

Senator David P. Hinkins proposes the following substitute bill:

ENERGY COST RECOVERY AND RENEWABLE

ENERGY PROVISIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses energy provisions in Title 54, Chapter 17, Energy Resource Procurement Act, including cost recovery for various forms of renewable energy to help achieve renewable energy goals.

Highlighted Provisions:

This bill:

- ▶ defines "category of resource" with regard to energy resources and cost recovery provisions;
- ▶ provides that certain costs analyses performed by the Public Service Commission shall evaluate whether an energy resource is the lowest cost for that category of resource;
- ▶ provides that no more than three-fourths of an electrical corporation's qualifying renewable electricity or renewable energy certificates shall be from the same category of resource, for purposes of determining the electrical corporation's compliance with Title 54, Chapter 17, Part 6, Carbon Emission Reductions for Electrical Corporations; and
- ▶ makes technical changes.



26 **Monies Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **54-17-102**, as last amended by Laws of Utah 2008, Chapter 382

33 **54-17-201**, as last amended by Laws of Utah 2008, Chapters 374 and 382

34 **54-17-302**, as last amended by Laws of Utah 2008, Chapters 374 and 382

35 **54-17-402**, as last amended by Laws of Utah 2008, Chapter 382

36 **54-17-602**, as enacted by Laws of Utah 2008, Chapter 374

37

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

39 Section 1. Section **54-17-102** is amended to read:

40 **54-17-102. Definitions.**

41 As used in this chapter:

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

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

46 (a) could be constructed or owned by:

47 (i) an affected electrical utility; or

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

49 (b) may be a purchase of:

50 (i) electricity;

51 (ii) electric generating capacity; or

52 (iii) electricity and electric generating capacity.

53 (3) "Category of resource" means a set of resources generally identifiable within one of
54 the following:

55 (a) biofuel energy;

56 (b) biomass energy;

- 57 (c) coal energy;
- 58 (d) diesel energy;
- 59 (e) geothermal energy;
- 60 (f) hydroelectric energy;
- 61 (g) natural gas energy;
- 62 (h) solar energy;
- 63 (i) wind energy; or
- 64 (j) any other grouping of energy resources sharing the same general characteristics as
- 65 one another.

66 [~~3~~] (4) "Integrated resource plan" means a plan that contains:

- 67 (a) the demand and energy forecast by the affected electrical utility for at least a
- 68 ten-year period;
- 69 (b) the affected electrical utility's options for meeting the requirements shown in its
- 70 load and resource forecast in an economic and reliable manner, including:
- 71 (i) demand-side and supply-side options; and
- 72 (ii) a brief description and summary cost-benefit analysis, if available, of each option
- 73 that was considered;
- 74 (c) the affected electrical utility's assumptions and conclusions with respect to the
- 75 effect of the plan on the cost and reliability of energy service;
- 76 (d) a description of the external environmental and economic consequences of the plan
- 77 to the extent practicable; and
- 78 (e) any other data and analyses as the commission may require.

79 [~~4~~] (5) "Significant energy resource" for an affected electrical utility means a resource

80 that consists of:

- 81 (a) a total of 100 megawatts or more of new generating capacity that has a dependable
- 82 life of 10 or more years;
- 83 (b) a purchase of the following if the contract is for a term of 10 or more years and not
- 84 less than 100 megawatts:
- 85 (i) electricity;
- 86 (ii) electric generating capacity; or
- 87 (iii) electricity and electrical generating capacity;

88 (c) the purchase or lease by an affected electrical utility from an affiliated company of:

89 (i) a generating facility;

90 (ii) electricity;

91 (iii) electrical generating capacity; or

92 (iv) electricity and electrical generating capacity;

93 (d) a contract with an option for the affected electrical utility or an affiliate to purchase
94 a resource that consists of not less than 100 megawatts or more of new generating capacity that
95 has a remaining dependable life of 10 or more years; or

96 (e) a type of resource designated by the commission as a significant energy resource in
97 rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative
98 Rulemaking Act, after considering the affected electrical utility's integrated resource plan and
99 action plan.

100 [~~5~~] (6) "Solicitation" means a request for proposals or other invitation for persons to
101 submit a bid or proposal through an open bid process for construction or acquisition of a
102 significant energy resource.

103 Section 2. Section **54-17-201** is amended to read:

104 **54-17-201. Solicitation process required -- Exception.**

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

107 (b) Notwithstanding Subsection (1)(a), this chapter does not apply to a significant
108 energy resource for which the affected electrical utility has issued a solicitation before February
109 25, 2005.

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

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

115 (i) a description of the solicitation process the affected electrical utility will use;

116 (ii) a complete proposed solicitation; and

117 (iii) any other information the commission requires by rule made in accordance with
118 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

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

124 (A) whether it will most likely result in the acquisition, production, and delivery of
125 electricity at the lowest reasonable cost for that category of resource to the retail customers of
126 an affected electrical utility located in this state;

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

128 (C) risk;

129 (D) reliability;

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

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

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

133 (i) may hold a public hearing; and

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

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

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

142 (i) approve a proposed solicitation process;

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

144 (iii) reject a proposed solicitation process.

