

1 **RENEWABLE ENERGY FINANCING PROVISIONS**

2 2010 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Bradley G. Last**

5 Senate Sponsor: Stephen H. Urquhart

6 Cosponsor: Jackie Biskupski

7

8 **LONG TITLE**

9 **General Description:**

10 This bill addresses provisions related to net metering programs and public utilities.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ excludes from the definition of a "public utility" an independent energy producer
14 that provides service to a customer on the real property where an independent
15 power production facility is located under certain circumstances;

16 ▶ changes definitions to provide that a facility used to supply energy for a specific
17 customer may qualify as a customer generation system under Title 54, Chapter 15,
18 Net Metering of Electricity;

19 ▶ provides for actions by the Public Service Commission; and

20 ▶ makes technical changes.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 This bill provides an immediate effective date.

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **54-2-1**, as last amended by Laws of Utah 2008, Chapter 374

28 **54-15-102**, as last amended by Laws of Utah 2008, Chapter 244

29 ENACTS:

30 **54-15-108**, Utah Code Annotated 1953



31
32 *Be it enacted by the Legislature of the state of Utah:*

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

34 **54-2-1. Definitions.**

35 As used in this title:

36 (1) "Avoided costs" means the incremental costs to an electrical corporation of electric
37 energy or capacity or both [~~which~~] that, due to the purchase of electric energy or capacity or
38 both from small power production or cogeneration facilities, the electrical corporation would
39 not have to generate itself or purchase from another electrical corporation.

40 (2) "Cogeneration facility":

41 (a) means a facility [~~which~~] that produces:

42 (i) electric energy; and

43 (ii) steam or forms of useful energy, including heat, [~~which~~] that are used for
44 industrial, commercial, heating, or cooling purposes; and

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

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

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

48 (5) (a) "Corporation" includes an association[;] and a joint stock company having any
49 powers or privileges not possessed by individuals or partnerships.

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

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

54 (a) is a cooperative;

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

57 (c) is required to allocate or distribute savings in excess of additions to reserves and

58 surplus on the basis of patronage to the cooperative's:

59 (i) members; or

60 (ii) patrons.

61 (7) "Electrical corporation" includes every corporation, cooperative association, and
62 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any
63 electric plant, or in any way furnishing electric power for public service or to its consumers or
64 members for domestic, commercial, or industrial use, within this state, except independent
65 energy producers, and except where electricity is generated on or distributed by the producer
66 solely for the producer's own use, or the use of the producer's tenants, or for the use of
67 members of an association of unit owners formed under Title 57, Chapter 8, Condominium
68 Ownership Act, and not for sale to the public generally.

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

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

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

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

82 (ii) not for sale to others;

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

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

86 for sale as a motor vehicle fuel.

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

90 (11) "Heat corporation" includes every corporation and person, their lessees, trustees,
91 and receivers, owning, controlling, operating, or managing any heating plant for public service
92 within this state.

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

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

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

101 (14) "Independent power production facility" means a facility that:

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

105 (b) is a qualifying power production facility.

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

113 (16) (a) "Public utility" includes every railroad corporation, gas corporation, electrical

114 corporation, distribution electrical cooperative, wholesale electrical cooperative, telephone
115 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
116 and independent energy producer not described in Subsection (16)(d), where the service is
117 performed for, or the commodity delivered to, the public generally, or in the case of a gas
118 corporation or electrical corporation where the gas or electricity is sold or furnished to any
119 member or consumers within the state for domestic, commercial, or industrial 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)(d), performs a service for or
123 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)(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 Subsection (16)(d)(i), (ii), ~~(iii)~~, or (iv), 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; ~~(iii)~~

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

150 (iv) the independent energy producer:

151 (A) supplies energy for direct consumption by a customer that is:

152 (I) a county, municipality, city, town, other political subdivision, local district, special
153 service district, state institution of higher education, school district, charter school, or any
154 entity within the state system of public education; or

155 (II) an entity qualifying as a charitable organization under 26 U.S.C. Sec. 501(c)(3)
156 operated for religious, charitable, or educational purposes that is exempt from federal income
157 tax and able to demonstrate its tax-exempt status;

158 (B) supplies energy to the customer through use of a customer generation system, as
159 defined in Section 54-15-102, for use on the real property where the customer generation
160 system is located;

161 (C) supplies energy using a customer generation system designed to supply the lesser
162 of:

163 (I) no more than 90% of the average annual consumption of electricity by the customer
164 at that site, based on an annualized billing period; or

165 (II) the maximum size allowable under net metering provisions, defined in Section
166 54-15-102;

167 (D) notifies the customer before installing the customer generation system of:

168 (I) all costs the customer is required to pay for the customer generation system,
169 including any interconnection costs; and

170 (II) the potential for future changes in amounts paid by the customer for energy
171 received from the public utility and the possibility of changes to the customer fees or charges
172 to the customer associated with net metering and generation;

173 (E) enters into and performs in accordance with an interconnection agreement with a
174 public utility providing retail electric service where the real property on which the customer
175 generation system is located, with the rates, terms, and conditions of the retail service and
176 interconnection agreement subject to approval by the governing authority of the public utility,
177 as defined in Subsection 54-15-102(8); and

178 (F) installs the relevant customer generation system by December 31, 2015.

