

28 (2) "Biomass":
29 (a) means organic matter that is available on a renewable basis;
30 (b) includes agricultural, animal, food, and wood waste and aquatic plants; and
31 (c) does not include pump storage or matter from municipal solid waste, black liquor, or
32 treated wood.

33 [~~2~~] (3) "Cogeneration facility":
34 (a) means a facility which produces:
35 (i) electric energy; and
36 (ii) steam or forms of useful energy, including heat, which are used for industrial,
37 commercial, heating, or cooling purposes; and

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

39 [~~3~~] (4) "Commission" means the Public Service Commission of Utah.

40 [~~4~~] (5) "Commissioner" means a member of the commission.

41 [~~5~~] (6) (a) "Corporation" includes an association, and a joint stock company having any
42 powers or privileges not possessed by individuals or partnerships.

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

46 [~~6~~] (7) "Distribution electrical cooperative" includes an electrical corporation that:

47 (a) is a cooperative;

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

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

52 (i) members; or

53 (ii) patrons.

54 [~~7~~] (8) "Electrical corporation" includes every corporation, cooperative association, and
55 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any
56 electric plant, or in any way furnishing electric power for public service or to its consumers or
57 members for domestic, commercial, or industrial use, within this state, except independent energy
58 producers, and except where electricity is generated on or distributed by the producer solely for

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

62 ~~[(8)]~~ (9) "Electric plant" includes all real estate, fixtures, and personal property owned,
63 controlled, operated, or managed in connection with or to facilitate the production, generation,
64 transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits, ducts,
65 or other devices, materials, apparatus, or property for containing, holding, or carrying conductors
66 used or to be used for the transmission of electricity for light, heat, or power.

67 ~~[(9)]~~ (10) "Gas corporation" includes every corporation and person, their lessees, trustees,
68 and receivers, owning, controlling, operating, or managing any gas plant for public service within
69 this state or for the selling or furnishing of natural gas to any consumer or consumers within the
70 state for domestic, commercial, or industrial use, except in the situation that:

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

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

75 (ii) not for sale to others;

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

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

80 ~~[(10)]~~ (11) "Gas plant" includes all real estate, fixtures, and personal property owned,
81 controlled, operated, or managed in connection with or to facilitate the production, generation,
82 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

83 ~~[(11)]~~ (12) "Heat corporation" includes every corporation and person, their lessees,
84 trustees, and receivers, owning, controlling, operating, or managing any heating plant for public
85 service within this state.

86 ~~[(12)]~~ (13) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances, and
87 personal property controlled, operated, or managed in connection with or to facilitate the
88 production, generation, transmission, delivery, or furnishing of artificial heat.

89 (b) "Heating plant" does not include either small power production facilities or

90 cogeneration facilities.

91 ~~[(13)]~~ (14) "Independent energy producer" means every electrical corporation, person,
92 corporation, or government entity, their lessees, trustees, or receivers, that own, operate, control,
93 or manage a small power production ~~[or]~~ facility, a renewable energy production facility, or a
94 cogeneration facility.

95 ~~[(14)]~~ (15) "Private telecommunications system" includes all facilities for the transmission
96 of signs, signals, writing, images, sounds, messages, data, or other information of any nature by
97 wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio facilities, that are
98 owned, controlled, operated, or managed by a corporation or person, including their lessees,
99 trustees, receivers, or trustees appointed by any court, for the use of that corporation or person and
100 not for the shared use with or resale to any other corporation or person on a regular basis.

101 ~~[(15)]~~ (16) (a) "Public utility" includes every railroad corporation, gas corporation,
102 electrical corporation, distribution electrical cooperative, wholesale electrical cooperative,
103 telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat
104 corporation, and independent energy producer not described in Subsection ~~[(15)]~~ (16)(d), where
105 the service is performed for, or the commodity delivered to, the public generally, or in the case of
106 a gas corporation or electrical corporation where the gas or electricity is sold or furnished to any
107 member or consumers within the state for domestic, commercial, or industrial use.

