

**SUSTAINABLE TRANSPORTATION AND
ENERGY PLAN ACT**

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill amends provisions related to a public utility providing electrical service.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Public Service Commission to authorize a large-scale electric utility to implement tariffs to provide funding for a sustainable transportation and energy pilot program;
- ▶ allows an electrical corporation to recover 100% of the electrical corporation's prudently incurred costs in an energy balancing account;
- ▶ allows a large-scale electric utility to establish innovative electric efficiency technology programs;
- ▶ allows a large-scale electric utility to provide an incentive for:
 - a generation facility to curtail electricity generation to improve air quality;
 - creation of an electric vehicle infrastructure;
 - economic development; and
 - a solar power program; and
- ▶ provides rulemaking authority for the Public Service Commission.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **54-2-1**, as last amended by Laws of Utah 2014, Chapters 20, 381, and 388

34 **54-7-12.8**, as last amended by Laws of Utah 2009, Chapter 237

35 **54-7-13.5**, as enacted by Laws of Utah 2009, Chapter 319

36 **54-17-801**, as last amended by Laws of Utah 2014, Chapter 34

37 **63I-1-254**, as last amended by Laws of Utah 2013, Chapter 311

38 ENACTS:

39 **54-17-806**, Utah Code Annotated 1953

40 **54-20-101**, Utah Code Annotated 1953

41 **54-20-102**, Utah Code Annotated 1953

42 **54-20-103**, Utah Code Annotated 1953

43 **54-20-104**, Utah Code Annotated 1953

44 **54-20-105**, Utah Code Annotated 1953

45 **54-20-106**, Utah Code Annotated 1953

46 **54-20-107**, Utah Code Annotated 1953

47 **54-20-108**, Utah Code Annotated 1953



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

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

51 **54-2-1. Definitions.**

52 As used in this title:

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

57 (2) "Clean coal technology" means a technology that may be researched, developed, or
58 used for reducing emissions or the rate of emissions from a thermal electric generation plant.

59 ~~[(2)]~~ (3) "Cogeneration facility":

60 (a) means a facility that produces:

61 (i) electric energy; and

62 (ii) steam or forms of useful energy, including heat, that are used for industrial,

63 commercial, heating, or cooling purposes; and

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

65 ~~[(3)]~~ (4) "Commission" means the Public Service Commission ~~[of Utah]~~.

66 ~~[(4)]~~ (5) "Commissioner" means a member of the commission.

67 ~~[(5)]~~ (6) (a) "Corporation" includes an association and a joint stock company having
68 any powers or privileges not possessed by individuals or partnerships.

69 (b) "Corporation" does not include towns, cities, counties, conservancy districts,

70 improvement districts, or other governmental units created or organized under any general or

71 special law of this state.

72 ~~[(6)]~~ (7) "Distribution electrical cooperative" includes an electrical corporation that:

73 (a) is a cooperative;

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

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

78 (i) members; or

79 (ii) patrons.

80 ~~[(7)]~~ (8) (a) "Electrical corporation" includes every corporation, cooperative

81 association, and person, their lessees, trustees, and receivers, owning, controlling, operating, or

82 managing any electric plant, or in any way furnishing electric power for public service or to its

83 consumers or members for domestic, commercial, or industrial use, within this state.

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

85 (i) an independent energy producer;

86 (ii) ~~[where electricity is generated on or distributed by the producer solely for the~~

87 ~~producer's own use, or the use of the producer's]~~ a person that generates electricity solely for
88 the person's own use, or the use, at no charge, by:

89 (A) the person's tenants[;]; or ~~[the use of]~~

- 90 (B) members of an association of unit owners formed under Title 57, Chapter 8,
- 91 Condominium Ownership Act~~[-, and not for sale to the public generally];~~
- 92 (iii) an eligible customer who provides electricity for the eligible customer's own use or
- 93 the use of the eligible customer's tenant or affiliate; ~~[or]~~
- 94 (iv) a nonutility energy supplier who sells or provides electricity to:
- 95 (A) an eligible customer who has transferred the eligible customer's service to the
- 96 nonutility energy supplier in accordance with Section 54-3-32; or
- 97 (B) the eligible customer's tenant or affiliate~~[-(c) "Electrical corporation" does not~~
- 98 ~~include]; or~~
- 99 (v) an entity that sells electric vehicle battery charging services, unless the entity
- 100 conducts another activity in the state that subjects the entity to the jurisdiction and regulation of
- 101 the commission as an electrical corporation.

102 ~~[(8)]~~ (9) "Electric plant" includes all real estate, fixtures, and personal property owned,

103 controlled, operated, or managed in connection with or to facilitate the production, generation,

104 transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits,

105 ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying

106 conductors used or to be used for the transmission of electricity for light, heat, or power.

