
A BILL FOR AN ACT

RELATING TO WILDFIRE RISK MITIGATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the risk of
2 catastrophic wildfires has increased, making it imperative that
3 electric utilities develop, implement, and administer effective
4 plans for wildfire risk mitigation. Electric utilities should
5 develop, implement, and administer wildfire protection plans,
6 and, through a public process, the public utilities commission
7 should review and approve such plans and the recovery of any
8 related costs to implement the plans.

9 The legislature also finds that a resilience working group,
10 convened throughout 2019 and 2020, sought to: (1) identify and
11 prioritize resilience threat scenarios and potential grid
12 impacts; (2) identify key customer and infrastructure sector
13 capabilities and needs following a severe event and loss of
14 power; (3) identify gaps and priorities in grid and customer
15 capabilities following a severe event and loss of power; (4)
16 provide recommendations and inputs for investor-owned utility
17 grid planning to address resilience needs; and (5) recommend
18 additional grid and customer actions to close gaps and

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1 capabilities following severe events. The resilience working
2 group identified wildfires as one of five types of severe events
3 of utmost importance to consider for achieving a resilient grid
4 and provided resilience options for utilities to consider.

5 The legislature further finds that securitization may be
6 the most efficient, least-cost way to finance wildfire risk
7 mitigation costs and expenses. Utility rate securitization
8 transactions have an extensive track record of success. Bonds
9 securitized by rates receive AAA credit ratings from credit
10 rating agencies and thus provide a means of securing capital at
11 a lower interest rate than those currently available to
12 utilities, in particular utilities without an investment grade
13 credit rating.

14 The purpose of this Act is to create a process whereby
15 electric utilities develop and submit effective wildfire risk
16 protection plans to the public utilities commission for
17 approval; the public utilities commission evaluates those plans
18 and either approves them or does so with modifications; the
19 electric utilities are able to timely recover the prudently
20 incurred costs and expenses of developing, implementing, and
21 administering those plans; and those costs and expenses are not
22 borne disproportionately by any particular ratepayer or county.

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1 SECTION 2. Chapter 269, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 "PART . WILDFIRE PROTECTION AND MITIGATION

5 §269-A Definitions. As used in this part:

6 "Ancillary agreement" means a bond insurance policy, letter
7 of credit, reserve account, surety bond, swap arrangement,
8 hedging arrangement, liquidity or credit support arrangement, or
9 other similar agreement or arrangement entered into in
10 connection with the issuance of bonds that is designed to
11 promote the credit quality and marketability of the bonds or to
12 mitigate the risk of an increase in interest rates.

13 "Bond" means any bond, note, or other evidence of
14 indebtedness that is issued by the financing entity under a
15 financing order, the proceeds of which are used directly or
16 indirectly to recover, finance, or refinance financing costs of
17 any wildfire protection costs, and that are secured by or
18 payable from wildfire protection property.

19 "Department" means any state department or agency.

20 "Electric utility" means a public utility, as defined in
21 section 269-1, that is engaged in the production, transmission,
22 or distribution of electricity.

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1 "Financing costs" means the costs to issue, service, repay,
2 or refinance bonds, whether incurred or paid upon issuance of
3 the bonds or over the life of the bonds, if they are approved
4 for recovery by the public utilities commission in a financing
5 order. "Financing costs" may include any of the following:

6 (1) Principal, interest, and redemption premiums that are
7 payable on bonds;

8 (2) A payment required under an ancillary agreement;

9 (3) An amount required to fund or replenish reserve
10 accounts or other accounts established under an
11 indenture, ancillary agreement, or other financing
12 document related to the bonds;

13 (4) Taxes, franchise fees, or license fees imposed on the
14 wildfire protection plan fee;

15 (5) Costs related to issuing and servicing bonds or the
16 application for a financing order, including, without
17 limitation, servicing fees and expenses, trustee fees
18 and expenses, legal fees and expenses, accounting
19 fees, administrative fees, underwriting and placement
20 fees, financial advisory fees, original issue
21 discount, capitalized interest, rating agency fees,

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1 and any other related costs that are approved for
2 recovery in the financing order; and
3 (6) Other costs as specifically authorized by a financing
4 order.

