

**ELECTRIC VEHICLE CHARGING INFRASTRUCTURE**

**AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: V. Lowry Snow**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies public utilities provisions relating to electric vehicle battery charging infrastructure and service.

**Highlighted Provisions:**

This bill:

▶ modifies the definitions of "electrical corporation" and "public utility" for purposes of public utility code provisions and expands the description of entities excluded from those definitions because they are entities that sell electric vehicle battery charging service;

▶ enacts definitions relating to electric vehicle battery charging station infrastructure and services;

▶ requires the Public Service Commission to authorize a large-scale electric utility to establish a vehicle charging infrastructure program that allows for a \$50,000,000 initial investment, and provides for amendments to that program; and

▶ authorizes the Public Service Commission to allow a large-scale electric utility to recover the utility's investment in vehicle charging infrastructure and services and a program for that infrastructure and those services.

**Money Appropriated in this Bill:**

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **54-2-1**, as last amended by Laws of Utah 2019, Chapter 460

33 ENACTS:

34 **54-4-41**, Utah Code Annotated 1953

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

37 Section 1. Section **54-2-1** is amended to read:

38 **54-2-1. Definitions.**

39 As used in this title:

40 (1) "Avoided costs" means the incremental costs to an electrical corporation of electric  
41 energy or capacity or both that, due to the purchase of electric energy or capacity or both from  
42 small power production or cogeneration facilities, the electrical corporation would not have to  
43 generate itself or purchase from another electrical corporation.

44 (2) "Clean coal technology" means a technology that may be researched, developed, or  
45 used for reducing emissions or the rate of emissions from a thermal electric generation plant  
46 that uses coal as a fuel source.

47 (3) "Cogeneration facility":

48 (a) means a facility that produces:

49 (i) electric energy; and

50 (ii) steam or forms of useful energy, including heat, that are used for industrial,  
51 commercial, heating, or cooling purposes; and

52 (b) is a qualifying cogeneration facility under federal law.

53 (4) "Commission" means the Public Service Commission.

54 (5) "Commissioner" means a member of the commission.

55 (6) (a) "Corporation" includes an association and a joint stock company having any  
56 powers or privileges not possessed by individuals or partnerships.

57 (b) "Corporation" does not include towns, cities, counties, conservancy districts,  
58 improvement districts, or other governmental units created or organized under any general or

59 special law of this state.

60 (7) "Distribution electrical cooperative" includes an electrical corporation that:

61 (a) is a cooperative;

62 (b) conducts a business that includes the retail distribution of electricity the cooperative  
63 purchases or generates for the cooperative's members; and

64 (c) is required to allocate or distribute savings in excess of additions to reserves and  
65 surplus on the basis of patronage to the cooperative's:

66 (i) members; or

67 (ii) patrons.

68 (8) (a) "Electrical corporation" includes every corporation, cooperative association, and  
69 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any  
70 electric plant, or in any way furnishing electric power for public service or to its consumers or  
71 members for domestic, commercial, or industrial use, within this state.

72 (b) "Electrical corporation" does not include:

73 (i) an independent energy producer;

74 (ii) where electricity is generated on or distributed by the producer solely for the  
75 producer's own use, or the use of the producer's tenants, or the use of members of an  
76 association of unit owners formed under Title 57, Chapter 8, Condominium Ownership Act,  
77 and not for sale to the public generally;

78 (iii) an eligible customer who provides electricity for the eligible customer's own use or  
79 the use of the eligible customer's tenant or affiliate; or

80 (iv) a nonutility energy supplier who sells or provides electricity to:

81 (A) an eligible customer who has transferred the eligible customer's service to the  
82 nonutility energy supplier in accordance with Section 54-3-32; or

83 (B) the eligible customer's tenant or affiliate.