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

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

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

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

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

191 (III) a combination of Subsections (16)(f)(i)(A)(I) and (II);

192 (B) the lessor of the ownership interest identified in Subsection (16)(f)(i)(A) is:

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

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

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

198 (ii) Any person that is exempt from classification as a public utility under Subsection
199 (16)(f)(i) shall continue to be so exempt from classification following termination of the
200 lessee's right to possession or use of the electric plant for so long as the former lessor does not
201 operate the electric plant or sell electricity from the electric plant. If the former lessor operates
202 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a
203 period of 90 days following termination, or for a longer period that is ordered by the
204 commission. This period may not exceed one year. A change in rates that would otherwise
205 require commission approval may not be effective during the 90-day or extended period
206 without commission approval.

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

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

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

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

225 (18) "Qualifying power producer" means a corporation, cooperative association, or

226 person, or the lessee, trustee, and receiver of the corporation, cooperative association, or
227 person, who owns, controls, operates, or manages any qualifying power production facility or
228 cogeneration facility.

229 (19) "Qualifying power production facility" means a facility that:

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

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

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

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

243 (21) "Railroad corporation" includes every corporation and person, their lessees,
244 trustees, and receivers, owning, controlling, operating, or managing any railroad for public
245 service within this state.

246 (22) (a) "Sewerage corporation" includes every corporation and person, their lessees,
247 trustees, and receivers, owning, controlling, operating, or managing any sewerage system for
248 public service within this state.

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

253 (23) "Telegraph corporation" includes every corporation and person, their lessees,

254 trustees, and receivers, owning, controlling, operating, or managing any telegraph line for
255 public service within this state.

256 (24) "Telegraph line" includes all conduits, ducts, poles, wires, cables, instruments,
257 and appliances, and all other real estate, fixtures, and personal property owned, controlled,
258 operated, or managed in connection with or to facilitate communication by telegraph, whether
259 that communication be had with or without the use of transmission wires.

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

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

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

269 (ii) Internet service; or

270 (iii) resold intrastate toll service.

271 (26) "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments,
272 and appliances, and all other real estate, fixtures, and personal property owned, controlled,
273 operated, or managed in connection with or to facilitate communication by telephone whether
274 that communication is had with or without the use of transmission wires.

275 (27) "Transportation of persons" includes every service in connection with or
276 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
277 carriage, and delivery of that person and that person's baggage.

278 (28) "Transportation of property" includes every service in connection with or
279 incidental to the transportation of property, including in particular its receipt, delivery,
280 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and
281 hauling, and the transmission of credit by express companies.

282 (29) "Water corporation" includes every corporation and person, their lessees, trustees,
283 and receivers, owning, controlling, operating, or managing any water system for public service
284 within this state. It does not include private irrigation companies engaged in distributing
285 water only to their stockholders, or towns, cities, counties, water conservancy districts,
286 improvement districts, or other governmental units created or organized under any general or
287 special law of this state.

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

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

296 (31) "Wholesale electrical cooperative" includes every electrical corporation that is:

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

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

301 Section 2. Section **54-15-102** is amended to read:

302 **54-15-102. Definitions.**

303 As used in this chapter:

304 (1) "Annualized billing period" means a 12-month billing cycle beginning on April 1
305 of one year and ending on March 31 of the following year.

