

ENERGY AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill amends definitions and energy provisions in Title 54, Public Utilities.

Highlighted Provisions:

This bill:

- ▶ amends definitions; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

54-2-1, as last amended by Laws of Utah 2008, Chapter 374

54-12-1, as last amended by Laws of Utah 2008, Chapter 374

54-12-2, as last amended by Laws of Utah 2008, Chapter 374

54-17-102, as last amended by Laws of Utah 2008, Chapter 382

54-17-201, as last amended by Laws of Utah 2008, Chapters 374 and 382

54-17-601, as enacted by Laws of Utah 2008, Chapter 374

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



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

29 **54-2-1. Definitions.**

30 As used in this title:

31 (1) "Avoided costs" means the incremental costs to an electrical corporation of electric
32 energy or capacity or both which, due to the purchase of electric energy or capacity or both
33 from ~~small~~ qualifying power production or cogeneration facilities, the electrical corporation
34 would not have to generate itself or purchase from another electrical corporation.

35 (2) "Cogeneration facility":

36 (a) means a generation facility which produces:

37 (i) electric energy; and

38 (ii) steam or forms of useful energy, including heat, which are used for industrial,
39 commercial, heating, or cooling purposes; and

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

41 (3) "Commission" means the Public Service Commission of Utah.

42 (4) "Commissioner" means a member of the commission.

43 (5) (a) "Corporation" includes an association, and a joint stock company having any
44 powers or privileges not possessed by individuals or partnerships.

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

48 (6) "Distribution electrical cooperative" includes an electrical corporation that:

49 (a) is a cooperative;

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

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

54 (i) members; or

55 (ii) patrons.

56 (7) "Electrical corporation" includes every corporation, cooperative association, and
57 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any
58 electric plant, or in any way furnishing electric power for public service or to its consumers or

59 members for domestic, commercial, or industrial use, within this state, except independent
60 energy producers, and except where electricity is generated on or distributed by the producer
61 solely for the producer's own use, or the use of the producer's tenants, or for the use of
62 members of an association of unit owners formed under Title 57, Chapter 8, Condominium
63 Ownership Act, and not for sale to the public generally.

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

69 (9) "Generation facility" means all electric plant used for the production or generation
70 of electricity, including all electric plant used to interconnect the production or generation
71 plant.

72 [~~(9)~~] (10) "Gas corporation" includes every corporation and person, their lessees,
73 trustees, and receivers, owning, controlling, operating, or managing any gas plant for public
74 service within this state or for the selling or furnishing of natural gas to any consumer or
75 consumers within the state for domestic, commercial, or industrial use, except in the situation
76 that:

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

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

81 (ii) not for sale to others;

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

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

86 [~~(10)~~] (11) "Gas plant" includes all real estate, fixtures, and personal property owned,
87 controlled, operated, or managed in connection with or to facilitate the production, generation,
88 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

89 [~~(11)~~] (12) "Heat corporation" includes every corporation and person, their lessees,

90 trustees, and receivers, owning, controlling, operating, or managing any heating plant for public
91 service within this state.

92 ~~[(12)]~~ (13) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances,
93 and personal property controlled, operated, or managed in connection with or to facilitate the
94 production, generation, transmission, delivery, or furnishing of artificial heat.

95 (b) "Heating plant" does not include ~~[either small]~~ an independent power production
96 facility, a qualifying power production [facilities] facility, or a cogeneration [facilities] facility.

97 ~~[(13)]~~ (14) "Independent energy producer" means every electrical corporation, person,
98 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,
99 control, or manage an independent power production or cogeneration facility.

100 ~~[(14)]~~ (15) "Independent power production facility" means a generation facility that:

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

104 (b) is a qualifying power production facility.

105 ~~[(15)]~~ (16) "Private telecommunications system" includes all facilities for the
106 transmission of signs, signals, writing, images, sounds, messages, data, or other information of
107 any nature by wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio
108 facilities, that are owned, controlled, operated, or managed by a corporation or person,
109 including their lessees, trustees, receivers, or trustees appointed by any court, for the use of that
110 corporation or person and not for the shared use with or resale to any other corporation or
111 person on a regular basis.