107 ~~[(9)]~~ (10) "Eligible customer" means a person who:

- 108 (a) on December 31, 2013:
- 109 (i) was a customer of a public utility that, on December 31, 2013, had more than
- 110 200,000 retail customers in this state; and
- 111 (ii) owned an electric plant that is an electric generation plant that, on December 31,
- 112 2013, had a generation name plate capacity of greater than 150 megawatts; and
- 113 (b) produces electricity:
- 114 (i) from a qualifying power production facility for sale to a public utility in this state;
- 115 (ii) primarily for the eligible customer's own use; or
- 116 (iii) for the use of the eligible customer's tenant or affiliate.

117 ~~[(10)]~~ (11) "Eligible customer's tenant or affiliate" means one or more tenants or

118 affiliates:

- 119 (a) of an eligible customer; and
- 120 (b) who are primarily engaged in an activity:

121 (i) related to the eligible customer's core mining or industrial businesses; and
122 (ii) performed on real property that is:
123 (A) within a 25-mile radius of the electric plant described in Subsection [~~(9)~~]
124 (10)(a)(ii); and
125 (B) owned by, controlled by, or under common control with, the eligible customer.
126 [~~(11)~~] (12) "Gas corporation" includes every corporation and person, their lessees,
127 trustees, and receivers, owning, controlling, operating, or managing any gas plant for public
128 service within this state or for the selling or furnishing of natural gas to any consumer or
129 consumers within the state for domestic, commercial, or industrial use, except in the situation
130 that:
131 (a) gas is made or produced on, and distributed by the maker or producer through,
132 private property:
133 (i) solely for the maker's or producer's own use or the use of the maker's or producer's
134 tenants; and
135 (ii) not for sale to others;
136 (b) gas is compressed on private property solely for the owner's own use or the use of
137 the owner's employees as a motor vehicle fuel; or
138 (c) gas is compressed by a retailer of motor vehicle fuel on the retailer's property solely
139 for sale as a motor vehicle fuel.
140 [~~(12)~~] (13) "Gas plant" includes all real estate, fixtures, and personal property owned,
141 controlled, operated, or managed in connection with or to facilitate the production, generation,
142 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.
143 [~~(13)~~] (14) "Heat corporation" includes every corporation and person, their lessees,
144 trustees, and receivers, owning, controlling, operating, or managing any heating plant for public
145 service within this state.
146 [~~(14)~~] (15) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances,
147 and personal property controlled, operated, or managed in connection with or to facilitate the
148 production, generation, transmission, delivery, or furnishing of artificial heat.
149 (b) "Heating plant" does not include either small power production facilities or
150 cogeneration facilities.
151 [~~(15)~~] (16) "Independent energy producer" means every electrical corporation, person,

152 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,
153 control, or manage an independent power production or cogeneration facility.

154 ~~[(16)]~~ (17) "Independent power production facility" means a facility that:

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

158 (b) is a qualifying power production facility.

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

161 ~~[(17)]~~ (19) "Nonutility energy supplier" means a person that:

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

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

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

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

171 ~~[(18)]~~ (20) "Private telecommunications system" includes all facilities for the
172 transmission of signs, signals, writing, images, sounds, messages, data, or other information of
173 any nature by wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio
174 facilities, that are owned, controlled, operated, or managed by a corporation or person,
175 including their lessees, trustees, receivers, or trustees appointed by any court, for the use of that
176 corporation or person and not for the shared use with or resale to any other corporation or
177 person on a regular basis.

178 ~~[(19)]~~ (21) (a) "Public utility" includes every railroad corporation, gas corporation,
179 electrical corporation, distribution electrical cooperative, wholesale electrical cooperative,
180 telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat
181 corporation, and independent energy producer not described in Subsection ~~[(19)]~~ (21)(d),
182 where the service is performed for, or the commodity delivered to, the public generally, or in

183 the case of a gas corporation or electrical corporation where the gas or electricity is sold or
184 furnished to any member or consumers within the state for domestic, commercial, or industrial
185 use.

186 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone
187 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
188 or independent energy producer not described in Subsection [~~(19)~~] (21)(d), performs a service
189 for or delivers a commodity to the public, it is considered to be a public utility, subject to the
190 jurisdiction and regulation of the commission and this title.

191 (ii) If a gas corporation, independent energy producer not described in Subsection
192 [~~(19)~~] (21)(d), or electrical corporation sells or furnishes gas or electricity to any member or
193 consumers within the state, for domestic, commercial, or industrial use, for which any
194 compensation or payment is received, it is considered to be a public utility, subject to the
195 jurisdiction and regulation of the commission and this title.

