

INDEPENDENT ENERGY PRODUCER AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Francis D. Gibson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to public utilities.

Highlighted Provisions:

This bill:

- ▶ amends definitions; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

54-2-1, as last amended by Laws of Utah 2014, Chapters 20, 381, and 388

54-15-108, as last amended by Laws of Utah 2014, Chapter 381

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

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

54-2-1. Definitions.

As used in this title:

(1) "Avoided costs" means the incremental costs to an electrical corporation of electric



28 energy or capacity or both that, due to the purchase of electric energy or capacity or both from
29 small power production or cogeneration facilities, the electrical corporation would not have to
30 generate itself or purchase from another electrical corporation.

31 (2) "Cogeneration facility":

32 (a) means a facility that produces:

33 (i) electric energy; and

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

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

37 (3) "Commission" means the Public Service Commission of Utah.

38 (4) "Commissioner" means a member of the commission.

39 (5) (a) "Corporation" includes an association and a joint stock company having any
40 powers or privileges not possessed by individuals or partnerships.

41 (b) "Corporation" does not include towns, cities, counties, conservancy districts,
42 improvement districts, or other governmental units created or organized under any general or
43 special law of this state.

44 (6) "Distribution electrical cooperative" includes an electrical corporation that:

45 (a) is a cooperative;

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

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

50 (i) members; or

51 (ii) patrons.

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

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

57 (i) an independent energy producer;

58 (ii) where electricity is generated on or distributed by the producer solely for the

59 producer's own use, or the use of the producer's tenants, or the use of members of an
60 association of unit owners formed under Title 57, Chapter 8, Condominium Ownership Act,
61 and not for sale to the public generally;

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

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

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

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

68 (c) "Electrical corporation" does not include an entity that sells electric vehicle battery
69 charging services, unless the entity conducts another activity in the state that subjects the entity
70 to the jurisdiction and regulation of the commission as an electrical corporation.

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

76 (9) "Eligible customer" means a person who:

77 (a) on December 31, 2013:

78 (i) was a customer of a public utility that, on December 31, 2013, had more than
79 200,000 retail customers in this state; and

80 (ii) owned an electric plant that is an electric generation plant that, on December 31,
81 2013, had a generation name plate capacity of greater than 150 megawatts; and

82 (b) produces electricity:

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

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

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

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

87 (a) of an eligible customer; and

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

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

90 (ii) performed on real property that is:

91 (A) within a 25-mile radius of the electric plant described in Subsection (9)(a)(ii); and

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

93 (11) "Gas corporation" includes every corporation and person, their lessees, trustees,
94 and receivers, owning, controlling, operating, or managing any gas plant for public service
95 within this state or for the selling or furnishing of natural gas to any consumer or consumers
96 within the state for domestic, commercial, or industrial use, except in the situation that:

97 (a) gas is made or produced on, and distributed by the maker or producer through,
98 private property:

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

101 (ii) not for sale to others;

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

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

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

109 (13) "Heat corporation" includes every corporation and person, their lessees, trustees,
110 and receivers, owning, controlling, operating, or managing any heating plant for public service
111 within this state.

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

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

117 (15) "Independent energy producer" means every electrical corporation, person,
118 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,
119 control, or manage an independent power production or cogeneration facility.

120 (16) "Independent power production facility" means a facility that:

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

124 (b) is a qualifying power production facility.

125 (17) "Nonutility energy supplier" means a person that:

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

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

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

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

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

141 (19) (a) "Public utility" includes every railroad corporation, gas corporation, electrical
142 corporation, distribution electrical cooperative, wholesale electrical cooperative, telephone
143 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
144 and independent energy producer not described in Subsection (19)(d), where the service is
145 performed for, or the commodity delivered to, the public generally, or in the case of a gas
146 corporation or electrical corporation where the gas or electricity is sold or furnished to any
147 member or consumers within the state for domestic, commercial, or industrial use.

