



28 **54-9-101. Title.**29 This chapter is known as the "Electric Power Facilities Act."30 Section 2. Section **54-9-102**, which is renumbered from Section 54-9-1.5 is renumbered  
31 and amended to read:32 **[54-9-1.5]. 54-9-102. Definitions.**

33 As used in this chapter:

34 ~~[(1) "City" means a city of this state owning a system for the generation, transmission, or~~  
35 ~~distribution of electric power and energy for public or private use.]~~36 ~~[(2)]~~ (1) "Common facilities" means all works and facilities necessary to the generation,  
37 transmission, or distribution of electric power ~~[, and energy by thermal means].~~38 (2) "Interlocal entity" means a legal or administrative entity created under Section  
39 11-13-5.5.

40 (3) "Power utility":

41 (a) means ~~[any of the following entities]~~ a public agency, as defined in Section 11-13-3,  
42 or other person engaged in generating, transmitting, [or] distributing, or marketing electric power  
43 and energy[: a state, a political subdivision or agency of a state, or a cooperative or privately  
44 owned electric utility company subject to regulation by the Public Service Commission of Utah  
45 or comparable governmental body in their respective states.]; and46 ~~[(4) "Town" means a town of this state owning a system for the generation, transmission,~~  
47 ~~or distribution of electric power and energy for public or private use.]~~48 (b) does not include a public power entity.49 (4) "Public power entity" means a city, town, or interlocal entity that owns a system for  
50 the generation, transmission, or distribution of electric power and energy for public or private use.51 Section 3. Section **54-9-103**, which is renumbered from Section 54-9-2 is renumbered and  
52 amended to read:53 **[54-9-2]. 54-9-103. Establishment of common facilities authorized --**54 **Determination of needs -- Agreements -- Ownership interest.**55 (1) ~~[In]~~ (a) Notwithstanding Title 11, Chapter 13, Interlocal Cooperation Act, and  
56 Subsection 11-14-1(1)(k), and in addition to [the] all other powers [otherwise] conferred on [cities  
57 and towns of this state, any city or town, irrespective of the provisions of Title 11, Chapter 13 or  
58 Subsection 11-14-1(1)(k):] public power entities, a public power entity may:

59 (i) plan, finance, construct, acquire, operate, own, and maintain an undivided interest in  
60 common facilities; ~~may~~

61 (ii) participate in and enter into agreements with one or more public power entities or  
62 power utilities; and ~~may~~

63 (iii) enter into contracts and agreements as may be necessary or appropriate for the joint  
64 planning, financing, construction, operation, ownership, or maintenance of common facilities.

65 (b) (i) Before entering into an agreement providing for common facilities, the governing  
66 body of ~~a city or town~~ each public power entity shall determine the needs of ~~a city or town~~ the  
67 public power entity for electric power and energy based on engineering studies and reports.

68 (ii) In determining the future electric power and energy requirements of a ~~city~~ public  
69 power entity, the governing body shall consider ~~the following~~:

70 ~~(a)~~ (A) the ~~economies~~ economies and efficiencies of scale to be achieved in  
71 constructing or acquiring common facilities for the generation and transmission of electric power  
72 and energy;

73 ~~(b)~~ (B) the public power entity's need ~~of the city or town~~ for reserve and peaking  
74 capacity, and to meet obligations under pooling and reserve sharing agreements reasonably related  
75 to the needs of the ~~city or town~~ public power entity for power and energy ~~to which the city is or~~  
76 ~~may become a party~~;

77 ~~(c)~~ (C) the estimated useful life of the common facilities;

78 ~~(d)~~ (D) the estimated time necessary for the planning, financing, construction, and  
79 acquisition of the common facilities and the ~~length of time in advance to obtain, acquire, or~~  
80 ~~construct~~ estimated timing of the need for an additional power supply; and

81 ~~(e)~~ (E) the reliability and availability of existing or alternate power supply sources and  
82 the cost of those existing or alternate power supply sources.

