

1                                   **RENEWABLE ENERGY AMENDMENTS**

2   2003 GENERAL SESSION

3   STATE OF UTAH

4   **Sponsor: James R. Gowans**

5 **This act modifies the Public Utilities title to address purchases of power from**  
6 **independent energy producers and to enact the Renewable Energy Act. The act modifies**  
7 **definitions. The act modifies the chapter addressing small power production and**  
8 **cogeneration facilities and includes renewable energy production facilities under that**  
9 **chapter. The act enacts the Renewable Energy Act which provides for the creation of a**  
10 **renewable energy portfolio standard established by rule by the commission. The act**  
11 **provides for an exemption from the standard, criteria to be used in applying the**  
12 **standard, reporting requirements, and a process to evaluate what the standard should be**  
13 **for years beginning with 2014. The act contains provisions related to renewable energy**  
14 **contracts and the recovery of just and reasonable costs associated with a renewable**  
15 **energy contract. The act encourages cities or towns to have similar renewable energy**  
16 **production standards and requires cities or towns to provide an annual report. The act**  
17 **provides for fines. The act provides for use of private and state renewable energy credits**  
18 **to satisfy renewable energy portfolio obligations. The act authorizes the Utah Energy**  
19 **Office to issue and sell state renewable energy credits. The act creates the Renewable**  
20 **Portfolio Standard Restricted Account. This act makes technical changes.**

21 This act affects sections of Utah Code Annotated 1953 as follows:

22 AMENDS:

23           **54-2-1**, as last amended by Chapter 212, Laws of Utah 2001

24           **63-34-101**, as enacted by Chapter 231, Laws of Utah 2002

25 ENACTS:

26           **54-12-101**, Utah Code Annotated 1953

27           **54-17-101**, Utah Code Annotated 1953



- 28           **54-17-102**, Utah Code Annotated 1953
- 29           **54-17-201**, Utah Code Annotated 1953
- 30           **54-17-202**, Utah Code Annotated 1953
- 31           **54-17-203**, Utah Code Annotated 1953
- 32           **54-17-204**, Utah Code Annotated 1953
- 33           **54-17-205**, Utah Code Annotated 1953
- 34           **54-17-206**, Utah Code Annotated 1953
- 35           **54-17-207**, Utah Code Annotated 1953
- 36           **54-17-208**, Utah Code Annotated 1953
- 37           **54-17-301**, Utah Code Annotated 1953
- 38           **54-17-302**, Utah Code Annotated 1953

39 RENUMBERS AND AMENDS:

- 40           **54-12-102**, (Renumbered from 54-12-1, as enacted by Chapter 180, Laws of Utah 1985)
- 41           **54-12-201**, (Renumbered from 54-12-2, as last amended by Chapter 4, Laws of Utah
- 42 1989)
- 43           **54-12-203**, (Renumbered from 54-12-3, as enacted by Chapter 180, Laws of Utah 1985)

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

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

46 **54-2-1. Definitions.**

47 As used in this title:

48 (1) "Avoided costs" means the incremental costs to an electrical corporation of electric  
49 energy or capacity or both which, due to the purchase of electric energy or capacity or both  
50 from small power production or cogeneration facilities, the electrical corporation would not  
51 have to generate itself or purchase from another electrical corporation.

52 (2) (a) Except as provided in Subsection (2)(b), "biomass" means:

53 (i) material from a plant or tree that is planted for the purpose of being used to produce  
54 energy; or

55 (ii) other organic matter that is available on a renewable basis, including:

56 (A) animal waste;

57 (B) methane produced;

58 (I) at landfills; or

59            (II) as a byproduct of the treatment of wastewater residuals; and  
60            (C) aquatic plants.  
61            (b) "Biomass" does not include:  
62            (i) black liquor;  
63            (ii) treated woods; or  
64            (iii) biomass from municipal solid waste other than methane produced:  
65            (A) at landfills; or  
66            (B) as a byproduct of the treatment of wastewater residuals.  
67            [~~2~~] (3) "Cogeneration facility":  
68            (a) means a facility which produces:  
69            (i) electric energy; and  
70            (ii) steam or forms of useful energy, including heat, which are used for industrial,  
71 commercial, heating, or cooling purposes; and  
72            (b) is a qualifying cogeneration facility under federal law.  
73            [~~3~~] (4) "Commission" means the Public Service Commission of Utah.  
74            [~~4~~] (5) "Commissioner" means a member of the commission.  
75            [~~5~~] (6) (a) "Corporation" includes an association, and a joint stock company having  
76 any powers or privileges not possessed by individuals or partnerships.  
77            (b) "Corporation" does not include towns, cities, counties, conservancy districts,  
78 improvement districts, or other governmental units created or organized under any general or  
79 special law of this state.  
80            [~~6~~] (7) "Distribution electrical cooperative" includes an electrical corporation that:  
81            (a) is a cooperative;  
82            (b) conducts a business that includes the retail distribution of electricity the cooperative  
83 purchases or generates for the cooperative's members; and  
84            (c) is required to allocate or distribute savings in excess of additions to reserves and  
85 surplus on the basis of patronage to the cooperative's:  
86            (i) members; or  
87            (ii) patrons.  
88            [~~7~~] (8) "Electrical corporation" includes every corporation, cooperative association,  
89 and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing

90 any electric plant, or in any way furnishing electric power for public service or to its consumers  
91 or members for domestic, commercial, or industrial use, within this state, except independent  
92 energy producers, and except where electricity is generated on or distributed by the producer  
93 solely for the producer's own use, or the use of the producer's tenants, or for the use of  
94 members of an association of unit owners formed under Title 57, Chapter 8, Condominium  
95 Ownership Act, and not for sale to the public generally.