145 (3) Notwithstanding Subsection (2), an affected electrical utility may acquire or
146 construct a significant energy resource without conducting a solicitation process if it obtains a
147 waiver of the solicitation requirement in accordance with Section 54-17-501.

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

150 (a) whether this chapter or another competitive bidding procedure shall apply to a
151 purchase of a significant energy resource by an affected electrical utility from a small power
152 producer or cogenerator; and

153 (b) if this chapter applies as provided in Subsection (4)(a), the manner in which this
154 chapter applies to a purchase of a significant energy resource by an affected electrical utility
155 from a small power producer or cogenerator.

156 Section 3. Section **54-17-302** is amended to read:

157 **54-17-302. Approval of a significant energy resource decision required.**

158 (1) If pursuant to Part 2, Solicitation Process, an affected electrical utility is required to
159 conduct a solicitation for a significant energy resource or obtains a waiver of the requirement to
160 conduct a solicitation under Section 54-17-501, but does not obtain a waiver of the requirement
161 to obtain approval of the significant energy resource decision under Section 54-17-501, the
162 affected electrical utility shall obtain approval of its significant energy resource decision:

163 (a) after the completion of the solicitation process, if the affected electrical utility is
164 required to conduct a solicitation; and

165 (b) before an affected electrical utility may construct or enter into a binding agreement
166 to acquire the significant energy resource.

167 (2) (a) To obtain the approval required by Subsection (1), the affected electrical utility
168 shall file a request for approval with the commission.

169 (b) The request for approval required by this section shall include any information
170 required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
171 Administrative Rulemaking Act.

172 (3) In ruling on a request for approval of a significant energy resource decision, the
173 commission shall determine whether the significant energy resource decision:

174 (a) is reached in compliance with this chapter and rules made in accordance with Title
175 63G, Chapter 3, Utah Administrative Rulemaking Act;

176 (b) (i) is reached in compliance with the solicitation process approved by the
177 commission in accordance with Part 2, Solicitation Process; or

178 (ii) is reached after the waiver of the solicitation process as provided in Subsection
179 54-17-201(3); and

180 (c) is in the public interest, taking into consideration:

181 (i) whether it will most likely result in the acquisition, production, and delivery of
182 electricity at the lowest reasonable cost for that category of resource to the retail customers of
183 an affected electrical utility located in this state;

184 (ii) long-term and short-term impacts;

185 (iii) risk;

186 (iv) reliability;

187 (v) financial impacts on the affected electrical utility; and

188 (vi) other factors determined by the commission to be relevant.

189 (4) The commission may not approve a significant energy resource decision under this
190 section before holding a public hearing.

191 (5) Unless the commission determines that additional time to analyze a significant
192 energy resource decision is warranted and is in the public interest, within 120 days of the day
193 on which the affected electrical utility files a request for approval, the commission shall:

194 (a) approve the significant energy resource decision;

195 (b) approve the significant energy resource decision subject to conditions imposed by
196 the commission; or

197 (c) disapprove the significant energy resource decision.

198 (6) The commission shall include in its order under this section:

199 (a) findings as to the total projected costs for construction or acquisition of an
200 approved significant energy resource; and

201 (b) the basis upon which the findings described in Subsection (6)(a) are made.

202 (7) Notwithstanding any other provision of this part, an affected electrical utility may
203 acquire a significant energy resource without obtaining approval pursuant to this section if it
204 obtains a waiver of the requirement for approval in accordance with Section 54-17-501.

205 (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
206 commission shall make rules regarding the process for approval of a significant energy
207 resource decision under this section.

208 Section 4. Section **54-17-402** is amended to read:

209 **54-17-402. Request for review of resource decision.**

210 (1) Beginning on February 25, 2005, before implementing a resource decision, an
211 energy utility may request that the commission approve all or part of a resource decision in

212 accordance with this part.

213 (2) (a) To obtain the approval permitted by Subsection (1), the energy utility shall file a
214 request for approval with the commission.

215 (b) The request for approval required by this section shall include any information
216 required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
217 Administrative Rulemaking Act.

218 (3) In ruling on a request for approval of a resource decision, the commission shall
219 determine whether the decision:

220 (a) is reached in compliance with this chapter and rules made in accordance with Title
221 63G, Chapter 3, Utah Administrative Rulemaking Act; and

222 (b) is in the public interest, taking into consideration:

223 (i) whether it will most likely result in the acquisition, production, and delivery of
224 utility services at the lowest reasonable cost for that category of resource to the retail customers
225 of an energy utility located in this state;

226 (ii) long-term and short-term impacts;

227 (iii) risk;

228 (iv) reliability;

229 (v) financial impacts on the energy utility; and

230 (vi) other factors determined by the commission to be relevant.

