

ELECTRIC SERVICE DISTRICT

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Francis D. Gibson

Senate Sponsor: Jerry W. Stevenson

LONG TITLE

General Description:

This bill addresses the provision of municipal electric services in relation to an electric service district.

Highlighted Provisions:

This bill:

- ▶ prohibits a municipality from certain activities regarding electric services in relation to an electric service district; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

10-2-421, as repealed and reenacted by Laws of Utah 2013, Chapter 242

Utah Code Sections Affected by Revisor Instructions:

10-2-421, as repealed and reenacted by Laws of Utah 2013, Chapter 242

Be it enacted by the Legislature of the state of Utah:



28 Section 1. Section 10-2-421 is amended to read:

29 **10-2-421. Electric utility service in annexed area -- Reimbursement for value of**
30 **facilities -- Liability -- Arbitration.**

31 (1) As used in this section:

32 (a) "Commission" means the Public Service Commission established in Section
33 54-1-1.

34 (b) "Current replacement cost" means the cost the transferring party would incur to
35 construct the facility at the time of transfer using the transferring party's:

36 (i) standard estimating rates and standard construction methodologies for the facility;
37 and

38 (ii) standard estimating process.

39 (c) "Depreciation" means an amount calculated:

40 (i) based on:

41 (A) the life and depreciation mortality curve most recently set for the type of facility in
42 the depreciation rates set by the commission or other governing regulatory authority for the
43 electrical corporation; or

44 (B) a straight-line depreciation rate that represents the expended life if agreed to by the
45 transferring and receiving parties; and

46 (ii) to include the gross salvage value of the type of facility based on the latest
47 depreciation life approved by the commission or other governing regulatory authority for the
48 electrical corporation, with a floor at the gross salvage value of the asset and in no case less
49 than zero.

50 (d) "Electric improvement district" means an improvement district that provides
51 electric service in accordance with Subsection 17B-2a-403(1)(a)(iv).

52 [~~(d)~~] (e) "Electrical corporation" means [~~:(i) an entity as~~] the same as that term is
53 defined in Section 54-2-1 [~~; and~~].

54 [~~(ii) an improvement district system described in Subsection 17B-2a-403(1)(a)(iv).~~]

55 [~~(e)~~] (f) "Facility" means electric equipment or infrastructure used to serve an electric
56 customer, above ground or underground, including:

57 (i) a power line, transformer, switch gear, pole, wire, guy anchor, conductor, cable, or
58 other related equipment; or

59 (ii) a right-of-way, easement, or any other real property interest or legal right or interest
60 used to operate and maintain the electric equipment or infrastructure.

61 ~~[(f)]~~ (g) "Facility transfer" means the transfer of a facility from a transferring party to a
62 receiving party in accordance with Subsection (3).

63 ~~[(g)]~~ (h) "Lost or stranded facility" means a facility that is currently used by a
64 transferring party that will no longer be used, whether in whole or in part, as a result of a
65 facility transfer.

66 ~~[(h)]~~ (i) "Receiving party" means a municipality or electrical corporation to whom a
67 facility is transferred.

68 ~~[(i)]~~ (j) "Transferring party" means a municipality or electrical corporation that
69 transfers a facility.

70 (2) Beginning on this bill's effective date, without a written agreement that an electric
71 improvement district executes on or after this bill's effective date, a municipality may not:

72 (a) provide municipal electric service to any customer in an area that:

73 (i) the municipality did not annex before this bill's effective date; and

74 (ii) is part of an electric improvement district described in Subsection [17B-2a-406\(3\)](#);

75 (b) provide municipal electric service to a customer that an electric improvement
76 district serves; or

77 (c) construct facilities within the boundary of an electric improvement district.

78 ~~[(2)]~~ (3) If an electric customer in an area being annexed by a municipality receives
79 electric service from an electrical corporation, the municipality may not, without the agreement
80 of the electrical corporation, furnish municipal electric service to the electric customer in the
81 annexed area until the municipality has reimbursed the electrical corporation for the value of
82 each facility used to serve each electric customer within the annexed area, including the value
83 of any facility owned by a wholesale electric cooperative affiliated with the electrical
84 corporation, dedicated to provide service to the annexed area.

85 ~~[(3)]~~ (4) The following procedures shall apply if a municipality transfers a facility to an
86 electrical corporation in accordance with Section [10-8-14](#) or if an electrical corporation
87 transfers a facility to a municipality in accordance with Subsection ~~[(2)]~~ (3), Section [54-3-30](#),
88 or [54-3-31](#):

89 (a) The transferring party shall provide a written estimate of the transferring party's

90 cost of preparing the inventory required in Subsection [~~(3)~~] (4)(c) to the receiving party no later
91 than 60 days after the date of notice from the receiving party.