108 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone
109 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, or
110 independent energy producer not described in Subsection ~~[(15)]~~ (16)(d), performs a service for or
111 delivers a commodity to the public, it is considered to be a public utility, subject to the jurisdiction
112 and regulation of the commission and this title.

113 (ii) If a gas corporation, independent energy producer not described in Subsection ~~[(15)]~~
114 (16)(d), or electrical corporation sells or furnishes gas or electricity to any member or consumers
115 within the state, for domestic, commercial, or industrial use, for which any compensation or
116 payment is received, it is considered to be a public utility, subject to the jurisdiction and regulation
117 of the commission and this title.

118 (c) Any corporation or person not engaged in business exclusively as a public utility as
119 defined in this section is governed by this title in respect only to the public utility owned,
120 controlled, operated, or managed by the corporation or person, and not in respect to any other

121 business or pursuit.

122 (d) An independent energy producer is exempt from the jurisdiction and regulations of the
123 commission if it meets the requirements of Subsection [~~(15)~~] (16)(d)(i), (ii), or (iii), or any
124 combination of these:

125 (i) the commodity or service is produced or delivered, or both, by an independent energy
126 producer solely for the uses exempted in Subsection [~~(7)~~] (8) or for the use of state-owned
127 facilities;

128 (ii) the commodity or service is sold by an independent energy producer to an electrical
129 corporation; or

130 (iii) (A) the commodity or service delivered by the independent energy producer is
131 delivered to an entity which controls, is controlled by, or affiliated with the independent energy
132 producer or to a user located on real property managed by the independent energy producer; and

133 (B) the real property on which the service or commodity is used is contiguous to real
134 property which is owned or controlled by the independent energy producer. Parcels of real
135 property separated solely by public roads or easements for public roads shall be considered as
136 contiguous for purposes of this Subsection [~~(15)~~] (16).

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

140 (f) (i) "Public utility" does not include any person that is otherwise considered a public
141 utility under this Subsection [~~(15)~~] (16) solely because of that person's ownership of an interest in
142 an electric plant, cogeneration facility, or small power production facility in this state if all of the
143 following conditions are met:

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

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

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

149 (III) a combination of Subsections [~~(15)~~] (16)(f)(i)(A)(I) and (II);

150 (B) the lessor of the ownership interest identified in Subsection [~~(15)~~] (16)(f)(i)(A) is:

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

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

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

156 (ii) Any person that is exempt from classification as a public utility under Subsection
157 ~~[(15)]~~ (16)(f)(i) shall continue to be so exempt from classification following termination of the
158 lessee's right to possession or use of the electric plant for so long as the former lessor does not
159 operate the electric plant or sell electricity from the electric plant. If the former lessor operates the
160 electric plant or sells electricity, the former lessor shall continue to be so exempt for a period of
161 90 days following termination, or for a longer period that is ordered by the commission. This
162 period may not exceed one year. A change in rates that would otherwise require commission
163 approval may not be effective during the 90-day or extended period without commission approval.

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

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

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

179 ~~[(16)]~~ (17) "Purchasing utility" means ~~[any electrical corporation that is required to~~
180 ~~purchase electricity from small power production or cogeneration facilities pursuant to the Public~~
181 ~~Utility Regulatory Policies Act, 16 U.S.C. Section 824a-3]~~ an electrical corporation that provides
182 electricity to consumers within the state for domestic, commercial, or industrial use.

183 ~~[(17)]~~ (18) "Railroad" includes every commercial, interurban, and other railway, other than
184 a street railway, and each branch or extension of a railway, by any power operated, together with
185 all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots, union depots, yards,
186 grounds, terminals, terminal facilities, structures, and equipment, and all other real estate, fixtures,
187 and personal property of every kind used in connection with a railway owned, controlled, operated,
188 or managed for public service in the transportation of persons or property.

