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H.B. 425
2nd Sub. (Gray)

Senator Derrin R. Owens proposes the following substitute bill:

ENERGY SECURITY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: Derrin R. Owens

LONG TITLE

General Description:

This bill modifies provisions related to the regulation of energy.

Highlighted Provisions:

This bill:

- requires a project entity that is considering a material change or decommissioning of an electrical generation facility to obtain approval for the material change or decommissioning from the Public Service Commission;
- defines terms;
- modifies the state energy policy to promote the state's energy independence by:
  - promoting the use of energy resources generated within the state; and
  - promoting the use of clean energy sources by considering the emissions of an energy resource throughout the entire life cycle of the energy resource;
- provides legislative findings;
- requires a qualified utility to inform the Office of the Attorney General when a proposed federal regulation would result in the early retirement of an electrical generation facility;
- authorizes the Office of the Attorney General to take any action to defend the state's interests with respect to electricity generation by a qualified utility facing a

proposed federal regulation that would result in the early retirement of an electrical generation facility; and

- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

11-13-304, as last amended by Laws of Utah 2016, Chapter 382

79-6-301, as last amended by Laws of Utah 2021, Chapter 383 and renumbered and amended by Laws of Utah 2021, Chapter 280

ENACTS:

79-6-303, Utah Code Annotated 1953

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

Section 1. Section **11-13-304** is amended to read:

11-13-304. Certificate of public convenience and necessity required -- Exceptions.

(1) As used in this section:

(a) "Electrical generation facility" means a facility that generates electricity for provision to customers.

(b) "Material adverse change" means a material change that alone, or in the aggregate, would have a material adverse impact on an electrical generation facility's electric generation capacity or results in the reduction of the affordability, reliability, dispatchability, or security of the energy produced.

(c) (i) "Material change" means any change, or proposed change, to a project entity's assets, equipment, facilities, operations, supply chain, fuel source, or capitalization.

(ii) "Material change" includes the decommissioning of an electrical generation facility.

(2) Before proceeding with the construction of any [~~electrical generating plant~~] electrical generation facility or transmission line, each interlocal entity and each out-of-state

public agency shall first obtain from the public service commission a certificate, after a hearing, that public convenience and necessity requires such construction and in addition that such construction will in no way impair the public convenience and necessity of electrical consumers of the state of Utah at the present time or in the future.

[~~(2)~~] (3) The requirement to obtain a certificate of public convenience and necessity applies to each project initiated after the section's effective date but does not apply to:

(a) a project for which a feasibility study was initiated prior to the effective date;

(b) any facilities providing additional project capacity;

(c) any facilities providing replacement project capacity; or

(d) transmission lines required for the delivery of electricity from a project described in Subsection [~~(2)(a),~~] (3)(a), or facilities providing additional project capacity, or facilities providing replacement project capacity within the corridor of a transmission line, with reasonable deviation, of a project producing as of April 21, 1987.

(4) (a) Before proceeding with a material change, a project entity shall:

(i) appear before the public service commission for a hearing;

(ii) obtain from the public service commission a certificate that the proposed material change:

(A) is required for public convenience and necessity;

(B) is not a material adverse change; and

(C) does not impair the public convenience and necessity of electrical consumers of the state at the time the certificate is obtained or in the future; and

(iii) after obtaining a certificate from the public service commission, appear before the Legislative Management Committee to present the viability of alternatives to the material change, including:

(A) public and private partnerships to continue use of the electrical generation facility;

(B) private offers that the project entity has received to purchase the electrical generation facility; and

(C) the state exercising eminent domain to purchase the electrical generation facility.

(b) When making the determination to issue a certificate described in Subsection (4)(a)(ii), the public service commission shall consider:

(i) the legislative findings in Section 79-6-303;

(ii) the results of any study conducted by the Governor's Office of Economic Opportunity of the project entity; and

(iii) the results of any audit conducted by the Office of the Legislative Auditor General of the project entity.

Section 2. Section **79-6-301** is amended to read:

79-6-301. State energy policy.

(1) It is the policy of the state that:

(a) Utah shall have adequate, reliable, affordable, sustainable, and clean energy resources;

(b) Utah [~~will~~] shall promote the development of:

(i) nonrenewable energy resources, including natural gas, coal, oil, oil shale, and oil sands;

(ii) renewable energy resources, including geothermal, solar, wind, biomass, biofuel, and hydroelectric;

(iii) nuclear power generation technologies certified for use by the United States Nuclear Regulatory Commission including molten salt reactors producing medical isotopes;

(iv) alternative transportation fuels and technologies;

(v) infrastructure to facilitate energy development, diversified modes of transportation, greater access to domestic and international markets for Utah's resources, and advanced transmission systems;