5 "Financing entity" means a public utility that is
6 authorized by the public utilities commission to issue bonds or
7 acquire wildfire protection property, or both, pursuant to a
8 financing order.

9 "Financing order" means an order of the public utilities
10 commission under this part that has become final as provided by
11 law, and that authorizes the issuance of bonds and the
12 imposition, adjustment from time to time, and collection of
13 wildfire protection fees.

14 "Wildfire protection costs" means any capital costs and
15 operation and maintenance expenses related to the development,
16 implementation, and administration of a wildfire protection plan
17 prepared pursuant to section 269-C(a) but shall not include any
18 penalties levied against an electric utility pursuant to section
19 269-D.

20 "Wildfire protection fee" means the nonbypassable fees and
21 charges authorized by section 269-G and in a financing order
22 authorized under this part to be imposed on and collected from

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1 all existing and future customers of a financing entity or any
2 successor.

3 "Wildfire protection plan" means the risk-based wildfire
4 protection plan mandated by section 269-C(a) and approved by the
5 public utilities commission.

6 "Wildfire protection property" means the property right
7 created pursuant to this part, including, without limitation,
8 the right, title, and interest of the financing entity or its
9 transferee:

10 (1) In and to the wildfire protection fee established
11 pursuant to a financing order, including all rights to
12 obtain adjustments to the wildfire protection fee in
13 accordance with section 269-G and the financing order;

14 (2) To be paid in the amount that is determined in a
15 financing order to be the amount that the public
16 utility or its transferee is lawfully entitled to
17 receive pursuant to this part and the proceeds
18 thereof, and in and to all revenues, collections,
19 claims, payments, moneys, or proceeds of, or arising
20 from, the wildfire protection fee that is the subject
21 of a financing order.

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1 **§269-B Electric utility workshops.** The public utilities
2 commission may periodically convene workshops to help electric
3 utilities develop and share information for the identification,
4 adoption, and implementation of best practices regarding
5 wildfires, including but not limited to risk-based wildfire
6 protection and risk-based wildfire mitigation procedures and
7 standards.

8 **§269-C Wildfire protection plans.** (a) Each electric
9 utility shall have and operate in compliance with a risk-based
10 wildfire protection plan, which shall be filed with and
11 evaluated by the public utilities commission. The risk-based
12 wildfire protection plan shall be based on reasonable and
13 prudent practices, which may be identified through workshops and
14 regulatory proceedings conducted by the public utilities
15 commission pursuant to section 269-B, and public utilities
16 commission standards adopted by decision or rule. The electric
17 utility shall design the risk-based wildfire protection plan to
18 protect public safety, reduce risk to utility customers, and
19 promote resilience of the Hawaii electric system to wildfire
20 damage. Each electric utility's plan shall, at a minimum:

- 21 (1) Identify areas that are subject to a heightened risk
22 of wildfire and are:

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- 1 (A) Within the right of way or legal control or
2 ownership of the electric utility; and
- 3 (B) Outside the right of way or legal control or
4 ownership of the electric utility but within a
5 reasonable distance, as determined by the public
6 utilities commission, of the electric utility's
7 generation or transmission assets;
- 8 (2) Identify a means for mitigating wildfire risk that
9 reflects a reasonable balancing of mitigation costs
10 with the resulting reduction of wildfire risk;
- 11 (3) Identify preventive actions and programs that the
12 electric utility shall carry out to minimize the risk
13 of utility facilities causing wildfire;
- 14 (4) After seeking information from state and local
15 entities, identify a protocol for the deenergizing of
16 power lines and adjusting of power system operations
17 to mitigate wildfires, promote the safety of the
18 public and first responders, and preserve health and
19 communication infrastructure;
- 20 (5) Describe the procedures, standards, and time frames
21 that the electric utility shall use to inspect utility
22 infrastructure in areas that the electric utility

