

## SB0224S01 compared with SB0224

~~text~~ shows text that was in SB0224 but was deleted in SB0224S01.

text shows text that was not in SB0224 but was inserted into SB0224S01.

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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

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#### 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

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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:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

ENACTS:

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

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

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

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

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

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

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

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

As used in this chapter:

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

(2) "Benchmark option" means an energy resource against which bids in an open bid

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process may be evaluated that:

- (a) could be constructed or owned by:
  - (i) an affected electrical utility; or
  - (ii) an affiliate of an affected electrical utility; or

(b) may be a purchase of:

- (i) electricity;
- (ii) electric generating capacity; or
- (iii) electricity and electric generating capacity.

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

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

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

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

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

- (i) demand-side and supply-side options; and
- (ii) a brief description and summary cost-benefit analysis, if available, of each option

that was considered;

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

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

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

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

~~{ (7) "Office" means the Office of Energy Development created in Section 79-6-401.~~

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

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~~(9)~~<sup>8</sup> (a) "Risk" means the probability that an energy resource will produce negative consequences that outweigh anticipated positive results and undermine the public interest.

(b) "Risk" includes the probability that:

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

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

(iii) electricity costs will become unsustainable for consumers.

~~(4)~~ ~~(10)~~<sup>9</sup> "Significant energy resource" for an affected electrical utility means a resource that consists of:

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

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

(i) electricity;

(ii) electric generating capacity; or

(iii) electricity and electrical generating capacity;

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

(i) a generating facility;

(ii) electricity;

(iii) electrical generating capacity; or

(iv) electricity and electrical generating capacity;

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

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

~~(5)~~ ~~(11)~~<sup>10</sup> "Solicitation" means a request for proposals or other invitation for persons to submit a bid or proposal through an open bid process for construction or acquisition

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of a significant energy resource.

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

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

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

(b) Notwithstanding Subsection (1)(a), this chapter does not apply to a significant energy resource for which the affected electrical utility has issued a solicitation before February 25, 2005.

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

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

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

(ii) a complete proposed solicitation; and

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

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

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

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

(A) the dispatchability of the significant energy resource;

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

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

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

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

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

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

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

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

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

(i) may hold a public hearing; and

(ii) shall provide an opportunity for public comment.

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

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

(i) approve a proposed solicitation process;

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

(iii) reject a proposed solicitation process.

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

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

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

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

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

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

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

(a) after the completion of the solicitation process, if the affected electrical utility is required to conduct a solicitation; and

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

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

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

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

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

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

(ii) is reached after the waiver of the solicitation process as provided in Subsection 54-17-201(3); and

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

(i) the dispatchability of the significant energy resource;

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

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

(iv) whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of an affected electrical utility

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located in this state, including any lowered costs resulting from the ability to sell excess energy generated in an interstate energy market;

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

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

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

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

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

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

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

(a) approve the significant energy resource decision;

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

(c) disapprove the significant energy resource decision.

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

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

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

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

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

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

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

(1) (a) Except as otherwise provided in this section, and excluding cost recovery for costs associated with proven dispatchable generation resources, which is governed by Section 54-17-1002, if the commission approves a significant energy resource decision under Section



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54-17-302, the commission shall, in a general rate case or other appropriate commission proceeding, include in the affected electrical utility's retail electric rates the state's share of costs:

(i) relevant to the proceeding;

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

(iii) up to the projected costs specified in the commission's order issued under Section 54-17-302.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) any other information the commission requires.

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

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

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

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

(B) the state's desire to have proven dispatchable generation resources operating within the state to ensure adequate resources to reliably meet the state's energy needs and to make needed dispatchable generation from proven dispatchable energy generation resources available

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to the bulk electric system to support reliability;

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

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

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

~~(C)~~ (F) risk;

~~(D)~~ (G) reliability;

~~(E)~~ (H) financial impacts on the energy utility; and

~~(F)~~ (I) other factors determined by the commission to be relevant; or

(ii) for a request for approval of rural gas infrastructure development:

(A) the potential benefits to previously unserved rural areas;

(B) the potential number of new customers;

(C) natural gas consumption; and

(D) revenues, costs, and other factors determined by the commission to be relevant.

