

The “Only Pay for What You Get” Ensuring Reliable and Affordable Electricity Act

Summary

This legislation amends _____, the _____ [fair, just, reasonable] statute, to direct that the contribution of an electric generation unit and a transmission asset to the ability of an electric utility to meet its capacity contributions to bulk-power system reliability will be a factor to be considered in the determination of whether the costs and expenses related to and associated with that unit and that asset should be considered fair, just, and reasonable and eligible for recovery from ratepayers through rates; or whether those costs and expenses should not be considered fair, just, and reasonable, should not be eligible for recovery from ratepayers through rates, but should be otherwise funded by the applicant’s business entity through its own resources, which could include an impact to shareholder returns.

The legislation requires an application for an adjustment in rates to include an evaluation of each new proposed generation asset and its ability to meet the applicant’s capacity contributions to bulk-power system reliability, including an assessment of the asset’s estimated percentage contribution to the applicant’s capacity contributions; and a narrative for each generation unit proposed for scale down or retirement and how the scale down or retirement, viewed in conjunction with any new added generation, will affect bulk-power system reliability. This information may be provided by a Transmission Organization, the applicant, or its agent.

This legislation requires an applicant to establish its requests by clear and convincing evidence.

The utility regulatory commission is directed to make a separate finding for each proposed asset addition or retirement whether such meets the chapter requirements, and to find what portion, if any, of the asset’s costs and expenses are fair, just, and reasonable and should be eligible for recovery from ratepayers through rates; or whether the costs and expenses related to that asset are not fair, just, and reasonable and should be funded through the applicant’s business sources, which could impact shareholder returns.

Costs and expenses over and above those that the utility commission finds do not meet the requirements of the chapter, if any, are directed to be funded from utility business sources, which could include an impact to shareholder returns.

This legislation is intended to protect ratepayers from excessive costs stemming from the recent trend of electric utilities in building generation assets, transmission lines, substations, and interconnections that may underperform during periods of peak demand as compared to legacy assets.

Section 1. Findings.

The [name of state legislature] finds that:

1. _____[name of state] citizens, including its families, schools, hospitals, small businesses, farms, and industries depend on reliable and affordable electric utility service for everything they do, from operating lifesaving medical equipment to operating lifesaving building temperature and humidity control;
2. The transition from fossil fuel based electric power generation to carbon-neutral and carbon-free electric power generation presents opportunities for innovation and investment and challenges an electric utility to maintain an asset inventory that can provide a reliable energy capacity that is equivalent in its ability to be dispatched on demand, its useful life, and its overall costs compared to its asset inventory that existed before the transition from fossil fuel based electric power generation began;
3. The reliability of electric service for _____[name of state] citizens requires attention due to the ability of an electric utility to retire a reliable and affordable electric generation unit (“EGU”) and replace that EGU with a different asset or assets, regardless of whether that asset is equal to or greater in its energy capacity, its ability to be dispatched on demand, its useful life, and its overall costs compared to those characteristics in a previously retired EGU;
4. It is the policy of _____ [state] that electric utility service shall be reliable and that an electric utility’s recovery of costs and expenses through rates shall only be for those costs and expenses that are fair, just, and reasonable; and
5. In order to provide electric utility service in _____ [state], an electric utility subject to the jurisdiction of the _____ [name of commission] shall operate a reliable operation.

Section 2. Definitions

1. As used in this section:

(a) The term “Application” shall mean any application, amended application, and any and all other amendments to any document filed for the purpose of adjustment to electric utility rates.

(b) The term “Bulk-power system” shall have the definition as set forth for at 16 U.S.C. §824o (a)(1) which states:

(a) Definitions.

For purposes of this section:

(1) The term “bulk-power” system means –

(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and

(B) electric energy from generation facilities needed to maintain transmission system reliability.

(c) The term “Capacity value” or “Capacity credit” shall mean the fraction of the installed capacity of an electric generating unit which can be relied on at a given time to reliably meet demand. The capacity value or capacity credit of an electric generating unit is frequently measured either in terms of the physical output capacity of the unit such as kilowatt (kW), megawatt (MW), or gigawatt (GW); or as the fractional output percentage (%) of the asset’s nameplate capacity.

(d) The term “Cost-of-service formula” shall mean the total amount of revenue that must be collected in rates for the utility to recover its costs and earn a reasonable return on its investment.

(e) The term “Effective Load Carrying Capacity” (ELCC) shall mean an electric generating unit’s contribution to reliability based on the incremental quantity of load that can be satisfied by adding that resource asset to the electric power grid.