189 ~~[(18)]~~ (19) "Railroad corporation" includes every corporation and person, their lessees,
190 trustees, and receivers, owning, controlling, operating, or managing any railroad for public service
191 within this state.

192 (20) "Renewable energy":

193 (a) means electricity generated exclusively by nonnuclear and nonfossil low-air or no-air
194 emission technology using resources that:

195 (i) are virtually inexhaustible;

196 (ii) reduce haze; and

197 (iii) are environmentally beneficial; and

198 (b) includes electricity generated by:

199 (i) wind, solar, or geothermal energy;

200 (ii) energy from landfill gas and biomass sources; and

201 (iii) hydropower that meets the Low-Impact Hydropower Institute criteria.

202 (21) "Renewable energy production facility" means an electricity generating facility in the
203 state that:

204 (a) is put into operation after May 6, 2002; and

205 (b) produces renewable energy.

206 (22) "Renewable portfolio standard" means the percentage of the total amount of electricity
207 that a purchasing utility sells annually to consumers within the state that is required, under rules
208 adopted by the commission under Section 54-12-4, to be renewable energy.

209 ~~[(19)]~~ (23) (a) "Sewerage corporation" includes every corporation and person, their lessees,
210 trustees, and receivers, owning, controlling, operating, or managing any sewerage system for
211 public service within this state.

212 (b) "Sewerage corporation" does not include private sewerage companies engaged in
213 disposing of sewage only for their stockholders, or towns, cities, counties, conservancy districts,

214 improvement districts, or other governmental units created or organized under any general or
215 special law of this state.

216 ~~[(20)]~~ (24) "Small power production facility" means a facility ~~[which]~~ that:

217 ~~[(a) produces electric energy solely by the use, as a primary energy source, of biomass,~~
218 ~~waste, renewable resources, geothermal resources, or any combination of them]~~

219 (a) produces renewable energy;

220 (b) has a power production capacity that, together with any other facilities located at the
221 same site, is not greater than 80 megawatts; and

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

223 ~~[(21)]~~ (25) "Telegraph corporation" includes every corporation and person, their lessees,
224 trustees, and receivers, owning, controlling, operating, or managing any telegraph line for public
225 service within this state.

226 ~~[(22)]~~ (26) "Telegraph line" includes all conduits, ducts, poles, wires, cables, instruments,
227 and appliances, and all other real estate, fixtures, and personal property owned, controlled,
228 operated, or managed in connection with or to facilitate communication by telegraph, whether that
229 communication be had with or without the use of transmission wires.

230 ~~[(23)]~~ (27) (a) "Telephone corporation" means any corporation or person, and their lessees,
231 trustee, receivers, or trustees appointed by any court, who owns, controls, operates, manages, or
232 resells a public telecommunications service as defined in Section 54-8b-2.

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

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

237 (ii) Internet service; or

238 (iii) resold intrastate toll service.

239 ~~[(24)]~~ (28) "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments,
240 and appliances, and all other real estate, fixtures, and personal property owned, controlled,
241 operated, or managed in connection with or to facilitate communication by telephone whether that
242 communication is had with or without the use of transmission wires.

243 ~~[(25)]~~ (29) "Transportation of persons" includes every service in connection with or
244 incidental to the safety, comfort, or convenience of the person transported, and the receipt,

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

246 [~~(26)~~] (30) "Transportation of property" includes every service in connection with or
247 incidental to the transportation of property, including in particular its receipt, delivery, elevation,
248 transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and hauling, and
249 the transmission of credit by express companies.

250 [~~(27)~~] (31) "Water corporation" includes every corporation and person, their lessees,
251 trustees, and receivers, owning, controlling, operating, or managing any water system for public
252 service within this state. It does not include private irrigation companies engaged in distributing
253 water only to their stockholders, or towns, cities, counties, water conservancy districts,
254 improvement districts, or other governmental units created or organized under any general or
255 special law of this state.