(4) In a decision relating to a request for approval of rural gas infrastructure development, the commission may determine that spreading all or a portion of the costs of the rural gas infrastructure development to the larger customer base is in the public interest.

(5) (a) If the commission approves a proposed resource decision only in part, the commission shall explain in the order issued under this section why the commission does not approve the resource decision in total.

(b) Recovery of expenses incurred in connection with parts of a resource decision that are not approved is subject to the review of the commission as part of a rate hearing under Section 54-7-12.

(6) The commission may not approve a resource decision in whole or in part under this section before holding a public hearing.

(7) Unless the commission determines that additional time to analyze a resource decision is warranted and is in the public interest, within 180 days of the day on which the energy utility files a request for approval, the commission shall:

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- (a) approve all or part of the resource decision;
  - (b) approve all or part of the resource decision subject to conditions imposed by the commission; or
  - (c) disapprove all or part of the resource decision.
- (8) The commission shall include in ~~[its]~~ the commission's order under this section:
- (a) findings as to the approved projected costs of a resource decision; and
  - (b) the basis upon which the findings described in Subsection (8)(a) are made.
- (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules regarding the process for approval of a resource decision under this section.

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

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

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

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

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

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

- (i) the inclusion of those costs will not increase the base distribution non-gas revenue requirement by more than 2% in any three-year period;
- (ii) the distribution non-gas revenue requirement increase related to the infrastructure

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development costs under Subsection (1)(c)(i) does not exceed 5% in the aggregate; and

(iii) the applicable distribution non-gas revenue requirement is the annual revenue requirement determined in the gas corporation's most recent rate case.

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

(a) the commission;

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- (b) the division;
- (c) the office;
- (d) the president of the Senate; and
- (e) the speaker of the House of Representatives.

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

~~(a) for excess proven dispatchable generation capacity that existed on June 1, 2024, before July 1, 2024;~~

~~—— (b) for excess proven dispatchable generation capacity that the affected electrical utility becomes aware of after June 1, 2024, within 30~~by July 1, 2024, for any excess capacity the utility is aware of on or before May 1, 2024; or

(b) within 60 days after the day ~~on which~~ the ~~affected electrical~~ utility becomes aware of the excess ~~proven dispatchable generation capacity, or~~

~~—— (c) at least one year before the day on which the affected electrical utility anticipates having new excess proven dispatchable generation capacity~~capacity, for any excess capacity the utility becomes aware of after May 1, 2024.

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

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

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

(6) When ~~considering~~ reviewing an affected electrical utility's application seeking approval of ~~a public utility filing for allocating an~~ an agreement to allocate another state's existing share of excess ~~of~~ proven dispatchable generation capacity, the commission shall consider:

- (a) the state energy policy described in Section 79-6-301;
- (b) recommendations made by the president of the Senate, the speaker of the House of

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Representatives, and the office;

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

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

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

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

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

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

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

and

(~~h~~) any other factors the commission determines relevant.

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

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

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

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

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

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

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

(i) reasonable when considering available dispatchable resources; and

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

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

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

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

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

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

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

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

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

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

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

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

(ii) the cost to purchase that fuel from an affiliate company of the affected electrical



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utility; and

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

(5) (a) An affected electrical utility:

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

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

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

(c) If an affected electrical utility's operating costs are unchallenged or the commission determines after a commission proceeding that a challenging party has failed to demonstrate that the affected electrical utility's operating costs are not reasonable, the affected electrical utility is entitled to recover operating costs associated with a proven dispatchable generation resource in rates.

