

Senator Scott D. Sandall proposes the following substitute bill:

ENERGY INDEPENDENCE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. Sandall

House Sponsor: Carl R. Albrecht

LONG TITLE

General Description:

This bill modifies provisions related to planning and cost recovery for certain energy resource decisions and allows an electrical corporation to establish a Utah fire fund.

Highlighted Provisions:

This bill:

- ▶ modifies the factors the Public Service Commission (commission) must consider when evaluating certain proposed energy resource decisions;
 - ▶ establishes parameters for an affected electrical utility's recovery of costs associated with proven dispatchable generation resources located within the state;
 - ▶ encourages the commission to evaluate the purchase of excess proven dispatchable generation capacity;
 - ▶ allows an electrical corporation to create a Utah fire fund to supplement other insurance for making certain fire damage payments;
 - ▶ establishes requirements for administration, funding, and access to a Utah fire fund;
- and
- ▶ enacts provisions related to filing and resolving claims against an electrical corporation for damages caused by wildfire.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **54-17-102**, as last amended by Laws of Utah 2008, Chapter 382

32 **54-17-201**, as last amended by Laws of Utah 2008, Chapters 374, 382

33 **54-17-302**, as last amended by Laws of Utah 2008, Chapters 374, 382

34 **54-17-303**, as last amended by Laws of Utah 2008, Chapter 374

35 **54-17-402**, as last amended by Laws of Utah 2018, Chapter 449

36 **54-17-403**, as last amended by Laws of Utah 2018, Chapter 449

37 ENACTS:

38 **54-17-1001**, Utah Code Annotated 1953

39 **54-17-1002**, Utah Code Annotated 1953

40 **54-24-301**, Utah Code Annotated 1953

41 **54-24-302**, Utah Code Annotated 1953

42 **54-24-303**, Utah Code Annotated 1953



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

45 Section 1. Section **54-17-102** is amended to read:

46 **54-17-102. Definitions.**

47 As used in this chapter:

48 (1) "Affected electrical utility" means an electrical corporation with at least 200,000
49 retail customers in the state.

50 (2) "Benchmark option" means an energy resource against which bids in an open bid
51 process may be evaluated that:

52 (a) could be constructed or owned by:

53 (i) an affected electrical utility; or

54 (ii) an affiliate of an affected electrical utility; or

55 (b) may be a purchase of:

56 (i) electricity;

57 (ii) electric generating capacity; or

58 (iii) electricity and electric generating capacity.

59 (3) "Dispatchability" means the extent to which an energy resource is dispatchable.

60 (4) "Dispatchable" means available for use on demand and generally available to be

61 delivered at a time and quantity of the operator's choosing.

62 [~~(3)~~] (5) "Integrated resource plan" means a plan that contains:

63 (a) the demand and energy forecast by the affected electrical utility for at least a
64 ten-year period;

65 (b) the affected electrical utility's options for meeting the requirements shown in [its]
66 the affected electrical utility's load and resource forecast in an economic and reliable manner,
67 including:

68 (i) demand-side and supply-side options; and

69 (ii) a brief description and summary cost-benefit analysis, if available, of each option
70 that was considered;

71 (c) the affected electrical utility's assumptions and conclusions with respect to the
72 effect of the plan on the cost and reliability of energy service;

73 (d) a description of the external environmental and economic consequences of the plan
74 to the extent practicable; and

75 (e) any other data and analyses as the commission may require.

76 (6) "Intermittent resource" means an energy resource that relies on a variable fuel
77 source that interrupts energy generation, resulting in periods of non-production or reduced
78 production.

79 (7) "Proven dispatchable generation resource" means a significant energy resource that
80 has demonstrated the capability to provide dispatchable energy.

81 (8) (a) "Risk" means the probability that an energy resource will produce negative
82 consequences that outweigh anticipated positive results and undermine the public interest.

83 (b) "Risk" includes the probability that:

84 (i) overreliance on intermittent resources will create instability or inadequacy in
85 meeting electricity demand;

86 (ii) the energy resource will be unable to provide a consistent and resilient supply of
87 electricity to consumers; and

88 (iii) electricity costs will become unsustainable for consumers.

89 [~~(4)~~] (9) "Significant energy resource" for an affected electrical utility means a resource
90 that consists of:

91 (a) a total of 100 megawatts or more of new generating capacity that has a dependable
92 life of 10 or more years;

93 (b) a purchase of the following if the contract is for a term of 10 or more years and not
94 less than 100 megawatts:

95 (i) electricity;

96 (ii) electric generating capacity; or

97 (iii) electricity and electrical generating capacity;

98 (c) the purchase or lease by an affected electrical utility from an affiliated company of:

99 (i) a generating facility;

100 (ii) electricity;

101 (iii) electrical generating capacity; or

102 (iv) electricity and electrical generating capacity;

103 (d) a contract with an option for the affected electrical utility or an affiliate to purchase
104 a resource that consists of not less than 100 megawatts or more of new generating capacity that
105 has a remaining dependable life of 10 or more years; or

106 (e) a type of resource designated by the commission as a significant energy resource in
107 rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative
108 Rulemaking Act, after considering the affected electrical utility's integrated resource plan and
109 action plan.