(vi) energy storage, pumped storage, and other advanced energy systems, including hydrogen from all sources;

(vii) electricity systems that can be controlled at the request of grid operators to meet system load demands, to ensure an adequate supply of dispatchable energy generation resources; and

(viii) increased refinery capacity;

(c) Utah [~~will~~] shall promote the development of resources and infrastructure sufficient to meet the state's growing demand, while contributing to the regional and national energy supply, thus reducing dependence on international energy sources;

(d) Utah [~~will~~] shall promote the development of resources, tools, and infrastructure to enhance the state's ability to:

(i) respond effectively to significant disruptions to the state's energy generation, energy delivery systems, or fuel supplies; [~~and~~]

(ii) maintain adequate supply, including reserves of proven and cost-effective dispatchable electricity reserves to meet grid demand; and

(iii) ensure the state's energy independence by promoting the use of energy resources generated within the state;

(e) Utah [~~will~~] shall allow market forces to drive prudent use of energy resources, although incentives and other methods may be used to ensure the state's optimal development and use of energy resources in the short- and long-term;

(f) Utah [~~will~~] shall pursue energy conservation, energy efficiency, and environmental quality;

(g) Utah shall promote the development of a secure supply chain from resource extraction to energy production and consumption;

[~~(g)~~] (h) (i) state regulatory processes should be streamlined to balance economic costs with the level of review necessary to ensure protection of the state's various interests; and

(ii) where federal action is required, Utah will encourage expedited federal action and will collaborate with federal agencies to expedite review;

[~~(h)~~] (i) Utah [~~will~~] shall maintain an environment that provides for stable consumer prices that are as low as possible while providing producers and suppliers a fair return on investment, recognizing that:

(i) economic prosperity is linked to the availability, reliability, and affordability of consumer energy supplies; and

(ii) investment will occur only when adequate financial returns can be realized; [~~and~~]

[~~(i)~~] (j) Utah [~~will~~] shall promote training and education programs focused on developing a comprehensive understanding of energy, including:

(i) programs addressing:

(A) energy conservation;

(B) energy efficiency;

(C) supply and demand; and

(D) energy related workforce development; and

(ii) energy education programs in grades [~~K-12.~~] kindergarten through grade 12; and

(k) Utah shall promote the use of clean energy sources by considering the emissions of an energy resource throughout the entire life cycle of the energy resource.

(2) State agencies are encouraged to conduct agency activities consistent with Subsection (1).

(3) A person may not file suit to challenge a state agency's action that is inconsistent with Subsection (1).

Section 3. Section **79-6-303** is enacted to read:

79-6-303. Legislative findings -- Forced retirement of electrical generation facilities.

(1) As used in this section:

(a) "Dispatchable" means available for use on demand and generally available to be delivered at a time and quantity of the operator's choosing.

(b) "Electrical generation facility" means a facility that generates electricity for provision to customers.

(c) "Forced retirement" means the closure of an electrical generation facility as a result of a federal regulation that either directly mandates the closure of an electrical generation facility or where the costs of compliance are so high as to effectively force the closure of an electrical generation facility.

(d) "Qualified utility" means the same as that term is defined in Section 54-17-801.

(e) "Reliable" means generally able to provide a continuous supply of electricity at the proper voltage and frequency and the resiliency to withstand sudden or unexpected disturbances.

(f) "Secure" means protected against disruption, tampering, and external interference.

(2) The Legislature finds that:

(a) affordable, reliable, dispatchable, and secure energy resources are important to the health, safety, and welfare of the state's citizens;

(b) the state has invested substantial resources in the development of affordable, reliable, dispatchable, and secure energy resources within the state;

(c) the early retirement of an electrical generation facility that provides affordable, reliable, dispatchable, and secure energy is a threat to the health, safety, and welfare of the state's citizens;

(d) the state's police powers, reserved to the state by the United States Constitution, provide the state with sovereign authority to make and enforce laws for the protection of the health, safety, and welfare of the state's citizens;

(e) the state has a duty to defend the production and supply of affordable, reliable, dispatchable, and secure energy from external regulatory interference; and

(f) the state's sovereign authority with respect to the retirement of an electrical generation facility for the protection of the health, safety, and welfare of the state's citizens is primary and takes precedence over any attempt from an external regulatory body to mandate, restrict, or influence the early retirement of an electrical generation facility in the state.

(3) A qualified utility that receives notice of any federal regulation that may result in the forced retirement of the qualified utility's electrical generation facility shall inform the Office of the Attorney General of the regulation within 30 days after the receipt of notice.

(4) After being informed as described in Subsection (3), the Office of the Attorney General may take any action necessary to defend the interest of the state with respect to electricity generation by the qualified utility, including filing an action in court or participating in administrative proceedings.

Section 4. **Effective date.**

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.