84 (c) "Electrical corporation" does not include an entity that sells electric vehicle battery  
85 charging services[;]:

86 (i) if the entity obtains the electricity for the electric vehicle battery charging service:

87 (A) from an electrical corporation in whose service area the electric vehicle battery  
88 charging service is located; and

89 (B) under an established tariff for rates, charges, and conditions of service for

90 electricity furnished to an electric vehicle battery charging service; and

91 (ii) unless the entity conducts another activity in the state that subjects the entity to the  
92 jurisdiction and regulation of the commission as an electrical corporation.

93 (9) "Electric plant" includes all real estate, fixtures, and personal property owned,  
94 controlled, operated, or managed in connection with or to facilitate the production, generation,  
95 transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits,  
96 ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying  
97 conductors used or to be used for the transmission of electricity for light, heat, or power.

98 (10) "Eligible customer" means a person who:

99 (a) on December 31, 2013:

100 (i) was a customer of a public utility that, on December 31, 2013, had more than  
101 200,000 retail customers in this state; and

102 (ii) owned an electric plant that is an electric generation plant that, on December 31,  
103 2013, had a generation name plate capacity of greater than 150 megawatts; and

104 (b) produces electricity:

105 (i) from a qualifying power production facility for sale to a public utility in this state;

106 (ii) primarily for the eligible customer's own use; or

107 (iii) for the use of the eligible customer's tenant or affiliate.

108 (11) "Eligible customer's tenant or affiliate" means one or more tenants or affiliates:

109 (a) of an eligible customer; and

110 (b) who are primarily engaged in an activity:

111 (i) related to the eligible customer's core mining or industrial businesses; and

112 (ii) performed on real property that is:

113 (A) within a 25-mile radius of the electric plant described in Subsection (10)(a)(ii); and

114 (B) owned by, controlled by, or under common control with, the eligible customer.

115 (12) "Gas corporation" includes every corporation and person, their lessees, trustees,

116 and receivers, owning, controlling, operating, or managing any gas plant for public service

117 within this state or for the selling or furnishing of natural gas to any consumer or consumers

118 within the state for domestic, commercial, or industrial use, except in the situation that:

119 (a) gas is made or produced on, and distributed by the maker or producer through,

120 private property:

121 (i) solely for the maker's or producer's own use or the use of the maker's or producer's  
122 tenants; and

123 (ii) not for sale to others;

124 (b) gas is compressed on private property solely for the owner's own use or the use of  
125 the owner's employees as a motor vehicle fuel; or

126 (c) gas is compressed by a retailer of motor vehicle fuel on the retailer's property solely  
127 for sale as a motor vehicle fuel.

128 (13) "Gas plant" includes all real estate, fixtures, and personal property owned,  
129 controlled, operated, or managed in connection with or to facilitate the production, generation,  
130 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

131 (14) "Heat corporation" includes every corporation and person, their lessees, trustees,  
132 and receivers, owning, controlling, operating, or managing any heating plant for public service  
133 within this state.

134 (15) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances, and  
135 personal property controlled, operated, or managed in connection with or to facilitate the  
136 production, generation, transmission, delivery, or furnishing of artificial heat.

137 (b) "Heating plant" does not include either small power production facilities or  
138 cogeneration facilities.

139 (16) "Independent energy producer" means every electrical corporation, person,  
140 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,  
141 control, or manage an independent power production or cogeneration facility.

142 (17) "Independent power production facility" means a facility that:

143 (a) produces electric energy solely by the use, as a primary energy source, of biomass,  
144 waste, a renewable resource, a geothermal resource, or any combination of the preceding  
145 sources; or

146 (b) is a qualifying power production facility.

147 (18) "Large-scale electric utility" means a public utility that provides retail electric  
148 service to more than 200,000 retail customers in the state.

149 (19) "Large-scale natural gas utility" means a public utility that provides retail natural  
150 gas service to more than 200,000 retail customers in the state.

151 (20) "Nonutility energy supplier" means a person that:

152 (a) has received market-based rate authority from the Federal Energy Regulatory  
153 Commission in accordance with 16 U.S.C. Sec. 824d, 18 C.F.R. Part 35, Filing of Rate  
154 Schedules and Tariffs, or applicable Federal Energy Regulatory Commission orders; or

155 (b) owns, leases, operates, or manages an electric plant that is an electric generation  
156 plant that:

157 (i) has a capacity of greater than 100 megawatts; and

158 (ii) is hosted on the site of an eligible customer that consumes the output of the electric  
159 plant, in whole or in part, for the eligible customer's own use or the use of the eligible  
160 customer's tenant or affiliate.