92 (b) (i) The receiving party shall pay the estimated cost of preparing the inventory to the
93 transferring party no later than 60 days after the day that the receiving party receives the written
94 estimate.

95 (ii) If the actual cost of preparing the inventory differs from the estimated cost, the
96 transferring party shall include the difference between the actual cost and the estimated cost in
97 the reimbursement described in Subsection [~~(5)~~] (6).

98 (c) Except as provided in Subsection [~~(3)~~] (4)(f), the transferring party shall prepare, in
99 accordance with Subsection [~~(4)~~] (5), and deliver the inventory to the receiving party no later
100 than 180 days after the day that the transferring party receives the payment specified in
101 Subsection [~~(3)~~] (4)(b).

102 (d) (i) At any time, the parties may by agreement correct or update the inventory.

103 (ii) If the parties are unable to reach an agreement on an updated inventory, they shall:

104 (A) proceed with the facility transfer and reimbursement based on the inventory as
105 submitted in accordance with Subsection [~~(3)~~] (4)(c); and

106 (B) resolve their dispute as provided in Subsection [~~(6)~~] (7).

107 (e) Except as provided in Subsection [~~(3)~~] (4)(f), the parties shall complete each facility
108 transfer and reimbursement contemplated by this Subsection [~~(3)~~] (4) no later than 180 days
109 after the date that the transferring party delivers the inventory to the receiving party in
110 accordance with Subsection [~~(3)~~] (4)(c).

111 (f) The periods specified in Subsections [~~(3)~~] (4)(c) and (e) may be extended for up to
112 an additional 90 days by agreement of the parties.

113 [~~(4)~~] (5) (a) The inventory prepared by a transferring party in accordance with
114 Subsection [~~(3)~~] (4)(c) shall include an identification of each facility to be transferred and the
115 amount of reimbursement as provided in Subsection [~~(5)~~] (6).

116 (b) The transferring party may not include in the inventory a facility that the
117 transferring party removed from service for at least 36 consecutive months prior to the date of
118 the inventory, unless the facility was taken out of service as a result of an action by the
119 receiving party.

120 [~~(5)~~] (6) (a) Unless otherwise agreed by the parties, the reimbursement for the transfer

121 of each facility shall include:

- 122 (i) the cost of preparing the inventory as provided in Subsection [~~(3)~~] (4)(b);
- 123 (ii) subject to Subsection [~~(5)~~] (6)(b)(i), the value of each transferred facility calculated
- 124 by the current replacement cost of the facility less depreciation based on facility age;
- 125 (iii) the cost incurred by the transferring party for:
- 126 (A) the physical separation of each facility from its system, including the cost of any
- 127 facility constructed or installed that is necessary for the transferring party to continue to provide
- 128 reliable electric service to its remaining customers;
- 129 (B) administrative, engineering, and record keeping expenses incurred by the
- 130 transferring party for the transfer of each facility to the receiving party, including any difference
- 131 between the actual cost of preparing the inventory and the estimated cost of preparing the
- 132 inventory; and
- 133 (C) reimbursement for any tax consequences to the transferring party resulting from
- 134 each facility transfer;
- 135 (iv) the value of each lost or stranded facility of the transferring party based on the
- 136 valuation formula described in Subsection [~~(5)~~] (6)(a)(ii) or as otherwise agreed by the parties;
- 137 (v) the diminished value of each transferring party facility that will not be transferred
- 138 based on the percentage of the facility that will no longer be used as a result of the facility
- 139 transfer; and
- 140 (vi) the transferring party's book value of a right-of-way or easement transferred with
- 141 each facility.
- 142 (b) (i) (A) The receiving party may review the estimation of the current replacement
- 143 costs of each facility, including the wage rates, material costs, overhead assumptions, and other
- 144 pricing used to establish the estimation of the current replacement costs of the facility.
- 145 (B) Prior to reviewing the estimation, the receiving party shall enter into a
- 146 nondisclosure agreement acceptable to the transferring party.
- 147 (C) The nondisclosure agreement shall restrict the use of the information provided by
- 148 the transferring party solely for the purpose of reviewing the estimation of the current
- 149 replacement cost and preserve the confidentiality of the information to prevent any effect on a
- 150 competitive bid received by either party.
- 151 (ii) (A) If the age of a facility may be readily determined by the transferring party, the

152 transferring party shall use that age to determine the facility's depreciation.

153 (B) If the age of a facility cannot be readily determined, the transferring party shall
154 estimate the age of the facility based on the average remaining life approved for the same type
155 of facility in the most current depreciation rates set by the commission or other governing
156 regulatory authority for the electrical corporation.