(f) The term “Electric Generation Unit” (EGU) shall mean any asset used to generate or store electricity, regardless of fuel source, including but not limited to coal, natural gas, nuclear fuel, hydroelectric, geothermal, wind, solar, hydrogen, or other applicable technologies. EGU shall also include, but is not limited to, pumped hydroelectric storage, lithium-ion batteries, and any other device or asset used to store energy for later use as electricity.

(g) The term “Independent System Operator” (ISO) shall have the definition as set forth for a transmission organization at 18 C.F.R. §39.1.

(h) The term “Rate Base” shall mean the net amount of investment, funded by investors, in utility plant and other assets, including transmission and distribution assets, devoted to the rendering of utility service upon which an electric utility may seek recovery from ratepayers which may include a reasonable rate of return on equity.

(i) The term “Reliability” shall have the definition as set forth at 16 U.S.C. §824o and the regulations promulgated pursuant thereto.

(j) The term “Reliable operation” shall have the definition set forth for at 16 U.S.C. §824o (a)(4) which states:

The term “reliable operation” means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.

(k) The term “Transmission Organization” shall have the definition as set forth at 16 U.S.C. §824o (a)(6) which states:

The term “transmission organization” means a Regional Transmission Organization, Independent System Operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

The “Commission” referred to in this definition is the Federal Energy Regulatory Commission.

(l) The term “Retirement” shall mean any scale down, scale back, intent for lesser usage, or any other similar term with respect to an electric generation unit or a transmission asset.

(m) The term “Transmission asset” shall mean any and all equipment necessary to transmit electricity from a new or existing EGU to the distribution network used to provide electricity to an end consumer. Transmission asset includes, but is not limited to, any and all substation, inverter, transformer, transmission tower, and additional transmission mileage operating above 69 kilovolts (kV).

Section 3. Addition of Bulk-Power System Reliability as a Factor In the Determination of Fair, Just, and Reasonable Rates

1. For any and all adjustments of electric utility rates subject to the jurisdiction of the _____ [commission] _____ [statute] is hereby amended by adding the following:

(a) The bulk-power system reliability, the energy capacity, on-demand dispatch ability, useful life, intermittent operational nature, overall operational costs including back end disposal costs, environmental compliance costs, of each and every asset used for the production or transmission of electric energy, including but not limited to any electric generation unit (EGU), any transmission asset, and any and all other related assets shall be considered by _____ [name of Commission] in its determination of whether the costs and expenses related to and associated with that asset are fair, just, and reasonable and should be approved for recovery in rates.

2. Each application for an adjustment in rates shall include:

(a) for each electric generation unit the applicant proposes to add to its generation portfolio a statement that shall include:

- (i) an evaluation of each generation unit’s ability to reliably meet the applicant’s capacity contributions to bulk-power system reliability during times of peak demand, as projected in the application; and
- (ii) an assessment of the estimated percentage contribution of each generation unit in meeting the applicant’s capacity contributions to bulk-power system reliability during times of peak demand, as projected in the application; and
- (iii) a narrative outlining how the addition of each electric generation unit when viewed in conjunction with any proposed scale down, less utilization, retirement or other similar action with respect to any other electric generation will impact the applicant’s ability to meet its capacity contributions to bulk-power system reliability during times of peak demand as projected in the application.

(b) for each electric generation unit that the applicant proposes to scale down, utilize less frequently, retire, or otherwise remove from its generation portfolio, a statement that shall include:

- (i) an evaluation of each generation unit’s current ability to reliably meet the electric utility’s capacity contributions to bulk-power system reliability during times of peak demand, as projected in the application; and

- (ii) an assessment of the current estimated percentage contribution of each generation unit in meeting the electric utility's capacity contributions to bulk-power system reliability during times of peak demand, as projected in the application.
- (iii) a narrative outlining how the scale down, less frequent utilization, retirement, or removal of each electric generation unit from the applicant's portfolio when viewed in conjunction with any proposed addition of an electric generation unit to the applicant's portfolio will impact the applicant's ability to meet its capacity contributions to bulk-power system reliability during times of peak demand as projected in the application.

(c) The statement in (a) and (b) above shall inform of, to the best of the declarant's assessment, the effective load carrying capacity (ELCC) of the electric generation unit. The effective load carrying capacity of the electric generation unit may be indicated as the unforced or accredited capacity of the asset and the statement may be provided by a Transmission Organization, the applicant, or its agent.

(d) for each transmission asset the applicant proposes to add to its portfolio a statement that shall include an evaluation of each transmission asset's ability to meet its capability to support the applicant's capacity contributions to bulk-power system reliability during times of peak demand, as projected in the application. The statement shall inform, to the best of the declarant's assessment, how the transmission asset will support the applicant's capacity contributions to bulk-power system reliability during times of peak demand, as projected in the application. The statement may be provided by a Transmission Organization, the applicant, or its agent.

