuits.

Enacted by Chapter 230, 2018 General Session

54-22-103 Scope of chapter.

This chapter does not expand or affect the jurisdiction of the commission. An electric entity is not subject to the jurisdiction of the commission unless made subject to the jurisdiction of the commission under a statute other than this chapter.

Enacted by Chapter 230, 2018 General Session

Part 2
Notice and Remedies

54-22-201 Notice -- Testing -- Reporting -- Access to property.

(1) A livestock owner or livestock operator shall file a notice with an electric entity as provided in Subsection (2) if the livestock owner or livestock operator believes that the livestock owner's or livestock operator's livestock is affected by stray current or voltage that may be attributable to an electric entity and is seeking a remedy from the electric entity.

(2) To file a notice, a livestock owner or livestock operator shall provide written notice to the electric entity that documents:

(a) the address of the livestock owner or livestock operator and the location of the potential stray current or voltage; and

(b) a description of the claimed impacts of the potential stray current or voltage.

(3) Within 30 days of receipt of notice under Subsection (1), the electric entity shall provide for testing for stray current or voltage at the location that is the subject of the notice required by Subsection (2) by a qualified testing professional.

(4)

(a) Within 60 days after completion of the tests required to be performed under this chapter, a qualified testing professional shall prepare a written report. The written report shall include:

(i) a summary of the tests performed; and

(ii) the data and results from the tests.

(b) The electric entity shall provide a copy of the written report to the livestock owner or livestock operator who provided notice under Subsection (2).

(5) A livestock owner or livestock operator who provides written notice under Subsection (2) shall provide reasonable access to the property where alleged stray current or voltage has occurred to allow testing to be conducted as directed under this section.

Enacted by Chapter 230, 2018 General Session

54-22-202 Plan to reduce or eliminate stray current or voltage.

(1) The procedure described in Subsection (2) shall be followed if, through testing by a qualified testing professional as described in Section 54-22-201, it is determined that the electric entity's contribution to any stray current or voltage is 50% or more of the actionable level.

(2) If the conditions of Subsection (1) are met, the electric entity shall diligently pursue remediation to the electric entity's contribution to any stray current or voltage to less than 50% of the actionable level within 90 days.

(3) The livestock owner or livestock operator who provides written notice under Subsection 54-22-201(2) shall provide reasonable access for remediation.

Enacted by Chapter 230, 2018 General Session

54-22-203 Liability limitations.

(1) An electric entity may not be held liable for damages or other relief if the claim for damages or other relief is based on livestock contact with any kind of stray current or voltage contributed by the electric entity below the actionable level.

(2) There is no presumption of liability if the stray current or voltage is equal to or greater than the actionable level.

(3) A claim for nuisance may not be asserted against an electric entity for damages due to stray current or voltage. Claims for stray current or voltage shall be limited to claims of negligence. The electric entity's conduct shall be evaluated using a standard of ordinary care under the circumstances.

Enacted by Chapter 230, 2018 General Session

54-22-204 Committee review requirements.

By November 2020 and in three year intervals thereafter, the Public Utilities, Energy, and Technology Interim Committee shall review industry standards and peer reviewed research regarding levels of stray current and voltage and impacts to livestock.

Enacted by Chapter 230, 2018 General Session

Superseded 7/1/2024

54-22-205 Disputes.

A dispute under this chapter involving an electric entity shall be resolved as follows:

(1) if the electric entity is a public utility, in accordance with Section 54-7-9; and

(2) if the electric entity is not a public utility, by filing an action with the district court.

Enacted by Chapter 230, 2018 General Session

Effective 7/1/2024

54-22-205 Disputes.

A dispute under this chapter involving an electric entity shall be resolved as follows:

(1) if the electric entity is a public utility, in accordance with Section 54-7-9; and

(2) if the electric entity is not a public utility, by bringing an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.

Amended by Chapter 158, 2024 General Session

Chapter 23
Crossing Railroad Rights-of-way by Fiber Optic Carriers

54-23-101 Title.

This chapter is known as "Crossing Railroad Rights-of-Way by Fiber Optic Carriers."