96 ~~[(8)]~~ (9) "Electric plant" includes all real estate, fixtures, and personal property owned,  
97 controlled, operated, or managed in connection with or to facilitate the production, generation,  
98 transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits,  
99 ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying  
100 conductors used or to be used for the transmission of electricity for light, heat, or power.

101 ~~[(9)]~~ (10) "Gas corporation" includes every corporation and person, their lessees,  
102 trustees, and receivers, owning, controlling, operating, or managing any gas plant for public  
103 service within this state or for the selling or furnishing of natural gas to any consumer or  
104 consumers within the state for domestic, commercial, or industrial use, except in the situation  
105 that gas is:

106 (a) ~~[gas is]~~ made or produced on, and distributed by the maker or producer through,  
107 private property:

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

110 (ii) not for sale to others;

111 (b) ~~[gas is]~~ compressed on private property solely for the owner's own use or the use of  
112 the owner's employees as a motor vehicle fuel; or

113 (c) ~~[gas is]~~ compressed by a retailer of motor vehicle fuel on the retailer's property  
114 solely for sale as a motor vehicle fuel.

115 ~~[(10)]~~ (11) "Gas plant" includes all real estate, fixtures, and personal property owned,  
116 controlled, operated, or managed in connection with or to facilitate the production, generation,  
117 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

118 ~~[(11)]~~ (12) "Heat corporation" includes every corporation and person, their lessees,  
119 trustees, and receivers, owning, controlling, operating, or managing any heating plant for public  
120 service within this state.

121 ~~[(12)]~~ (13) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances,  
122 and personal property controlled, operated, or managed in connection with or to facilitate the  
123 production, generation, transmission, delivery, or furnishing of artificial heat.

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

126 (14) "Hydroelectric facility" means a facility that produces electricity with water as the  
127 sole source of energy.

128 (15) (a) Subject to Subsection (15)(b), "incremental hydroelectric facility" means a  
129 facility that:

130 (i) is located in Utah; and

131 (ii) uses a technology that:

132 (A) produces energy from the incremental hydroelectric potential of a water  
133 conveyance structure located in Utah; and

134 (B) does not result in the further diversion of water from any river, stream, or other  
135 waterway in Utah.

136 (b) "Incremental hydroelectric facility" does not include the developed capacity of a  
137 storage hydroelectric facility whether or not the facility is:

138 (i) a pumped storage hydroelectric facility; or

139 (ii) a conventional storage hydroelectric facility.

140 ~~[(13)]~~ (16) "Independent energy producer" means ~~[every]~~ an electrical corporation,  
141 person, corporation, ~~[or]~~ government entity, ~~[their lessees, trustees, or receivers,]~~ or their  
142 lessee, trustee, or receiver that [own, operate, control, or manage] owns, operates, controls, or  
143 manages:

144 (a) a small power production facility;

145 (b) a renewable energy production facility; or

146 (c) a cogeneration facility.

147 ~~[(14)]~~ (17) "Private telecommunications system" includes all facilities for the  
148 transmission of signs, signals, writing, images, sounds, messages, data, or other information of  
149 any nature by wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio  
150 facilities, that are owned, controlled, operated, or managed by a corporation or person,  
151 including their lessees, trustees, receivers, or trustees appointed by any court, for the use of that

152 corporation or person and not for the shared use with or resale to any other corporation or  
153 person on a regular basis.

154 ~~[(15)]~~ (18) (a) "Public utility" includes every railroad corporation, gas corporation,  
155 electrical corporation, distribution electrical cooperative, wholesale electrical cooperative,  
156 telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat  
157 corporation, and independent energy producer not described in Subsection ~~[(15)]~~ (18)(d),  
158 where the service is performed for, or the commodity delivered to, the public generally, or in  
159 the case of a gas corporation or electrical corporation where the gas or electricity is sold or  
160 furnished to any member or consumers within the state for domestic, commercial, or industrial  
161 use.

162 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone  
163 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,  
164 or independent energy producer not described in Subsection ~~[(15)]~~ (18)(d), performs a service  
165 for or delivers a commodity to the public, it is considered to be a public utility, subject to the  
166 jurisdiction and regulation of the commission and this title.