112 ~~[(16)]~~ (17) (a) "Public utility" includes every railroad corporation, gas corporation,
113 electrical corporation, distribution electrical cooperative, wholesale electrical cooperative,
114 telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat
115 corporation, and independent energy producer not described in Subsection ~~[(16)]~~ (17)(d),
116 where the service is performed for, or the commodity delivered to, the public generally, or in
117 the case of a gas corporation or electrical corporation where the gas or electricity is sold or
118 furnished to any member or consumers within the state for domestic, commercial, or industrial
119 use.

120 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone

121 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
122 or independent energy producer not described in Subsection ~~[(16)]~~ (17)(d), performs a service
123 for or delivers a commodity to the public, it is considered to be a public utility, subject to the
124 jurisdiction and regulation of the commission and this title.

125 (ii) If a gas corporation, independent energy producer not described in Subsection
126 ~~[(16)]~~ (17)(d), or electrical corporation sells or furnishes gas or electricity to any member or
127 consumers within the state, for domestic, commercial, or industrial use, for which any
128 compensation or payment is received, it is considered to be a public utility, subject to the
129 jurisdiction and regulation of the commission and this title.

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

134 (d) An independent energy producer is exempt from the jurisdiction and regulations of
135 the commission with respect to an independent power production facility if it meets the
136 requirements of this Subsection ~~[(16)]~~ (17)(d)~~[(i), (ii), or (iii)]~~, or any combination of these:

137 (i) the commodity or service is produced or delivered, or both, by an independent
138 energy producer solely for the uses exempted in Subsection (7) or for the use of state-owned
139 facilities;

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

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

146 (B) the real property on which the service or commodity is used is contiguous to real
147 property which is owned or controlled by the independent energy producer. Parcels of real
148 property separated solely by public roads or easements for public roads shall be considered as
149 contiguous for purposes of this Subsection ~~[(16)]~~ (17).

150 (e) Any person or corporation defined as an electrical corporation or public utility
151 under this section may continue to serve its existing customers subject to any order or future

152 determination of the commission in reference to the right to serve those customers.

153 (f) (i) "Public utility" does not include any person that is otherwise considered a public
154 utility under this Subsection [~~(16)~~] (17) solely because of that person's ownership of an interest
155 in an electric plant, cogeneration facility, independent power production facility, or [small]
156 qualifying power production facility in this state if all of the following conditions are met:

157 (A) the ownership interest in the electric plant, cogeneration facility, independent
158 power production facility, or qualifying or [small] power production facility is leased to:

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

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

162 (III) a combination of Subsections [~~(16)~~] (17)(f)(i)(A)(I) and (II);

163 (B) the lessor of the ownership interest identified in Subsection [~~(16)~~] (17)(f)(i)(A) is:

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

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

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

169 (ii) Any person that is exempt from classification as a public utility under Subsection
170 [~~(16)~~] (17)(f)(i) shall continue to be so exempt from classification following termination of the
171 lessee's right to possession or use of the electric plant for so long as the former lessor does not
172 operate the electric plant or sell electricity from the electric plant. If the former lessor operates
173 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a
174 period of 90 days following termination, or for a longer period that is ordered by the
175 commission. This period may not exceed one year. A change in rates that would otherwise
176 require commission approval may not be effective during the 90-day or extended period
177 without commission approval.

178 (g) "Public utility" does not include any person that provides financing for, but has no
179 ownership interest in an electric plant, [small] qualifying power production facility,
180 independent power production facility, or cogeneration facility. In the event of a foreclosure in
181 which an ownership interest in an electric plant, [small] qualifying power production facility,
182 independent power production facility, or cogeneration facility is transferred to a third-party

183 financier of an electric plant, ~~[small]~~ qualifying power production facility, independent power
184 production facility, or cogeneration facility, then that third-party financier is exempt from
185 classification as a public utility for 90 days following the foreclosure, or for a longer period that
186 is ordered by the commission. This period may not exceed one year.