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

200 (d) An independent energy producer is exempt from the jurisdiction and regulations of
201 the commission with respect to an independent power production facility if it meets the
202 requirements of Subsection [~~(19)~~] (21)(d)(i), (ii), (iii), or (iv), or any combination of these:

203 (i) the commodity or service is produced or delivered, or both, by an independent
204 energy producer solely for a use described in Subsections [~~(7)~~] (8)(b)(ii) through (iv) or for the
205 use of state-owned facilities;

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

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

212 (B) the real property on which the service or commodity is used is contiguous to real
213 property that is owned or controlled by the independent energy producer or is separated only by

214 a public road or an easement for a public road; or
215 (iv) the independent energy producer:
216 (A) supplies energy for direct consumption by a customer that is:
217 (I) a United States governmental entity, including an entity of the United States
218 military, or a county, municipality, city, town, other political subdivision, local district, special
219 service district, state institution of higher education, school district, charter school, or any
220 entity within the state system of public education; or
221 (II) an entity qualifying as a charitable organization under 26 U.S.C. Sec. 501(c)(3)
222 operated for religious, charitable, or educational purposes that is exempt from federal income
223 tax and able to demonstrate its tax-exempt status;
224 (B) supplies energy to the customer through use of a customer generation system, as
225 defined in Section 54-15-102, for use on the real property where the customer generation
226 system is located;
227 (C) supplies energy using a customer generation system designed to supply the lesser
228 of:
229 (I) no more than 90% of the average annual consumption of electricity by the customer
230 at that site, based on an annualized billing period; or
231 (II) the maximum size allowable under net metering provisions, defined in Section
232 54-15-102;
233 (D) notifies the customer before installing the customer generation system of:
234 (I) all costs the customer is required to pay for the customer generation system,
235 including any interconnection costs; and
236 (II) the potential for future changes in amounts paid by the customer for energy
237 received from the public utility and the possibility of changes to the customer fees or charges to
238 the customer associated with net metering and generation;
239 (E) enters into and performs in accordance with an interconnection agreement with a
240 public utility providing retail electric service where the real property on which the customer
241 generation system is located, with the rates, terms, and conditions of the retail service and
242 interconnection agreement subject to approval by the governing authority of the public utility,
243 as defined in Subsection 54-15-102(8); and
244 (F) installs the relevant customer generation system by December 31, 2021.

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

248 (f) (i) "Public utility" does not include any person that is otherwise considered a public
249 utility under this Subsection [~~(19)~~] (21) solely because of that person's ownership of an interest
250 in an electric plant, cogeneration facility, or small power production facility in this state if all of
251 the following conditions are met:

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

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

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

257 (III) a combination of Subsections [~~(19)~~] (21)(f)(i)(A)(I) and (II);

258 (B) the lessor of the ownership interest identified in Subsection [~~(19)~~] (21)(f)(i)(A) is:

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

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

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

264 (ii) Any person that is exempt from classification as a public utility under Subsection
265 [~~(19)~~] (21)(f)(i) shall continue to be so exempt from classification following termination of the
266 lessee's right to possession or use of the electric plant for so long as the former lessor does not
267 operate the electric plant or sell electricity from the electric plant. If the former lessor operates
268 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a
269 period of 90 days following termination, or for a longer period that is ordered by the
270 commission. This period may not exceed one year. A change in rates that would otherwise
271 require commission approval may not be effective during the 90-day or extended period
272 without commission approval.

273 (g) "Public utility" does not include any person that provides financing for, but has no
274 ownership interest in an electric plant, small power production facility, or cogeneration facility.
275 In the event of a foreclosure in which an ownership interest in an electric plant, small power

276 production facility, or cogeneration facility is transferred to a third-party financier of an electric
277 plant, small power production facility, or cogeneration facility, then that third-party financier is
278 exempt from classification as a public utility for 90 days following the foreclosure, or for a
279 longer period that is ordered by the commission. This period may not exceed one year.

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

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

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

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

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

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

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

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

298 [~~(20)~~] (22) "Purchasing utility" means any electrical corporation that is required to
299 purchase electricity from small power production or cogeneration facilities pursuant to the
300 Public Utility Regulatory Policies Act, 16 U.S.C. Section 824a-3.

301 [~~(21)~~] (23) "Qualifying power producer" means a corporation, cooperative association,
302 or person, or the lessee, trustee, and receiver of the corporation, cooperative association, or
303 person, who owns, controls, operates, or manages any qualifying power production facility or
304 cogeneration facility.

305 [~~(22)~~] (24) "Qualifying power production facility" means a facility that:

306 (a) produces electrical energy solely by the use, as a primary energy source, of biomass,

307 waste, a renewable resource, a geothermal resource, or any combination of the preceding
308 sources;

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

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

312 [~~(23)~~] (25) "Railroad" includes every commercial, interurban, and other railway, other
313 than a street railway, and each branch or extension of a railway, by any power operated,
314 together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots,
315 union depots, yards, grounds, terminals, terminal facilities, structures, and equipment, and all
316 other real estate, fixtures, and personal property of every kind used in connection with a
317 railway owned, controlled, operated, or managed for public service in the transportation of
318 persons or property.

