

Effective 5/13/2014

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 than 18 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 - (A) the date the notice described in Subsection (3)(a) is withdrawn in accordance with this section; or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