83 (2) ~~the~~ (a) Each agreement providing for common facilities shall ~~not~~:

84 (i) contain provisions not inconsistent with this chapter~~, as~~ that the governing body of  
85 the ~~city or town~~ public power entity determines to be in the interests of the ~~city or town~~. ~~An~~  
86 ~~agreement shall be ratified by resolution of the governing body of the city or town and shall~~  
87 ~~include provisions relating to, but not limited to, the following~~ public power entity, including:

88 ~~(a)~~ (A) the purposes of the agreement;

89 ~~(b)~~ (B) the duration of the agreement;

90           ~~[(e)]~~ (C) the method of appointing or employing the personnel necessary in connection  
91 with the common facilities;

92           ~~[(d)]~~ (D) the method of financing the common facilities, including the apportionment of  
93 costs of construction and operation;

94           ~~[(e)]~~ (E) the ownership interests of the owners in the common facilities and other property  
95 used or useful in connection with the common facilities and the procedures for disposition of ~~[that]~~  
96 the common facilities and other property when the agreement expires or is terminated or when the  
97 common facilities are abandoned, decommissioned, or dismantled;

98           ~~[(f) the prohibition or restriction of]~~

99           (F) any agreement of the parties prohibiting or restricting the alienation or partition of the  
100 undivided interests of ~~[a city or town]~~ an owner in the common facilities~~[- which provision shall~~  
101 ~~not be subject to a law restricting covenants against alienation or partition];~~

102           ~~[(g)]~~ (G) the construction and repair of the common facilities, ~~[which may include]~~  
103 including, if the parties agree, a determination that a ~~[city or town, person, firm, or corporation]~~  
104 power utility or public power entity may construct or repair the common facilities as agent for all  
105 parties to the agreement;

106           ~~[(h)]~~ (H) the administration, operation, and maintenance of the common facilities, ~~[which~~  
107 ~~may include]~~ including, if the parties agree, a determination that a ~~[city or town, person, firm, or~~  
108 ~~corporation]~~ power utility or public power entity may administer, operate, and maintain the  
109 common facilities as agent for all parties to the agreement;

110           ~~[(i)]~~ (I) the creation of a committee of representatives of the parties to the agreement~~[-~~  
111 ~~which committee shall have powers regarding the construction and operation of the common~~  
112 ~~facilities as the agreement, not inconsistent with this chapter, may provide];~~

113           ~~[(j)]~~ (J) if the ~~[city or town]~~ parties agree, a provision that if any party defaults in the  
114 performance or discharge of its obligations with respect to the common facilities, ~~[that]~~ the other  
115 parties may perform or assume, pro rata or otherwise, the obligations of the defaulting ~~[parties]~~  
116 party and may, if the ~~[city or town]~~ defaulting party fails to remedy the default, succeed to the  
117 rights and interests of the defaulting party ~~[or parties]~~ in the common facilities ~~[as may be agreed~~  
118 ~~upon in the agreement];~~

119           ~~[(k)]~~ (K) provisions for indemnification of construction ~~[and], operation, and~~  
120 administration agents, for completion of construction, for handling emergencies, and for allocation

121 of output of the common facilities among the parties to the agreement according to the ownership  
 122 interests of the parties;

123 ~~[(†)]~~ (L) methods for amending and terminating the agreement; and

124 ~~[(m)]~~ (M) any other matter, not inconsistent with this chapter, determined by the parties

125 to the agreement to be necessary and proper~~[-, not inconsistent with this chapter.];~~

126 ~~[(3) Agreements providing for common facilities shall]~~

127 (ii) clearly disclose the ~~[cities' or towns']~~ ownership interest~~[-]~~ of each party;

128 (iii) provide for an equitable method of allocating operation, repair, and maintenance costs

129 of the common facilities; and

130 (iv) be approved or ratified by resolution of the governing body of the public power entity.

131 (b) A provision under Subsection (2)(a)(i)(F) in an agreement providing for common

132 facilities under this Subsection (2) is not subject to any law restricting covenants against alienation

133 or partition.

134 (c) Each committee created under Subsection (2)(a)(i)(I) in an agreement providing for

135 common facilities under this Subsection (2) shall have the powers, not inconsistent with this

136 chapter, regarding the construction and operation of the common facilities that the agreement

137 provides.

138 (d) (i) The ~~[cities' or towns']~~ ownership interest ~~[shall be in]~~ of a public power entity in the

139 common facilities may not be less than the proportion ~~[to]~~ of the funds or the value of property

140 supplied by it for the acquisition, construction, and operation of the common ~~[facility]~~ facilities.

141 ~~[The city or town]~~

142 (ii) Each public power entity shall own and control ~~[a like percentage]~~ the same proportion

143 of the electrical output ~~[thereof. The agreement shall provide for an equitable method of allocating~~

144 ~~operation and maintenance costs of the common facility]~~ from the common facilities as its

145 ownership interest in them.