Enacted by Chapter 452, 2019 General Session

54-23-102 Definitions.

As used in this chapter:

(1) "Consumer price index" means the Consumer Price Index for All Urban Consumers: All Items Less Food & Energy, as published by the Bureau of Labor Statistics of the United States Department of Labor.

(2)

(a) "Crossing" means a telecommunications facility constructed under or across a railroad right-of-way:

(i) at an angle between 80 degrees and 100 degrees;

(ii) with a minimum depth of:

(A) 10 feet below rail level for nonhorizontal directional drilling; or

(B) 15 feet below rail for horizontal directional drilling; and

(iii) within a county that is not a county of the first class.

(b) "Crossing" does not include longitudinal occupancy of railroad right-of-way.

(3) "Facility" or "telecommunications facility" means fiber optics or related conduit installed in a crossing.

(4) "Fiber optic carrier" means a telecommunications corporation or a telecommunications corporation's contractor or agent.

Enacted by Chapter 452, 2019 General Session

54-23-103 Right-of-way crossing -- application for permission.

(1)

(a) Any fiber optic carrier that intends to place a facility across or upon a railroad right-of-way shall submit a request for permission from the railroad prior to placing a facility.

(b) A request under this Subsection (1) shall:

(i) be in the railroad form of a completed crossing application;

(ii) include an engineering design that:

(A) shows the location of the proposed crossing and the railroad's property, tracks, and wires that the telecommunications facility will cross; and
(B) conforms with guidelines published in the most recent edition of the National Electric Safety Code and American Railway Engineering and Maintenance-of-Way Association standards; and
(iii) include the standard crossing fee specified in Section 54-23-105.
(2) Unless the railroad provides written or electronic notice to the fiber optic carrier that the proposed crossing is a serious threat to the safe operations of the railroad or to the current or future use of the railroad right-of-way, would violate any federal law or regulation applicable to a public transit district, or would violate an agreement between a public transit district and the federal government, the railroad shall approve the application within 35 calendar days after the receipt of a completed application for a crossing.
(3) This section applies to:
(a) any crossing in existence before May 14, 2019, if an agreement concerning the crossing has expired or has been terminated; and
(b) any crossing commenced on or after May 14, 2019.
(4) If an applicant that intends to place a facility across or upon a railroad right-of-way at a crossing described in Subsection (3)(a) has paid a collective amount that equals or exceeds the standard crossing fee established under Section 54-23-105 to the railroad during the existence of the crossing, no additional fee may be required.

Enacted by Chapter 452, 2019 General Session

54-23-104 Right-of-way crossing -- Construction.

Unless the railroad notifies the fiber optic carrier in writing or electronically that the approved crossing is a serious threat to the safe operation of the railroad or to the current or future use of the railroad right-of-way, would violate any federal law or regulation applicable to a public transit district, or would violate an agreement between a public transit district and the federal government, the railroad shall issue the permit or crossing agreement and schedule flagging to occur within 45 calendar days of the approved application.

Enacted by Chapter 452, 2019 General Session

54-23-105 Standard crossing fee.

(1) Unless otherwise agreed by the parties, a fiber optic carrier that crosses a railroad right-of-way shall pay the railroad a one-time standard crossing fee of $1,250, adjusted as provided in Subsection (5), for each crossing.
(2)
(a) Except as otherwise provided in this chapter, the standard crossing fee is paid in lieu of any license, permit, application, processing fee, or any other fee or charge to reimburse the railroad for direct expenses incurred by the railroad as a result of the crossing.
(b) Except as otherwise provided in this chapter, no other fee or charge related to the crossing may be assessed to the fiber optic carrier by the railroad.
(3) In addition to the standard crossing fee, the fiber optic carrier shall also reimburse the railroad for any reasonable and necessary flagging expense associated with a crossing, based on the railroad traffic at the crossing.
(4)

(a) The placement of a single conduit is limited to a single applicant, and the conduit's contents are a single facility.
(b) No additional fees are payable based on the individual fibers, wires, lines, or other items contained within a single conduit.
(5) On January 1 of each year, the standard crossing fee under Subsection (1) shall be adjusted by multiplying the current standard crossing fee by the sum of:
(a) one; and
(b) the actual percent change of the consumer price index during the most recent 12-month period for which data is available.