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1 identifies under paragraph (1), including whether
2 those procedures, standards, and time frames are
3 already set forth in the electric utility's existing
4 plans or protocols and in coordination with any
5 relevant entities;

6 (6) Describe the procedures, standards, and time frames
7 that the electric utility will use to carry out
8 vegetation management in areas that the electric
9 utility identifies under paragraph (1), including
10 whether those procedures, standards, and time frames
11 are already set forth in the electric utility's
12 existing plans or protocols and in coordination with
13 any relevant entities;

14 (7) Identify the estimated development, implementation,
15 and administration costs for the risk-based wildfire
16 protection plan; and

17 (8) Identify community outreach and public awareness
18 efforts that the electric utility will use before,
19 during, and after a wildfire.

20 (b) Each electric utility shall regularly update its risk-
21 based wildfire protection plan on a schedule determined by the
22 public utilities commission.

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1 (c) To develop the risk-based wildfire protection plan,
2 the electric utility may consult with and consider information
3 from federal, state, local, and other expert entities.

4 (d) The public utilities commission, in consultation with
5 the department of land and natural resources and local emergency
6 services agencies, shall evaluate each electric utility's risk-
7 based wildfire protection plan and plan updates through a public
8 process.

9 (e) No more than ninety days after the last party filing,
10 and no more than a total of one hundred eighty days after the
11 initial filing in the docket or non-docketed case related to the
12 public utilities commission's evaluation of a risk-based
13 wildfire protection plan or plan update from an electric
14 utility, the public utilities commission shall approve or
15 approve with conditions the plan or update if the public
16 utilities commission finds that the plan or update is based on
17 reasonable and prudent practices and designed to meet all
18 applicable rules and standards adopted by the public utilities
19 commission. The public utilities commission may, in approving
20 the plan or update with conditions, direct the electric utility
21 to make modifications to the plan or updates that the public
22 utilities commission believes represent a reasonable balancing

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1 of mitigation costs with the resulting reduction of wildfire
2 risk based on the information provided by the electric utility
3 and based on best practices. The public utilities commission
4 shall issue a decision explaining any such directed
5 modifications at the time it approves the plan.

6 (f) The public utilities commission's approval of a risk-
7 based wildfire protection plan does not by itself establish a
8 defense to any enforcement action for violation of a public
9 utilities commission decision, order, or rule, or relieve an
10 electric utility from proactively managing wildfire risk,
11 including by monitoring emerging practices and technologies.
12 Electric utilities are expected to continuously improve and take
13 reasonable actions outside of approved plans to mitigate
14 wildfire risk.

15 (g) The public utilities commission shall, as appropriate,
16 adopt rules or issue orders for the implementation of this
17 section. The rules or orders may include but need not be
18 limited to procedures and standards regarding vegetation
19 management, public power safety shutoffs and restorations, pole
20 materials, circuitry, and monitoring systems.

21 **§269-D Penalties.** In addition to any other penalties
22 provided by law, a failure by an electric utility to comply with

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1 an approved plan or part of an approved plan shall be subject to
2 a civil penalty, as determined by the public utilities
3 commission. Imposition of penalties pursuant to this section
4 shall otherwise be in accordance with section 269-28 and all
5 applicable administrative rules. All moneys collected under
6 this section shall be deposited into the public utilities
7 commission special fund.

8 **§269-E Applications to issue bonds and authorize wildfire**
9 **protection fees.** (a) An electric utility or department may
10 apply to the public utilities commission for one or more
11 financing orders to issue bonds to recover any wildfire
12 protection costs, each of which authorizes the following:

13 (1) The imposition, charging, and collection of a wildfire
14 protection fee, to become effective upon the issuance
15 of the bonds, and an adjustment of any such wildfire
16 protection fee in accordance with an adjustment
17 mechanism under this part in amounts sufficient to pay
18 the principal of and interest on bonds and all related
19 financing costs on a timely basis; and

20 (2) The creation of wildfire protection property under the
21 financing order.