148 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone
149 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
150 or independent energy producer not described in Subsection (19)(d), performs a service for or
151 delivers a commodity to the public, it is considered to be a public utility, subject to the

152 jurisdiction and regulation of the commission and this title.

153 (ii) If a gas corporation, independent energy producer not described in Subsection
154 (19)(d), or electrical corporation sells or furnishes gas or electricity to any member or
155 consumers within the state, for domestic, commercial, or industrial use, for which any
156 compensation or payment is received, it is considered to be a public utility, subject to the
157 jurisdiction and regulation of the commission and this title.

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

162 (d) An independent energy producer is exempt from the jurisdiction and regulations of
163 the commission with respect to an independent power production facility if it meets the
164 requirements of Subsection (19)(d)(i), (ii), (iii), or (iv), or any combination of these:

165 (i) the commodity or service is produced or delivered, or both, by an independent
166 energy producer solely for a use described in Subsections (7)(b)(ii) through (iv) or for the use
167 of state-owned facilities;

168 (ii) the commodity or service is sold by an independent energy producer solely to an
169 electrical corporation or other wholesale purchaser;

170 (iii) (A) the commodity or service produced or delivered by the independent energy
171 producer is delivered to an entity that controls, is controlled by, or affiliated with the
172 independent energy producer or to a user located on real property managed or controlled by the
173 independent energy producer; and

174 (B) the real property on which the service or commodity is used is contiguous to real
175 property that is owned or controlled by the independent energy producer or is separated only by
176 a public road or an easement for a public road; or

177 (iv) the independent energy producer:

178 [~~(A) supplies energy for direct consumption by a customer that is:~~]

179 [~~(f) a United States governmental entity, including an entity of the United States
180 military, or a county, municipality, city, town, other political subdivision, local district, special
181 service district, state institution of higher education, school district, charter school, or any
182 entity within the state system of public education; or]~~]

183 ~~[(H) an entity qualifying as a charitable organization under 26 U.S.C. Sec. 501(c)(3)~~
184 ~~operated for religious, charitable, or educational purposes that is exempt from federal income~~
185 ~~tax and able to demonstrate its tax-exempt status;]~~

186 ~~[(B)]~~ (A) supplies energy to ~~[the]~~ a customer through use of a customer generation
187 system, as defined in Section 54-15-102, for use on the real property where the customer
188 generation system is located, except that for purposes of this Subsection (19)(d)(iv)(A),
189 participation in a net metering program, as defined in Section 54-15-102, qualifies as use on
190 the real property where the customer generation system is located;

191 ~~[(C)]~~ (B) supplies energy using a customer generation system designed to supply the
192 lesser of:

193 (I) no more than 90% of the average annual consumption of electricity by the customer
194 at that site, based on an annualized billing period; or

195 (II) the maximum size allowable under net metering provisions, defined in Section
196 54-15-102;

197 ~~[(D)]~~ (C) notifies the customer before installing the customer generation system of:

198 (I) all costs the customer is required to pay for the customer generation system,
199 including any interconnection costs; and

200 (II) the potential for future changes in amounts paid by the customer for energy
201 received from the public utility and the possibility of changes to the customer fees or charges to
202 the customer associated with net metering and generation; or

203 ~~[(E)]~~ (D) enters into and performs in accordance with an interconnection agreement
204 with a public utility providing retail electric service where the real property on which the
205 customer generation system is located, with the rates, terms, and conditions of the retail service
206 and interconnection agreement subject to approval by the governing authority of the public
207 utility, as defined in Subsection 54-15-102(8)~~;~~and.