Enacted by Chapter 452, 2019 General Session

54-23-106 Objections -- petition to Public Service Commission by a railroad.
(1) If a railroad objects to the proposed crossing due to the proposal being a serious threat to the safe operations of the railroad or to the current or future use of the railroad right-of-way, a violation of any federal law or regulation applicable to a public transit district, or a violation of an agreement between a public transit district and the federal government, the railroad shall provide written or electronic notice to the fiber optic carrier of the objection and the specific basis for the objection.
(2)
(a) If the parties make good faith efforts to resolve the objection, and are unable to resolve the objection, either party may petition the commission for assistance via mediation or arbitration of the disputed crossing application.
(b) The petition shall be filed within 60 days of receipt of the objection.
(3) If a petition is filed under Subsection (2), the commission shall issue an order within 120 days of filing of the petition.
(4) An order issued under Subsection (3) may be appealed in accordance with Chapter 7, Hearings, Practice, and Procedure.
(5) The commission shall assess the costs associated with a petition equitably among the parties.

Enacted by Chapter 452, 2019 General Session

54-23-107 Objections -- petition to Public Service Commission by a fiber optic carrier.
(1)
(a) If a railroad imposes additional requirements on a fiber optic carrier for crossing the railroad's lines, other than the proposed crossing being a serious threat to the safe operations of the railroad or to the current or future use of the railroad right-of-way, a violation of any federal law or regulation applicable to a public transit district, or a violation of an agreement between a public transit district and the federal government, the fiber optic carrier may object to one or more of the requirements.
(b) The fiber optic carrier shall provide written or electronic notice of the objection and the specific basis for the objection to the railroad.
(2)
(a) If the parties make good faith efforts to resolve the objection, and are unable to resolve the objection, either party may petition the commission for resolution or modification of the additional requirements.
(b) The petition shall be filed within 60 days of receipt of the objection.
(3)

(a) If a petition is filed under Subsection (2), the commission shall determine, after notice and opportunity for hearing, whether special circumstances exist that necessitate additional requirements for the placement of the crossing.
(b) The commission shall issue an order within 120 days of filing of the petition.
(4) An order issued under Subsection (3) may be appealed in accordance with Chapter 7, Hearings, Practice, and Procedure.
(5) The commission shall assess the costs associated with a petition equitably among the parties.

Enacted by Chapter 452, 2019 General Session

54-23-108 Existing agreements.

Nothing in this chapter prevents a railroad and a fiber optic carrier from continuing under an existing agreement, or from otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes relating to the crossing.

Enacted by Chapter 452, 2019 General Session

Chapter 24
Wildland Fire Planning and Cost Recovery Act

Part 1
General Provisions

54-24-101 Title.

This chapter is known as the "Wildland Fire Planning and Cost Recovery Act."

Enacted by Chapter 162, 2020 General Session

54-24-102 Definitions.

As used in this chapter:
(1) "Electric cooperative" means an electrical corporation that is a:
(a) distribution electrical cooperative; or
(b) wholesale electrical cooperative.
(2) "Governing authority" means the same as that term is defined in Section 54-15-102.
(3) "Qualified utility" means the same as that term is defined in Section 54-17-801.
(4) "Wildland fire protection plan" means a plan submitted to the commission or governing authority in accordance with the requirements of this chapter.

Enacted by Chapter 162, 2020 General Session

54-24-103 Commission rulemaking authority.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules to implement this chapter, including:
(1) rules establishing procedures for the review and approval of a wildland fire protection plan;
(2) rules establishing the procedures for the review and approval of annual expenditures for the implementation of a wildland fire protection plan; and

(3) any other rules that the commission determines are necessary to protect the public interest and implement this chapter.

Enacted by Chapter 162, 2020 General Session

Part 2
Wildland Fire Protection Plans

54-24-201 Wildland fire protection plan for a qualified utility.