256 [~~(28)~~] (32) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
257 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures, and
258 personal property owned, controlled, operated, or managed in connection with or to facilitate the
259 diversion, development, storage, supply, distribution, sale, furnishing, carriage, appointment,
260 apportionment, or measurement of water for power, fire protection, irrigation, reclamation, or
261 manufacturing, or for municipal, domestic, or other beneficial use.

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

264 [~~(29)~~] (33) "Wholesale electrical cooperative" includes every electrical corporation that
265 is:

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

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

270 Section 2. Section **54-12-1** is amended to read:

271 **54-12-1. Legislative policy.**

272 (1) The Legislature declares that in order to promote the more rapid development of new
273 sources of electrical energy, to maintain the economic vitality of the state through the continuing
274 production of goods and the employment of its people, and to promote the efficient utilization and
275 distribution of energy, it is desirable and necessary to encourage independent energy producers to

276 competitively develop sources of electric energy not otherwise available to Utah businesses,
277 residences, and industries served by electrical corporations, and to remove unnecessary barriers
278 to energy transactions involving independent energy producers and electrical corporations.

279 (2) It is the policy of this state to encourage the development of small power production
280 facilities, renewable energy production facilities, and cogeneration facilities, to promote a diverse
281 array of economical and permanently sustainable energy resources in an environmentally
282 acceptable manner, and to conserve our finite and expensive energy resources and provide for their
283 most efficient and economic utilization.

284 Section 3. Section **54-12-2** is amended to read:

285 **54-12-2. Purchase of power from independent energy producers.**

286 (1) Purchasing utilities shall offer to purchase power from independent energy producers.

287 (2) (a) The commission shall establish reasonable rates, terms, and conditions for the
288 purchase or sale ~~[of electricity or electrical generating capacity, or both,]~~ between a purchasing
289 utility and an independent energy producer~~[- In establishing these rates, terms, and conditions, the~~
290 ~~commission shall either] of:~~

291 (i) electricity, including renewable energy;

292 (ii) electrical generating capacity, including capacity of a renewable energy production
293 facility; or

294 (iii) both electricity under Subsection (2)(a)(i) and electrical generating capacity under
295 Subsection (2)(a)(ii).

296 (b) In establishing rates, terms, and conditions under Subsection (2)(a), the commission
297 shall:

298 (i) establish a procedure under which [small power] independent energy producers [and
299 cogenerators] offer competitive bids for the sale of power to purchasing utilities; or

300 (ii) devise an alternative method which considers the purchasing utility's avoided costs.

301 (c) The capacity component of avoided costs shall reflect the purchasing utility's long-term
302 deferral or cancellation of generating units which may result from the purchase of power from
303 independent energy producers.

304 (3) (a) [Purchasing utilities] A purchasing utility and an independent energy [producers]
305 producer may, subject to commission approval, agree to rates, terms, or conditions for the sale of
306 electricity or electrical capacity described in Subsection (2)(a) which differ from the rates, terms,

307 and conditions adopted by the commission under Subsection (2).

308 (b) The commission may not approve an agreement under this Subsection (3) unless it
309 determines that at the time the agreement is executed the cost of electricity provided for in the
310 agreement is reasonably equivalent to the industry standard cost of renewable energy generated
311 from the energy source that generates the electricity that is the subject of the agreement.

312 (c) The term of each agreement under this Subsection (3) shall be at least 20 years.

313 (4) The commission ~~[may]~~ shall adopt further rules which encourage the development of
314 small power production facilities, renewable energy production facilities, and cogeneration
315 facilities.

316 Section 4. Section **54-12-3** is amended to read:

317 **54-12-3. Recovery of investment costs.**

318 The commission may not consider any purchasing utility's purchase of power ~~[from]~~ under
319 an agreement with an independent energy producer as a reason for disallowing recovery of:

320 (1) the purchasing utility's investment costs for facilities [which are in use prior to signing
321 a contract for the purchase of power from an independent energy producer.] that are in use prior
322 to signing the agreement; or

323 (2) the purchasing utility's costs of renewable energy under the agreement if, at the time
324 the agreement is executed, those costs are reasonably equivalent to the industry standard for the
325 cost of renewable energy generated from the energy source that generates the electricity that is the
326 subject of the agreement.