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

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

195 ~~[(+7)]~~ (18) "Purchasing utility" means any electrical corporation that is required to
196 purchase electricity from ~~[small]~~ qualifying power production or cogeneration facilities
197 pursuant to the Public Utility Regulatory Policies Act, 16 U.S.C. Section 824a-3.

198 ~~[(+8)]~~ (19) "Qualifying power producer" means a corporation, cooperative association,
199 or person, or the lessee, trustee, and receiver of the corporation, cooperative association, or
200 person, who owns, controls, operates, or manages any qualifying power production facility or
201 cogeneration facility.

202 ~~[(+9)]~~ (20) "Qualifying power production facility" means a generation facility that:

203 (a) produces electrical energy solely by the use, as a primary energy source, of biomass,
204 waste, a renewable resource, a geothermal resource, or any combination of the preceding
205 sources;

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

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

209 ~~[(+20)]~~ (21) "Railroad" includes every commercial, interurban, and other railway, other
210 than a street railway, and each branch or extension of a railway, by any power operated,
211 together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots,
212 union depots, yards, grounds, terminals, terminal facilities, structures, and equipment, and all
213 other real estate, fixtures, and personal property of every kind used in connection with a

214 railway owned, controlled, operated, or managed for public service in the transportation of
215 persons or property.

216 [~~(21)~~] (22) "Railroad corporation" includes every corporation and person, their lessees,
217 trustees, and receivers, owning, controlling, operating, or managing any railroad for public
218 service within this state.

219 [~~(22)~~] (23) (a) "Sewerage corporation" includes every corporation and person, their
220 lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage
221 system for public service within this state.

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

226 [~~(23)~~] (24) "Telegraph corporation" includes every corporation and person, their
227 lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line
228 for public service within this state.

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

233 [~~(25)~~] (26) (a) "Telephone corporation" means any corporation or person, and their
234 lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates,
235 manages, or resells a public telecommunications service as defined in Section 54-8b-2.

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

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

242 (ii) Internet service; or

243 (iii) resold intrastate toll service.

244 [~~(26)~~] (27) "Telephone line" includes all conduits, ducts, poles, wires, cables,

245 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
246 controlled, operated, or managed in connection with or to facilitate communication by
247 telephone whether that communication is had with or without the use of transmission wires.

248 ~~[(27)]~~ (28) "Transportation of persons" includes every service in connection with or
249 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
250 carriage, and delivery of that person and that person's baggage.

251 ~~[(28)]~~ (29) "Transportation of property" includes every service in connection with or
252 incidental to the transportation of property, including in particular its receipt, delivery,
253 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and
254 hauling, and the transmission of credit by express companies.

255 ~~[(29)]~~ (30) "Water corporation" includes every corporation and person, their lessees,
256 trustees, and receivers, owning, controlling, operating, or managing any water system for
257 public service within this state. It does not include private irrigation companies engaged in
258 distributing water only to their stockholders, or towns, cities, counties, water conservancy
259 districts, improvement districts, or other governmental units created or organized under any
260 general or special law of this state.

261 ~~[(30)]~~ (31) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
262 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,
263 and personal property owned, controlled, operated, or managed in connection with or to
264 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,
265 appointment, apportionment, or measurement of water for power, fire protection, irrigation,
266 reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

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

269 ~~[(31)]~~ (32) "Wholesale electrical cooperative" includes every electrical corporation that
270 is:

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

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

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

276 **54-12-1. Legislative policy.**

277 (1) The Legislature declares that in order to promote the more rapid development of
278 new sources of electrical energy, to maintain the economic vitality of the state through the
279 continuing production of goods and the employment of its people, and to promote the efficient
280 utilization and distribution of energy, it is desirable and necessary to encourage independent
281 energy and qualifying power producers to competitively develop sources of electric energy not
282 otherwise available to Utah businesses, residences, and industries served by electrical
283 corporations, and to remove unnecessary barriers to energy transactions involving independent
284 energy and qualifying power producers and electrical corporations.