(1) A qualified utility shall prepare a wildland fire protection plan in accordance with the requirements of this chapter.

(2) A wildland fire protection plan under Subsection (1) shall include:

(a) a description of areas within the service territory of the qualified utility that may be subject to a heightened risk of wildland fire;

(b) a description of the procedures, standards, and time frames that the qualified utility will use to inspect and operate its infrastructure;

(c) a description of the procedures and standards that the qualified utility will use to perform vegetation management;

(d) a description of proposed modifications or upgrades to facilities and preventative programs that the qualified utility will implement to reduce the risk of its electric facilities initiating a wildland fire;

(e) a description of procedures for de-energizing power lines and disabling reclosers to mitigate potential wildland fires taking into consideration:

(i) the ability of the qualified utility to reasonably access the proposed power line to be de-energized;

(ii) the balance of the risk of wildland fire with the need for continued supply of electricity to a community; and

(iii) any potential impact to public safety, first responders, and health and communication infrastructure;

(f) a description of the procedures the qualified utility intends to use to restore its electrical system in the event of a wildland fire;

(g) a description of the costs for the implementation of the plan, including system improvements and upgrades;

(h) a description of community outreach and public awareness efforts before and during a wildland fire season; and

(i) a description of potential participation, if applicable, with state or local wildland fire protection plans.

(3)

(a) A qualified utility shall submit the wildland fire protection plan described in this section to the commission:

(i) on or before June 1, 2020; and

(ii) on or before October 1 of every third year after calendar year 2020.

(b) The commission shall:

(i) review the plan submitted under Subsection (3)(a); and

(ii) consider input from:

(A) the State Division of Forestry, Fire, and State Lands created in Section 65A-1-4;

(B) any other appropriate federal, state, or local entity that chooses to provide input; and
(C) other interested persons who choose to provide input.
(c) The commission shall approve a wildland fire protection plan submitted under Subsection (3)(a) if the plan:
(i) is reasonable and in the public interest; and
(ii) appropriately balances the costs of implementing the plan with the risk of a potential wildland fire.
(4) No later than June 1, 2021, and each year after 2021, a qualified utility shall submit to the commission a report detailing the qualified utility's compliance with the qualified utility's wildland fire protection plan.

Enacted by Chapter 162, 2020 General Session

54-24-202 Cost recovery for wildland fire protection plan implementation.
(1) A qualified utility shall recover in rates all prudently incurred investments and expenditures, including the costs of capital, made to implement an approved wildland fire protection plan.
(2) A qualified utility shall file an annual report to the commission identifying the actual capital investments and expenses made in the prior calendar year and a forecast of the capital investments and expenses for the present year to implement a wildland fire protection plan approved by the commission under Section 54-24-201.
(3) The commission shall authorize the deferral and collection of the incremental revenue requirement for the capital investments and expenses:
(a) to implement an approved wildland fire protection plan; and
(b) not included in base rates.

Enacted by Chapter 162, 2020 General Session

54-24-203 Wildland fire protection plan for an electric cooperative.
(1) An electric cooperative shall prepare a wildland fire protection plan in accordance with the requirements of this chapter.
(2) A wildland fire protection plan under Subsection (1) shall include:
(a) a description of areas within the service territory of the electric cooperative that may be subject to a heightened risk of wildland fire;
(b) a description of the procedures, standards, and time frames that the electric cooperative will use to inspect and operate its infrastructure;
(c) a description of the procedures and standards that the electric cooperative will use to perform vegetation management;
(d) a description of proposed modifications or upgrades to facilities and preventative programs that the electric cooperative will implement to reduce the risk of its electric facilities initiating a wildland fire;
(e) a description of procedures for de-energizing power lines and disabling reclosers to mitigate potential wildland fires, taking into consideration:
(i) the ability of the electric cooperative to reasonably access the proposed power line to be de-energized;
(ii) the balance of the risk of wildland fire with the need for continued supply of electricity to a community; and
(iii) any potential impact to public safety, first responders, and health and communication infrastructure;