161 (21) "Private telecommunications system" includes all facilities for the transmission of  
162 signs, signals, writing, images, sounds, messages, data, or other information of any nature by  
163 wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio facilities, that  
164 are owned, controlled, operated, or managed by a corporation or person, including their lessees,  
165 trustees, receivers, or trustees appointed by any court, for the use of that corporation or person  
166 and not for the shared use with or resale to any other corporation or person on a regular basis.

167 (22) (a) "Public utility" includes every railroad corporation, gas corporation, electrical  
168 corporation, distribution electrical cooperative, wholesale electrical cooperative, telephone  
169 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,  
170 and independent energy producer not described in Section 54-2-201 where the service is  
171 performed for, or the commodity delivered to, the public generally, or in the case of a gas  
172 corporation or electrical corporation where the gas or electricity is sold or furnished to any  
173 member or consumers within the state for domestic, commercial, or industrial use.

174 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone  
175 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,  
176 or independent energy producer not described in Section 54-2-201, performs a service for or  
177 delivers a commodity to the public, it is considered to be a public utility, subject to the  
178 jurisdiction and regulation of the commission and this title.

179 (ii) If a gas corporation, independent energy producer not described in Section  
180 54-2-201, or electrical corporation sells or furnishes gas or electricity to any member or  
181 consumers within the state, for domestic, commercial, or industrial use, for which any  
182 compensation or payment is received, it is considered to be a public utility, subject to the

183 jurisdiction and regulation of the commission and this title.

184 (c) Any corporation or person not engaged in business exclusively as a public utility as  
185 defined in this section is governed by this title in respect only to the public utility owned,  
186 controlled, operated, or managed by the corporation or person, and not in respect to any other  
187 business or pursuit.

188 (d) Any person or corporation defined as an electrical corporation or public utility  
189 under this section may continue to serve its existing customers subject to any order or future  
190 determination of the commission in reference to the right to serve those customers.

191 (e) (i) "Public utility" does not include any person that is otherwise considered a public  
192 utility under this Subsection (22) solely because of that person's ownership of an interest in an  
193 electric plant, cogeneration facility, or small power production facility in this state if all of the  
194 following conditions are met:

195 (A) the ownership interest in the electric plant, cogeneration facility, or small power  
196 production facility is leased to:

197 (I) a public utility, and that lease has been approved by the commission;

198 (II) a person or government entity that is exempt from commission regulation as a  
199 public utility; or

200 (III) a combination of Subsections (22)(e)(i)(A)(I) and (II);

201 (B) the lessor of the ownership interest identified in Subsection (22)(e)(i)(A) is:

202 (I) primarily engaged in a business other than the business of a public utility; or

203 (II) a person whose total equity or beneficial ownership is held directly or indirectly by  
204 another person engaged in a business other than the business of a public utility; and

205 (C) the rent reserved under the lease does not include any amount based on or  
206 determined by revenues or income of the lessee.

207 (ii) Any person that is exempt from classification as a public utility under Subsection  
208 (22)(e)(i) shall continue to be so exempt from classification following termination of the  
209 lessee's right to possession or use of the electric plant for so long as the former lessor does not  
210 operate the electric plant or sell electricity from the electric plant. If the former lessor operates  
211 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a  
212 period of 90 days following termination, or for a longer period that is ordered by the  
213 commission. This period may not exceed one year. A change in rates that would otherwise

214 require commission approval may not be effective during the 90-day or extended period  
215 without commission approval.