319 [~~(24)~~] (26) "Railroad corporation" includes every corporation and person, their lessees,
320 trustees, and receivers, owning, controlling, operating, or managing any railroad for public
321 service within this state.

322 [~~(25)~~] (27) (a) "Sewerage corporation" includes every corporation and person, their
323 lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage
324 system for public service within this state.

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

329 [~~(26)~~] (28) "Telegraph corporation" includes every corporation and person, their
330 lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line
331 for public service within this state.

332 [~~(27)~~] (29) "Telegraph line" includes all conduits, ducts, poles, wires, cables,
333 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
334 controlled, operated, or managed in connection with or to facilitate communication by
335 telegraph, whether that communication be had with or without the use of transmission wires.

336 [~~(28)~~] (30) (a) "Telephone corporation" means any corporation or person, and their
337 lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates,

338 manages, or resells a public telecommunications service as defined in Section [54-8b-2](#).

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

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

345 (ii) Internet service; or

346 (iii) resold intrastate toll service.

347 ~~[(29)]~~ (31) "Telephone line" includes all conduits, ducts, poles, wires, cables,
348 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
349 controlled, operated, or managed in connection with or to facilitate communication by
350 telephone whether that communication is had with or without the use of transmission wires.

351 ~~[(30)]~~ (32) "Transportation of persons" includes every service in connection with or
352 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
353 carriage, and delivery of that person and that person's baggage.

354 ~~[(31)]~~ (33) "Transportation of property" includes every service in connection with or
355 incidental to the transportation of property, including in particular its receipt, delivery,
356 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and
357 hauling, and the transmission of credit by express companies.

358 ~~[(32)]~~ (34) "Water corporation" includes every corporation and person, their lessees,
359 trustees, and receivers, owning, controlling, operating, or managing any water system for
360 public service within this state. It does not include private irrigation companies engaged in
361 distributing water only to their stockholders, or towns, cities, counties, water conservancy
362 districts, improvement districts, or other governmental units created or organized under any
363 general or special law of this state.

364 ~~[(33)]~~ (35) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
365 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,
366 and personal property owned, controlled, operated, or managed in connection with or to
367 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,
368 appointment, apportionment, or measurement of water for power, fire protection, irrigation,

369 reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

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

372 [~~(34)~~] (36) "Wholesale electrical cooperative" includes every electrical corporation that
373 is:

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

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

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

379 **54-7-12.8. Electric energy efficiency, sustainable transportation and energy, and**
380 **conservation tariff.**

381 (1) As used in this section [~~,"demand"]:~~

382 (a) "Demand side management" means [~~activities or programs that promote~~] an activity
383 or program that promotes electric energy efficiency [or], conservation, renewable energy, or
384 more efficient management of electric energy loads.

385 (b) "Pilot program period" means a period of 10 years, beginning on January 1, 2017,
386 during which the sustainable transportation and energy plan is effective.

387 (c) "Sustainable transportation and energy plan" means the same as that term is defined
388 in Section 54-20-102.

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

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

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

397 (i) capitalize the annual costs incurred for demand side management provided in
398 Subsection (2)(a);

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

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

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

405 (3) The commission shall, before January 1, 2017, authorize a large-scale electric
406 utility to implement:

407 (a) the sustainable transportation and energy plan; and

408 (b) a minimum 4% combined line item charge on the large-scale electric utility's
409 customers' bills to recover the cost to the large-scale electric utility of:

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

411 (ii) the sustainable transportation and energy plan;

412 (iii) accelerated thermal generation asset depreciation and environmental compliance
413 described in Subsection (6)(d); and

414 (iv) before January 1, 2017, the Utah solar incentive program balance.

415 (4) The commission shall end the Utah solar incentive program and surcharge tariff on
416 December 31, 2016.

417 (5) If the commission approves an energy supply contract for a contract rate for a
418 large-scale electric utility's customer, the commission:

419 (a) may allow the large-scale electric utility to exempt the customer from paying for a
420 demand side management program; and

421 (b) may not allow the large-scale electric utility to exempt the customer from paying
422 for the sustainable transportation and energy plan.

423 (6) (a) During the pilot program period, a large-scale electric utility that capitalizes
424 demand side management costs under Subsection (2)(b) shall:

425 (i) recognize the difference between the annual revenues the large-scale electric utility
426 bills for demand side management and the annual amount of the large-scale electric utility's
427 demand side management cost amortization expense as additional expense; and

428 (ii) establish and fund, via the additional expense described in Subsection (6)(a)(i), a
429 regulatory liability that the large-scale electric utility shall use to:

430 (A) depreciate thermal generation plant; or

431 (B) pay for customers' share of the large-scale utility's cost for environmental
432 compliance related to thermal generation plant.