167 (ii) If a gas corporation, independent energy producer not described in Subsection  
168 ~~[(15)]~~ (18)(d), or electrical corporation sells or furnishes gas or electricity to any member or  
169 consumers within the state, for domestic, commercial, or industrial use, for which any  
170 compensation or payment is received, it is considered to be a public utility, subject to the  
171 jurisdiction and regulation of the commission and this title.

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

176 (d) An independent energy producer is exempt from the jurisdiction and regulations of  
177 the commission if it meets the requirements of Subsection ~~[(15)]~~ (18)(d)(i), (ii), or (iii), or any  
178 combination of these:

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

182 (ii) the commodity or service is sold by an independent energy producer to an electrical

183 corporation; or

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

188 (B) the real property on which the service or commodity is used is contiguous to real  
189 property which is owned or controlled by the independent energy producer. Parcels of real  
190 property separated solely by public roads or easements for public roads shall be considered as  
191 contiguous for purposes of this Subsection [~~(15)~~] (18).

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

195 (f) (i) "Public utility" does not include any person that is otherwise considered a public  
196 utility under this Subsection [~~(15)~~] (18) solely because of that person's ownership of an interest  
197 in an electric plant, cogeneration facility, or small power production facility in this state if all of  
198 the following conditions are met:

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

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

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

204 (III) a combination of Subsections [~~(15)~~] (18)(f)(i)(A)(I) and (II);

205 (B) the lessor of the ownership interest identified in Subsection [~~(15)~~] (18)(f)(i)(A) is:

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

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

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

211 (ii) Any person that is exempt from classification as a public utility under Subsection  
212 [~~(15)~~] (18)(f)(i) shall continue to be so exempt from classification following termination of the  
213 lessee's right to possession or use of the electric plant for so long as the former lessor does not

214 operate the electric plant or sell electricity from the electric plant. If the former lessor operates  
215 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a  
216 period of 90 days following termination, or for a longer period that is ordered by the  
217 commission. This period may not exceed one year. A change in rates that would otherwise  
218 require commission approval may not be effective during the 90-day or extended period  
219 without commission approval.

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

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

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

235 ~~[(16)]~~ (19) "Purchasing utility" means any electrical corporation that is required to  
236 purchase electricity from small power production or cogeneration facilities pursuant to the  
237 Public Utility Regulatory Policies Act, 16 U.S.C. Section 824a-3.

238 ~~[(17)]~~ (20) "Railroad" includes every commercial, interurban, and other railway, other  
239 than a street railway, and each branch or extension of a railway, by any power operated,  
240 together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots,  
241 union depots, yards, grounds, terminals, terminal facilities, structures, and equipment, and all  
242 other real estate, fixtures, and personal property of every kind used in connection with a  
243 railway owned, controlled, operated, or managed for public service in the transportation of  
244 persons or property.

245            [~~18~~] (21) "Railroad corporation" includes every corporation and person, their lessees,  
246 trustees, and receivers, owning, controlling, operating, or managing any railroad for public  
247 service within this state.

248            (22) (a) "Renewable energy" means:

249            (i) biomass;

250            (ii) geothermal energy;

251            (iii) solar energy; or

252            (iv) wind energy.

253            (b) "Renewable energy" does not include energy produced from or by:

254            (i) any fossil fuel including:

255            (A) natural gas;

256            (B) oil; or

257            (C) propane;

258            (ii) a hydroelectric facility; or

259            (iii) a nuclear generation facility.

260            (23) (a) "Renewable energy production facility" means a facility that:

261            (i) is not a hydroelectric facility; and

262            (ii) uses renewable energy to produce electricity.

263            (b) A facility is a renewable energy production facility regardless of whether the  
264 facility is:

265            (i) connected to an electric grid; or

266            (ii) located on the premises of an electricity consumer.

267            [~~19~~] (24) (a) "Sewerage corporation" includes every corporation and person, their  
268 lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage  
269 system for public service within this state.

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

274            (25) "Small hydroelectric facility" means a facility that:

275            (a) is located in Utah; and

276 (b) produces electricity:

277 (i) in an amount equal to or less than five megawatts; and

278 (ii) with water as the sole source of energy.

279 [~~(20)~~] (26) "Small power production facility" means a facility [~~which~~] that:

280 (a) [~~produces electric energy solely by the use, as a primary energy source, of biomass,~~  
281 ~~waste, renewable resources, geothermal resources, or any combination of them~~] uses renewable  
282 energy to produce electricity;

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

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

286 [~~(21)~~] (27) "Telegraph corporation" includes every corporation and person, their  
287 lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line  
288 for public service within this state.

289 [~~(22)~~] (28) "Telegraph line" includes all conduits, ducts, poles, wires, cables,  
290 instruments, and appliances, and all other real estate, fixtures, and personal property owned,  
291 controlled, operated, or managed in connection with or to facilitate communication by  
292 telegraph, whether that communication be had with or without the use of transmission wires.

293 [~~(23)~~] (29) (a) "Telephone corporation" means any corporation or person, and their  
294 lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates,  
295 manages, or resells a public telecommunications service as defined in Section 54-8b-2.

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

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

302 (ii) Internet service; or

303 (iii) resold intrastate toll service.