22 (b) The application shall include all of the following:

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- 1 (1) The principal amount of the bonds proposed to be
2 issued;
- 3 (2) An estimate of the date each series of bonds is
4 expected to be issued;
- 5 (3) The expected term, not to exceed thirty years, during
6 which term the wildfire protection fee associated with
7 the issuance of each series of bonds is expected to be
8 imposed and collected;
- 9 (4) An estimate of the financing costs associated with the
10 issuance of each series of bonds;
- 11 (5) An estimate of the amount of the wildfire protection
12 fee revenues necessary to pay principal and interest
13 on the bonds and related financing costs as set forth
14 in the application and the calculation for that
15 estimate;
- 16 (6) A proposed methodology for allocating the wildfire
17 protection fee among customer classes within the
18 financing entity;
- 19 (7) A description of a proposed formulaic adjustment
20 mechanism for the adjustment of the wildfire
21 protection fee to correct for any overcollection or
22 undercollection of the wildfire protection fee, and to

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1 otherwise ensure the timely payment of principal and
2 interest on the bonds and related financing costs; and
3 (8) Any other information required by the public utilities
4 commission.

5 (c) The public utilities commission shall issue an
6 approval or denial of any application for a financing order
7 filed pursuant to this section within ninety days of the last
8 filing in the applicable docket.

9 (d) In exercising its duties under this section, the
10 public utilities commission shall consider:

11 (1) Whether the wildfire protection costs to be financed
12 by any bonds to be issued are just and reasonable;

13 (2) Whether the terms and conditions of any bonds to be
14 issued are just and reasonable;

15 (3) Whether the immediate ratepayer bill impact of any
16 financing order is minimized to the furthest extent
17 practicable; and

18 (4) Any other factors that the public utilities commission
19 deems reasonable and in the public interest.

20 **§269-F Wildfire protection plan financing order.** (a) A
21 financing order shall remain in effect until the bonds issued
22 under the financing order and all financing costs related to the

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1 bonds have been paid in full or defeased by their terms. A
2 financing order shall remain in effect and unabated
3 notwithstanding the bankruptcy, reorganization, or insolvency of
4 the financing entity or the commencement of any judicial or
5 nonjudicial proceeding on the financing order.

6 (b) Once a financing order has become final as provided by
7 law, the financing order shall become irrevocable. The public
8 utilities commission may not directly or indirectly, except as
9 provided in the adjustment mechanism approved in the financing
10 order, reduce, impair, postpone, rescind, alter, or terminate
11 the wildfire protection plan fee authorized in the financing
12 order or impair the wildfire protection property or the
13 collection of the wildfire protection plan fee so long as any
14 bonds are outstanding or any financing costs remain unpaid.

15 (c) Under a final financing order, the financing entity
16 shall retain sole discretion to cause bonds to be issued,
17 including the right to defer or postpone such issuance,
18 assignment, sale, or transfer.

19 **§269-G Wildfire protection fee.** (a) The public utilities
20 commission may create, pursuant to a financing order approved
21 pursuant to section 269-F, a nonbypassable surcharge for a
22 financing entity, referred to as a wildfire protection fee,

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1 which shall be applied to the repayment of bonds and related
2 financing costs as described in this part. The wildfire
3 protection fee may be a usage-based surcharge, a flat user fee,
4 or a charge based upon customer revenues as determined by the
5 public utilities commission for each customer class in any
6 financing order.

7 (b) As long as any bonds are outstanding and any financing
8 costs have not been paid in full, any wildfire protection fee
9 authorized under a financing order shall be nonbypassable.
10 Subject to any exceptions provided in a financing order, a
11 wildfire protection fee shall be paid by all existing and future
12 customers of a financing entity or any successors.