327 Section 5. Section **54-12-4** is enacted to read:

328 **54-12-4. Required percentages of renewable energy.**

329 (1) (a) On or before January 1, 2003, the commission shall adopt rules that:

330 (i) impose a renewable portfolio standard on each purchasing utility in a percentage
331 specified in Subsection (1)(b);

332 (ii) specify reasonable performance standards that:

333 (A) a facility generating renewable energy is required to meet in order for the electricity
334 generated by the facility to qualify as renewable energy that can be included in the amount of
335 renewable energy necessary to meet a renewable portfolio standard; and

336 (B) are designed and implemented to maximize the energy output from each addition of
337 renewable energy capacity consistent with industry standards applicable at the time of the addition;

338 (iii) include a reasonable enforcement mechanism to ensure that each purchasing utility
339 complies with the renewable portfolio standard, including an administrative penalty as provided
340 in Subsection (4);

341 (iv) establish requirements to govern the process of contracting for the purchase of
342 renewable energy to ensure that each purchasing utility is making adequate efforts to meet the
343 renewable portfolio standard; and

344 (v) implement and enforce the provisions of this section.

345 (b) The required percentage for each renewable portfolio standard in rules adopted under
346 Subsection (1)(a) shall be:

347 (i) for calendar year 2003, at least 1%;

348 (ii) for calendar year 2004, at least 3%;

349 (iii) for calendar year 2005, at least 5%;

350 (iv) for calendar years 2006 and 2007, at least 7%; and

351 (v) for calendar year 2008 and for each calendar year thereafter, at least 10%.

352 (2) Each purchasing utility shall comply with the renewable portfolio standard.

353 (3) The commission may adopt rules to establish a system of renewable energy credits that
354 a purchasing utility may use to comply with the renewable portfolio standard.

355 (4) (a) Each purchasing utility that fails to comply with its renewable portfolio standard
356 shall be subject to an administrative penalty imposed by the commission.

357 (b) An administrative penalty under Subsection (4)(a) may not be less than \$.05 per
358 kilowatt hour for each kilowatt hour that the difference between the renewable portfolio standard
359 and the percentage achieved by the purchasing utility represents in kilowatt hours.

360 (c) An administrative penalty imposed under this Subsection (4) may not constitute a cost
361 of service for the purchasing utility.

362 (d) A purchasing utility may not include the cost of an administrative penalty imposed
363 under this Subsection (4) in an application for a rate adjustment or increase.

364 (e) The commission may not allow a purchasing utility required to pay an administrative
365 penalty under this Subsection (4) to recover any part of the penalty from its customers.

366 (5) Renewable energy for which a purchasing utility charges a higher rate than for other
367 electricity may not be included in determining whether the purchasing utility has met its renewable
368 portfolio standard.

369 (6) The amount of renewable energy needed to meet a purchasing utility's renewable
370 portfolio standard shall be reduced by the amount of electricity conserved annually due to the
371 installation of a solar photovoltaic generation system by a retail customer of the purchasing utility
372 if the purchasing utility has borne at least half of the acquisition and installation cost of the solar
373 photovoltaic generation system.

374 (7) At the end of each calendar year, beginning with calendar year 2003, each purchasing
375 utility shall submit to the commission a report, in a format approved by the commission, that states
376 the quantity of renewable energy that the purchasing utility generated or purchased to meet the
377 renewable portfolio standard.

378 (8) Each purchasing utility that constructs a renewable energy production facility shall
379 comply with all commission requirements applicable to the construction of a new generation
380 facility.

Legislative Review Note
as of 2-7-02 7:24 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel