

ENERGY EFFICIENCY PROGRAMS AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: Curtis S. Bramble

Cosponsor:

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LONG TITLE

General Description:

This bill amends provisions related to energy efficiency programs for large-scale natural gas utilities and large-scale electric utilities.

Highlighted Provisions:

This bill:

- modifies the definition of "demand side management" in the context of an authorized tariff relating to energy efficiency and conservation, to include the use of heat pumps; and
- requires the Public Service Commission to allow an end-use customer of a large-scale electric utility or a large-scale natural gas utility to continue to receive a credit or rebate under an approved demand side management tariff or schedule under certain circumstances.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

[54-7-12](#), as last amended by Laws of Utah 2009, Chapter 319

29 **54-7-12.8**, as last amended by Laws of Utah 2016, Chapter 393

30
31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **54-7-12** is amended to read:

33 **54-7-12. Rate increase or decrease -- Procedure -- Effective dates -- Electrical or**
34 **telephone cooperative.**

35 (1) As used in this section:

36 (a) (i) "Base rates" means those charges included in a public utility's generally
37 applicable rate tariffs, including:

38 (A) a fare;

39 (B) a rate;

40 (C) a rental;

41 (D) a toll; or

42 (E) any other charge generally applicable to a public utility's rate tariffs.

43 (ii) Unless included by a commission order, "base rates" does not include charges
44 included in:

45 (A) a deferred account;

46 (B) a balancing account;

47 (C) a major plant addition surcharge;

48 (D) a major plant addition surcredit;

49 (E) a special contract; or

50 (F) a public utility program offering.

51 (b) (i) "Complete filing" means an application filed by a public utility that substantially
52 complies with minimum filing requirements established by the commission, by rule, for a
53 general rate increase or decrease.

54 (ii) The commission shall within 180 days after March 25, 2009 create and finalize
55 rules concerning the minimum requirements to be met for an application to be considered a
56 complete filing.

(c) "General rate decrease" means:

(i) any direct decrease to a public utility's base rates; or

(ii) any modification of a classification, contract, practice, or rule that decreases a public utility's base rates.

(d) "General rate increase" means:

(i) any direct increase to a public utility's base rates; or

(ii) any modification of a classification, contract, practice, or rule that increases a public utility's base rates.

(2) (a) A public utility that files for a general rate increase or general rate decrease shall file a complete filing with the commission setting forth the proposed rate increase or decrease.

(b) (i) For purposes of this Subsection (2), a public utility's application for a general rate increase or decrease shall be considered a complete filing unless within 30 days after the day on which the commission receives the public utility's application, the commission issues an order describing information that the public utility must provide for the application to be considered a complete filing.

(ii) Subject to Subsection (2)(b)(iii) and within 14 days after the day on which the application is received by the commission, a party or a person may file a motion to challenge whether an application for a general rate increase or decrease is a complete filing.

(iii) A party or a person may not file a motion described in Subsection (2)(b)(ii) unless the person or party has first filed a motion to intervene with the commission.

(c) If, in accordance with Subsection (2)(b)(i), the commission issues an order that an application is not a complete filing, the commission shall:

(i) determine the materiality of an application deficiency; and

(ii) (A) if the deficiencies are not material, issue an order that the 240-day period described in Subsection (3)(a) shall continue without delay or be suspended and resume when the public utility files the required information; or

(B) if the deficiencies are material, issue an order that the 240-day period described in Subsection (3)(a) shall start over when the public utility files the required information.

(d) (i) The commission shall, after reasonable notice, hold a hearing to determine whether the proposed rate increase or decrease, or some other rate increase or decrease, is just and reasonable.

(ii) If a rate decrease is proposed by a public utility, the commission may waive a hearing unless it seeks to suspend, alter, or modify the rate decrease.

(e) Except as otherwise provided in Subsection (2)(d), (3), or (4), a proposed rate increase or decrease is not effective until after completion of the hearing and issuance of a final order by the commission concerning the proposed increase or decrease.

(3) (a) Within 240 days after a public utility submits a complete filing, the commission shall issue a final order to:

(i) grant the proposed general rate increase or decrease;

(ii) grant a different general rate increase or decrease; or

(iii) deny the proposed general rate increase or decrease.

(b) If the commission does not issue a final written order within 240 days after the public utility submits a complete filing in accordance with Subsection (3)(a):

(i) the public utility's proposed rate increase or decrease is final; and

(ii) the commission may not order a refund of any amount already collected or returned by the public utility under Subsection ~~[(4)]~~ (3)(a).

(4) (a) (i) A request for interim rates shall be made within 90 days after the day on which a public utility files a complete filing for a general rate increase or a general rate decrease.

(ii) The commission, on its own initiative or in response to an application by a public utility or other party, may, after a hearing, allow any rate increase or decrease proposed by a public utility, or a reasonable part of the rate increase or decrease, to take effect on an interim basis within 45 days after the day on which the request is filed, subject to the commission's right to order a refund or surcharge.

(iii) The evidence presented in the hearing held pursuant to this Subsection (4) need not encompass all issues that may be considered in a rate case hearing held pursuant to

Subsection (2)(d), but shall establish an adequate prima facie showing that the interim rate increase or decrease is justified.

(b) The commission may, after a hearing, issue a final order before the expiration of 240 days after the day on which the public utility files a complete filing establishing the utility's revenue requirement and fixing the utility's allowable rates before the commission determines the final allocation of the increase or decrease among categories of customers and classes of service.

(c) (i) If the commission in the commission's final order on a public utility's revenue requirement finds that the interim increase ordered under Subsection (4)(a)(ii) exceeds the increase finally ordered, the commission shall order the public utility to refund the excess to customers.

(ii) If the commission in the commission's final order on a public utility's revenue requirement finds that the interim decrease ordered under Subsection (4)(a)(ii) exceeds the decrease finally ordered, the commission shall order a surcharge to customers to recover the excess decrease.

(5) (a) Notwithstanding any other provisions of this title, any schedule, classification, practice, or rule filed by a public utility with the commission that does not result in any rate increase shall take effect 30 days after the date of filing or within any lesser time the commission may grant, subject to its authority after a hearing to suspend, alter, or modify that schedule, classification, practice, or rule.

(b) When the commission suspends a schedule, classification, practice, or rule, the commission shall hold a hearing on the schedule, classification, practice, or rule before issuing its final order.

(c) For purposes of this Subsection (5), any schedule, classification, practice, or rule that introduces a service or product not previously offered may not result in a rate increase.

(6) Notwithstanding any other provision of this title, whenever a public utility files with the commission any schedule, classification, practice, or rule that does not result in an increase in any rate, fare, toll, rental, or charge, the schedule, classification, practice, or rule

shall take effect 30 days after the date of filing or at any earlier time the commission may grant, subject to the authority of the commission, after a hearing, to suspend, alter, or modify the schedule, classification, practice, or rule.

(7) This section does not apply to any rate changes of an electrical or telephone cooperative that meets all of the requirements of this Subsection (7).

(a) (i) The cooperative is organized for the purpose of either distributing electricity or providing telecommunication services to its members and the public at cost.

(ii) "At cost" includes interest costs and a reasonable rate of return as determined by the cooperative's board of directors.

(b) The cooperative's board of directors and any appropriate agency of the federal government have approved the rate increase or other rate change and all necessary tariff revisions reflecting the increased rate or rate change.

(c) Before implementing any rate increases, the cooperative has held a public meeting for all its customers and members. The cooperative shall mail a notice of the meeting to all of the cooperative's customers and members not less than 10 days prior to the date that the meeting is held.

(d) The cooperative has filed its tariff revisions reflecting the rate increase or other rate change with the commission, who shall make the tariffs available for public inspection.

(8) Notwithstanding Subsections (2) and (4), the procedures for implementing a proposed rate increase by a telephone corporation having less than 30,000 subscriber access lines in the state are provided in this Subsection (8).

(a) (i) The proposed rate increase by a telephone corporation subject to this Subsection (8) may become effective on the day the telephone corporation files with the commission the proposed tariff revisions and necessary information to support a determination by the commission that the proposed rate increase is just and reasonable.

(ii) The telephone corporation shall notify the commission and all potentially affected access line subscribers of the proposed rate increase 30 days before filing the proposed rate increase or change.

(b) (i) The commission may investigate whether the proposed rate increase is just and reasonable.

(ii) If the commission determines, after notice and hearing, that the rate increase is unjust or unreasonable in whole or in part, the commission may establish the rates, charges, or classifications that the commission finds to be just and reasonable.

(c) The commission shall investigate and hold a hearing to determine whether any proposed rate increase is just and reasonable if 10% or more of the telephone corporation's potentially affected access line subscribers file a request for agency action requesting an investigation and hearing.

(9) For a rebate received by an end-use customer under a demand side management program of a large-scale natural gas utility's approved schedule, the commission shall allow the end-use customer to continue receiving the rebate for up to one calendar year if:

(a) the end-use customer:

(i) is currently participating in the demand side management program; and

(ii) has completed new construction within the previous 12 months; and

(b) the schedule under which the rebate was created is modified due to a change in:

(i) standards adopted under Title 15A, State Construction and Fire Codes Act; or

(ii) 10 C.F.R. Chapter 2, Chapter 3, and Chapter 5.

Section 2. Section **54-7-12.8** is amended to read:

54-7-12.8. Electric energy efficiency, sustainable transportation and energy, and conservation tariff.

(1) As used in this section:

(a) "Demand side management" means an activity or program that promotes electric energy efficiency or conservation, the use of heat pumps, or more efficient management of electric energy loads.

(b) "Pilot program period" means a period of five years, beginning on January 1, 2017, during which the sustainable transportation and energy plan is effective.

(c) "Sustainable transportation and energy plan" means the same as that term is defined

in Section 54-20-102.

(d) "Utah solar incentive program" means the eligible utility rooftop solar pilot program established by commission order in 2012.

(2) (a) As provided in this section, the commission may approve a tariff under which an electrical corporation includes a line item charge on the electrical corporation's customers' bills to recover costs incurred by the electrical corporation for demand side management.

(b) The commission shall authorize a large-scale electric utility that is allowed to charge a customer for demand side management under Subsection (2)(a) to:

(i) if requested by the large-scale electric utility, capitalize the annual costs incurred for demand side management provided in Subsection (2)(a);

(ii) amortize the annual cost for demand side management over a period of 10 years;

(iii) apply a carrying charge to the unamortized balance that is equal to the large-scale electric utility's pretax weighted average cost of capital approved by the commission in the large-scale electric utility's most recent general rate proceeding; and

(iv) recover the amortization cost described in Subsection (2)(b)(ii) and the carrying charge described in Subsection (2)(b)(iii) in customer rates.

(3) The commission shall, before January 1, 2017, authorize a large-scale electric utility to implement a combined line item charge on the large-scale electric utility's customers' bills to recover the cost to the large-scale electric utility of:

(a) demand side management, including the cost of amortizing a deferred balance;

(b) the sustainable transportation and energy plan; and

(c) the additional expense described in Subsection (5)(a)(i).

(4) On December 31, 2016, the commission shall end the Utah solar incentive program and surcharge tariff and the large-scale electric utility shall stop accepting new applications for solar incentive program incentives.

(5) (a) The commission may authorize a large-scale electric utility that capitalizes demand side management costs under Subsection (2)(b) to:

(i) recognize the difference between the annual revenues the large-scale electric utility

collects for demand side management and the annual amount of the large-scale electric utility's demand side management cost amortization expense as an additional expense;

(ii) establish and fund, via the additional expense described in Subsection (5)(a)(i), a regulatory liability; and

(iii) use the regulatory liability described in Subsection (5)(a)(ii) to depreciate thermal generation plant.

(b) (i) The commission may authorize the large-scale electric utility to use the regulatory liability described in Subsection (5)(a)(ii) to depreciate thermal generation plant for which the commission determines depreciation is in the public interest for compliance with an environmental regulation or another purpose.

(ii) The commission may not consider the existence of the regulatory liability described in Subsection (5)(a)(ii) in a determination to accelerate depreciation under Subsection (5)(b)(i).

(c) The commission shall allow the large-scale electric utility to apply a carrying charge to the regulatory liability described in Subsection (5)(a)(ii) in an amount equal to the large-scale electric utility's pretax average weighted cost of capital approved by the commission in the large-scale electric utility's most recent general rate proceeding.

(d) The commission may allow a large-scale electric utility to use the regulatory liability carrying charge described in Subsection (5)(c) to offset the carrying charge described in Subsection (2)(b)(iii).

(e) The large-scale electric utility shall apply the carrying charge described in Subsection (5)(c) to funds that a large-scale electric utility is authorized to use to depreciate thermal generation plant under Subsection (5)(a) until the reduction in the large-scale electric utility's rate base associated with the thermal generation plant depreciation for which the funds are used is reflected in the large-scale electric utility's customers' rates.