231 (4) (a) If the commission approves a proposed resource decision only in part, the
232 commission shall explain in the order issued under this section why the commission does not
233 approve the resource decision in total.

234 (b) Recovery of expenses incurred in connection with parts of a resource decision that
235 are not approved is subject to the review of the commission as part of a rate hearing under
236 Section 54-7-12.

237 (5) The commission may not approve a resource decision in whole or in part under this
238 section before holding a public hearing.

239 (6) Unless the commission determines that additional time to analyze a resource
240 decision is warranted and is in the public interest, within 180 days of the day on which the
241 energy utility files a request for approval, the commission shall:

242 (a) approve all or part of the resource decision;

243 (b) approve all or part of the resource decision subject to conditions imposed by the
244 commission; or

245 (c) disapprove all or part of the resource decision.

246 (7) The commission shall include in its order under this section:

247 (a) findings as to the approved projected costs of a resource decision; and

248 (b) the basis upon which the findings described in Subsection (7)(a) are made.

249 (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
250 commission shall make rules regarding the process for approval of a resource decision under
251 this section.

252 Section 5. Section **54-17-602** is amended to read:

253 **54-17-602. Target amount of qualifying electricity -- Renewable energy certificate**
254 **-- Cost-effectiveness -- Cooperatives.**

255 (1) (a) To the extent that it is cost effective to do so, beginning in 2025 the annual retail
256 electric sales in this state of each electrical corporation shall consist of qualifying electricity or
257 renewable energy certificates in an amount equal to at least 20% of adjusted retail electric
258 sales, no more than 15% of which may derive from the same category of resource.

259 (b) The amount under Subsection (1)(a) is computed based upon adjusted retail electric
260 sales for the calendar year commencing 36 months before the first day of the year for which the
261 target calculated under Subsection (1)(a) applies.

262 (c) Notwithstanding Subsections (1)(a) and (b), an increase in the annual target from
263 one year to the next may not exceed the greater of:

264 (i) 17,500 megawatt-hours; or

265 (ii) 20% of the prior year's amount under Subsections (1)(a) and (b).

266 (2) (a) Cost-effectiveness under Subsection (1) for other than a cooperative association
267 is determined in comparison to other viable resource options using the criteria provided by
268 Subsection 54-17-201(2)(c)(ii).

269 (b) For an electrical corporation that is a cooperative association, cost-effectiveness is
270 determined using criteria applicable to the cooperative association's acquisition of a significant
271 energy resource established by the cooperative association's board of directors.

272 (3) This section does not require an electrical corporation to:

273 (a) substitute qualifying electricity for electricity from a generation source owned or

274 contractually committed, or from a contractual commitment for a power purchase;

275 (b) enter into any additional electric sales commitment or any other arrangement for the
276 sale or other disposition of electricity that is not already, or would not be, entered into by the
277 electrical corporation; or

278 (c) acquire qualifying electricity in excess of its adjusted retail electric sales.

279 (4) For the purpose of Subsection (1), an electrical corporation may combine the
280 following:

281 (a) qualifying electricity from a renewable energy source owned by the electrical
282 corporation;

283 (b) qualifying electricity acquired by the electrical corporation through trade, power
284 purchase, or other transfer; and

285 (c) a bundled or unbundled renewable energy certificate, including a banked renewable
286 energy certificate.

287 (5) For an electrical corporation whose rates the commission regulates, the following
288 rules concerning renewable energy certificates apply:

289 (a) a banked renewable energy certificate with an older issuance date shall be used
290 before any other banked renewable energy certificate issued at a later date is used; and

291 (b) the total of all unbundled renewable energy certificates, including unbundled
292 banked renewable energy certificates, may not exceed 20% of the amount of the annual target
293 provided for in Subsection (1).

294 (6) An electrical corporation that is a cooperative association may count towards
295 Subsection (1) any of the following:

296 (a) electric production allocated to this state from hydroelectric facilities becoming
297 operational after December 31, 2007 if the facilities are located in any state in which the
298 cooperative association, or a generation and transmission cooperative with which the
299 cooperative association has a contract, provides electric service;

300 (b) qualifying electricity generated or acquired or renewable energy certificates
301 acquired for a program that permits a retail customer to voluntarily contribute to a renewable
302 energy source; and

303 (c) notwithstanding Subsection 54-17-601(7), an unbundled renewable energy
304 certificate purchased from a renewable energy source located outside the geographic boundary

305 of the Western Electricity Coordinating Council if the electricity on which the unbundled
306 renewable energy certificate is based would be considered qualifying electricity if the
307 renewable energy source was located within the geographic boundary of the Western
308 Electricity Coordinating Council.

309 (7) The use of the renewable attributes associated with qualifying electricity to satisfy
310 any federal renewable energy requirement does not preclude the electricity from being
311 qualifying electricity for the purpose of this chapter.