304 [~~(24)~~] (30) "Telephone line" includes all conduits, ducts, poles, wires, cables,  
305 instruments, and appliances, and all other real estate, fixtures, and personal property owned,  
306 controlled, operated, or managed in connection with or to facilitate communication by

307 telephone whether that communication is had with or without the use of transmission wires.

308        ~~[(25)]~~ (31) "Transportation of persons" includes every service in connection with or  
309 incidental to the safety, comfort, or convenience of the person transported, and the receipt,  
310 carriage, and delivery of that person and that person's baggage.

311        ~~[(26)]~~ (32) "Transportation of property" includes every service in connection with or  
312 incidental to the transportation of property, including in particular its receipt, delivery,  
313 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and  
314 hauling, and the transmission of credit by express companies.

315        ~~[(27)]~~ (33) "Water corporation" includes every corporation and person, their lessees,  
316 trustees, and receivers, owning, controlling, operating, or managing any water system for  
317 public service within this state. It does not include private irrigation companies engaged in  
318 distributing water only to their stockholders, or towns, cities, counties, water conservancy  
319 districts, improvement districts, or other governmental units created or organized under any  
320 general or special law of this state.

321        ~~[(28)]~~ (34) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,  
322 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,  
323 and personal property owned, controlled, operated, or managed in connection with or to  
324 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,  
325 appointment, apportionment, or measurement of water for power, fire protection, irrigation,  
326 reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

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

329        ~~[(29)]~~ (35) "Wholesale electrical cooperative" includes every electrical corporation that  
330 is:

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

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

335        Section 2. Section **54-12-101** is enacted to read:

336                    **CHAPTER 12. INDEPENDENT ENERGY PRODUCERS ACT**

337                                **Part 1. General Provisions**

338 **54-12-101. Title.**

339 This chapter is known as the "Independent Energy Producers Act."

340 Section 3. Section **54-12-102**, which is renumbered from Section 54-12-1 is  
341 renumbered and amended to read:

342 **~~[54-12-1].~~ 54-12-102. Legislative policy.**

343 (1) The Legislature declares that ~~[in order]~~ to promote the more rapid development of  
344 new sources of electrical energy, to maintain the economic vitality of the state through the  
345 continuing production of goods and the employment of its people, and to promote the efficient  
346 ~~[utilization]~~ use and distribution of energy, it is desirable and necessary to:

347 (a) encourage independent energy producers to competitively develop sources of  
348 electric energy not otherwise available to Utah businesses, residences, and industries served by  
349 electrical corporations~~[-];~~ and

350 (b) to remove unnecessary barriers to energy transactions involving independent energy  
351 producers and electrical corporations.

352 (2) It is the policy of this state to:

353 (a) encourage the development of:

354 (i) small power production facilities;

355 (ii) renewable energy production facilities; and

356 (iii) cogeneration facilities~~[-to];~~

357 (b) promote a diverse array of economical and permanently sustainable energy  
358 resources in an environmentally acceptable manner~~[-and to];~~

359 (c) conserve ~~[our]~~ the state's finite and expensive energy resources; and

360 (d) provide for ~~[their]~~ the state resource's most efficient and economic ~~[utilization]~~ use.

361 Section 4. Section **54-12-201**, which is renumbered from Section 54-12-2 is  
362 renumbered and amended to read:

363 **Part 2. Purchases from Independent Energy Producers**

364 **~~[54-12-2].~~ 54-12-201. Purchase of power from independent energy producers.**

365 (1) ~~[Purchasing utilities]~~ A purchasing utility shall offer to purchase power from one or  
366 more independent energy producers.

367 (2) (a) The commission shall establish reasonable rates, terms, and conditions for the  
368 purchase or sale ~~[of electricity or electrical generating capacity, or both,]~~ between a purchasing

369 utility and an independent energy producer[-] of:

370 (i) electricity;

371 (ii) electrical generating capacity; or

372 (iii) both electricity and electrical generating capacity.

373 (b) In establishing [these] the rates, terms, and conditions[-] described in Subsection  
374 (2)(a) the commission shall [either]:

375 (i) establish a procedure under which [small power producers and cogenerators offer]  
376 an independent energy producer offers competitive bids for the sale of [power] electricity or  
377 electrical generating capacity to one or more purchasing utilities; or

378 (ii) devise [an alternative] a method [which] that considers [the] a purchasing utility's  
379 avoided costs. [The]

380 (c) If the commission devises a method that considers a purchasing utility's avoided  
381 costs, the capacity component of the avoided costs shall reflect the purchasing utility's  
382 long-term deferral or cancellation of generating units [which] that may result from the purchase  
383 of [power] electricity or electrical generating capacity from the independent energy [producers]  
384 producer.

385 (3) [Purchasing utilities] A purchasing utility and an independent energy [producers]  
386 producer may agree to rates, terms, or conditions for the sale of electricity or electrical capacity  
387 [which] that differ from the rates, terms, and conditions adopted by the commission under  
388 Subsection (2).