(f) a description of the procedures the electric cooperative intends to use to restore its electrical system in the event of a wildland fire; and
(g) a description of potential consultation, if applicable, with state or local wildland fire protection plans.
(3)
(a) An electric cooperative shall submit the wildland fire protection plan described in this section to its governing authority:
(i) on or before June 1, 2020; and
(ii) on or before October 1 of every third year after calendar year 2020.
(b) The governing authority shall:
(i) review the plan submitted under Subsection (3)(a); and
(ii) consider input from:
(A) the Division of Forestry, Fire, and State Lands created in Section 65A-1-4;
(B) any other appropriate federal, state, or local entity that chooses to provide input; and
(C) other interested persons who choose to provide input.
(c) The governing authority shall approve a wildland fire protection plan submitted under Subsection (3)(a) if the plan:
(i) is reasonable and in the interest of the electric cooperative members; and
(ii) appropriately balances the costs of implementing the plan with the risk of a potential wildland fire.
(d) An electric cooperative shall file with the commission a wildland fire protection plan submitted and approved under this section.
(4) An electric cooperative shall:
(a) file with its governing authority an annual report detailing the electric cooperative's compliance with the wildland fire protection plan; and
(b) file with the commission a copy of the annual compliance report described in Subsection (4)(a).
(5) The commission shall make available for public inspection:
(a) a wildland fire protection plan filed under Subsection (3)(d); and
(b) an annual compliance report filed under Subsection (4)(b).

Enacted by Chapter 162, 2020 General Session

Part 3
Utah Fire Fund

54-24-301 Utah fire funds -- Creation -- Sources of funding.
(1) As used in this part:
(a)
(i) "Eligible payment" means an amount owed by a large-scale electric utility to a third party in the state that exceeds the large-scale electric utility's applicable insurance coverage, including self-insurance.
(ii) "Eligible payment" includes amounts owed as a result of:
(A) a settlement agreement resolving economic damages arising out of a fire claim; or
(B) economic damages awarded in a finally adjudicated fire claim.

(iii) "Eligible payment" does not include an amount for damages to infrastructure owned by a large-scale electric utility caused by a fire event.

(b) "Fire event" means any unplanned or uncontrolled fire in the state alleged to have been caused by an electrical corporation.

(c) "Fire claim" means any claim, whether based on negligence, nuisance, trespass, or any other claim for relief, brought by a non-governmental person against an electrical corporation in any civil action to recover for damage resulting from a fire event.

(d) "Inflation" means the seasonally adjusted Consumer Price Index for all urban consumers as published by the Bureau of Labor Statistics of the United States Department of Labor.

(e) "Utah fire fund" means a fund that may be created under this section by a large-scale electric utility to serve as a resource to supplement other forms of insurance to make eligible payments.

(2)

(a) A large-scale electric utility may create a Utah fire fund by filing notice with the commission.

(b) The creation of a Utah fire fund under this section does not:

(i) establish an exclusive fund for payment of eligible claims; or

(ii) prohibit a large-scale electric utility from proposing, or the commission from approving, other mechanisms for third party liability coverage that are in the public interest.

(3) A Utah fire fund shall consist of:

(a) a reasonable and prudent fire surcharge that a large-scale electric utility may charge to the large-scale electric utility customers, as approved by the commission in a rate case, to be collected over a 10-year period from the date of the commission's approval of the Utah fire fund;

(b) investment income from money in the fund; and

(c) other amounts deposited into the fund as otherwise required by law.

(4) The commission shall approve a large-scale electric utility's request to create a Utah fire fund for a large-scale electric utility if the large-scale electric utility demonstrates to the commission's satisfaction:

(a) that the fund:

(i) is in the public interest;

(ii) supports the financial health of the large-scale electric utility; and

(iii) maintains or improves the large-scale electric utility's ability to deliver safe and reliable services;

(b) that the fire surcharge does not result in an increase over current rates:

(i) for all customers, more than 4.95%; and

(ii) for an average residential customer more than $3.70 a month.

(5) Notwithstanding any other provision of law, a Utah fire fund created under this part may not be used for payments related to any fire or property damage claim originating or occurring outside of the state.