110 [~~(5)~~] (10) "Solicitation" means a request for proposals or other invitation for persons to
111 submit a bid or proposal through an open bid process for construction or acquisition of a
112 significant energy resource.

113 Section 2. Section **54-17-201** is amended to read:

114 **54-17-201. Solicitation process required -- Exception.**

115 (1) (a) An affected electrical utility shall comply with this chapter to acquire or
116 construct a significant energy resource after February 25, 2005.

117 (b) Notwithstanding Subsection (1)(a), this chapter does not apply to a significant
118 energy resource for which the affected electrical utility has issued a solicitation before February

119 25, 2005.

120 (2) (a) Except as provided in Subsection (3), to acquire or construct a significant
121 energy resource, an affected electrical utility shall conduct a solicitation process that is
122 approved by the commission.

123 (b) To obtain the approval of the commission of a solicitation process, the affected
124 electrical utility shall file with the commission a request for approval that includes:

125 (i) a description of the solicitation process the affected electrical utility will use;

126 (ii) a complete proposed solicitation; and

127 (iii) any other information the commission requires by rule made in accordance with
128 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

129 (c) In ruling on the request for approval of a solicitation process, the commission shall
130 determine whether the solicitation process:

131 (i) complies with this chapter and rules made in accordance with Title 63G, Chapter 3,
132 Utah Administrative Rulemaking Act; and

133 (ii) is in the public interest, taking into consideration:

134 (A) the dispatchability of the significant energy resource;

135 (B) the state's desire to have proven dispatchable generation resources operating within
136 the state to ensure adequate resources to reliably meet the state's energy needs;

137 (C) whether the proposal is consistent with the state energy policy described in Section
138 [79-6-301](#);

139 (D) whether it will most likely result in the acquisition, production, and delivery of
140 electricity at the lowest reasonable cost to the retail customers of an affected electrical utility
141 located in this state, including any lowered costs resulting from the ability to sell excess energy
142 generated in an interstate energy market;

143 [~~B~~] (E) long-term and short-term impacts;

144 [~~C~~] (F) risk;

145 [~~D~~] (G) reliability;

146 [~~E~~] (H) financial impacts on the affected electrical utility; and

147 [~~F~~] (I) other factors determined by the commission to be relevant.

148 (d) Before approving a solicitation process under this section the commission:

149 (i) may hold a public hearing; and

150 (ii) shall provide an opportunity for public comment.

151 (e) As part of [its] the commission's review of a solicitation process, the commission
152 may provide the affected electrical utility guidance on any additions or changes to [its] the
153 commission's proposed solicitation process.

154 (f) Unless the commission determines that additional time to analyze a solicitation
155 process is warranted and is in the public interest, within 60 days of the day on which the
156 affected electrical utility files a request for approval of the solicitation process, the commission
157 shall:

158 (i) approve a proposed solicitation process;

159 (ii) suggest modifications to a proposed solicitation process; or

160 (iii) reject a proposed solicitation process.

161 (3) Notwithstanding Subsection (2), an affected electrical utility may acquire or
162 construct a significant energy resource without conducting a solicitation process if it obtains a
163 waiver of the solicitation requirement in accordance with Section 54-17-501.

164 (4) In accordance with the commission's authority under Subsection 54-12-2(2), the
165 commission shall determine:

166 (a) whether this chapter or another competitive bidding procedure shall apply to a
167 purchase of a significant energy resource by an affected electrical utility from a small power
168 producer or cogenerator; and

169 (b) if this chapter applies as provided in Subsection (4)(a), the manner in which this
170 chapter applies to a purchase of a significant energy resource by an affected electrical utility
171 from a small power producer or cogenerator.

172 Section 3. Section 54-17-302 is amended to read:

173 **54-17-302. Approval of a significant energy resource decision required.**

174 (1) If pursuant to Part 2, Solicitation Process, an affected electrical utility is required to
175 conduct a solicitation for a significant energy resource or obtains a waiver of the requirement to
176 conduct a solicitation under Section 54-17-501, but does not obtain a waiver of the requirement
177 to obtain approval of the significant energy resource decision under Section 54-17-501, the
178 affected electrical utility shall obtain approval of [its] the affected electrical utility's significant
179 energy resource decision:

180 (a) after the completion of the solicitation process, if the affected electrical utility is

181 required to conduct a solicitation; and

182 (b) before an affected electrical utility may construct or enter into a binding agreement
183 to acquire the significant energy resource.