389 (4) [The] In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking  
390 Act, the commission may [adopt further] make rules [which] in addition to the rates, terms, and  
391 conditions described in Subsection (2) that encourage the development of [small power  
392 production and cogeneration] facilities of independent energy producers.

393 (5) Notwithstanding the other provisions of this chapter, an electrical corporation is not  
394 required to acquire from a renewable energy production facility the following that is in excess  
395 of the electrical corporation's renewable energy standard obligation under Chapter 17,  
396 Renewable Energy Act:

397 (a) electricity;

398 (b) electric generation capacity; or

399 (c) both electricity and electric generation capacity.

400 Section 5. Section **54-12-203**, which is renumbered from Section 54-12-3 is  
 401 renumbered and amended to read:

402 ~~[54-12-3].~~ **54-12-203. Recovery of investment costs.**

403 (1) The commission may not [consider any purchasing utility's purchase of power from  
 404 an independent energy producer as a reason for disallowing] disallow recovery of [the] a  
 405 purchasing utility's investment costs [for facilities which] that are in use prior to signing a  
 406 contract for the purchase of power from an independent energy producer on the basis that the  
 407 purchasing utility:

408 (a) purchased power from the independent energy producer; or

409 (b) acquired electricity or electric generating capacity from a renewable energy  
 410 production facility for the purpose of complying with Chapter 17, Renewable Energy Act.

411 (2) (a) The commission shall allow an electrical corporation to recover through just and  
 412 reasonable tariffs, rates, and charges from retail customers within the state costs that are  
 413 prudently incurred in complying with Chapter 17, Renewable Energy Act.

414 (b) For purposes of this Subsection (2), the commission shall review renewable energy  
 415 costs in light of general industry costs for:

416 (i) renewable energy; and

417 (ii) technologies with similar characteristics.

418 Section 6. Section **54-17-101** is enacted to read:

419 **CHAPTER 17. RENEWABLE ENERGY ACT**

420 **Part 1. General Provisions**

421 **54-17-101. Title.**

422 This chapter is known as the "Renewable Energy Act."

423 Section 7. Section **54-17-102** is enacted to read:

424 **54-17-102. Definitions.**

425 As used in this chapter:

426 (1) "Renewable energy credit" means:

427 (a) a private renewable energy credit described in Section 54-17-301; or

428 (b) a state renewable energy credit described in Section 54-17-302.

429 (2) "Renewable energy contract" means a contract executed by an electrical  
 430 corporation:

431 (a) under which the electrical corporation purchases:  
432 (i) a private renewable energy credit; or  
433 (ii) both:  
434 (A) electricity; and  
435 (B) a private renewable energy credit; and  
436 (b) if the electricity or private renewable energy credit acquired under the contract is  
437 used by the electrical corporation to satisfy the electrical corporation's renewable energy  
438 portfolio obligation.

439 (3) "Renewable energy portfolio obligation" means the amount calculated in  
440 accordance with Subsection 54-17-201(3).

441 (4) "Renewable energy portfolio standard" means the rules made by the commission in  
442 accordance with Section 54-17-201.

443 Section 8. Section **54-17-201** is enacted to read:

444 **Part 2. Renewable Energy Portfolio Standard.**

445 **54-17-201. Commission to establish a renewable energy portfolio standard.**

446 (1) The commission shall establish a renewable energy portfolio standard:

447 (a) by no later than February 1, 2004;

448 (b) by rule made in accordance with Title 63, Chapter 46a, Utah Administrative  
449 Rulemaking Act; and

450 (c) that complies with this chapter.

451 (2) The renewable energy portfolio standard described in Subsection (1) shall require  
452 an electrical corporation that sells electricity to retail customers in this state to, beginning with  
453 calendar year 2005:

454 (a) generate or acquire electricity:

455 (i) from:

456 (A) a renewable energy production facility located in Utah;

457 (B) a renewable energy production facility that is:

458 (I) not located in Utah; and

459 (II) installed on or after January 1, 2003;

460 (C) an incremental hydroelectric facility installed as of January 1, 2003; or

461 (D) a small hydroelectric facility installed as of January 1, 2003; and

462 (ii) in an amount for each calendar year calculated in accordance with Subsection (3);

463 or

464 (b) expend one or more renewable energy credits in accordance with Part 3, Renewable  
465 Energy Credits.

466 (3) (a) For each calendar year, an electrical corporation shall calculate its renewable  
467 energy portfolio obligation by multiplying:

468 (i) the percentage specified for that calendar year in the commission rules described in  
469 Subsection (1); and

470 (ii) the total amount of electricity sold by the electrical corporation:

471 (A) to its retail customers located in the state; and

472 (B) during that calendar year.

473 (b) In the rules described in Subsection (1), the commission shall specify the  
474 percentage described in Subsection (3)(a)(i) which shall be:

475 (i) for each of the calendar years 2005 through 2009, not less than 4%;

476 (ii) for each of the calendar years 2010 through 2012, not less than 7%;

477 (iii) for calendar year 2013, not less than 10%; and

478 (iv) for calendar year 2014 and for every calendar year after 2014, not less than the  
479 percentage specified by the commission in accordance with Section 54-17-206.

