

**PUBLIC SERVICE COMMISSION -  
REGULATION OF CABLE COMPANIES**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: David L. Hogue**

---

---

**LONG TITLE**

**General Description:**

This bill modifies the definition of a public utility within the Public Utilities Code.

**Highlighted Provisions:**

This bill:

- ▶ defines a cable television provider as a public utility for purposes of the Public Utilities Code; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

---

---

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

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

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

As used in this title:

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



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

31 (2) "Cable television provider" means a person who owns, controls, operates, manages,  
32 or resells cable television service, as defined in Section 10-18-102.

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  
42 any 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,  
55 and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing  
56 any electric plant, or in any way furnishing electric power for public service or to its consumers  
57 or members for domestic, commercial, or industrial use, within this state, except independent  
58 energy producers, and except where electricity is generated on or distributed by the producer

59 solely for the producer's own use, or the use of the producer's tenants, or for the use of  
60 members of an association of unit owners formed under Title 57, Chapter 8, Condominium  
61 Ownership Act, and 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,  
65 ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying  
66 conductors 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,  
68 trustees, and receivers, owning, controlling, operating, or managing any gas plant for public  
69 service within this state or for the selling or furnishing of natural gas to any consumer or  
70 consumers within the state for domestic, commercial, or industrial use, except in the situation  
71 that:

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

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

76 (ii) not for sale to others;

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

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

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

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

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

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

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

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

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

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

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

120 (c) Any corporation or person not engaged in business exclusively as a public utility as

121 defined in this section is governed by this title in respect only to the public utility owned,  
122 controlled, operated, or managed by the corporation or person, and not in respect to any other  
123 business or pursuit.

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

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

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

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

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

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

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

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

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

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

152 (III) a combination of Subsections [~~(15)~~] (16)(f)(i)(A)(I) and (II);  
153 (B) the lessor of the ownership interest identified in Subsection [~~(15)~~] (16)(f)(i)(A) is:  
154 (I) primarily engaged in a business other than the business of a public utility; or  
155 (II) a person whose total equity or beneficial ownership is held directly or indirectly by  
156 another person engaged in a business other than the business of a public utility; and  
157 (C) the rent reserved under the lease does not include any amount based on or  
158 determined by revenues or income of the lessee.

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

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

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

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

183           ~~[(16)]~~ (17) "Purchasing utility" means any electrical corporation that is required to  
184 purchase electricity from small power production or cogeneration facilities pursuant to the  
185 Public Utility Regulatory Policies Act, 16 U.S.C. Section 824a-3.

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

193           ~~[(18)]~~ (19) "Railroad corporation" includes every corporation and person, their lessees,  
194 trustees, and receivers, owning, controlling, operating, or managing any railroad for public  
195 service within this state.

196           ~~[(19)]~~ (20) (a) "Sewerage corporation" includes every corporation and person, their  
197 lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage  
198 system for public service within this state.

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

203           ~~[(20)]~~ (21) "Small power production facility" means a facility which:

204           (a) produces electric energy solely by the use, as a primary energy source, of biomass,  
205 waste, renewable resources, geothermal resources, or any combination of them;

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

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

209           ~~[(21)]~~ (22) "Telegraph corporation" includes every corporation and person, their  
210 lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line  
211 for public service within this state.

212           ~~[(22)]~~ (23) "Telegraph line" includes all conduits, ducts, poles, wires, cables,  
213 instruments, and appliances, and all other real estate, fixtures, and personal property owned,

214 controlled, operated, or managed in connection with or to facilitate communication by  
215 telegraph, whether that communication be had with or without the use of transmission wires.

216 ~~[(23)]~~ (24) (a) "Telephone corporation" means any corporation or person, and their  
217 lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates,  
218 manages, or resells a public telecommunications service as defined in Section 54-8b-2.

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

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

225 (ii) Internet service; or

226 (iii) resold intrastate toll service.

227 ~~[(24)]~~ (25) "Telephone line" includes all conduits, ducts, poles, wires, cables,  
228 instruments, and appliances, and all other real estate, fixtures, and personal property owned,  
229 controlled, operated, or managed in connection with or to facilitate communication by  
230 telephone whether that communication is had with or without the use of transmission wires.

231 ~~[(25)]~~ (26) "Transportation of persons" includes every service in connection with or  
232 incidental to the safety, comfort, or convenience of the person transported, and the receipt,  
233 carriage, and delivery of that person and that person's baggage.

234 ~~[(26)]~~ (27) "Transportation of property" includes every service in connection with or  
235 incidental to the transportation of property, including in particular its receipt, delivery,  
236 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and  
237 hauling, and the transmission of credit by express companies.

238 ~~[(27)]~~ (28) "Water corporation" includes every corporation and person, their lessees,  
239 trustees, and receivers, owning, controlling, operating, or managing any water system for  
240 public service within this state. It does not include private irrigation companies engaged in  
241 distributing water only to their stockholders, or towns, cities, counties, water conservancy  
242 districts, improvement districts, or other governmental units created or organized under any  
243 general or special law of this state.

244 ~~[(28)]~~ (29) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,

245 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,  
246 and personal property owned, controlled, operated, or managed in connection with or to  
247 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,  
248 appointment, apportionment, or measurement of water for power, fire protection, irrigation,  
249 reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

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

252 [~~(29)~~] (30) "Wholesale electrical cooperative" includes every electrical corporation that  
253 is:

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

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

---

---

**Legislative Review Note**  
**as of 1-29-04 7:59 AM**

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 will require an additional 1/2 time clerical at a cost of \$30,000 for the Public Service Commission and \$97,400 for an auditor for the Department of Public Utilities in the Commerce Department. All funding would be from the Public Utilities Regulatory Fee (PURF). Second year costs would be less.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
GF Restricted	\$127,400	\$100,800	\$127,400	\$100,800
<b>TOTAL</b>	<b>\$127,400</b>	<b>\$100,800</b>	<b>\$127,400</b>	<b>\$100,800</b>

---

---

**Individual and Business Impact**

Regulated cable companies would pay 0.3% of gross revenues plus other fees. They would also need additional accounting and legal services to comply with regulatory requirements. Costs would be passed onto customers.

---

---

**Office of the Legislative Fiscal Analyst**