184 (2) (a) To obtain the approval required by Subsection (1), the affected electrical utility
185 shall file a request for approval with the commission.

186 (b) The request for approval required by this section shall include any information
187 required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
188 Administrative Rulemaking Act.

189 (3) In ruling on a request for approval of a significant energy resource decision, the
190 commission shall determine whether the significant energy resource decision:

191 (a) is reached in compliance with this chapter and rules made in accordance with Title
192 63G, Chapter 3, Utah Administrative Rulemaking Act;

193 (b) (i) is reached in compliance with the solicitation process approved by the
194 commission in accordance with Part 2, Solicitation Process; or

195 (ii) is reached after the waiver of the solicitation process as provided in Subsection
196 [54-17-201\(3\)](#); and

197 (c) is in the public interest, taking into consideration:

198 (i) the dispatchability of the significant energy resource;

199 (ii) the state's desire to have proven dispatchable generation resources operating within
200 the state to ensure adequate resources to reliably meet the state's energy needs;

201 (iii) whether the proposal is consistent with the state energy policy described in Section
202 [79-6-301](#);

203 (iv) whether it will most likely result in the acquisition, production, and delivery of
204 electricity at the lowest reasonable cost to the retail customers of an affected electrical utility
205 located in this state, including any lowered costs resulting from the ability to sell excess energy
206 generated in an interstate energy market;

207 [~~(ii)~~] (v) long-term and short-term impacts;

208 [~~(iii)~~] (vi) risk;

209 [~~(iv)~~] (vii) reliability;

210 [~~(v)~~] (viii) financial impacts on the affected electrical utility; and

211 [~~(vi)~~] (ix) other factors determined by the commission to be relevant.

212 (4) The commission may not approve a significant energy resource decision under this
213 section before holding a public hearing.

214 (5) Unless the commission determines that additional time to analyze a significant
215 energy resource decision is warranted and is in the public interest, within 120 days of the day
216 on which the affected electrical utility files a request for approval, the commission shall:

217 (a) approve the significant energy resource decision;

218 (b) approve the significant energy resource decision subject to conditions imposed by
219 the commission; or

220 (c) disapprove the significant energy resource decision.

221 (6) The commission shall include in ~~[its]~~ the commission's order under this section:

222 (a) findings as to the total projected costs for construction or acquisition of an
223 approved significant energy resource; and

224 (b) the basis upon which the findings described in Subsection (6)(a) are made.

225 (7) Notwithstanding any other provision of this part, an affected electrical utility may
226 acquire a significant energy resource without obtaining approval pursuant to this section if it
227 obtains a waiver of the requirement for approval in accordance with Section [54-17-501](#).

228 (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
229 commission shall make rules regarding the process for approval of a significant energy
230 resource decision under this section.

231 Section 4. Section **54-17-303** is amended to read:

232 **54-17-303. Cost recovery.**

233 (1) (a) Except as otherwise provided in this section, and excluding cost recovery for
234 costs associated with proven dispatchable generation resources, which is governed by Section
235 [54-17-1002](#), if the commission approves a significant energy resource decision under Section
236 [54-17-302](#), the commission shall, in a general rate case or other appropriate commission
237 proceeding, include in the affected electrical utility's retail electric rates the state's share of
238 costs:

239 (i) relevant to the proceeding;

240 (ii) incurred by the affected electrical utility in constructing or acquiring the approved
241 significant energy resource; and

242 (iii) up to the projected costs specified in the commission's order issued under Section

243 54-17-302.

244 (b) (i) The commission shall, in a general rate case or other appropriate commission
245 proceeding, include in the affected electrical utility's retail electric rates the state's share of the
246 incremental cost relevant to the proceeding that were prudently incurred by the affected
247 electrical utility to identify, evaluate, and submit a reasonable benchmark option, whether or
248 not the benchmark option is selected or becomes operational.

249 (ii) A recoverable cost under Subsection (1)(b)(i) shall be included in the affected
250 electrical utility's project costs for the purpose of evaluating the project's cost-effectiveness.

251 (iii) A recoverable cost under Subsection (1)(b)(i) may not be added to the cost or
252 otherwise considered in the evaluation of a project proposed by any person other than the
253 affected electrical utility for the purpose of evaluating that person's proposal.

254 (c) Except to the extent that the commission enters an order under Section 54-17-304,
255 an increase from the projected costs specified in the commission's order issued under Section
256 54-17-302 shall be subject to review by the commission as part of a rate hearing under Section
257 54-7-12.