216 (f) "Public utility" does not include any person that provides financing for, but has no  
217 ownership interest in an electric plant, small power production facility, or cogeneration facility.  
218 In the event of a foreclosure in which an ownership interest in an electric plant, small power  
219 production facility, or cogeneration facility is transferred to a third-party financier of an electric  
220 plant, small power production facility, or cogeneration facility, then that third-party financier is  
221 exempt from classification as a public utility for 90 days following the foreclosure, or for a  
222 longer period that is ordered by the commission. This period may not exceed one year.

223 (g) (i) The distribution or transportation of natural gas for use as a motor vehicle fuel  
224 does not cause the distributor or transporter to be a "public utility," unless the commission,  
225 after notice and a public hearing, determines by rule that it is in the public interest to regulate  
226 the distributors or transporters, but the retail sale alone of compressed natural gas as a motor  
227 vehicle fuel may not cause the seller to be a "public utility."

228 (ii) In determining whether it is in the public interest to regulate the distributors or  
229 transporters, the commission shall consider, among other things, the impact of the regulation  
230 on the availability and price of natural gas for use as a motor fuel.

231 (h) "Public utility" does not include:

232 (i) an eligible customer who provides electricity for the eligible customer's own use or  
233 the use of the eligible customer's tenant or affiliate; or

234 (ii) a nonutility energy supplier that sells or provides electricity to:

235 (A) an eligible customer who has transferred the eligible customer's service to the  
236 nonutility energy supplier in accordance with Section 54-3-32; or

237 (B) the eligible customer's tenant or affiliate.

238 (i) "Public utility" does not include an entity that sells electric vehicle battery charging  
239 services[;];

240 (i) if the entity obtains the electricity for the electric vehicle battery charging service:

241 (A) from a large-scale electric utility in whose service area the electric vehicle battery  
242 charging service is located; and

243 (B) under an established tariff for rates, charges, and conditions of service for  
244 electricity furnished to an electric vehicle battery charging service; and



245           (ii) unless the entity conducts another activity in the state that subjects the entity to the  
246 jurisdiction and regulation of the commission as a public utility.

247           (j) "Public utility" does not include an independent energy producer that is not subject  
248 to regulation by the commission as a public utility under Section 54-2-201.

249           (23) "Purchasing utility" means any electrical corporation that is required to purchase  
250 electricity from small power production or cogeneration facilities pursuant to the Public Utility  
251 Regulatory Policies Act, 16 U.S.C. Sec. 824a-3.

252           (24) "Qualifying power producer" means a corporation, cooperative association, or  
253 person, or the lessee, trustee, and receiver of the corporation, cooperative association, or  
254 person, who owns, controls, operates, or manages any qualifying power production facility or  
255 cogeneration facility.

256           (25) "Qualifying power production facility" means a facility that:

257           (a) produces electrical energy solely by the use, as a primary energy source, of biomass,  
258 waste, a renewable resource, a geothermal resource, or any combination of the preceding  
259 sources;

260           (b) has a power production capacity that, together with any other facilities located at  
261 the same site, is no greater than 80 megawatts; and

262           (c) is a qualifying small power production facility under federal law.

263           (26) "Railroad" includes every commercial, interurban, and other railway, other than a  
264 street railway, and each branch or extension of a railway, by any power operated, together with  
265 all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots, union depots,  
266 yards, grounds, terminals, terminal facilities, structures, and equipment, and all other real  
267 estate, fixtures, and personal property of every kind used in connection with a railway owned,  
268 controlled, operated, or managed for public service in the transportation of persons or property.

269           (27) "Railroad corporation" includes every corporation and person, their lessees,  
270 trustees, and receivers, owning, controlling, operating, or managing any railroad for public  
271 service within this state.

272           (28) (a) "Sewerage corporation" includes every corporation and person, their lessees,  
273 trustees, and receivers, owning, controlling, operating, or managing any sewerage system for  
274 public service within this state.

275           (b) "Sewerage corporation" does not include private sewerage companies engaged in

276 disposing of sewage only for their stockholders, or towns, cities, counties, conservancy  
277 districts, improvement districts, or other governmental units created or organized under any  
278 general or special law of this state.