306 (2) "Customer-generated electricity" means electricity that:

307 (a) is generated by a customer generation system for a customer participating in a net
308 metering program [~~from a customer generation system~~];

309 (b) exceeds the electricity the customer needs for the customer's own use; and

- 310 (c) is supplied to the electrical corporation administering the net metering program.
- 311 (3) "Customer generation system":
- 312 (a) means [~~a customer-owned or customer-leased~~] an eligible facility[~~, operated by the~~
313 ~~customer,~~] that is used to supply energy to or for a specific customer that:
- 314 (i) has a generating capacity of:
- 315 (A) not more than 25 kilowatts for a residential facility; or
- 316 (B) not more than 2 megawatts for a non-residential facility, unless the governing
317 authority approves a greater generation capacity;
- 318 (ii) is located on, or adjacent to, the premises of the electrical corporation's customer,
319 subject to the electrical corporation's service requirements;
- 320 (iii) operates in parallel and is interconnected with the electrical corporation's
321 distribution facilities;
- 322 (iv) is intended primarily to offset part or all of the customer's requirements for
323 electricity; and
- 324 (v) is controlled by an inverter or switchgear; and
- 325 (b) includes an electric generator and its accompanying equipment package.
- 326 (4) "Eligible facility" means a facility that uses energy derived from one of the
327 following to generate electricity:
- 328 (a) solar photovoltaic and solar thermal energy;
- 329 (b) wind energy;
- 330 (c) hydrogen;
- 331 (d) organic waste;
- 332 (e) hydroelectric energy;
- 333 (f) waste gas and waste heat capture or recovery;
- 334 (g) biomass and biomass byproducts, except for the combustion of:
- 335 (i) wood that has been treated with chemical preservatives such as creosote,
336 pentachlorophenol, or chromated copper arsenate; or
- 337 (ii) municipal waste in a solid form;

- 338 (h) forest or rangeland woody debris from harvesting or thinning conducted to
339 improve forest or rangeland ecological health and to reduce wildfire risk;
- 340 (i) agricultural residues;
- 341 (j) dedicated energy crops;
- 342 (k) landfill gas or biogas produced from organic matter, wastewater, anaerobic
343 digesters, or municipal solid waste; or
- 344 (l) geothermal energy.
- 345 (5) "Equipment package" means a group of components connecting an electric
346 generator to an electric distribution system, including all interface equipment and the interface
347 equipment's controls, switchgear, inverter, and other interface devices.
- 348 (6) "Excess customer-generated electricity" means the amount of customer-generated
349 electricity in excess of the customer's consumption from the customer generation system
350 during a monthly billing period, as measured at the electrical corporation's meter.
- 351 (7) "Fuel cell" means a device in which the energy of a reaction between a fuel and an
352 oxidant is converted directly and continuously into electrical energy.
- 353 (8) "Governing authority" means:
- 354 (a) for a distribution electrical cooperative, its board of directors; and
- 355 (b) for each other electrical corporation, the Public Service Commission.
- 356 (9) "Inverter" means a device that:
- 357 (a) converts direct current power into alternating current power that is compatible with
358 power generated by an electrical corporation; and
- 359 (b) has been designed, tested, and UL certified to UL1741 and installed and operated
360 in accordance with IEEE1547 standards.
- 361 (10) "Net electricity" means the difference, as measured at the meter owned by the
362 electrical corporation between:
- 363 (a) the amount of electricity that an electrical corporation supplies to a customer
364 participating in a net metering program; and
- 365 (b) the amount of customer-generated electricity delivered to the electrical corporation.

366 (11) "Net metering" means measuring the amount of net electricity for the applicable
367 billing period.

368 (12) "Net metering program" means a program administered by an electrical
369 corporation whereby a customer with a customer generation system may:

370 (a) generate electricity primarily for the customer's own use;

371 (b) supply customer-generated electricity to the electrical corporation; and

372 (c) if net metering results in excess customer-generated electricity during a billing
373 period, receive a credit under Section 54-15-104.

374 (13) "Switchgear" means the combination of electrical disconnects, fuses, or circuit
375 breakers:

376 (a) used to:

377 (i) isolate electrical equipment; and

378 (ii) de-energize equipment to allow work to be performed or faults downstream to be
379 cleared; and

380 (b) that is:

381 (i) designed, tested, and UL certified to UL1741; and

382 (ii) installed and operated in accordance with IEEE1547 standards.

383 Section 3. Section **54-15-108** is enacted to read:

384 **54-15-108. Damages and fines for connecting a customer generation system to**
385 **more than one customer.**

386 If an independent energy producer defined in Subsection 54-2-1(13) that is supplying
387 energy to a customer under Subsection 54-2-1(16)(d)(iv) violates the limitations set forth in
388 Subsection 54-2-1(16)(d)(iv)(B), the commission may:

389 (1) award damages to an electrical corporation for actual and consequential damages
390 to the electrical corporation; and

391 (2) assess a fine against the independent energy producer or person responsible for the
392 violation.

393 Section 4. **Effective date.**

394 If approved by two-thirds of all the members elected to each house, this bill takes effect
395 upon approval by the governor, or the day following the constitutional time limit of Utah
396 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
397 the date of veto override.