258 (2) (a) Subsequent to the commission issuing an order described in Subsection (2)(a)(i)
259 or (ii), the commission may disallow some or all costs incurred in connection with an
260 approved significant energy resource decision if the commission finds that an affected
261 electrical utility's actions in implementing an approved significant energy resource decision are
262 not prudent because of new information or changed circumstances that occur after:

263 (i) the commission's approval of the significant energy resource decisions under
264 Section 54-17-302; or

265 (ii) a commission order to proceed under Section 54-17-304.

266 (b) In making a determination of prudence under Subsection (2)(a), the commission
267 shall use the standards identified in Section 54-4-4.

268 (3) Notwithstanding any other provision of this chapter, the commission may disallow
269 some or all of the costs incurred by an affected electrical utility in connection with an approved
270 significant energy resource decision upon a finding by the commission that the affected
271 electrical utility is responsible for a material misrepresentation or concealment in connection
272 with an approval process under this chapter.

273 Section 5. Section 54-17-402 is amended to read:

274 **54-17-402. Request for review of resource decision.**

275 (1) Beginning on February 25, 2005, before implementing a resource decision, an
276 energy utility may request that the commission approve all or part of a resource decision in
277 accordance with this part.

278 (2) (a) To obtain the approval permitted by Subsection (1), the energy utility shall file a
279 request for approval with the commission.

280 (b) The request for approval required by this section shall include any information
281 required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
282 Administrative Rulemaking Act.

283 (c) A request for approval of natural gas infrastructure development shall include:

284 (i) a description of the proposed rural gas infrastructure development project;

285 (ii) an explanation of projected benefits from the proposed rural gas infrastructure
286 development project;

287 (iii) the estimated costs of the rural gas infrastructure development project; and

288 (iv) any other information the commission requires.

289 (3) In ruling on a request for approval of a resource decision, the commission shall
290 determine whether the decision:

291 (a) is reached in compliance with this chapter and rules made in accordance with Title
292 63G, Chapter 3, Utah Administrative Rulemaking Act; and

293 (b) is in the public interest, taking into consideration:

294 (i) (A) the dispatchability of the energy resource;

295 (B) the state's desire to have proven dispatchable generation resources operating within
296 the state to ensure adequate resources to reliably meet the state's energy needs and to make
297 needed dispatchable generation from proven dispatchable energy generation resources available
298 to the bulk electric system to support reliability;

299 (C) whether the proposal is consistent with the state energy policy described in Section
300 79-6-301;

301 (D) whether it will most likely result in the acquisition, production, and delivery of
302 utility services at the lowest reasonable cost to the retail customers of an energy utility located
303 in this state, including any lowered costs resulting from the ability to sell excess energy
304 generated in an interstate energy market;

- 305 ~~[(B)]~~ (E) long-term and short-term impacts;
- 306 ~~[(C)]~~ (F) risk;
- 307 ~~[(D)]~~ (G) reliability;
- 308 ~~[(E)]~~ (H) financial impacts on the energy utility; and
- 309 ~~[(F)]~~ (I) other factors determined by the commission to be relevant; or
- 310 (ii) for a request for approval of rural gas infrastructure development:
- 311 (A) the potential benefits to previously unserved rural areas;
- 312 (B) the potential number of new customers;
- 313 (C) natural gas consumption; and
- 314 (D) revenues, costs, and other factors determined by the commission to be relevant.
- 315 (4) In a decision relating to a request for approval of rural gas infrastructure
- 316 development, the commission may determine that spreading all or a portion of the costs of the
- 317 rural gas infrastructure development to the larger customer base is in the public interest.
- 318 (5) (a) If the commission approves a proposed resource decision only in part, the
- 319 commission shall explain in the order issued under this section why the commission does not
- 320 approve the resource decision in total.
- 321 (b) Recovery of expenses incurred in connection with parts of a resource decision that
- 322 are not approved is subject to the review of the commission as part of a rate hearing under
- 323 Section [54-7-12](#).
- 324 (6) The commission may not approve a resource decision in whole or in part under this
- 325 section before holding a public hearing.
- 326 (7) Unless the commission determines that additional time to analyze a resource
- 327 decision is warranted and is in the public interest, within 180 days of the day on which the
- 328 energy utility files a request for approval, the commission shall:
- 329 (a) approve all or part of the resource decision;
- 330 (b) approve all or part of the resource decision subject to conditions imposed by the
- 331 commission; or
- 332 (c) disapprove all or part of the resource decision.
- 333 (8) The commission shall include in [its] the commission's order under this section:
- 334 (a) findings as to the approved projected costs of a resource decision; and
- 335 (b) the basis upon which the findings described in Subsection (8)(a) are made.

336 (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
337 commission shall make rules regarding the process for approval of a resource decision under
338 this section.