Enacted by Chapter 214, 2024 General Session

54-24-302 Utah fire fund administration.

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

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

(b) invest Utah fire fund assets collected under Subsection 54-24-301(3) only in accordance with Title 51, Chapter 7, State Money Management Act, with all investment returns remaining in the Utah fire fund and not allocated to other accounts of the large-scale electric utility;
(c) record all customer funds received into the large-scale electric utility's Utah fire fund account in a separate ledger account that reflects deposits, disbursements, assets, liabilities, equity, income, and expenditures related to the fund;
(d) report all Utah fire fund account activity, including investment statements and ledger account reconciliations, to the commission annually, unless otherwise directed by commission order or regulation;
(e) identify the Utah fire fund investment account as restricted in the large-scale electric utility's financial statements, with an offsetting regulatory liability owed back to customers in the event the funds are not fully utilized; and
(f) maintain records of the assets, liabilities, equity, income, and expenditures of the large-scale electric utility's Utah fire fund.

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

(3) A surcharge described in Section 54-24-301 that funds a large-scale electric utility's Utah fire fund shall terminate on the earliest of the following dates:
(a) the date that is 10 years after the effective date of the commission approved surcharge that established the large-scale electric utility's Utah fire fund;
(b) the date on which the assets in the large-scale electric utility's Utah fire fund reach an amount equal to 50% of the large-scale electric utility's Utah revenue requirement established in the large-scale electric utility's most recently approved general rate case; or
(c) the date on which the commission determines, on the commission's own motion, that the surcharge should terminate, regardless of the current balance in the Utah fire fund.

(4)
(a) In a rate case or other appropriate proceeding, any party may challenge the amount of the disbursement from the large-scale electric utility's Utah fire fund used for the settlement of a fire claim.
(b) If an expenditure is challenged under Subsection (5)(a):
(i) the commission may require that the large-scale electric utility replenish the large-scale electric utility's Utah fire fund for any amount that the commission determines was imprudent; and
(ii) the burden is on the challenging party to prove imprudence.
(c) The use of a Utah fire fund to pay a judgment relating to a fire claim is considered prudent and is not subject to challenge.

(5) If the commission orders a large-scale electric utility to reimburse a Utah fire fund due to imprudence under this Subsection (5), the large-scale electric utility's total reimbursement obligation may not exceed 10% of the large-scale electric utility's distribution equity rate base assigned to this state for the calendar year in which the calculation is performed.

Enacted by Chapter 214, 2024 General Session

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

(1) A fire claim shall be brought within two years from the date of the ignition of the fire.

(2) Subject to the limitations described in this section and Section 65A-3-4, an injured plaintiff may recover for a fire claim:

(a) economic losses to compensate for damage to property; and

(b) noneconomic losses to compensate for pain, suffering, and inconvenience.

(3) Subject to Subsection (6), the amount of damages recoverable under Subsection (2)(a) for economic loss to property shall be calculated as the lesser of:

(a) the cost to restore the property to the property's pre-fire condition; or

(b) the difference between:

(i) the fair market value of the property immediately before the fire; and

(ii) the fair market value of the property after the fire.

(4)

(a) Subject to Subsections (4)(b) and (6), the amount of damages recoverable under Subsection (2)(b) for noneconomic loss may not exceed:

(i) for a person who is not physically injured as a result of the fire, $100,000; or

(ii) for a person who is physically injured as a result of the fire, $450,000.

(b) The limitation described in Subsection (4)(a)(ii) does not apply in a wrongful death action.

(5)

(a) Beginning on July 1, 2025, and on July 1 of each year thereafter until July 1, 2031, the commission shall adjust the limitation on recoverable damages described in Subsection (4) for inflation.

(b) By July 15 of each year described in Subsection (5)(a), the commission shall:

(i) certify the inflation-adjusted limitation on recoverable damages calculated under this subsection; and

(ii) inform the Administrative Office of the Courts of the adjusted limitation on recoverable damages.