146 (3) Notwithstanding any other provision of this chapter, an interlocal entity may not act

147 in a manner inconsistent with any provision of the agreement under Section 11-13-5.5 under which

148 it was created.

149 Section 4. Section **54-9-104**, which is renumbered from Section 54-9-3 is renumbered and  
 150 amended to read:

151 ~~[54-9-3].~~ **54-9-104. Joint owners to supply materials -- Arrange for own**

152 **financing -- Share in costs and taxes.**

153 (1) The joint owners of the common [~~facility must~~] facilities shall supply the materials and  
154 make the payments provided for in the agreement.

155 (2) Each owner shall arrange its own funding and financing and be responsible for all the  
156 costs, interest, and payments required in connection with its share of the funding for the planning,  
157 acquisition, construction, operation, repairs, and improvements, and each participant shall pay its  
158 share of taxes or charges in lieu of taxes in connection with the common [~~facility~~] facilities.

159 (3) (a) Notwithstanding any other provision of this section, a public power entity may  
160 finance its funding share with one or more other owners through a financing agent, as long as no  
161 public power entity is liable for more than its proportionate share of the debt service with respect  
162 to the financing.

163 (b) A public power entity that is an owner may serve as the financing agent.

164 Section 5. Section **54-9-105**, which is renumbered from Section 54-9-4 is renumbered and  
165 amended to read:

166 [~~54-9-4~~]. **54-9-105. Limitations on liability.**

167 (1) (a) Each [~~city or town~~] public entity and power utility shall be liable only for its own  
168 acts, omissions, and obligations with respect to the planning, financing, construction, acquisition,  
169 administration, operation, ownership, repair, or maintenance of the common facilities and [~~shall~~]  
170 may not be jointly or severally liable for the acts, omissions, or obligations of others.

171 (b) Subsection (1)(a) may not be construed to:

172 (i) affect the liability of a public power entity or power utility with respect to its  
173 contractual obligations, including a contractual obligation to indemnify a construction, operation,  
174 or administrative agent for the common facilities; or

175 (ii) affect an immunity or other protection that may be available to a public power entity  
176 or power utility under applicable law.

177 (2) No money, materials, or other contribution supplied by a [~~city or town shall~~] public  
178 power entity may be credited or otherwise applied to the account of any other [~~participant~~] owner  
179 in the common facilities, nor [~~shall~~] may the undivided share of a [~~city or town~~] public power  
180 entity be charged, directly or indirectly, with any debt or obligation of any other [~~participant~~]  
181 owner or be subject to any lien as a result thereof.

182 (3) No action in connection with [~~a~~] common [~~facility shall~~] facilities may be binding upon

183 ~~[any city or town]~~ a public power entity unless authorized or approved by or under a resolution  
184 or ordinance of its governing body.

185 Section 6. Section **54-9-106**, which is renumbered from Section 54-9-5 is renumbered and  
186 amended to read:

187 ~~[54-9-5]~~. **54-9-106. Funding -- Power sales contracts -- Fee in lieu of ad valorem**  
188 **property taxes -- Bond issues -- Outlay declared for public purpose.**

189 (1) A ~~[city or town]~~ public power entity participating in common facilities under ~~[authority~~  
190 ~~contained in]~~ this chapter may furnish money and provide property, both real and personal, and,  
191 in addition to any other authority now existing, may issue and sell, either at public or privately  
192 negotiated sale, general obligation bonds or revenue bonds, pledging either the revenues of its  
193 entire electric system or only its interest or share of the revenues derived from the common  
194 facilities in order to pay its respective share of the costs of the planning, financing, acquisition,  
195 ~~[and]~~ construction, repair, and replacement of common facilities.

196 (2) (a) Capacity or output derived by a ~~[city or town]~~ public power entity from its  
197 ownership share of common facilities not then required by the ~~[city or town]~~ public power entity  
198 for its own use and for the use of its customers may be sold or exchanged ~~[by the city or town]~~ for  
199 a consideration, for a period, and upon other terms and conditions as may be determined by the  
200 parties prior to the sale and as embodied in a power sales contract ~~[entered into by the city or town;~~  
201 ~~and any]~~.

202 (b) Any revenues arising under ~~[the]~~ a power sales contract under Subsection (2)(a) may  
203 be pledged by the ~~[city or town]~~ public power entity to the payment of revenue bonds issued to pay  
204 its respective share of the costs of the common facilities.