480 Section 9. Section **54-17-202** is enacted to read:

481 **54-17-202. Electric corporations to comply with the renewable energy portfolio**  
482 **standard -- Exemption.**

483 (1) Except as provided in Subsection (3), beginning in 2005, an electrical corporation  
484 shall satisfy the electrical corporation's renewable energy portfolio obligation in accordance  
485 with:

486 (a) this chapter; and

487 (b) rules made by the commission in accordance with this chapter.

488 (2) An electrical corporation shall satisfy at least 50% of its renewable energy portfolio  
489 obligation by:

490 (a) generating or acquiring electricity from one or more renewable energy production  
491 facilities that transmit or distribute electricity generated from the renewable energy production  
492 facility through a power line that is:

493 (i) dedicated solely to the transmission or distribution of electricity generated from  
494 renewable energy; and

495 (ii) is connected to an electrical facility in Utah that is owned, operated, or controlled  
496 by an electrical corporation; or

497 (b) acquiring a private renewable energy credit that is derived from electricity  
498 generated by one or more renewable energy production facilities that transmit or distribute  
499 electricity generated from the renewable energy production facility through a power line  
500 described in Subsections (2)(a)(i) and (ii).

501 (3) (a) An electrical corporation with annual retail sales in the state of less than  
502 1,000,000 megawatt hours is exempt from this chapter until the calendar year in which:

503 (i) actual construction begins on an electric production facility:

504 (A) that is not a renewable energy production facility; and

505 (B) (I) that is owned by the electrical corporation; or

506 (II) from which the owner of the electric production facility is under legal obligation to  
507 provide electricity for use or sale by the electrical corporation; or

508 (ii) a power purchase contract is executed under which the electric corporation will  
509 receive electricity for use or sale by the electrical corporation.

510 (b) If an electrical corporation that is exempt under Subsection (3)(a) becomes subject  
511 to this chapter in accordance with Subsection (3)(a), the electrical corporation shall comply  
512 with this chapter:

513 (i) for the calendar year in which the event described in Subsection (3)(a) occurs; and

514 (ii) for each calendar year subsequent to the calendar year described in Subsection  
515 (3)(b)(i).

516 (c) For the calendar year in which an event described in Subsection (3)(a) occurs, the  
517 electrical corporation is required to meet the electrical corporation's full renewable energy  
518 portfolio obligation without proration.

519 Section 10. Section **54-17-203** is enacted to read:

520 **54-17-203. Criteria for a renewable energy portfolio standard.**

521 The renewable energy portfolio standard established under Section 54-17-201 shall  
522 provide that in determining whether an electric corporation has satisfied its renewable energy  
523 portfolio obligation:

524 (1) one kilowatt hour generated by solar energy is considered to be equal to three  
525 kilowatt hours;

526 (2) a kilowatt hour generated by a renewable energy production facility may not be  
527 used to satisfy the electrical corporation's renewable energy portfolio obligation if an electrical  
528 corporation charges a higher rate for that kilowatt hour; and

529 (3) one kilowatt hour reduction in the consumption of electricity by an electrical  
530 corporation's retail customers during a calendar year is considered to be equal to one kilowatt  
531 hour of electricity generated by a renewable energy resource if:

532 (a) the electrical corporation pays at least 50% of the cost of the acquisition or  
533 installation of a solar or wind energy production facility that:

534 (i) is located in this state; and

535 (ii) produces electricity for the benefit of one or more retail customers; and

536 (b) the reduction in the consumption is a result of the operation of the solar or wind  
537 production facility described in Subsection (3)(a).

538 Section 11. Section **54-17-204** is enacted to read:

539 **54-17-204. Reporting requirements.**

540 (1) (a) Beginning with the report for calendar year 2005, each electrical corporation  
541 shall submit to the commission an annual report for each calendar year that complies with the  
542 requirements of this section.

543 (b) The annual report described in this Subsection (1) shall:

544 (i) be submitted on or before the April 1 immediately following the calendar year for  
545 which the report is being made;

546 (ii) in a form approved by the commission; and

547 (iii) contain the information listed in Subsection (2).

548 (2) The annual report required by Subsection (1) shall state for the calendar year for  
549 which the report is being made:

550 (a) the amount of electricity that the electrical corporation generated or acquired during  
551 the calendar year from a facility described in Subsection 54-17-201(2)(a)(i);

552 (b) the amount of renewable energy credits, if any, that the electrical corporation  
553 acquired, sold, or traded during the calendar year;

554 (c) the capacity of each facility described in Subsection 54-17-201(2)(a)(i) owned,

555 operated, or controlled by the electrical corporation;

556 (d) the location of each facility listed in Subsection (2)(c);

557 (e) the total amount of electricity generated by each facility described in Subsection  
558 (2)(c) during the calendar year;

559 (f) the percentage of the total amount of electricity generated by a facility owned,  
560 operated, or controlled by the electrical corporation that was directly generated from renewable  
561 energy;

562 (g) whether during that calendar year the electrical corporation:

563 (i) began construction on a renewable energy production facility;

564 (ii) acquired a renewable energy production facility; or

565 (iii) placed into operation a renewable energy production facility;

566 (h) the date on which an event described in Subsection (2)(g) occurs; and

567 (i) any other information required by the commission by rule.