208 ~~[(F) installs the relevant customer generation system by December 31, 2021.]~~

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

212 (f) (i) "Public utility" does not include any person that is otherwise considered a public
213 utility under this Subsection (19) solely because of that person's ownership of an interest in an

214 electric plant, cogeneration facility, or small power production facility in this state if all of the
215 following conditions are met:

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

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

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

221 (III) a combination of Subsections (19)(f)(i)(A)(I) and (II);

222 (B) the lessor of the ownership interest identified in Subsection (19)(f)(i)(A) is:

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

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

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

228 (ii) Any person that is exempt from classification as a public utility under Subsection
229 (19)(f)(i) shall continue to be so exempt from classification following termination of the
230 lessee's right to possession or use of the electric plant for so long as the former lessor does not
231 operate the electric plant or sell electricity from the electric plant. If the former lessor operates
232 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a
233 period of 90 days following termination, or for a longer period that is ordered by the
234 commission. This period may not exceed one year. A change in rates that would otherwise
235 require commission approval may not be effective during the 90-day or extended period
236 without commission approval.

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

244 (h) (i) The distribution or transportation of natural gas for use as a motor vehicle fuel

245 does not cause the distributor or transporter to be a "public utility," unless the commission,
246 after notice and a public hearing, determines by rule that it is in the public interest to regulate
247 the distributors or transporters, but the retail sale alone of compressed natural gas as a motor
248 vehicle fuel may not cause the seller to be a "public utility."

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

252 (i) "Public utility" does not include:

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

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

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

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

259 (j) "Public utility" does not include an entity that sells electric vehicle battery charging
260 services, unless the entity conducts another activity in the state that subjects the entity to the
261 jurisdiction and regulation of the commission as a public utility.

262 (20) "Purchasing utility" means any electrical corporation that is required to purchase
263 electricity from small power production or cogeneration facilities pursuant to the Public Utility
264 Regulatory Policies Act, 16 U.S.C. [~~Section~~] Sec. 824a-3.

265 (21) "Qualifying power producer" means a corporation, cooperative association, or
266 person, or the lessee, trustee, and receiver of the corporation, cooperative association, or
267 person, who owns, controls, operates, or manages any qualifying power production facility or
268 cogeneration facility.

269 (22) "Qualifying power production facility" means a facility that:

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

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

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

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

282 (24) "Railroad corporation" includes every corporation and person, their lessees,
283 trustees, and receivers, owning, controlling, operating, or managing any railroad for public
284 service within this state.

285 (25) (a) "Sewerage corporation" includes every corporation and person, their lessees,
286 trustees, and receivers, owning, controlling, operating, or managing any sewerage system for
287 public service within this state.

288 (b) "Sewerage corporation" does not include private sewerage companies engaged in
289 disposing of sewage only for their stockholders, or towns, cities, counties, conservancy
290 districts, improvement districts, or other governmental units created or organized under any
291 general or special law of this state.

292 (26) "Telegraph corporation" includes every corporation and person, their lessees,
293 trustees, and receivers, owning, controlling, operating, or managing any telegraph line for
294 public service within this state.

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

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

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

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

307 Commission;

308 (ii) Internet service; or

309 (iii) resold intrastate toll service.

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

314 (30) "Transportation of persons" includes every service in connection with or
315 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
316 carriage, and delivery of that person and that person's baggage.

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

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

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

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

335 (34) "Wholesale electrical cooperative" includes every electrical corporation that is:

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

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

340 Section 2. Section **54-15-108** is amended to read:

341 **54-15-108. Damages and fines for connecting a customer generation system to**
342 **more than one customer.**

343 If an independent energy producer defined in Section **54-2-1** that is supplying energy to
344 a customer as described in Subsection **54-2-1(19)(d)(iv)** violates the limitations set forth in
345 Subsection **54-2-1(19)(d)(iv)**~~(B)~~(A), the commission may:

346 (1) award damages to an electrical corporation for actual and consequential damages to
347 the electrical corporation; and

348 (2) assess a fine against the independent energy producer or person responsible for the
349 violation.

Legislative Review Note
as of 3-9-15 7:26 AM

Office of Legislative Research and General Counsel