157 (c) (i) (A) A transferring party that transfers a facility in accordance with this section
158 shall, upon delivery of a document conveying title to the receiving party, transfer the facility
159 without any express or implied warranties.

160 (B) A receiving party that receives a facility in accordance with this section shall, upon
161 receipt of a document conveying title, accept the facility in its existing condition and assume
162 any and all liability, fault, risk, or potential loss arising from or related to the facility.

163 (ii) Notwithstanding Subsection [~~(5)~~] (6)(c)(i), if, within six months after the date that
164 any oil filled equipment is transferred, the receiving party discovers that a transferred oil filled
165 equipment contains polychlorinated biphenyl, the transferring party shall reimburse the
166 receiving party for the cost of testing and disposal of that oil filled equipment.

167 [~~(6)~~] (7) (a) If the parties cannot agree on each facility to be transferred or the
168 respective reimbursement amount, the parties shall:

169 (i) proceed with the facility transfer and the reimbursement based on the inventory as
170 submitted by the transferring party in accordance with Subsection [~~(3)~~] (4)(c) and in
171 accordance with the schedule provided in Subsection [~~(3)~~] (4)(e); and

172 (ii) submit the dispute for mediation or arbitration.

173 (b) The parties shall share equally in the costs of mediation or arbitration.

174 (c) If the parties are unable to resolve the dispute through mediation or arbitration,
175 either party may bring an action in the state court of jurisdiction.

176 (d) The arbitrator, or state court if the parties cannot agree on arbitration, shall
177 determine each facility to be transferred and the amount to be reimbursed in accordance with
178 Subsection [~~(5)~~] (6).

179 (e) If the arbitrator or state court determines that:

180 (i) a transferring party transferred a facility that should not have been transferred, the
181 receiving party shall return the facility;

182 (ii) a party did not transfer a facility that should have been transferred, the party that

183 should have transferred the facility shall transfer the facility to the party to whom the facility
 184 should have been transferred;

185 (iii) the amount reimbursed by the receiving party is insufficient, the receiving party
 186 shall pay the difference to the transferring party; or

187 (iv) the amount reimbursed by the receiving party is more than the amount that should
 188 have been reimbursed, the transferring party shall pay the difference to the receiving party.

189 ~~[(7)]~~ (8) Unless otherwise agreed upon in writing by the parties:

190 (a) a party shall transfer a facility to be transferred in accordance with Subsection ~~[(6)]~~
 191 ~~(7)~~(e) no later than 60 days after the day that the arbitrator or court issues a determination
 192 unless the parties mutually agree to a longer time to complete the transfer; and

193 (b) a party shall:

194 (i) pay an amount required to be paid in accordance with Subsection ~~[(6)]~~ ~~(7)~~(e) no
 195 later than 30 days after the day that the arbitrator or court issues a determination; and

196 (ii) include interest in the payment at the overall rate of return on the rate base most
 197 recently authorized by the commission or other governing regulatory agency for the electrical
 198 corporation from the date the reimbursement was originally paid until the difference is paid.

199 ~~[(8)]~~ (9) (a) Nothing in this section limits the availability of other damages under law
 200 arising by virtue of an agreement between the municipality and the electrical corporation.

201 (b) Notwithstanding Subsection ~~[(8)]~~ ~~(9)~~(a), a ~~[party]~~ municipality or electric
 202 corporation described in this section is not entitled to an award for:

203 (i) damages that are indirect, incidental, punitive, exemplary, or consequential;

204 (ii) lost profits; or

205 (iii) other business interruption damages.

206 ~~[(9)]~~ (10) Nothing in this section or Section [10-8-14](#), [54-3-30](#), or [54-3-31](#) applies to a
 207 transfer of facilities from an electrical corporation or an electric improvement district to a
 208 municipality in accordance with a decision by a municipality that did not previously provide
 209 electric service and seeks to commence providing electric service to a customer currently
 210 served by an electrical corporation or an electric improvement district within the municipal
 211 boundary.

212 Section 2. **Effective date.**

213 If approved by two-thirds of all the members elected to each house, this bill takes effect

214 upon approval by the governor, or the day following the constitutional time limit of Utah
215 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
216 the date of veto override.

217 Section 3. **Revisor instructions.**

218 The Legislature intends that the Office of Legislative Research and General Counsel, in
219 preparing the Utah Code database for publication, replace the references in Subsection
220 [10-2-421\(2\)](#) from "this bill's effective date" to the actual effective date of the bill.

Legislative Review Note
Office of Legislative Research and General Counsel