339 Section 6. Section **54-17-403** is amended to read:

340 **54-17-403. Cost recovery.**

341 (1) (a) Except as otherwise provided in this section, and excluding cost recovery for
342 costs associated with proven dispatchable generation resources, which is governed by Section
343 54-17-1002, if the commission approves any portion of an energy utility's resource decision
344 under Section 54-17-402, the commission shall, in a general rate case or other appropriate
345 commission proceeding, include in the energy utility's retail rates the state's share of costs:

- 346 (i) relevant to that proceeding;
- 347 (ii) incurred by the energy utility in implementing the approved resource decision; and
- 348 (iii) up to the projected costs specified in the commission's order issued under Section
349 54-17-402.

350 (b) Except to the extent that the commission issues an order under Section 54-17-404,
351 any increase from the projected costs specified in the commission's order issued under Section
352 54-17-402 shall be subject to review by the commission as part of a rate hearing under Section
353 54-7-12.

354 (c) If the commission approves a request for approval of rural gas infrastructure
355 development under Section 54-17-402, the commission may approve the inclusion of rural gas
356 infrastructure development costs within the gas corporation's base rates if:

- 357 (i) the inclusion of those costs will not increase the base distribution non-gas revenue
358 requirement by more than 2% in any three-year period;
- 359 (ii) the distribution non-gas revenue requirement increase related to the infrastructure
360 development costs under Subsection (1)(c)(i) does not exceed 5% in the aggregate; and
- 361 (iii) the applicable distribution non-gas revenue requirement is the annual revenue
362 requirement determined in the gas corporation's most recent rate case.

363 (2) (a) Subsequent to the commission issuing an order described in Subsection (2)(a)(i)
364 or (ii), the commission may disallow some or all costs incurred in connection with an
365 approved resource decision if the commission finds that an energy utility's actions in
366 implementing an approved resource decision are not prudent because of new information or

367 changed circumstances that occur after:

368 (i) the commission approves the resource decision under Section 54-17-402; or

369 (ii) the commission issues an order to proceed under Section 54-17-404.

370 (b) In making a determination of prudence under Subsection (2)(a), the commission

371 shall use the standards identified in Section 54-4-4.

372 (3) Notwithstanding any other provision of this chapter, the commission may disallow

373 some or all of the costs incurred by an energy utility in connection with an approved resource

374 decision upon a finding by the commission that the energy utility is responsible for a material

375 misrepresentation or concealment in connection with an approval process under this chapter.

376 Section 7. Section 54-17-1001 is enacted to read:

377 **54-17-1001. Acquiring excess proven dispatchable generation capacity.**

378 (1) As used in this section:

379 (a) "Allocation agreement" means a multi-state agreement that allocates the costs and
380 benefits from energy resources serving multiple states to each participating state.

381 (b) "Division" means the Division of Public Utilities established in Section 54-4a-1.

382 (c) "Excess proven dispatchable generation capacity" means electric generation
383 capacity from a proven dispatchable generating resource located in the state that is subject to an
384 allocation agreement, where excess capacity becomes available as another state transitions
385 away from the use of proven dispatchable generation resources.

386 (d) "Office" means the Office of Energy Development created in Section 79-6-401.

387 (2) If the affected electrical utility becomes aware that the affected electrical utility will
388 have excess proven dispatchable generation capacity at an in-state proven dispatchable
389 generation resource, the affected electrical utility shall provide notice to:

390 (a) the commission;

391 (b) the division;

392 (c) the office;

393 (d) the president of the Senate; and

394 (e) the speaker of the House of Representatives.

395 (3) An affected electrical utility that becomes aware of excess proven dispatchable
396 generation capacity shall provide the notice described in Subsection (2):

397 (a) by July 1, 2024, for any excess capacity the utility is aware of on or before May 1,

398 2024; or

399 (b) within 60 days after the day the utility becomes aware of the excess capacity, for
400 any excess capacity the utility becomes aware of after May 1, 2024.

401 (4) An affected electrical utility may not offer excess proven dispatchable generation
402 capacity for sale outside of the state unless the affected electrical utility has complied with
403 Subsection (2).

404 (5) (a) After receiving the notice described in Subsection (2), the division shall
405 immediately begin negotiations through an allocation agreement process to purchase excess
406 proven dispatchable generation capacity.

407 (b) The division shall provide regular updates on the status of negotiations under
408 Subsection (5)(a) to the president of the Senate, the speaker of the House of Representatives,
409 and other relevant stakeholders as determined by the commission.