13 (c) The wildfire protection plan fee shall be collected by
14 a financing entity or its successors, in accordance with section
15 269-G(a), in full through a surcharge, fee, or charge that is
16 separate and apart from the financing entity's rates.

17 (d) A financing entity may exercise the same rights and
18 remedies under its tariff and applicable law and regulation
19 based on a customer's nonpayment of the wildfire protection plan
20 fee as it could for a customer's failure to pay any other charge
21 payable to that public utility.

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1 **§269-H Financing entity successor requirements; default of**
2 **financing entity.** (a) Any successor to a financing entity
3 subject to a financing order shall be bound by the requirements
4 of this part. The successor shall perform and satisfy all
5 obligations of the financing entity under the financing order,
6 in the same manner and to the same extent as the financing
7 entity, including the obligation to collect and pay the wildfire
8 protection plan fee to any financing party as required by a
9 financing order.

10 (b) The public utilities commission may require in a
11 financing order that, if a default by the financing entity in
12 remittance of the wildfire protection plan fee collected arising
13 with respect to wildfire protection property occurs, the public
14 utilities commission, without limiting any other remedies
15 available to any financing party by reason of the default, shall
16 order the sequestration and payment to the beneficiaries of the
17 wildfire protection plan fee collected arising with respect to
18 the wildfire protection plan property. Any order shall remain
19 in full force and effect notwithstanding any bankruptcy,
20 reorganization, or other insolvency proceedings with respect to
21 the financing entity.

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1 **§269-I Treatment of bonds, fees, and property.** (a)

2 Neither financing orders nor bonds issued under this part shall
3 constitute a debt or liability of the State or of any political
4 subdivision thereof, nor shall they constitute a pledge of the
5 full faith and credit of the State or any of its political
6 subdivisions, but are payable solely from the funds provided
7 therefor under this part. All bonds shall contain on the face
8 thereof a statement to the following effect: "Neither the full
9 faith and credit nor the taxing power of the State of Hawaii is
10 pledged to the payment of the principal of, or interest on, this
11 bond."

12 (b) The issuance of bonds under this part shall not
13 directly, indirectly, or contingently obligate the State or any
14 political subdivision thereof to levy or pledge any form of
15 taxation or to make any appropriation for their payment.

16 **§269-J Severability.** If any provision of this part is
17 held to be invalid or is superseded, replaced, repealed, or
18 expires for any reason:

19 (1) That occurrence shall not affect any action allowed
20 under this part that is taken prior to that occurrence
21 by the public utilities commission, a financing

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1 entity, a bondholder, or any financing party, and any
2 such action shall remain in full force and effect; and
3 (2) The validity and enforceability of the rest of this
4 part shall remain unaffected."

5 SECTION 3. Chapter 269-17, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§269-17 Issuance of securities.** A public utility
8 corporation may, on securing the prior approval of the public
9 utilities commission, and not otherwise, except as provided in
10 section 269-E, issue stocks and stock certificates, bonds,
11 notes, and other evidences of indebtedness, payable at periods
12 of more than twelve months after the date thereof, for the
13 following purposes and no other, namely: for the acquisition
14 of property or for the construction, completion, extension, or
15 improvement of or addition to its facilities or service, or for
16 the discharge or lawful refunding of its obligations or for the
17 reimbursement of moneys actually expended from income or from
18 any other moneys in its treasury not secured by or obtained
19 from the issue of its stocks or stock certificates, or bonds,
20 notes, or other evidences of indebtedness, for any of the
21 aforesaid purposes except maintenance of service, replacements,
22 and substitutions not constituting capital expenditure in cases

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1 where the corporation has kept its accounts for such
2 expenditures in such manner as to enable the commission to
3 ascertain the amount of moneys so expended and the purposes for
4 which the expenditures were made, and the sources of the funds
5 in its treasury applied to the expenditures. As used herein,
6 "property" and "facilities", mean property and facilities used
7 in all operations of a public utility corporation whether or
8 not included in its public utility operations or rate base. A
9 public utility corporation may not issue securities to acquire
10 property or to construct, complete, extend or improve or add to
11 its facilities or service if the commission determines that the
12 proposed purpose will have a material adverse effect on its
13 public utility operations.