285 (2) It is the policy of this state to encourage the development of independent and
286 qualifying power production and cogeneration facilities, to promote a diverse array of
287 economical and permanently sustainable energy resources in an environmentally acceptable
288 manner, and to conserve our finite and expensive energy resources and provide for their most
289 efficient and economic utilization.

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

291 **54-12-2. Purchase of power from qualifying power producers.**

292 (1) Purchasing utilities shall offer to purchase power from qualifying power producers.

293 (2) The commission shall establish reasonable rates, terms, and conditions for the
294 purchase or sale of electricity or electrical generating capacity, or both, between a purchasing
295 utility and a qualifying power producer. In establishing these rates, terms, and conditions, the
296 commission shall either establish a procedure under which qualifying power producers offer
297 competitive bids for the sale of power to purchasing utilities or devise an alternative method
298 which considers the purchasing utility's avoided costs. The capacity component of avoided
299 costs shall reflect the purchasing utility's long-term deferral or cancellation of generating units
300 which may result from the purchase of power from qualifying power producers.

301 (3) Purchasing utilities and qualifying power producers may agree to rates, terms, or
302 conditions for the sale of electricity or electrical capacity which differ from the rates, terms,
303 and conditions adopted by the commission under Subsection (2).

304 (4) The commission may adopt further rules which encourage the development of
305 [small] qualifying power production and cogeneration facilities.

306 Section 4. Section **54-17-102** is amended to read:

307 **54-17-102. Definitions.**

308 As used in this chapter:

309 (1) "Affected electrical utility" means an electrical corporation with at least 200,000
310 retail customers in the state.

311 (2) "Benchmark option" means an energy resource against which bids in an open bid
312 process may be evaluated that:

313 (a) could be constructed or owned by:

314 (i) an affected electrical utility; or

315 (ii) an affiliate of an affected electrical utility; or

316 (b) may be a purchase of:

317 (i) electricity;

318 (ii) electric generating capacity; or

319 (iii) electricity and electric generating capacity.

320 (3) "Integrated resource plan" means a plan that contains:

321 (a) the demand and energy forecast by the affected electrical utility for at least a
322 ten-year period;

323 (b) the affected electrical utility's options for meeting the requirements shown in its
324 load and resource forecast in an economic and reliable manner, including:

325 (i) demand-side and supply-side options; and

326 (ii) a brief description and summary cost-benefit analysis, if available, of each option
327 that was considered;

328 (c) the affected electrical utility's assumptions and conclusions with respect to the
329 effect of the plan on the cost and reliability of energy service;

330 (d) a description of the external environmental and economic consequences of the plan
331 to the extent practicable; and

332 (e) any other data and analyses as the commission may require.

333 (4) "Significant energy resource" for an affected electrical utility means a resource that
334 consists of:

335 (a) a total of 100 megawatts or more of new generating capacity that has a dependable
336 life of ten or more years;

337 (b) a purchase of the following if the contract is for a term of ten or more years and not

338 less than 100 megawatts:
339 (i) electricity;
340 (ii) electric generating capacity; or
341 (iii) electricity and electrical generating capacity;
342 (c) the purchase or lease by an affected electrical utility from an affiliated company of:
343 (i) a [~~generating~~] generation facility;
344 (ii) electricity;
345 (iii) electrical generating capacity; or
346 (iv) electricity and electrical generating capacity;
347 (d) a contract with an option for the affected electrical utility or an affiliate to purchase
348 a resource that consists of not less than 100 megawatts or more of new generating capacity that
349 has a remaining dependable life of ten or more years; or
350 (e) a type of resource designated by the commission as a significant energy resource in
351 rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative
352 Rulemaking Act, after considering the affected electrical utility's integrated resource plan and
353 action plan.

354 (5) "Solicitation" means a request for proposals or other invitation for persons to
355 submit a bid or proposal through an open bid process for construction or acquisition of a
356 significant energy resource.

