

MUNICIPAL SERVICES AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Walt Brooks

Senate Sponsor: Ronald M. Winterton

LONG TITLE

General Description:

This bill amends provisions related to municipal electric service.

Highlighted Provisions:

This bill:

- modifies requirements for a municipality to furnish municipal electric service in an area being annexed by the municipality.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-2-421, as last amended by Laws of Utah 2020, Chapter 208

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

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

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

(1) As used in this section:

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

(b) "Current replacement cost" means the cost the transferring party would incur to

30 construct the facility at the time of transfer using the transferring party's:

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

32 and

33 (ii) standard estimating process.

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

35 (i) based on:

36 (A) the life and depreciation mortality curve most recently set for the type of facility in

37 the depreciation rates set by the commission or other governing regulatory authority for the

38 electrical corporation; or

39 (B) a straight-line depreciation rate that represents the expended life if agreed to by the

40 transferring and receiving parties; and

41 (ii) to include the gross salvage value of the type of facility based on the latest

42 depreciation life approved by the commission or other governing regulatory authority for the

43 electrical corporation, with a floor at the gross salvage value of the asset and in no case less

44 than zero.

45 (d) "Electrical corporation" means:

46 (i) an entity as defined in Section 54-2-1; [~~and~~] or

47 (ii) an improvement district system described in Subsection 17B-2a-403(1)(a)(iv).

48 (e) "Facility" means electric equipment or infrastructure used to serve an electric

49 customer, above ground or underground, including:

50 (i) a power line, transformer, switch gear, pole, wire, guy anchor, conductor, cable, or

51 other related equipment; or

52 (ii) a right-of-way, easement, or any other real property interest or legal right or interest

53 used to operate and maintain the electric equipment or infrastructure.

54 (f) "Facility transfer" means the transfer of a facility from a transferring party to a

55 receiving party in accordance with Subsection (3).

56 (g) "Lost or stranded facility" means a facility that is currently used by a transferring

57 party that will no longer be used, whether in whole or in part, as a result of a facility transfer.

58 (h) "Receiving party" means a municipality or electrical corporation to whom a facility
59 is transferred.

60 (i) "Transferring party" means a municipality or electrical corporation that transfers a
61 facility.

62 (2) (a) If an electric customer in an area being annexed by a municipality receives
63 electric service from an electrical corporation that is not an improvement district system
64 described in Subsection 17B-2a-403(1)(a)(iv), the municipality may not, without the agreement
65 of the electrical corporation, furnish municipal electric service to [the] any electric customer in
66 the annexed area until the municipality has reimbursed the electrical corporation for the value
67 of each facility used to serve [each] any electric customer within the annexed area, including
68 the value of any facility owned by a wholesale electric cooperative affiliated with the electrical
69 corporation, dedicated to provide service to the annexed area.

70 (b) If an electric customer in an area being annexed by a municipality receives electric
71 service from an electrical corporation that is an improvement district system described in
72 Subsection 17B-2a-403(1)(a)(iv), the municipality may not, without the agreement of the
73 electrical corporation, furnish municipal electric service to the electric customer until the
74 municipality has reimbursed the electric corporation for the value of the facility used to serve
75 the electric customer within the annexed area.

76 (3) The following procedures shall apply if a municipality transfers a facility to an
77 electrical corporation in accordance with Section 10-8-14 or if an electrical corporation
78 transfers a facility to a municipality in accordance with Subsection (2), Section 54-3-30, or
79 54-3-31:

80 (a) The transferring party shall provide a written estimate of the transferring party's
81 cost of preparing the inventory required in Subsection (3)(c) to the receiving party no later than
82 60 days after the date of notice from the receiving party.

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

86 (ii) If the actual cost of preparing the inventory differs from the estimated cost, the
87 transferring party shall include the difference between the actual cost and the estimated cost in
88 the reimbursement described in Subsection (5).

89 (c) Except as provided in Subsection (3)(f), the transferring party shall prepare, in
90 accordance with Subsection (4), and deliver the inventory to the receiving party no later than
91 180 days after the day that the transferring party receives the payment specified in Subsection
92 (3)(b).

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

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

95 (A) proceed with the facility transfer and reimbursement based on the inventory as
96 submitted in accordance with Subsection (3)(c); and

97 (B) resolve their dispute as provided in Subsection (6).

98 (e) Except as provided in Subsection (3)(f), the parties shall complete each facility
99 transfer and reimbursement contemplated by this Subsection (3) no later than 180 days after the
100 date that the transferring party delivers the inventory to the receiving party in accordance with
101 Subsection (3)(c).

102 (f) The periods specified in Subsections (3)(c) and (e) may be extended for up to an
103 additional 90 days by agreement of the parties.

104 (4) (a) The inventory prepared by a transferring party in accordance with Subsection
105 (3)(c) shall include an identification of each facility to be transferred and the amount of
106 reimbursement as provided in Subsection (5).