433 (b) The commission shall allow the large-scale electric utility to apply a carrying
434 charge to the regulatory liability described in Subsection (6)(a)(ii) in an amount equal to the
435 large-scale electric utility's pretax average weighted cost of capital by the commission in its
436 most recent general rate proceeding.

437 (c) A large-scale electric utility shall apply to the commission for approval to use funds
438 from the regulatory liability described in Subsection (6)(a)(ii) for the purposes described in
439 Subsection (6)(a)(ii).

440 (d) The commission shall apply the carrying charge described in Subsection (2)(b)(iii)
441 to funds that a large-scale electric utility uses under Subsection (6)(c) until an impact on the
442 large-scale electric utility's customer rate base associated with the thermal generation plant
443 depreciation or environmental compliance cost for which the funds are used is reflected in the
444 large-scale electric utility's customers' rates.

445 (7) (a) During the pilot program period, of the funds a large-scale electric utility
446 collects via the line item charge described in Subsection (3)(b), the large-scale electric utility
447 shall allocate:

448 (i) \$10 million annually to the sustainable transportation and energy plan; and
449 (ii) the funds not allocated to the sustainable transportation and energy plan to demand
450 side management.

451 (b) The commission shall authorize a large-scale electric utility to spend, on the
452 sustainable transportation and energy plan, an annual average of:

453 (i) \$0.5 million for the air quality improvement program described in Section
454 [54-20-103](#);

455 (ii) \$4.0 million for the electric vehicle incentive program described in Section
456 [54-20-104](#);

457 (iii) \$0.5 million for the clean coal technology program described in Section
458 [54-20-105](#);

459 (iv) \$1.8 million to recoup customer incentives paid through the Utah solar incentive
460 program as of December 31, 2016;

461 (v) \$1.0 million for establishing retail electric rates that advance economic

462 development as described in Section 54-20-106;

463 (vi) \$1.7 million for the innovative technology and solar generation program described
464 in Section 54-20-107; and

465 (vii) \$0.5 million for the commercial line extension allowance described in Section
466 54-17a-108.

467 (8) (a) During the pilot program period, a large-scale electric utility shall establish a
468 balancing account that includes:

469 (i) funds allocated under Subsection (7)(a)(i);

470 (ii) the program expenditures described in Subsection (7)(b); and

471 (iii) the carrying charge described in Subsection (8)(b).

472 (b) The commission shall allow a large-scale electric utility to apply a carrying charge
473 to the balancing account described in Subsection (8)(a) in an amount determined by the
474 commission.

475 (c) At the end of the pilot program period, the large-scale electric utility shall use any
476 funds remaining in the balancing account described in Subsection (8)(a) to offset demand side
477 management deferred costs.

478 ~~[(3)]~~ (9) Each electrical corporation proposing a tariff under this section shall, before
479 submitting the tariff to the commission for approval, seek ~~[and receive]~~ input from:

480 (a) the Division of Public Utilities;

481 (b) the Office of Consumer Services ~~[created in Section 54-10a-201]~~; and

482 ~~[(c) other interested parties.]~~

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

484 ~~[(4)]~~ (10) Before approving a tariff under this section, the commission shall hold a
485 hearing if:

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

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

489 ~~[(5)]~~ (11) The commission may approve a demand side management tariff under this
490 section:

491 (a) either with or without a provision allowing an end-use customer to receive a credit
492 against the charges imposed under the tariff for electric energy efficiency measures that:

493 [(a)] (i) the customer implements or has implemented at the customer's expense; and
 494 [(b)] (ii) qualify for the credit under criteria established by the [~~Utah Public Service~~
 495 ~~Commission~~] commission.

496 [(6)] (12) In approving a tariff under this [~~section~~] Subsection (12), the commission
 497 may impose whatever conditions or limits it considers appropriate, including a maximum
 498 annual cost.

499 [(7)] (13) Unless otherwise ordered by the commission, each tariff under this section
 500 approved by the commission shall take effect no sooner than 30 days after the electrical
 501 corporation files the tariff with the commission.

502 Section 3. Section **54-7-13.5** is amended to read:

503 **54-7-13.5. Energy balancing accounts.**

504 (1) As used in this section:

505 (a) "Base rates" [~~is~~] means the same as that term is as defined in Subsection
 506 54-7-12(1).

507 (b) "Energy balancing account" means an electrical corporation account for some or all
 508 components of the electrical corporation's incurred actual power costs, including:

509 (i) (A) fuel;

510 (B) purchased power; and

511 (C) wheeling expenses; and

512 (ii) the sum of the power costs described in Subsection (1)(b)(i) less wholesale
 513 revenues.

514 (c) "Gas balancing account" means a gas corporation account to recover on a
 515 dollar-for-dollar basis, purchased gas costs, and gas cost-related expenses.

516 (2) (a) The commission may authorize an electrical corporation to establish an energy
 517 balancing account.

518 (b) An energy balancing account shall become effective upon a commission finding
 519 that the energy balancing account is:

520 (i) in the public interest;

521 (ii) for prudently-incurred costs; and

522 (iii) implemented at the conclusion of a general rate case.

523 (c) An electrical corporation:

524 (i) may, with approval from the commission, recover costs under this section through:

525 (A) base rates;

526 (B) contract rates;

527 (C) surcredits; or

528 (D) surcharges; and

529 (ii) shall file a reconciliation of the energy balancing account with the commission at
530 least annually with actual costs and revenues incurred by the electrical corporation.

531 (d) Beginning January 1, 2017, the commission shall allow an electrical corporation to
532 recover 100% of the electrical corporation's prudently incurred costs as determined and
533 approved by the commission under this section.

534 [~~(d)~~] (e) An energy balancing account may not alter:

535 (i) the standard for cost recovery; or

536 (ii) the electrical corporation's burden of proof.

537 [~~(e)~~] (f) The collection method described in Subsection (2)(c)(i) shall:

538 (i) apply to the appropriate billing components in base rates; and

539 (ii) be incorporated into base rates in an appropriate commission proceeding.

540 [~~(f)~~] (g) The collection of costs related to an energy balancing account from customers
541 paying contract rates shall be governed by the terms of the contract.

542 [~~(g)~~] (h) Revenues collected in excess of prudently incurred actual costs shall:

543 (i) be refunded as a bill surcredit to an electrical corporation's customers over a period
544 specified by the commission; and

545 (ii) include a carrying charge.

546 [~~(h)~~] (i) Prudently incurred actual costs in excess of revenues collected shall:

547 (i) be recovered as a bill surcharge over a period to be specified by the commission;

548 and

549 (ii) include a carrying charge.

550 [~~(i)~~] (j) The carrying charge applied to the balance in an energy balancing account shall
551 be:

552 (i) determined by the commission; and

553 (ii) symmetrical for over or under collections.

554 (3) (a) The commission may:

- 555 (i) establish a gas balancing account for a gas corporation; and
556 (ii) set forth procedures for a gas corporation's gas balancing account in the gas
557 corporation's commission-approved tariff.
- 558 (b) A gas balancing account may not alter:
559 (i) the standard of cost recovery; or
560 (ii) the gas corporation's burden of proof.
- 561 (4) (a) All allowed costs and revenues associated with an energy balancing account or
562 gas balancing account shall remain in the respective balancing account until charged or
563 refunded to customers.
- 564 (b) The balance of an energy balancing account or gas balancing account may not be:
565 (i) transferred by the electrical corporation or gas corporation; or
566 (ii) used by the commission to impute earnings or losses to the electrical corporation or
567 gas corporation.
- 568 (c) An energy balancing account or gas balancing account that is formed and
569 maintained in accordance with this section does not constitute impermissible retroactive
570 ratemaking or single-issue ratemaking.
- 571 (5) This section does not create a presumption for or against approval of an energy
572 balancing account.
- 573 Section 4. Section **54-17-801** is amended to read:
574 **54-17-801. Definitions.**
575 As used in this part:
576 (1) "Contract customer" means a person who executes or will execute a renewable
577 energy contract with a qualified utility.
578 (2) "Qualified utility" means an electric corporation that serves more than 200,000
579 retail customers in the state.
580 (3) "Renewable energy contract" means a contract under this part for the delivery of
581 electricity from one or more renewable energy facilities to a contract customer requiring the use
582 of a qualified utility's transmission or distribution system to deliver the electricity from a
583 renewable energy facility to the contract customer.
584 (4) "Renewable energy facility":
585 (a) except as provided in Subsection (4)(b), means a renewable energy source defined

586 in Section [54-17-601](#) that is located in the state; and

587 (b) does not include an electric generating facility whose costs have been included in a
588 qualified utility's rates as a facility providing electric service to the qualified utility's system.

589 (5) "Renewable energy tariff" means a tariff offered by a qualified utility that allows
590 the qualified utility to procure renewable generation on behalf of and to serve its customers.

591 Section 5. Section **54-17-806** is enacted to read:

592 **54-17-806. Qualified utility renewable energy tariff.**

593 (1) The commission shall authorize a qualified utility to implement a renewable energy
594 tariff in accordance with this section if:

595 (a) the qualified utility proposed the renewable energy tariff; and

596 (b) the commission determines the tariff that the qualified utility proposes is reasonable
597 and in the public interest.