568 (3) To implement the purposes of this chapter, the commission may require an  
569 electrical corporation to submit during a calendar year one or more reports in addition to the  
570 annual report required by Subsection (1).

571 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for  
572 an annual report required by this section the commission shall make rules regarding:

573 (a) the format of the annual report; and

574 (b) the contents of the annual report.

575 Section 12. Section **54-17-205** is enacted to read:

576 **54-17-205. Renewable energy contracts -- Rulemaking -- Terms -- Recovery of**  
577 **costs.**

578 (1) The commission shall make rules in accordance with Title 63, Chapter 46a, Utah  
579 Administrative Rulemaking Act, that:

580 (a) govern the terms and conditions of a renewable energy contract; and

581 (b) are consistent with Section 54-12-201 to the extent that a renewable energy contract  
582 is subject to Chapter 12, Independent Energy Producers Act.

583 (2) The term of a renewable energy contract may not be less than 20 years unless the  
584 parties to the renewable energy contract agree to a shorter term.

585 (3) If an electrical corporation submits a renewable energy contract to the commission

586 and the commission approves the terms and conditions of the renewable energy contract:

587 (a) the renewable energy contract including all the terms and conditions of the contract  
588 are considered to be a prudent investment; and

589 (b) the electrical corporation may recover all just and reasonable costs associated with  
590 the renewable energy contract.

591 Section 13. Section **54-17-206** is enacted to read:

592 **54-17-206. Benefit cost evaluation -- Portfolio standards beginning 2014.**

593 (1) (a) During the calendar year 2010, the commission shall create a task force to  
594 analyze the benefits and costs to the state of the renewable energy portfolio standard created  
595 under this chapter.

596 (b) The task force required by this Subsection (1) shall include representatives from:

597 (i) electrical corporations;

598 (ii) municipal corporations;

599 (iii) small and large retail electric customers;

600 (iv) state agencies that have an interest in:

601 (A) energy issues;

602 (B) consumer interests; or

603 (C) environmental issues;

604 (v) public interest environmental groups;

605 (vi) public interest consumer groups;

606 (vii) developers of renewable resources; and

607 (viii) any other group that the commission considers appropriate.

608 (2) The task force shall issue a report on or before December 31, 2011 that:

609 (a) summarizes the analysis of the task force;

610 (b) makes recommendations as to the appropriate percentage required by Section  
611 54-17-201 for the renewable energy portfolio standard for calendar years beginning with  
612 calendar year 2014; and

613 (c) recommends whether or not the fixed price for a state renewable energy credit  
614 provided in Subsection 54-17-302(2)(a) should be adjusted.

615 (3) (a) The commission shall by rule adopt a schedule of the percentage to be specified  
616 in the renewable energy portfolio standard for calendar years beginning 2014:

617 (i) after consideration of the report described in Subsection (2);

618 (ii) in accordance with Section 54-17-201; and

619 (iii) subject to Subsection (3)(b).

620 (b) A percentage adopted by the commission in accordance with this Subsection (3)

621 shall equal or exceed 10%.

622 Section 14. Section **54-17-207** is enacted to read:

623 **54-17-207. City or towns renewable portfolios.**

624 A city or town in this state that provides retail electricity service is encouraged to  
625 generate or acquire electricity from renewable energy production facilities in the same  
626 proportion as an electrical corporation is required to generate or acquire electricity from  
627 renewable energy production facilities to comply with the renewable energy portfolio standard  
628 imposed under this chapter.

629 Section 15. Section **54-17-208** is enacted to read:

630 **54-17-208. Fines -- Enforcement.**

631 (1) If an electrical corporation fails to comply with its renewable energy portfolio  
632 obligation for any calendar year, the commission shall impose an administrative fine against  
633 the electrical corporation of at least five cents for each kilowatt hour that the electrical  
634 corporation failed to satisfy its renewable energy portfolio obligation.

635 (2) (a) An administrative fine imposed pursuant to this section may not be treated as a  
636 cost of service of the electrical corporation.

637 (b) An electrical corporation may not include any portion of the administrative fine in  
638 any application for a rate adjustment.

639 (c) The commission may not allow an electrical corporation to recover any portion of  
640 an administrative fine from the electrical corporation's retail customers.

641 (3) An administrative fine imposed and collected pursuant to this section shall be  
642 deposited into the General Fund.

643 Section 16. Section **54-17-301** is enacted to read:

644 **Part 3. Renewable Energy Credits**

645 **54-17-301. Renewable energy credit program and private credits defined by rule**  
646 **-- Renewable energy portfolio obligations satisfied through renewable energy credits.**

647 (1) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,

648 on or before January 1, 2005, the commission shall make rules establishing a program that is  
649 consistent with this part by which an electrical corporation may satisfy its renewable energy  
650 portfolio obligation through expending one or more renewable energy credits.