279 (29) "Telegraph corporation" includes every corporation and person, their lessees,  
280 trustees, and receivers, owning, controlling, operating, or managing any telegraph line for  
281 public service within this state.

282 (30) "Telegraph line" includes all conduits, ducts, poles, wires, cables, instruments, and  
283 appliances, and all other real estate, fixtures, and personal property owned, controlled,  
284 operated, or managed in connection with or to facilitate communication by telegraph, whether  
285 that communication be had with or without the use of transmission wires.

286 (31) "Telephone cooperative" means a telephone corporation that:

287 (a) is a cooperative; and

288 (b) is organized for the purpose of providing telecommunications service to the  
289 telephone corporation's members and the public at cost plus a reasonable rate of return.

290 (32) (a) "Telephone corporation" means any corporation or person, and their lessees,  
291 trustee, receivers, or trustees appointed by any court, who owns, controls, operates, manages, or  
292 resells a public telecommunications service as defined in Section [54-8b-2](#).

293 (b) "Telephone corporation" does not mean a corporation, partnership, or firm  
294 providing:

295 (i) intrastate telephone service offered by a provider of cellular, personal  
296 communication systems (PCS), or other commercial mobile radio service as defined in 47  
297 U.S.C. Sec. 332 that has been issued a covering license by the Federal Communications  
298 Commission;

299 (ii) Internet service; or

300 (iii) resold intrastate toll service.

301 (33) "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments,  
302 and appliances, and all other real estate, fixtures, and personal property owned, controlled,  
303 operated, or managed in connection with or to facilitate communication by telephone whether  
304 that communication is had with or without the use of transmission wires.

305 (34) "Transportation of persons" includes every service in connection with or  
306 incidental to the safety, comfort, or convenience of the person transported, and the receipt,

307 carriage, and delivery of that person and that person's baggage.

308 (35) "Transportation of property" includes every service in connection with or  
309 incidental to the transportation of property, including in particular its receipt, delivery,  
310 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and  
311 hauling, and the transmission of credit by express companies.

312 (36) "Utility-owned vehicle charging infrastructure" means all facilities, equipment,  
313 and electrical systems owned and installed by a large-scale electric utility:

314 (a) on the customer's side or the large-scale electric utility's side of the electricity  
315 metering equipment; and

316 (b) to provide utility vehicle charging service.

317 (37) "Utility vehicle charging service" means the furnishing of electricity:

318 (a) to an electric vehicle battery charging station;

319 (b) by a public utility in whose service area the charging station is located; and

320 (c) pursuant to a duly established tariff for rates, charges, and conditions of service for  
321 the electricity.

322 [~~36~~] (38) "Water corporation" includes every corporation and person, their lessees,  
323 trustees, and receivers, owning, controlling, operating, or managing any water system for  
324 public service within this state. It does not include private irrigation companies engaged in  
325 distributing water only to their stockholders, or towns, cities, counties, water conservancy  
326 districts, improvement districts, or other governmental units created or organized under any  
327 general or special law of this state.

328 [~~37~~] (39) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,  
329 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,  
330 and personal property owned, controlled, operated, or managed in connection with or to  
331 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,  
332 appointment, apportionment, or measurement of water for power, fire protection, irrigation,  
333 reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

334 (b) "Water system" does not include private irrigation companies engaged in  
335 distributing water only to their stockholders.

336 [~~38~~] (40) "Wholesale electrical cooperative" includes every electrical corporation that  
337 is:

338 (a) in the business of the wholesale distribution of electricity it has purchased or  
339 generated to its members and the public; and

340 (b) required to distribute or allocate savings in excess of additions to reserves and  
341 surplus to members or patrons on the basis of patronage.

342 Section 2. Section **54-4-41** is enacted to read:

343 **54-4-41. Recovery of investment in utility-owned vehicle charging infrastructure.**

344 (1) As used in this section:

345 (a) "Charging infrastructure program" means the program described in Subsection (3).

346 (b) "Charging system investment" means the costs, expenses, and other investment in  
347 utility-owned vehicle charging infrastructure and the charging infrastructure program.