410 (6) When reviewing an affected electrical utility's application seeking approval of an
411 agreement to allocate another state's existing share of excess proven dispatchable generation
412 capacity, the commission shall consider:

413 (a) the state energy policy described in Section [79-6-301](#);

414 (b) recommendations made by the president of the Senate, the speaker of the House of
415 Representatives, and the office;

416 (c) current and forecasted electricity needs within the state and the region;

417 (d) the potential impact on long-term electricity costs for ratepayers in the state;

418 (e) the potential to resell excess electricity on interstate energy markets to lower costs
419 for state ratepayers;

420 (f) the additional operating costs borne by the state as the sole purchaser of capacity or
421 energy from the proven dispatchable generation resource;

422 (g) opportunities to coordinate with neighboring states with similar energy policies and
423 goals;

424 (h) that any excess capacity allocated and approved in rates under an agreement
425 described in Subsection (5) shall be operated in a manner that prioritizes the interests of
426 ratepayers in the state;

427 (i) that all revenues from the sale of excess capacity that is allocated and approved in
428 rates under an agreement described in Subsection (5) shall be credited to ratepayers in the state;

429 and

430 (j) any other factors the commission determines relevant.

431 Section 8. Section **54-17-1002** is enacted to read:

432 **54-17-1002. Cost recovery for proven dispatchable generation assets.**

433 (1) Notwithstanding any other provision of law, the recovery of costs associated with
434 the acquisition, expansion, maintenance, retrofitting, fueling, or operation of a proven
435 dispatchable generation resource, as well as the reasonable legal fees and costs associated with
436 efforts to preserve the continued operation of a proven dispatchable generation resource, is
437 governed by this section.

438 (2) To recover costs described in Subsections (3) and (5), an affected electrical utility is
439 required to demonstrate, to the commission's satisfaction:

440 (a) the amount sought to be recovered that is attributable to the state;

441 (b) a detailed description of the actions taken by the affected electrical utility resulting
442 in the costs sought to be recovered;

443 (c) that the actions taken by the affected electrical utility resulting in the costs sought to
444 be recovered were:

445 (i) reasonable when considering available dispatchable resources; and

446 (ii) necessary to acquire, operate, and maintain dispatchable resources; and

447 (d) that the recovery of costs for the actions taken by the affected electrical utility is in
448 the public interest.

449 (3) Subject to requirements of Subsection (2), the commission shall allow an affected
450 electrical utility to recover through the affected electrical utility's rates, as established in a
451 general rate case or other appropriate commission proceeding, the reasonable costs associated
452 with:

453 (a) any commission approved significant energy resource decision relating to a proven
454 dispatchable generation resource within the state;

455 (b) any commission approved voluntary resource decision relating to a proven
456 dispatchable generation resource within the state;

457 (c) costs necessary to acquire, expand, retrofit, or maintain proven dispatchable
458 generation resources located within the state to comply with federal law or ensure the efficient
459 operation of those resources;

460 (d) costs to obtain needed generation due to a federal decision or mandate requiring the
461 closure, retirement, or decommission of a proven dispatchable generation resource within the
462 state until permanent replacement generation can be obtained or constructed;

463 (e) stranded costs due to any federal decision or mandate to close, retire, or
464 decommission proven dispatchable generation resources located within the state; and

465 (f) reasonable legal fees and costs arising out of efforts to preserve the continued
466 operation of proven dispatchable generation resources that are either located within the state or
467 that provide generation to the state.

468 (4) An affected electrical utility may recover fuel-related costs associated with
469 acquiring and transporting fuel necessary for operating a proven dispatchable generation
470 resource located within the state if the affected electrical utility demonstrates to the
471 commission's satisfaction that:

472 (a) any fuel purchase for the proven dispatchable generation resource is at a cost less
473 than or equal to the lower of:

474 (i) the current market price for that fuel in the general geographic area from which the
475 resource is extracted; or

476 (ii) the cost to purchase that fuel from an affiliate company of the affected electrical
477 utility; and

478 (b) any fuel transportation costs are reasonable in comparison to current fuel
479 transportation market rates.

480 (5) (a) An affected electrical utility:

481 (i) may recover reasonable ongoing operating costs incurred in connection with the
482 operation of a proven dispatchable generation resource located within the state; and

483 (ii) has a presumption that the ongoing operating costs described in Subsection (5)(a)(i)
484 are reasonable as determined by the commission in a general rate case or other appropriate
485 commission proceeding.

486 (b) A party may submit evidence in a commission proceeding to challenge the
487 reasonableness of the affected electrical utility's operating costs.

488 (c) If an affected electrical utility's operating costs are unchallenged or the commission
489 determines after a commission proceeding that a challenging party has failed to demonstrate
490 that the affected electrical utility's operating costs are not reasonable, the affected electrical

491 utility is entitled to recover operating costs associated with a proven dispatchable generation
492 resource in rates.