205 (c) Each power sales contract entered into by a ~~[city or town]~~ public power entity with a  
206 ~~[consumer which]~~ purchaser that is not exempt by Article XIII, Sec. 2, Utah Constitution, for the  
207 sale or exchange to the ~~[consumer]~~ purchaser of capacity or output derived by the ~~[city or town]~~  
208 public power entity from its ownership share of common facilities shall contain a provision for  
209 payment of an annual fee to the ~~[city or town]~~ public power entity by the ~~[consumer]~~ purchaser in  
210 lieu of ad valorem property taxes based upon the taxable value of the percentage of the ownership  
211 share of the ~~[city or town]~~ public power entity in the common facilities which is used to produce  
212 the capacity or output that is sold or exchanged by the ~~[city or town]~~ public power entity to or with  
213 ~~[consumer]~~ the purchaser, which fee in lieu of ad valorem property taxes shall be paid over by the

214 ~~[city or town]~~ public power entity to the county treasurer for distribution as per distribution of  
 215 other ad valorem tax revenues.

216 (3) ~~[Any city or town]~~ A public power entity acquiring or owning an undivided interest  
 217 in common facilities may contract with a county or counties to pay, solely from the revenues  
 218 derived from the interest of the ~~[city or town]~~ public power entity in the common facilities, to the  
 219 county or counties in which the common facilities are located, an annual fee in lieu of ad valorem  
 220 property taxes based upon the taxable value of the percentage of the ownership share of the ~~[city~~  
 221 ~~or town]~~ public power entity in the common facilities, which fee in lieu of ad valorem property  
 222 taxes shall be paid over by the ~~[city or town]~~ public power entity to the county treasurer of the  
 223 county or counties in which the common facilities are located for distribution as per distribution  
 224 of other ad valorem tax revenues.

225 (4) (a) Bonds issued by a city or town shall be issued under the applicable provisions of  
 226 Title 11, Chapter 14, Utah Municipal Bond Act, ~~[and of Title 55, Chapter 3, Public Works~~  
 227 ~~Program,]~~ authorizing the issuance of bonds for the acquisition and construction of electric public  
 228 utility properties by cities or towns.

229 (b) Bonds or other debt instruments issued by an interlocal entity shall be issued under  
 230 Title 11, Chapter 13, Interlocal Cooperation Act, or other applicable law.

231 ~~[(4)] (5)~~ All moneys paid or property supplied by ~~[any city or town]~~ a public power entity  
 232 for the purpose of carrying out powers conferred by this chapter are declared to be for a public  
 233 purpose~~;~~ ~~but before a city or cities, town or towns, or power utility undertakes the construction~~  
 234 ~~of transmission facilities in which it or they have a common ownership interest, the city or cities,~~  
 235 ~~town or towns, or power utility shall, if the construction results in a duplication, in whole or part,~~  
 236 ~~of existing transmission in purpose or function, before construction endeavor to attain the~~  
 237 ~~equivalent capacity for a comparable term and comparable cost by purchase or contract with the~~  
 238 ~~duplicate facility. If the contract cannot be executed within six months from the date the city or~~  
 239 ~~cities, town or towns, or power utility request to contract with the owner of the duplicate facility,~~  
 240 ~~then the city or cities, town or towns, or power utility may proceed to construct the proposed~~  
 241 ~~transmission facilities notwithstanding the duplication].~~

242 Section 7. Section **54-9-107**, which is renumbered from Section 54-9-6 is renumbered and  
 243 amended to read:

244 ~~[54-9-6].~~ **54-9-107. Disposition of proceeds and revenues.**

245 All monies belonging to [~~cities or towns~~] a public power entity in connection with common  
246 facilities, including the proceeds of the sale of bonds and the revenues arising from the operation  
247 of [a] common [~~facility,~~] facilities:

248 (1) may be deposited in a bank or trust company doing business within or without the state  
249 [~~of Utah~~]; and

250 (2) shall be accounted for and disbursed in accordance with applicable law and the  
251 provisions of the resolution or indenture authorizing the issuance of [~~such~~] the bonds.

252 Section 8. **Repealer.**

253 This act repeals:

254 Section **54-9-1, Legislative purpose.**

**Legislative Review Note**  
**as of 11-29-01 3:33 PM**

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

**Office of Legislative Research and General Counsel**

**Committee Note**

The Public Utilities and Technology Interim Committee recommended this bill.