

**Effective 5/12/2020**

**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