493 (d) If the commission determines, after hearing evidence from a challenging party, that
494 the affected electrical utility's operating costs are not reasonable, the commission shall establish
495 reasonable rates that allow the affected electrical utility to recover only reasonable operating
496 costs associated with a proven dispatchable generation resource.

497 Section 9. Section **54-24-301** is enacted to read:

498 **Part 3. Utah Fire Fund**

499 **54-24-301. Utah fire funds -- Creation -- Sources of funding.**

500 (1) As used in this part:

501 (a) (i) "Eligible payment" means an amount owed by an electrical corporation to a third
502 party in the state that exceeds the electrical corporation's applicable insurance coverage,
503 including self-insurance.

504 (ii) "Eligible payment" includes amounts owed as a result of:

505 (A) a settlement agreement resolving economic damages arising out of a fire claim; or

506 (B) economic damages awarded in a finally adjudicated fire claim.

507 (iii) "Eligible payment" does not include an amount for damages to infrastructure
508 owned by an electrical corporation caused by a fire event.

509 (b) "Fire event" means any unplanned or uncontrolled fire in the state alleged to have
510 been caused by an electrical corporation.

511 (c) "Fire claim" means any claim, whether based on negligence, nuisance, trespass, or
512 any other claim for relief, brought by a non-governmental person against an electrical
513 corporation in any civil action to recover for damage resulting from a fire event.

514 (d) "Inflation" means the seasonally adjusted Consumer Price Index for all urban
515 consumers as published by the Bureau of Labor Statistics of the United States Department of
516 Labor.

517 (e) "Utah fire fund" means a fund that may be created under this section by an
518 electrical corporation to serve as a resource to supplement other forms of insurance to make
519 eligible payments.

520 (2) (a) An electrical corporation may create a Utah fire fund by filing notice with the
521 commission.

- 522 (b) The creation of a Utah fire fund under this section does not:
523 (i) establish an exclusive fund for payment of eligible claims; or
524 (ii) prohibit an electrical corporation from proposing, or the commission from
525 approving, other mechanisms for third party liability coverage that are in the public interest.
526 (3) A Utah fire fund shall consist of:
527 (a) a reasonable and prudent fire surcharge that an electrical corporation may charge to
528 the electrical corporation's customers, as approved by the commission in a rate case, to be
529 collected over a 10-year period from the date of the commission's approval of the Utah fire
530 fund;
531 (b) investment income from money in the fund; and
532 (c) other amounts deposited into the fund as otherwise required by law.
533 (4) The commission shall approve an electrical corporation's request to create a Utah
534 fire fund for an electrical corporation if the electrical corporation demonstrates to the
535 commission's satisfaction that the fund:
536 (a) is in the public interest;
537 (b) supports the financial health of the electrical corporation; and
538 (c) maintains or improves the electrical corporation's ability to deliver safe and reliable
539 services.
540 (5) Notwithstanding any other provision of law, a Utah fire fund created under this part
541 may not be used for payments related to any fire or property damage claim originating or
542 occurring outside of the state.

543 Section 10. Section **54-24-302** is enacted to read:

544 **54-24-302. Utah fire fund administration**

- 545 (1) Upon creation of a Utah fire fund under Section [54-24-301](#), an electrical
546 corporation shall:
547 (a) open a separate investment account designated as the Utah fire fund to hold all
548 assets as described in Subsection [54-24-301\(3\)](#) and designate the chief executive officer, chief
549 financial officer, and other appropriate representatives as authorized by the board of directors
550 of the utility as the account signatories;
551 (b) invest Utah fire fund assets collected under Subsection [54-24-301\(3\)](#) only in
552 accordance with Title 51, Chapter 7, State Money Management Act, with all investment returns

553 remaining in the Utah fire fund and not allocated to other accounts of the electrical corporation;

554 (c) record all customer funds received into the electrical corporation's Utah fire fund
555 account in a separate ledger account that reflects deposits, disbursements, assets, liabilities,
556 equity, income, and expenditures related to the fund;

557 (d) report all Utah fire fund account activity, including investment statements and
558 ledger account reconciliations, to the commission annually, unless otherwise directed by
559 commission order or regulation;

560 (e) identify the Utah fire fund investment account as restricted in the electrical
561 corporation's financial statements, with an offsetting regulatory liability owed back to
562 customers in the event the funds are not fully utilized; and

563 (f) maintain records of the assets, liabilities, equity, income, and expenditures of the
564 electrical corporation's Utah fire fund.

565 (2) (a) For all fire claims arising out of fire events that occurred in a calendar year, an
566 electrical corporation may not receive disbursement of funds from a Utah fire fund until the
567 electrical corporation has first paid \$10,000,000 towards eligible payments from the electrical
568 corporation's own funds, not included in its regulated revenue requirement.