(6) The limitations on an electrical corporation's liability for recoverable damages described in Subsections (3) and (4) apply unless:

(a) the electrical corporation did not have a wildland fire protection plan approved by the electrical corporation's own governing authority in place before the occurrence of the fire event; or

(b) the public service commission determines, in an action brought under Subsection (7), that the electrical corporation was in material noncompliance with the electrical corporation's wildland fire protection plan in the area of the fire event at the time the fire event occurred.

(7)

(a) A party may bring a request for agency action under Title 63G, Chapter 4, Administrative Procedures Act, requesting the commission to determine whether an electrical corporation was in material noncompliance with the electrical corporation's wildland fire protection plan in the area of a specific fire event.

(b) The commission's determination for an action brought under Subsection (7)(a) is binding on all fire claims arising out of the specific fire event.

(c) A party shall bring or join an action described in Subsection (7)(a) within 180 days of a fire event.

(d) Unless the commission determines additional time to complete the analysis required to make a determination under (7)(a) is in the public interest, the commission shall make a determination within 120 days from the date a party files a request for a determination.

Enacted by Chapter 214, 2024 General Session

Chapter 25
Electrical Power Delivery Quality Act

Part 1
General Provisions

54-25-101 Definitions.

As used in this chapter:

(1) "Electrical power delivery quality" means the suitability of power delivered to customers as measured in comparison to accepted industry standards on voltage and power quality.

(2) "Electrical power delivery quality plan" means a plan submitted to the commission in accordance with the requirements of this chapter.

(3) "Interconnection request" means a request from a utility-scale energy generation system to a qualified utility's transmission line.

(4) "Qualified utility" means the same as that term is defined in Section 54-17-801.

(5) "Utility-scale energy generation system" means an electric generation facility that has a generating capacity of more than two megawatts and is intermittent, non-dispatchable, or controlled by an inverter.

Enacted by Chapter 186, 2023 General Session

54-25-102 Commission rulemaking authority.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules to implement this chapter, including:

(a) rules establishing the submission of an electrical power delivery quality plan;

(b) rules establishing procedures for the review of an electrical power delivery quality plan;

(c) rules establishing the procedures for the review of the implementation of an electrical power delivery quality plan; and

(d) any other rules that the commission determines are necessary to protect the public interest and implement this chapter.

(2) In establishing the procedures and rules described in Subsection (1), the commission shall consult with:

(a) qualified utilities;

(b) utility-scale electricity providers; and

(c) other state agencies.

Enacted by Chapter 186, 2023 General Session

Part 2
Electrical Power Delivery Quality Plan

54-25-201 Electrical power delivery quality plan for a qualified utility.

(1) A qualified utility shall:

(a) prepare an electrical power delivery quality plan in accordance with the requirements of this chapter; and
(b) submit the electrical power delivery quality plan to the commission.
(2) An electrical power delivery quality plan under Subsection (1) shall include:
(a) a description of the procedures and standards that the qualified utility will use to assess an interconnection request to:
(i) decrease the risk that the interconnected utility-scale generation facility will adversely affect the electrical power delivery quality to other customers on the qualified utility lines; and
(ii) address adverse effects to the electrical power service quality caused by interconnected customer-owned generation systems that are discovered after the time of interconnection;
(b) a description of the equipment that the qualified utility will use to perform the assessment described in Subsection (2)(a); and
(c) a description of proposed modifications or upgrades to facilities and preventative programs that the qualified utility will implement to address any electrical power delivery quality issues that do not meet the qualified utility's interconnections policy or relevant national standards.
(3)
(a) The commission may only approve an electrical power delivery quality plan that meets the requirements of Subsection (2).
(b) If the commission does not approve a proposed electrical power delivery quality plan, the commission shall:
(i) notify the qualified utility that the proposed electrical power delivery quality plan was not approved; and
(ii) provide specific recommendations to the qualified utility about changes needed for approval of the proposed electrical power delivery quality plan.
(4) On or before October 31, 2023, and before October 31 of each year after 2023, the commission shall report to the Public Utilities, Energy, and Technology Interim Committee regarding a qualified utility's compliance with the qualified utility's electrical power delivery quality plan.

Enacted by Chapter 186, 2023 General Session