14 All stock and every stock certificate, and every bond,
15 note, or other evidence of indebtedness of a public utility
16 corporation not payable within twelve months, issued without an
17 order of the commission authorizing the same, then in effect,
18 shall be void."

19 SECTION 4. Each electric utility shall file its first
20 risk-based wildfire protection plan with the public utilities
21 commission required under section 269-B, Hawaii Revised

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1 Statutes, established by section 2 of this Act, no later than
2 December 31, 2024.

3 SECTION 5. Notwithstanding the provisions of Act 262,
4 Session Laws of Hawaii 2023, the legislature authorizes the
5 issuance of special purpose revenue bonds for wildfire risk
6 migration purposes that requires an allocation of the annual
7 state ceiling under section 39B-2, Hawaii Revised Statutes, for
8 the period July 1, 2024, through December 31, 2028.

9 SECTION 6. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 7. In codifying the new part added to chapter 269,
13 Hawaii Revised Statutes, by section 2 of this Act, the revisor
14 of statutes shall substitute appropriate section numbers for the
15 letters used in designating and referring to the new sections in
16 this Act.

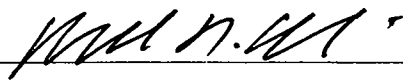
17 SECTION 8. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 9. This Act shall take effect upon its approval.

20

21

INTRODUCED BY:



22

BY REQUEST

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Report Title:

Wildfires; Mitigation; Protection; Public Utilities Commission;
Electric Utilities; Securitization; Risk Protection Plans

Description:

Creates a process for electric utilities to develop and submit wildfire protection plans to the Public Utilities Commission for approval and allow the recovery of related costs and expenses through securitization, while avoiding a disproportionate impact on a specific ratepayer or county.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Governor

TITLE: A BILL FOR AN ACT RELATING TO WILDFIRE RISK MITIGATION.

PURPOSE: To create a process whereby electric utilities develop and submit effective wildfire risk protection plans to the Public Utilities Commission for approval and allow the recovery of related costs and expenses through securitization, while avoiding a disproportionate impact on a specific ratepayer or county.

MEANS: Add a new part, titled "Wildfire Protection and Mitigation", to chapter 269, Hawaii Revised Statutes (HRS), and amend section 269-17, HRS.

JUSTIFICATION: The effects of climate change have increased the frequency, severity, and duration of wildfires. The risk of catastrophic wildfires is evident. Wildfire prevention and mitigation measures, including emergency preparedness and response and policy and institutional management frameworks, are critical in addressing wildfire risk.

It is imperative that electric utilities develop, implement, and administer effective plans for wildfire risk mitigation. Securitization may be the most efficient, least-cost way to finance wildfire risk mitigation costs and expenses. Furthermore, utility rate securitization transactions have an extensive track record of success. This measure creates a process whereby electric utilities develop and submit effective wildfire risk protection plans to the Public Utilities Commission for approval.

Impact on the public: The establishment of wildfire risk protection plans as provided

under this measure would strengthen wildfire prevention and mitigation efforts and approaches related to the impacts of wildfires in our State.

Impact on the department and other agencies:
None.

GENERAL FUND:

None.

OTHER FUNDS:

Public Utilities Commission Special Fund.

PPBS PROGRAM
DESIGNATION:

None.

OTHER AFFECTED
AGENCIES:

Public Utilities Commission; State Energy Office; and any other affected state departments or agencies.

EFFECTIVE DATE:

Upon approval.