357 Section 5. Section **54-17-201** is amended to read:

358 **54-17-201. Solicitation process required -- Exception.**

359 (1) (a) An affected electrical utility shall comply with this chapter to acquire or
360 construct a significant energy resource after February 25, 2005.

361 (b) Notwithstanding Subsection (1)(a), this chapter does not apply to a significant
362 energy resource for which the affected electrical utility has issued a solicitation before February
363 25, 2005.

364 (2) (a) Except as provided in Subsection (3), to acquire or construct a significant
365 energy resource, an affected electrical utility shall conduct a solicitation process that is
366 approved by the commission.

367 (b) To obtain the approval of the commission of a solicitation process, the affected
368 electrical utility shall file with the commission a request for approval that includes:

369 (i) a description of the solicitation process the affected electrical utility will use;
370 (ii) a complete proposed solicitation; and
371 (iii) any other information the commission requires by rule made in accordance with
372 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

373 (c) In ruling on the request for approval of a solicitation process, the commission shall
374 determine whether the solicitation process:

375 (i) complies with this chapter and rules made in accordance with Title 63G, Chapter 3,
376 Utah Administrative Rulemaking Act; and

377 (ii) is in the public interest taking into consideration:

378 (A) whether it will most likely result in the acquisition, production, and delivery of
379 electricity at the lowest reasonable cost to the retail customers of an affected electrical utility
380 located in this state;

381 (B) long-term and short-term impacts;

382 (C) risk;

383 (D) reliability;

384 (E) financial impacts on the affected electrical utility; and

385 (F) other factors determined by the commission to be relevant.

386 (d) Before approving a solicitation process under this section the commission:

387 (i) may hold a public hearing; and

388 (ii) shall provide an opportunity for public comment.

389 (e) As part of its review of a solicitation process, the commission may provide the
390 affected electrical utility guidance on any additions or changes to its proposed solicitation
391 process.

392 (f) Unless the commission determines that additional time to analyze a solicitation
393 process is warranted and is in the public interest, within 60 days of the day on which the
394 affected electrical utility files a request for approval of the solicitation process, the commission
395 shall:

396 (i) approve a proposed solicitation process;

397 (ii) suggest modifications to a proposed solicitation process; or

398 (iii) reject a proposed solicitation process.

399 (3) Notwithstanding Subsection (2), an affected electrical utility may acquire or

400 construct a significant energy resource without conducting a solicitation process if it obtains a
401 waiver of the solicitation requirement in accordance with Section 54-17-501.

402 (4) In accordance with the commission's authority under Subsection 54-12-2(2), the
403 commission shall determine:

404 (a) whether this chapter or another competitive bidding procedure shall apply to a
405 purchase of a significant energy resource by an affected electrical utility from a [small]
406 qualifying power producer or cogenerator; and

407 (b) if this chapter applies as provided in Subsection (4)(a), the manner in which this
408 chapter applies to a purchase of a significant energy resource by an affected electrical utility
409 from a [small] qualifying power producer or cogenerator.

410 Section 6. Section **54-17-601** is amended to read:

411 **54-17-601. Definitions.**

412 As used in this part:

413 (1) "Adjusted retail electric sales" means the total kilowatt-hours of retail electric sales
414 of an electrical corporation to customers in this state in a calendar year, reduced by:

415 (a) the amount of those kilowatt-hours attributable to electricity generated or purchased
416 in that calendar year from qualifying zero carbon emissions generation and qualifying carbon
417 sequestration generation;

418 (b) the amount of those kilowatt-hours attributable to electricity generated or purchased
419 in that calendar year from generation located within the geographic boundary of the Western
420 Electricity Coordinating Council that derives its energy from one or more of the following but
421 that does not satisfy the definition of a renewable energy source or that otherwise has not been
422 used to satisfy Subsection 54-17-602(1):

423 (i) wind energy;

424 (ii) solar photovoltaic and solar thermal energy;