651 (b) The rules described in Subsection (1)(a) shall provide:

652 (i) that one kilowatt hour of electricity generated by a renewable energy production  
653 facility is equivalent to one private renewable energy credit;

654 (ii) what documentation is required to establish that an electrical corporation owns a  
655 private renewable energy credit;

656 (iii) how to determine whether a private renewable energy credit meets the  
657 requirements of Subsection 54-17-202(2)(b); and

658 (iv) what other requirements other than the requirements listed in Subsections (1)(b)(i)  
659 through (iii) apply to a private renewable energy credit.

660 (2) In accordance with this section, an electrical corporation may satisfy its renewable  
661 energy portfolio obligation for a calendar year by expending one or more renewable energy  
662 credits in that calendar year in an amount equal to the portion of the electrical corporation's  
663 renewable energy portfolio obligation that is not satisfied through electricity generated or  
664 acquired in that calendar year from a renewable energy production facility.

665 (3) To expend a renewable energy credit an electrical corporation shall file a report:

666 (a) with the commission;

667 (b) with the report required by Section 54-17-204;

668 (c) stating the number of renewable energy credits that the electrical corporation is  
669 expending for a calendar year;

670 (d) identifying the portion of the renewable energy credits described in Subsection  
671 (3)(c) that are:

672 (i) private renewable energy credits described in Subsection (1)(b); or

673 (ii) state renewable energy credits described in Section 54-17-302; and

674 (e) accompanied by the documentation that establishes that the electrical corporation  
675 owns the renewable energy credit described in Subsection (3)(c).

676 Section 17. Section **54-17-302** is enacted to read:

677 **54-17-302. State renewable energy credit -- Renewable Portfolio Standard**

678 **Restricted Account.**

679 (1) The Utah Energy Office created in Section 63-34-101 may issue state renewable  
680 energy credits that:

681 (a) are each equivalent to one kilowatt hour of electricity generated by a renewable  
682 energy production facility; and

683 (b) available for purchase by an electrical corporation.

684 (2) (a) An electrical corporation may purchase a state renewable energy credit issued  
685 by the Utah Energy Office at a fixed price of three cents for each state renewable energy credit.

686 (b) If an electrical corporation purchases a state renewable energy credit, the Utah  
687 Energy Office shall provide the electrical corporation documentation that the electrical  
688 corporation owns the state energy credit.

689 (3) The Utah Energy Office shall deposit all monies received from the sale of a state  
690 renewable energy credit under this section into the Renewable Portfolio Standards Restricted  
691 Account created by this section.

692 (4) (a) There is created within the General Fund a restricted account known as the  
693 "Renewable Portfolio Standard Restricted Account."

694 (b) (i) The Renewable Portfolio Standards Restricted Account shall be funded from the  
695 revenues received by the Utah Energy Office for the sale of a state renewable energy credit  
696 under this section.

697 (ii) The restricted account may not earn interest.

698 (c) Monies in this Renewable Portfolio Standard Restricted Account:

699 (i) may be used only:

700 (A) to the extent appropriated by the Legislature; and

701 (B) for the purpose of developing photovoltaic projects for public schools in the state;

702 and

703 (ii) shall be disbursed through a competitive procurement process designed and  
704 administered by the Utah Energy Office in accordance with Section 63-34-101.

705 Section 18. Section **63-34-101** is amended to read:

706 **63-34-101. Utah Energy Office created -- Utah Energy Office duties.**

707 (1) There is created within the Department of Natural Resources the Utah Energy  
708 Office.

709 (2) The Utah Energy Office shall:

- 710 (a) administer federally funded state programs regarding renewable energy, energy  
711 efficiency, and energy conservation in accordance with applicable federal program guidelines;
- 712 (b) coordinate and facilitate the development and implementation of programs relating  
713 to procurement, consumption, conservation, and efficient use of energy in state buildings;
- 714 (c) if requested by the governor, prepare a state energy emergency plan in accordance  
715 with Title 63, Chapter 53a, Energy Emergency Powers of Governor; [~~and~~]
- 716 (d) participate in regulatory proceedings as appropriate to promote the development,  
717 conservation, and efficient use of energy[-]; and
- 718 (e) in accordance with Section 54-17-302:
- 719 (i) issue state renewable energy credits available for purchase by an electrical  
720 corporation; and
- 721 (ii) design and administer a competitive procurement process for the disbursement of  
722 monies appropriated from the Renewable Portfolio Standard Restricted Account created in  
723 Section 54-17-302.

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**Legislative Review Note**  
**as of 1-17-03 4:05 PM**

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

**Office of Legislative Research and General Counsel**

**State Impact**

This bill could cause the cost of electricity to rise and the state will pay its share of the costs. Costs of implementation for the Energy Office can be absorbed within existing budgets.

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**Individual and Business Impact**

Individuals and businesses could pay more for electricity.

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