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

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

### **Part 3. Utah Fire Fund**

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

(1) As used in this part:

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

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

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

(B) [economic damages awarded in](#) a finally adjudicated fire claim ~~awarding~~ [damages](#).

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

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

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

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

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

(2) (a) An electrical corporation may create a Utah fire fund ~~upon notification to~~ by filing notice with the commission ~~and the state treasurer~~.

(b) The creation of a Utah fire fund ~~by an electrical corporation~~ under this section does not ~~create~~:

(i) establish an exclusive fund for payment of eligible ~~payments~~ claims; or

(ii) prohibit an electrical corporation from proposing, or the commission from approving, other mechanisms for third party liability coverage that are in the public interest.

(3) A Utah fire fund shall consist of:

(a) a reasonable and prudent fire surcharge that an electrical corporation may charge to the electrical corporation's customers, as approved by the commission in a rate case, to be collected over a 10-year period from the date of the commission's approval of the Utah fire fund;

(b) investment income from money in the fund; and

(c) other amounts deposited into the fund as otherwise required by law.

(4) The commission shall approve an electrical corporation's request to create a Utah fire fund for an electrical corporation if the electrical corporation demonstrates to the commission's satisfaction that the fund:

(a) is in the public interest;

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(b) supports the financial health of the electrical corporation; and

(c) maintains or improves the electrical corporation's ability to deliver safe and reliable services.

(5) Notwithstanding any other provision of law, a Utah fire fund created under this part may not be used for payments related to any fire or property damage claim originating or occurring outside of the state.

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

### **54-24-302. Utah fire fund administration**~~{}~~

(1) ~~{The state treasurer shall:~~

~~— (a) administer any}~~ Upon creation of a Utah fire fund ~~{created }~~ under Section 54-24-301 ~~{for}~~, an electrical corporation shall:

(a) open a separate investment account designated as the Utah fire fund to hold all assets as described in Subsection 54-24-301(3) and designate the chief executive officer, chief financial officer, and other appropriate representatives as authorized by the board of directors of the utility as the account signatories;

(b) invest Utah fire fund assets collected under Subsection 54-24-301(3) only in accordance with Title 51, Chapter 7, State Money Management Act, with all investment returns remaining in the Utah fire fund and not allocated to other accounts of the electrical corporation;

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

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

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

~~{b}~~ maintain records of the assets, liabilities, equity, income, and expenditures of ~~{any}~~ the electrical corporation's Utah fire fund.

(2) (a) For all fire claims arising out of fire events that occurred in a calendar year, an electrical corporation may not receive disbursement of funds from a Utah fire fund until the

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electrical corporation has first paid \$10,000,000 towards eligible payments from the electrical corporation's own funds, not included in its regulated revenue requirement.

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

~~(3) The state treasurer shall release funds from an electrical corporation's Utah fire fund to the electrical corporation as directed by the electrical corporation.~~

~~(4)~~ (3) A surcharge described in Section 54-24-301 that funds an electrical corporation's Utah fire fund shall terminate on the earliest of the following dates:

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

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

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

~~(5)~~ (4) (a) In a rate case, any party may challenge the amount of the disbursement from the electrical corporation's Utah fire fund used for the settlement of a fire claim.

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

(i) the commission may require that the electrical corporation replenish the electrical corporation's Utah fire fund for any amount that the commission determines was imprudent; and

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

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

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

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

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

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

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

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

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

(3) Subject to Subsection (6), the amount of damages recoverable under Subsection (2)(a) for economic loss to property shall be calculated as the lesser of:

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

(b) the difference between:

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

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

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

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

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

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

(5) (a) Beginning on July 1, 2025, and on July 1 of each year thereafter until July 1, 2031, the ~~state treasurer~~ commission shall adjust the limitation on recoverable damages described in Subsection (4) for inflation.

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

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

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

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

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

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event; or

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

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

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

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

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

Section 12. **Effective date.**

This bill takes effect on May 1, 2024.