425 (iii) wave, tidal, and ocean thermal energy;

426 (iv) except for combustion of wood that has been treated with chemical preservatives
427 such as creosote, pentachlorophenol or chromated copper arsenate, biomass and biomass
428 byproducts, including:

429 (A) organic waste;

430 (B) forest or rangeland woody debris from harvesting or thinning conducted to improve

431 forest or rangeland ecological health and to reduce wildfire risk;

432 (C) agricultural residues;

433 (D) dedicated energy crops; and

434 (E) landfill gas or biogas produced from organic matter, wastewater, anaerobic

435 digesters, or municipal solid waste;

436 (v) geothermal energy;

437 (vi) hydroelectric energy; or

438 (vii) waste gas and waste heat capture or recovery; and

439 (c) the number of kilowatt-hours attributable to reductions in retail sales in that

440 calendar year from demand side management as defined in Section 54-7-12.8, with the

441 kilowatt-hours for an electrical corporation whose rates are regulated by the commission and

442 adjusted by the commission to exclude kilowatt-hours for which a renewable energy certificate

443 is issued under Subsection 54-17-603(4)(b).

444 (2) "Amount of kilowatt-hours attributable to electricity generated or purchased in that

445 calendar year from qualifying carbon sequestration generation," for qualifying carbon

446 sequestration generation, means the kilowatt-hours supplied by a facility during the calendar

447 year multiplied by the ratio of the amount of carbon dioxide captured from the facility and

448 sequestered to the sum of the amount of carbon dioxide captured from the facility and

449 sequestered plus the amount of carbon dioxide emitted from the facility during the same

450 calendar year.

451 (3) "Banked renewable energy certificate" means a bundled or unbundled renewable
452 energy certificate that is:

453 (a) not used in a calendar year to comply with this part or with a renewable energy
454 program in another state; and

455 (b) carried forward into a subsequent year.

456 (4) "Bundled renewable energy certificate" means a renewable energy certificate for
457 qualifying electricity that is acquired:

458 (a) by an electrical corporation by a trade, purchase, or other transfer of electricity that
459 includes the renewable energy attributes of, or certificate that is issued for, the electricity; or

460 (b) by an electrical corporation by generating the electricity for which the renewable
461 energy certificate is issued.

- 462 (5) "Electrical corporation":
- 463 (a) is as defined in Section 54-2-1; and
- 464 (b) does not include a person generating electricity that is not for sale to the public.
- 465 (6) "Qualifying carbon sequestration generation" means a fossil-fueled [~~generating~~
- 466 generation facility located within the geographic boundary of the Western Electricity
- 467 Coordinating Council that:
- 468 (a) becomes operational or is retrofitted on or after January 1, 2008; and
- 469 (b) reduces carbon dioxide emissions into the atmosphere through permanent
- 470 geological sequestration or through another verifiably permanent reduction in carbon dioxide
- 471 emissions through the use of technology.
- 472 (7) "Qualifying electricity" means electricity generated on or after January 1, 1995
- 473 from a renewable energy source if:
- 474 (a) (i) the renewable energy source is located within the geographic boundary of the
- 475 Western Electricity Coordinating Council; or
- 476 (ii) the qualifying electricity is delivered to the transmission system of an electrical
- 477 corporation or a delivery point designated by the electrical corporation for the purpose of
- 478 subsequent delivery to the electrical corporation; and
- 479 (b) the renewable energy attributes of the electricity are not traded, sold, transferred, or
- 480 otherwise used to satisfy another state's renewable energy program.
- 481 (8) "Qualifying zero carbon emissions generation":
- 482 (a) means a generation facility located within the geographic boundary of the Western
- 483 Electricity Coordinating Council that:
- 484 (i) becomes operational on or after January 1, 2008; and
- 485 (ii) does not produce carbon as a byproduct of the generation process;
- 486 (b) includes generation powered by nuclear fuel; and
- 487 (c) does not include renewable energy sources used to satisfy the requirement
- 488 established under Subsection 54-17-602(1).
- 489 (9) "Renewable energy certificate" means a certificate issued under Section 54-17-603.
- 490 (10) "Renewable energy source" means:
- 491 (a) an electric generation facility or generation capability or upgrade that becomes
- 492 operational on or after January 1, 1995 that derives its energy from one or more of the

