

Effective 5/1/2024

**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.

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