

UTILITY RELATED EXEMPTIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory H. Hughes

Senate Sponsor: _____

LONG TITLE

General Description:

This bill excludes from various public utility provisions certain entities producing electricity.

Highlighted Provisions:

This bill:

▶ provides that certain entities providing electricity to certain owners and creditors are not considered an electrical corporation or public utility under Title 54, Public Utilities;

▶ exempts from various regulatory provisions electricity provided to certain owners and creditors; 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 Laws of Utah 2008, Chapter 374

54-3-8, as last amended by Laws of Utah 2005, Chapter 5

54-4-2, Utah Code Annotated 1953



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

(2) "Cogeneration facility":

(a) means a facility which produces:

(i) electric energy; and

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

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

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

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

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

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

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

(a) is a cooperative;

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

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

(i) members; or

(ii) patrons.

(7) "Electrical corporation" includes every corporation, cooperative association, and

59 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any
60 electric plant, or in any way furnishing electric power for public service or to its consumers or
61 members for domestic, commercial, or industrial use, within this state, except independent
62 energy producers, and except where electricity is generated on or distributed by the producer
63 solely for the producer's own use, or the use of the producer's tenants, or for the use of
64 members of an association of unit owners formed under Title 57, Chapter 8, Condominium
65 Ownership Act, and not for sale to the public generally, or except where the electricity
66 generated is furnished to, directly or indirectly, an owner, lessor or interest holder, or an
67 affiliate of an owner, lessor, or interest holder, who has provided value, including credit
68 support in an amount exceeding \$25,000,000, relating to the electric plant furnishing service
69 and where any excess electricity is sold at wholesale prices.

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

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

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

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

83 (ii) not for sale to others;

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

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

88 (10) "Gas plant" includes all real estate, fixtures, and personal property owned,
89 controlled, operated, or managed in connection with or to facilitate the production, generation,

90 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

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

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

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

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

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

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

106 (b) is a qualifying power production facility.

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

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) solely because of that person's ownership of an interest in an
155 electric plant, cogeneration facility, or small power production facility in this state if all of the
156 following conditions are met:

157 (A) the ownership interest in the electric plant, cogeneration facility, or small power
158 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)(f)(i)(A)(I) and (II);

163 (B) the lessor of the ownership interest identified in Subsection (16)(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)(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 power production facility, or cogeneration facility.
180 In the event of a foreclosure in which an ownership interest in an electric plant, small power
181 production facility, or cogeneration facility is transferred to a third-party financier of an electric
182 plant, small power production facility, or cogeneration facility, then that third-party financier is

183 exempt from classification as a public utility for 90 days following the foreclosure, or for a
184 longer period that is ordered by the commission. This period may not exceed one year.

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

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

193 (i) "Public utility" does not include any corporation, cooperative association, or person,
194 their affiliates, lessees, trustees, or receivers, owning, controlling, operating, or managing an
195 electric plant or in any way furnishing electric power to an owner, lessor, interest holder, or an
196 affiliate of an owner, lessor, or interest holder, when the owner, lessor, interest holder, or
197 affiliate has provided value, including credit support, in an amount exceeding \$25,000,000,
198 relating to the electric plant, when the electric plant furnishes service, directly or indirectly, to
199 the owner, lessor, interest holder, or the affiliate, and when any excess electricity is sold at
200 wholesale prices.

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

204 (18) "Qualifying power producer" means a corporation, cooperative association, or
205 person, or the lessee, trustee, and receiver of the corporation, cooperative association, or
206 person, who owns, controls, operates, or manages any qualifying power production facility or
207 cogeneration facility.

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

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

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

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

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

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

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

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

231 (23) "Telegraph corporation" includes every corporation and person, their lessees,
232 trustees, and receivers, owning, controlling, operating, or managing any telegraph line for
233 public service within this state.

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

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

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

243 (i) intrastate telephone service offered by a provider of cellular, personal
244 communication systems (PCS), or other commercial mobile radio service as defined in 47

245 U.S.C. Sec. 332 that has been issued a covering license by the Federal Communications
246 Commission;

247 (ii) Internet service; or

248 (iii) resold intrastate toll service.

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

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

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

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

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

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

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

275 (a) in the business of the wholesale distribution of electricity it has purchased or

276 generated to its members and the public; and

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

279 Section 2. Section **54-3-8** is amended to read:

280 **54-3-8. Preferences forbidden -- Power of commission to determine facts.**

281 (1) Except as provided in Chapter 8b, Public Telecommunications Law, a public utility
282 may not:

283 (a) as to rates, charges, service, facilities or in any other respect, make or grant any
284 preference or advantage to any person, or subject any person to any prejudice or disadvantage;
285 and

286 (b) establish or maintain any unreasonable difference as to rates, charges, service or
287 facilities, or in any other respect, either as between localities or as between classes of service.

288 (2) The commission shall have power to determine any question of fact arising under
289 this section.

290 (3) This section does not apply to, and the commission may not enforce this chapter
291 concerning, a schedule, classification, rate, price, charge, fare, toll, rental, rule, service, or
292 facility, or contract of a public utility or electrical corporation furnishing electricity, directly or
293 indirectly, to an owner, lessor or interest holder, or an affiliate of an owner or lessor or interest
294 holder, if the person to whom the electricity is furnished or that person's affiliate has provided
295 value, including credit support, in an amount exceeding \$25,000,000, to the public utility or
296 electrical corporation.

297 Section 3. Section **54-4-2** is amended to read:

298 **54-4-2. Investigations -- Hearings and notice -- Findings.**

299 (1) Whenever the commission believes that in order to secure a compliance with the
300 provisions of this title or with the orders of the commission, or that it will be otherwise in the
301 interest of the public, an investigation should be made of any act or omission to act, or of
302 anything accomplished or proposed, or of any schedule, classification, rate, price, charge, fare,
303 toll, rental, rule, regulation, service or facility of any public utility, it shall investigate the same
304 upon its own motion, and may fix a time and place for a hearing thereof with notice to the
305 public utility concerning which such investigation shall be made, and upon such hearing shall
306 make such findings and orders as shall be just and reasonable with respect to any such matter.

307 (2) This chapter does not apply to a schedule, classification, rate, price, charge, fare,
308 toll, rental, rule, service, or facility, or contract of a public utility or electrical corporation
309 furnishing electricity, directly or indirectly, to an owner, lessor or interest holder, or an affiliate
310 of an owner or lessor or interest holder, if the person to whom the electricity is furnished or that
311 person's affiliate has provided value, including credit support, in an amount exceeding
312 \$25,000,000, to the public utility or electrical corporation.

Legislative Review Note
as of 2-11-10 2:00 PM

Office of Legislative Research and General Counsel

H.B. 335 - Utility Related Exemptions

Fiscal Note

2010 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.