493 following:

494 (i) wind energy;

495 (ii) solar photovoltaic and solar thermal energy;

496 (iii) wave, tidal, and ocean thermal energy;

497 (iv) except for combustion of wood that has been treated with chemical preservatives

498 such as creosote, pentachlorophenol or chromated copper arsenate, biomass and biomass

499 byproducts, including:

500 (A) organic waste;

501 (B) forest or rangeland woody debris from harvesting or thinning conducted to improve

502 forest or rangeland ecological health and to reduce wildfire risk;

503 (C) agricultural residues;

504 (D) dedicated energy crops; and

505 (E) landfill gas or biogas produced from organic matter, wastewater, anaerobic

506 digesters, or municipal solid waste;

507 (v) geothermal energy located outside the state;

508 (vi) waste gas and waste heat capture or recovery; or

509 (vii) efficiency upgrades to a hydroelectric facility, without regard to the date upon

510 which the facility became operational, if the upgrades become operational on or after January

511 1, 1995;

512 (b) any of the following:

513 (i) up to 50 average megawatts of electricity per year per electrical corporation from a

514 certified low-impact hydroelectric facility, without regard to the date upon which the facility

515 becomes operational, if the facility is certified as a low-impact hydroelectric facility on or after

516 January 1, 1995, by a national certification organization;

517 (ii) geothermal energy if located within the state, without regard to the date upon which

518 the facility becomes operational; or

519 (iii) hydroelectric energy if located within the state, without regard to the date upon

520 which the facility becomes operational;

521 (c) hydrogen gas derived from any source of energy described in Subsection (10)(a) or

522 (b);

523 (d) if an electric generation facility employs multiple energy sources, that portion of the

524 electricity generated that is attributable to energy sources described in Subsections (10)(a)
525 through (c); and

526 (e) any of the following located in the state and owned by a user of energy:

527 (i) a demand side management measure, as defined by Subsection 54-7-12.8(1), with
528 the quantity of renewable energy certificates to which the user is entitled determined by the
529 equivalent energy saved by the measure;

530 (ii) a solar thermal system that reduces the consumption of fossil fuels, with the
531 quantity of renewable energy certificates to which the user is entitled determined by the
532 equivalent kilowatt-hours saved, except to the extent the commission determines otherwise
533 with respect to net-metered energy;

534 (iii) a solar photovoltaic system that reduces the consumption of fossil fuels with the
535 quantity of renewable energy certificates to which the user is entitled determined by the total
536 production of the system, except to the extent the commission determines otherwise with
537 respect to net-metered energy;

538 (iv) a hydroelectric or geothermal facility with the quantity of renewable energy
539 certificates to which the user is entitled determined by the total production of the facility,
540 except to the extent the commission determines otherwise with respect to net-metered energy;

541 (v) a waste gas or waste heat capture or recovery system, other than from a combined
542 cycle combustion turbine that does not use waste gas or waste heat, with the quantity of
543 renewable energy certificates to which the user is entitled determined by the total production of
544 the system, except to the extent the commission determines otherwise with respect to
545 net-metered energy; and

546 (vi) the station use of solar thermal energy, solar photovoltaic energy, hydroelectric
547 energy, geothermal energy, waste gas, or waste heat capture and recovery.

548 (11) "Unbundled renewable energy certificate" means a renewable energy certificate
549 associated with:

550 (a) qualifying electricity that is acquired by an electrical corporation or other person by
551 trade, purchase, or other transfer without acquiring the electricity for which the certificate was
552 issued; or

553 (b) activities listed in Subsection (10)(e).

Legislative Review Note
as of 2-3-09 7:06 AM

Office of Legislative Research and General Counsel

S.B. 76 - Energy Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