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

111 (5) (a) Unless otherwise agreed by the parties, the reimbursement for the transfer of
112 each facility shall include:

113 (i) the cost of preparing the inventory as provided in Subsection (3)(b);

114 (ii) subject to Subsection (5)(b)(i), the value of each transferred facility calculated by
115 the current replacement cost of the facility less depreciation based on facility age;

116 (iii) the cost incurred by the transferring party for:

117 (A) the physical separation of each facility from its system, including the cost of any
118 facility constructed or installed that is necessary for the transferring party to continue to provide
119 reliable electric service to its remaining customers;

120 (B) administrative, engineering, and record keeping expenses incurred by the
121 transferring party for the transfer of each facility to the receiving party, including any difference
122 between the actual cost of preparing the inventory and the estimated cost of preparing the
123 inventory; and

124 (C) reimbursement for any tax consequences to the transferring party resulting from
125 each facility transfer;

126 (iv) the value of each lost or stranded facility of the transferring party based on the
127 valuation formula described in Subsection (5)(a)(ii) or as otherwise agreed by the parties;

128 (v) the diminished value of each transferring party facility that will not be transferred
129 based on the percentage of the facility that will no longer be used as a result of the facility
130 transfer; and

131 (vi) the transferring party's book value of a right-of-way or easement transferred with
132 each facility.

133 (b) (i) (A) The receiving party may review the estimation of the current replacement
134 costs of each facility, including the wage rates, material costs, overhead assumptions, and other
135 pricing used to establish the estimation of the current replacement costs of the facility.

136 (B) Prior to reviewing the estimation, the receiving party shall enter into a
137 nondisclosure agreement acceptable to the transferring party.

138 (C) The nondisclosure agreement shall restrict the use of the information provided by
139 the transferring party solely for the purpose of reviewing the estimation of the current
140 replacement cost and preserve the confidentiality of the information to prevent any effect on a
141 competitive bid received by either party.

142 (ii) (A) If the age of a facility may be readily determined by the transferring party, the
143 transferring party shall use that age to determine the facility's depreciation.

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

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

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

154 (ii) Notwithstanding Subsection (5)(c)(i), if, within six months after the date that any
155 oil filled equipment is transferred, the receiving party discovers that a transferred oil filled
156 equipment contains polychlorinated biphenyl, the transferring party shall reimburse the
157 receiving party for the cost of testing and disposal of that oil filled equipment.

158 (6) (a) If the parties cannot agree on each facility to be transferred or the respective
159 reimbursement amount, the parties shall:

160 (i) proceed with the facility transfer and the reimbursement based on the inventory as
161 submitted by the transferring party in accordance with Subsection (3)(c) and in accordance with
162 the schedule provided in Subsection (3)(e); and

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

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

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

167 (d) The arbitrator, or state court if the parties cannot agree on arbitration, shall
168 determine each facility to be transferred and the amount to be reimbursed in accordance with
169 Subsection (5).

- 170 (e) If the arbitrator or state court determines that:
- 171 (i) a transferring party transferred a facility that should not have been transferred, the
172 receiving party shall return the facility;
- 173 (ii) a party did not transfer a facility that should have been transferred, the party that
174 should have transferred the facility shall transfer the facility to the party to whom the facility
175 should have been transferred;
- 176 (iii) the amount reimbursed by the receiving party is insufficient, the receiving party
177 shall pay the difference to the transferring party; or
- 178 (iv) the amount reimbursed by the receiving party is more than the amount that should
179 have been reimbursed, the transferring party shall pay the difference to the receiving party.
- 180 (7) Unless otherwise agreed upon in writing by the parties:
- 181 (a) a party shall transfer a facility to be transferred in accordance with Subsection (6)(e)
182 no later than 60 days after the day that the arbitrator or court issues a determination unless the
183 parties mutually agree to a longer time to complete the transfer; and
- 184 (b) a party shall:
- 185 (i) pay an amount required to be paid in accordance with Subsection (6)(e) no later than
186 30 days after the day that the arbitrator or court issues a determination; and
- 187 (ii) include interest in the payment at the overall rate of return on the rate base most
188 recently authorized by the commission or other governing regulatory agency for the electrical
189 corporation from the date the reimbursement was originally paid until the difference is paid.
- 190 (8) (a) Nothing in this section limits the availability of other damages under law arising
191 by virtue of an agreement between the municipality and the electrical corporation.
- 192 (b) Notwithstanding Subsection (8)(a), a party described in this section is not entitled
193 to an award for:
- 194 (i) damages that are indirect, incidental, punitive, exemplary, or consequential;
- 195 (ii) lost profits; or
- 196 (iii) other business interruption damages.
- 197 (9) Nothing in this section or Section [10-8-14](#), [54-3-30](#), or [54-3-31](#) applies to a transfer

198 of facilities from an electrical corporation to a municipality in accordance with a decision by a
199 municipality that did not previously provide electric service and seeks to commence providing
200 electric service to a customer currently served by an electrical corporation within the municipal
201 boundary.

202 (10) The provisions of this section apply to any annexation under this part.