598 (2) A qualified utility customer with an electrical load of at least five megawatts and
599 who agrees to service that is subject to the renewable energy tariff shall pay:

600 (a) the customer's normal tariff rate;

601 (b) an incremental charge in an amount equal to the difference between the cost to the
602 qualified utility to purchase renewable generation on behalf of the renewable energy tariff
603 customer and the qualified utility's avoided costs as defined in Subsection [54-2-1\(1\)](#); and

604 (c) an administrative fee in an amount approved by the commission.

605 (3) The commission shall allow a qualified utility to recover the qualified utility's
606 prudently incurred cost of renewable generation procured pursuant to the tariff established in
607 this section that is not otherwise recovered from the proceeds of the tariff paid by customers
608 agreeing to service that is subject to the renewable energy tariff.

609 Section 6. Section **54-20-101** is enacted to read:

610 **CHAPTER 20. SUSTAINABLE TRANSPORTATION AND ENERGY PLAN ACT**

611 **54-20-101. Title.**

612 This chapter is known as the "Sustainable Transportation and Energy Plan Act."

613 Section 7. Section **54-20-102** is enacted to read:

614 **54-20-102. Definitions.**

615 As used in this chapter:

616 (1) "Demand side management" means the same as that term is defined in Section

617 [54-7-12.8.](#)

618 (2) "Pilot program period" means a period of 10 years, beginning on January 1, 2017,
619 during which the sustainable transportation and energy plan is effective.

620 (3) "Sustainable transportation and energy plan" means a pilot program that includes:

621 (a) the air quality improvement program described in Section [54-20-103](#);

622 (b) the electric vehicle incentive program described in Section [54-20-104](#);

623 (c) the clean coal technology program described in Section [54-20-105](#);

624 (d) retail electric rates that advance economic development as provided in Section

625 [54-20-106](#);

626 (e) innovative technology and the development of utility solar projects as provided in

627 Section [54-20-107](#);

628 (f) the establishment of a commercial line extension allowance designed to support

629 economic development as provided in Section [54-20-108](#); and

630 (g) the strategic management of thermal electric generation facilities as provided in

631 Subsection [54-7-12.8\(6\)\(a\)](#).

632 (4) "Utah solar incentive program" means the eligible utility rooftop solar pilot

633 program established by commission order in 2012.

634 Section 8. Section **54-20-103** is enacted to read:

635 **54-20-103. Nonattainment area air quality improvement.**

636 (1) The commission shall approve an energy supply contract for a contract rate for a

637 customer of a large-scale electric utility that is eligible to transfer electric service to a nonutility

638 energy supplier pursuant to Section [54-3-32](#) if:

639 (a) the customer, before January 1, 2012, obtained approval from the Division of Air

640 Quality to install and operate a new electric generation facility within the Salt Lake

641 nonattainment area in excess of 150 megawatts;

642 (b) the customer enters into an agreement with the large-scale electric utility and the

643 Division of Air Quality to retire the air emissions credits associated with the customer's electric

644 generation facility described in Subsection (1)(a); and

645 (c) the commission determines that the energy supply contract is reasonable and in the

646 public interest.

647 (2) A customer that enters into an energy supply contract for a contract rate pursuant to

648 Subsection (1) is not, after entering into the energy supply contract, eligible for the transfer of
649 electric service to a nonutility energy supplier pursuant to Section 54-3-32.

650 (3) (a) Beginning on the effective date of the contract described in Subsection (1) and
651 ending on the effective date of the next general rate case revenue requirement proceeding, the
652 commission shall allow a large-scale electric utility that enters into a contract described in
653 Subsection (1) to defer the difference in revenue the large-scale utility collects from the
654 customer under the contract:

655 (i) the contract rates approved by the commission under Subsection (1); and

656 (ii) the customer's contract rate immediately before the effective date of the contract
657 described in Subsection (1).

658 (b) The commission shall allow a large-scale electric utility that enters into an energy
659 supply contract with a customer under Subsection (1) to:

660 (i) amortize the deferral described in Subsection (3)(a) over the remaining term of the
661 contract; and

662 (ii) include the deferral described in Subsection (3)(a) in general rates upon the
663 effective date of the next general rate change.

664 (4) (a) During the pilot program period, a large-scale electric utility that operates a
665 thermal generation plant within the Salt Lake nonattainment area may:

666 (i) during an event determined by the Division of Air Quality to be an nonattainment
667 event, curtail electric energy production from the thermal generation plant; and

668 (ii) recover the incremental costs associated with the actions taken during the
669 curtailment described in Subsection (4)(a)(i) from the funds in the balancing account
670 established in Subsection 54-7-12.8(8).

671 (b) A large-scale electric utility may not recover, under Subsection (4)(a)(ii), an
672 amount of total annual incremental costs that is greater than \$500,000.