348 (2) (a) The commission may allow a large-scale electric utility to recover the utility's  
349 prudently made charging system investment.

350 (b) A large-scale utility's charging system investment is prudently made if the  
351 large-scale utility demonstrates in a formal adjudicative proceeding before the commission that  
352 the charging system investment can reasonably be anticipated to:

353 (i) result in one or more projects that are in the public's interest to reduce transportation  
354 sector emissions over time; and

355 (ii) provide the large-scale electric utility's customers with substantial benefits that may  
356 include:

357 (A) revenue from utility vehicle charging service that offsets the large-scale utility's  
358 costs and expenses;

359 (B) enabling the significant deployment of utility-owned charging infrastructure and  
360 increasing the availability of utility vehicle charging service; and

361 (C) any other measure that the commission determines promotes deployment of  
362 utility-owned vehicle charging infrastructure and the availability of utility vehicle charging  
363 service and creates significant benefits for customers in the long term.

364 (3) The commission shall authorize a large-scale electric utility to establish a program  
365 that:

366 (a) allows for an initial investment of up to \$50,000,000 for utility-owned vehicle  
367 charging infrastructure and utility vehicle charging service; and

368 (b) includes:

369 (i) terms and conditions for utility-owned vehicle charging infrastructure and utility  
370 vehicle charging service:

371 (A) that create a new customer class for electric vehicle battery charging customers;  
372 and

373 (B) with a transitional rate structure expected to allow the large-scale electric utility to  
374 recover, through service charges to electric vehicle battery charging customers, the large-scale  
375 electric utility's full cost of service for utility-owned vehicle charging infrastructure and utility  
376 vehicle charging service over a reasonable time frame determined by the commission; and

377 (ii) a transportation plan that:

378 (A) promotes the deployment of utility-owned vehicle charging infrastructure and the  
379 availability of utility vehicle charging service, including an evaluation of investments in the  
380 areas of the authority jurisdictional land, as defined in Section 11-58-102, and the point of the  
381 mountain state land, as defined in Section 11-59-102; and

382 (B) considers and does not unnecessarily limit competition for electric vehicle battery  
383 charging services while promoting low cost services for electric vehicle battery charging  
384 customers.

385 (4) Before submitting a proposed charging infrastructure program to the commission  
386 for commission approval under Subsection (3), a large-scale electric utility shall seek and  
387 consider input from:

388 (a) the Division of Public Utilities, established in Section 54-4a-1;

389 (b) the Office of Consumer Services, created in Section 54-10a-201;

390 (c) the Division of Air Quality, created in Section 19-1-105;

391 (d) the Department of Transportation, created in Section 72-1-201;

392 (e) the Governor's Office of Economic Development, created in Section 63N-1-201;

393 (f) the Office of Energy Development, created in Section 63M-4-401; and

394 (g) any other person who files a request for notice with the commission.

395 (5) (a) After the commission's approval of a charging infrastructure program, a  
396 large-scale electric utility may submit to the commission an amendment to the charging  
397 infrastructure program for the commission's approval.

398 (b) An amendment proposed by a large-scale electric utility to a charging infrastructure  
399 program may include adding an investment in the charging infrastructure program beyond the

400 initial \$50,000,000 under Subsection (3).

401 (c) The commission may, consistent with Subsection (3), approve an amendment  
402 proposed under this Subsection (5) if the large-scale electric utility demonstrates that the  
403 amendment:

404 (i) is prudent;

405 (ii) will provide net benefits to customers; and

406 (iii) is otherwise consistent with the requirements of Subsection (3).

407 (6) The commission shall authorize recovery of a large-scale electric utility's charging  
408 system investment through a balancing account or other ratemaking treatment that reflects:

409 (a) costs, expenses, and investment for and revenue from the utility-owned vehicle  
410 charging infrastructure and utility vehicle charging service; and

411 (b) a carrying charge that includes the large-scale electric utility's pre-tax average  
412 weighted cost of capital approved by the commission in the large-scale electric utility's most  
413 recent general rate proceeding.