(e) for each transmission asset the applicant proposes to scale down, utilize less frequently, retire, or otherwise remove from its portfolio, a statement from the applicant that shall include an evaluation of each transmission asset's current ability to meet its capability to support the applicant's capacity contributions to bulk-power system reliability during times of peak demand, as projected in the application. The statement may be provided by a Transmission Organization, the applicant, or its agent.

Section 4. Burden of Proof.

1. Each applicant for an adjustment in electric utility rates shall establish by clear and convincing evidence that:
 - (a) each electric generating unit that it proposes to add to its generation portfolio shall fully meet its capacity contributions to bulk-power system reliability during times of peak demand as projected in the application; and
 - (b) each transmission asset that it proposes to add to its portfolio shall fully meet its capability in order for the applicant to fully meet its capacity contributions to bulk-power system reliability during times of peak demand as projected in the application;
 - (c) each electric generation unit that it proposes to scale down, remove, retire, or perform other similar action with respect thereto will not negatively impact the applicant's ability to fully meet its capacity contributions to bulk-power system reliability during times of peak demand as projected in the application; and
 - (d) each transmission asset that it proposes to scale down, remove, retire, or perform other similar action with respect thereto will not negatively impact the applicant's ability to fully meet its capacity contributions to bulk-power system reliability during times of peak demand as projected in the application.

Section 5. Commission Directives

1. In any order approving an adjustment of rates, the _____ [utility regulatory authority] shall include in a separate finding:
 - (a) for each electric generation unit the applicant proposes to add to its generation portfolio and for which cost recovery is requested through rates, indicating whether that asset meets the requirements of this chapter; and
 - (b) for each transmission asset the applicant proposes to add to its portfolio and for which cost recovery is requested through rates, indicating whether that asset meets the requirements of this chapter; and
 - (c) for each electric generation unit that the applicant proposes to scale down, utilize less frequently, retire, or otherwise remove from its generation portfolio indicating whether such proposed action, in conjunction with the remaining proposals identified in the application, will negatively impact the applicant's ability to meet its capacity contributions to bulk-power system reliability during times of peak demand as projected in the application; and
 - (d) for each transmission asset that the applicant proposes to scale down, utilize less frequently, retire, or otherwise remove from its portfolio indicating whether such proposed action, in conjunction with the remaining proposals identified in the application, will negatively impact the applicant's ability to meet its capacity contributions to bulk-power system reliability during times of peak demand as projected in the application; and
2. If the _____ [commission] finds that an electric generation unit that the applicant proposes to add to its generation portfolio fails to meet the requirements of this chapter, the _____ [commission] shall determine what portion, if any, of the costs and expenses related to and associated with that electric generation unit are fair, just, and reasonable, and should be eligible for recovery from ratepayers through rates; and what portion, if any, of the costs and expenses related to and associated with that electric generation unit are not fair, just, and reasonable and should not be recovered by the applicant through rates, but should be funded from the applicant's business sources, which could include an impact to shareholder returns.
3. If the _____ [commission] finds that a transmission asset that the applicant proposes to add to its portfolio fails to meet the requirements of this chapter, the _____ [commission] shall determine what portion, if any, of the costs and expenses related to and associated with that transmission asset are fair, just, and reasonable, and should be eligible for recovery from ratepayers through rates; and what portion, if any, of the costs and expenses related to and associated with that transmission asset are not fair, just, and reasonable, and should not be recovered by the applicant through rates but should be funded from the applicant's business sources, which could include an impact to shareholder returns.

4. The _____ [commission] in its discretion may approve in part, deny in part, approve, or deny any portion of an applicant's proposal as set forth in its application.
5. In any order approving an adjustment of rates, the _____ [commission] shall include the following:
- (a) A separate and distinct paragraph in boldface type for each of the following and that sets forth:
 - (1) The total dollar amount of the increase in rate recovery approved ; and
 - (2) Whether a rate of return on any electric generating unit asset has been approved, the amount of the rate of return reflected as a percentage of the total dollar amount approved for such return, and the duration of such return; and
 - (3) Whether a rate of return on any transmission asset has been approved, the amount of the rate of return reflected as a percentage of the total dollar amount approved for such return, and the duration of such return; and
 - (4) A summary of the total amount of the electric generating unit costs and expenses, if any, that have been denied for rate recovery; and
 - (5) A summary of the total amount of the transmission asset costs and expenses, if any, that have been denied for rate recovery.
6. Nothing herein shall be construed to require the disclosure of confidential information under _____ [applicable statute] and any other applicable law.
7. Any agreed order of settlement or similar instrument among the parties shall not circumvent the requirements of this chapter and any and all other applicable law, and shall not abrogate the responsibility of _____ [commission] to make the findings as directed in paragraphs 1, 2, 3, 4, and 5 hereinabove.