(f) If the commission determines that funds established in the regulatory liability under Subsection (5)(a) are no longer needed for the purpose of depreciating thermal generation plant, the large-scale electric utility shall use the balance of the funds in the regulatory liability to offset the capitalized demand side management costs described in Subsection (2)(b)(i).

(6) (a) During the pilot program period, of the funds a large-scale electric utility collects via the line item charge described in Subsection (3), the commission shall authorize the large-scale electric utility to allocate on an annual basis:

(i) \$10,000,000 to the sustainable transportation and energy plan; and
(ii) the funds not allocated to the sustainable transportation and energy plan to demand side management.

(b) The commission shall authorize a large-scale electric utility to spend up to:

(i) \$2,000,000 annually for the electric vehicle incentive program described in Section 54-20-103; and

(ii) an annual average of:

(A) \$1,000,000 for the clean coal technology program described in Section 54-20-104; and

(B) \$3,400,000 for the innovative utility programs described in Section 54-20-105.

(c) The commission shall authorize a large-scale electric utility to recoup the large-scale electric utility's unrecovered costs paid through the Utah solar incentive program from the funds allocated under Subsection (6)(a)(i).

(d) The commission may authorize a large-scale electric utility to allocate funds the large-scale electric utility collects via the line item charge described in Subsection (3) not spent under this Subsection (6) to a conservation, efficiency, or new technology program if the conservation, efficiency, or new technology program is cost-effective and in the public interest.

(7) A large-scale electric utility shall establish a balancing account that includes:

(a) funds allocated under Subsection (6)(a)(i);
(b) the program expenditures described in Subsection (6)(b);
(c) the unrecovered Utah solar incentive program costs described in Subsection (6)(c); and

(d) a carrying charge in an amount determined by the commission.

(8) A customer that is paying a contract rate under an agreement with a large-scale electric utility as of January 1, 2016, is exempt from the costs recovered under Subsection (3),

except for costs created by or arising from the Utah solar incentive program included in Subsection 54-7-12.8(3)(b).

(9) (a) In any proceeding commenced under Section 54-3-32, the commission may not consider or assess to an eligible customer an expenditure, cost, amortization, charge, or liability of any kind that is created by or arises in whole or in part from:

(i) any program created under Title 54, Chapter 20, Sustainable Transportation and Energy Plan Act; or

(ii) this section, except for costs created by or arising from the Utah solar incentive program included in Subsection 54-7-12.8(3)(b).

(b) Except as provided in Subsection (9)(a) and in Section 54-3-33, this section and Title 54, Chapter 20, Sustainable Transportation and Energy Plan Act, do not:

(i) amend or repeal any provision of Section 54-3-32; or

(ii) affect any right, defense, or credit available to an eligible customer under Section 54-3-32.

(10) Each electrical corporation proposing a tariff under this section shall, before submitting the tariff to the commission for approval, seek input from:

(a) the Division of Public Utilities;

(b) the Office of Consumer Services; and

(c) a person that files a request for notice with the commission.

(11) Before approving a tariff under this section, the commission shall hold a hearing if:

(a) requested in writing by the electrical corporation, a customer of the electrical corporation, or any other interested party within 15 days after the tariff filing; or

(b) the commission determines that a hearing is appropriate.

(12) (a) The commission may approve a demand side management tariff under this section either with or without a provision allowing an end-use customer to receive a credit against the charges imposed under the tariff for electric energy efficiency measures that:

~~[(a)]~~ (i) the customer implements or has implemented at the customer's expense; and

309 ~~[(b)]~~ (ii) qualify for the credit under criteria established by the commission.

310 (b) For a credit that an end-use customer receives under an approved demand side
311 management tariff pursuant to Subsection (12)(a), the commission shall allow the end-use
312 customer to continue receiving the credit for up to one calendar year if:

313 (i) the end-use customer:

314 (A) is currently participating in the demand side management tariff; and

315 (B) has completed new construction within the previous 12 months; and

316 (ii) the tariff under which the credit was created is modified due to a change in:

317 (A) standards adopted under Title 15A, State Construction and Fire Codes Act; or

318 (B) 10 C.F.R. Chapter 2, Chapter 3, and Chapter 5.

319 (13) In approving a tariff under this section, the commission may impose whatever
320 conditions or limits it considers appropriate, including a maximum annual cost.

321 (14) Unless otherwise ordered by the commission, each tariff under this section
322 approved by the commission shall take effect no sooner than 30 days after the electrical
323 corporation files the tariff with the commission.