569 (b) Subject to Subsection (2)(a), an electrical corporation may disburse funds from the
570 electrical corporation's Utah fire fund to pay eligible payments.

571 (3) A surcharge described in Section [54-24-301](#) that funds an electrical corporation's
572 Utah fire fund shall terminate on the earliest of the following dates:

573 (a) the date that is 10 years after the effective date of the commission approved
574 surcharge that established the electrical corporation's Utah fire fund;

575 (b) the date on which the assets in the electrical corporation's Utah fire fund reach an
576 amount equal to 50% of the electrical corporation's Utah revenue requirement established in
577 the electrical corporation's most recently approved general rate case; or

578 (c) the date on which the commission determines, on the commission's own motion,
579 that the surcharge should terminate, regardless of the current balance in the Utah fire fund.

580 (4) (a) In a rate case, any party may challenge the amount of the disbursement from the
581 electrical corporation's Utah fire fund used for the settlement of a fire claim.

582 (b) If an expenditure is challenged under Subsection (5)(a):

583 (i) the commission may require that the electrical corporation replenish the electrical

584 corporation's Utah fire fund for any amount that the commission determines was imprudent;
585 and

586 (ii) the burden is on the challenging party to prove imprudence.

587 (c) The use of a Utah fire fund to pay a judgment relating to a fire claim is considered
588 prudent and is not subject to challenge.

589 (d) If the commission orders an electrical corporation to reimburse a Utah fire fund due
590 to imprudence under this Subsection (5), the electrical corporation's total reimbursement
591 obligation may not exceed 10% of the electrical corporation's distribution equity rate base
592 assigned to this state for the calendar year in which the calculation is performed.

593 Section 11. Section **54-24-303** is enacted to read:

594 **54-24-303. Fire claims against an electrical corporation.**

595 (1) A fire claim shall be brought within two years from the date of the ignition of the
596 fire.

597 (2) Subject to the limitations described in this section, an injured plaintiff may recover
598 for a fire claim:

599 (a) economic losses to compensate for damage to property; and

600 (b) noneconomic losses to compensate for pain, suffering, and inconvenience.

601 (3) Subject to Subsection (6), the amount of damages recoverable under Subsection

602 (2)(a) for economic loss to property shall be calculated as the lesser of:

603 (a) the cost to restore the property to the property's pre-fire condition; or

604 (b) the difference between:

605 (i) the fair market value of the property immediately before the fire; and

606 (ii) the fair market value of the property after the fire.

607 (4) (a) Subject to Subsections (4)(b) and (6), the amount of damages recoverable under
608 Subsection (2)(b) for noneconomic loss may not exceed:

609 (i) for a person who is not physically injured as a result of the fire, \$100,000; or

610 (ii) for a person who is physically injured as a result of the fire, \$450,000.

611 (b) The limitation described in Subsection (4)(a)(ii) does not apply in a wrongful death
612 action.

613 (5) (a) Beginning on July 1, 2025, and on July 1 of each year thereafter until July 1,
614 2031, the commission shall adjust the limitation on recoverable damages described in

615 Subsection (4) for inflation.

616 (b) By July 15 of each year described in Subsection (5)(a), the commission shall:

617 (i) certify the inflation-adjusted limitation on recoverable damages calculated under
618 this subsection; and

619 (ii) inform the Administrative Office of the Courts of the adjusted limitation on
620 recoverable damages.

621 (6) The limitations on an electrical corporation's liability for recoverable damages
622 described in Subsections (3) and (4) apply unless:

623 (a) the electrical corporation did not have a wildland fire protection plan approved by
624 the electrical corporation's own governing authority in place before the occurrence of the fire
625 event; or

626 (b) the public service commission determines, in an action brought under Subsection
627 (7), that the electrical corporation was in material noncompliance with the electrical
628 corporation's wildland fire protection plan in the area of the fire event at the time the fire event
629 occurred.

630 (7) (a) A party may bring a request for agency action under Title 63G, Chapter 4,
631 Administrative Procedures Act, requesting the commission to determine whether an electrical
632 corporation was in material noncompliance with the electrical corporation's wildland fire
633 protection plan in the area of a specific fire event.

634 (b) The commission's determination for an action brought under Subsection (7)(a) is
635 binding on all fire claims arising out of the specific fire event.

636 (c) A party shall bring or join an action described in Subsection (7)(a) within 180 days
637 of a fire event.

638 (d) Unless the commission determines additional time to complete the analysis
639 required to make a determination under (7)(a) is in the public interest, the commission shall
640 make a determination within 120 days from the date a party files a request for a determination.

641 **Section 12. Effective date.**

642 This bill takes effect on May 1, 2024.