673 (5) If a large-scale electric utility does not use the funds the large-scale electric utility
674 recovers under Subsection (4), the commission may accept an application from, and authorize,
675 a large-scale electric utility to reimburse a large-scale electric utility customer that operates an
676 electric generation plant in the Salt Lake nonattainment area that is capable of producing at
677 least 10 megawatts for the incremental costs associated with curtailing electric energy
678 production during the nonattainment event.

679 Section 9. Section **54-20-104** is enacted to read:

680 **54-20-104. Electric vehicle incentive program.**

681 The commission shall authorize a large-scale electric utility to establish a program that
682 includes:

683 (1) an incentive to a large-scale electric utility customer to provide electric vehicle
684 infrastructure;

685 (2) time of use pricing for electric vehicle charging;

686 (3) installation or operation of electric vehicle charging infrastructure by the large-scale
687 electric utility; or

688 (4) a measure, that the commission determines is in the public interest, that
689 incentivizes the use of electric vehicles.

690 Section 10. Section **54-20-105** is enacted to read:

691 **54-20-105. Clean coal technology program.**

692 (1) Subject to Subsection (2), the commission shall authorize a large-scale electric
693 utility to establish a program to provide for the investigation, analysis, and implementation of
694 clean coal technology.

695 (2) The commission shall approve the program described in Subsection (1) if the
696 commission determines that the program is in the public interest.

697 Section 11. Section **54-20-106** is enacted to read:

698 **54-20-106. Energy efficient economic development.**

699 (1) The commission shall accept a proposal from and authorize a large-scale electric
700 utility to establish a program to provide a bill credit for a qualifying new or existing electric
701 customer that meets the criteria in Subsection (2).

702 (2) To qualify for a bill credit, a customer of a large-scale electric utility shall, before
703 five years after the day on which the customer enters into a contract with the large-scale electric
704 utility for electric service:

705 (a) (i) establish a new business that utilizes at least 10 megawatts of electricity; or

706 (ii) expand an existing business by increasing the customer's monthly electricity
707 demand by at least 10 megawatts;

708 (b) spend at least \$50,000,000 on capital investment;

709 (c) create a minimum of 100 new full-time jobs;

710 (d) participate in a large-scale electric utility's demand side management program, as
711 approved by the commission; and

712 (e) establish, to the satisfaction of the large-scale electric utility, that the customer
713 meets the requirements described in this Subsection (2).

714 (3) A customer of a large-scale electric utility may not receive a bill credit:

715 (a) for more than five consecutive calendar years; or

716 (b) in an amount each year that is greater than 25% of the amount described in
717 Subsection 54-7-12.8(7)(b)(v).

718 Section 12. Section **54-20-107** is enacted to read:

719 **54-20-107. Innovative technologies and solar generation program.**

720 (1) On or before January 1, 2017, the commission shall authorize a large-scale electric
721 utility to establish a program to investigate, analyze, and implement:

722 (a) an incentive to the large-scale electric utility's non-residential customers for the
723 purchase and installation of solar electric generation facilities;

724 (b) battery storage projects; and

725 (c) residential developments that significantly reduce energy usage to the extent that
726 the customer's energy use may be economically met by renewable energy sources.

727 (2) The commission shall authorize the large-scale electric utility to:

728 (a) recoup any unrecovered Utah solar incentive program costs as of December 31,
729 2016; and

730 (b) recover the costs incurred under Subsection (1), up to the limit described in
731 Subsection 54-7-12.8(7)(b)(vi).

732 Section 13. Section **54-20-108** is enacted to read:

733 **54-20-108. Line extensions.**

734 (1) On or before January 1, 2017, the commission shall authorize a large-scale electric
735 utility to pay a line extension allowance to provide a primary voltage electrical connection to
736 each lot within a developer's nonresidential development.

737 (2) (a) Subject to Subsection (2)(b), the commission shall determine the amount of the
738 line extension allowance described in Subsection (1).

739 (b) For any single development project, a large-scale electric utility may not pay an
740 allowance described in Subsection (1) in an amount that is greater than the lesser of:

741 (i) 10% of the annual available funds authorized in Subsection 54-7-12.8(7)(b)(vii)
742 annually; or

743 (ii) 20% of the primary voltage electrical connection cost.

744 (c) A large-scale electric utility shall approve a developer's primary voltage electrical
745 connection plan before paying the line extension allowance described in Subsection (1).

746 Section 14. Section **63I-1-254** is amended to read:

747 **63I-1-254. Repeal dates -- Title 54.**

748 (1) The language of Subsection 54-4-13.4(1)(a)(ii) after "do not exceed \$5,000,000 in
749 any calendar year" is repealed July 1, 2018.

750 (2) Subsection 54-7-12.8(3) is repealed January 1, 2027.

Legislative Review Note
Office of Legislative Research and General Counsel