

ELECTRIC VEHICLE BATTERY CHARGING SERVICE

AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrice M. Arent

Senate Sponsor: Ralph Okerlund

LONG TITLE

Committee Note:

The Public Utilities and Technology Interim Committee recommended this bill.

General Description:

This bill amends Title 54, Public Utilities.

Highlighted Provisions:

This bill:

- ▶ provides that the definition of "public utility" does not include certain entities that sell electric vehicle battery charging services.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

54-2-1, as last amended by Laws of Utah 2010, Chapters 302 and 390

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.



28 As used in this title:

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

33 (2) "Cogeneration facility":

34 (a) means a facility that produces:

35 (i) electric energy; and

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

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

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

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

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

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

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

47 (a) is a cooperative;

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

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

52 (i) members; or

53 (ii) patrons.

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

59 solely for the producer's own use, or the use of the producer's tenants, or for the use of
60 members of an association of unit owners formed under Title 57, Chapter 8, Condominium
61 Ownership Act, and not for sale to the public generally, and except where the electricity
62 generated is consumed by an owner, lessor, or interest holder, or by an affiliate of an owner,
63 lessor, or interest holder, who has provided at least \$25,000,000 in value, including credit
64 support, relating to the electric plant furnishing the electricity and whose consumption does not
65 exceed its long-term entitlement in the plant under a long-term arrangement other than a power
66 purchase agreement, except a power purchase agreement with an electrical corporation.

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

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

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

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

80 (ii) not for sale to others;

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

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

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

88 (11) "Heat corporation" includes every corporation and person, their lessees, trustees,
89 and receivers, owning, controlling, operating, or managing any heating plant for public service

90 within this state.

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

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

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

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

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

103 (b) is a qualifying power production facility.

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

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

117 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone
118 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
119 or independent energy producer not described in Subsection (16)(d), performs a service for or
120 delivers a commodity to the public, it is considered to be a public utility, subject to the

121 jurisdiction and regulation of the commission and this title.

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

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

131 (d) An independent energy producer is exempt from the jurisdiction and regulations of
132 the commission with respect to an independent power production facility if it meets the
133 requirements of Subsection (16)(d)(i), (ii), (iii), or (iv), or any combination of these:

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

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

139 (iii) (A) the commodity or service produced or delivered by the independent energy
140 producer is delivered to an entity that controls, is controlled by, or affiliated with the
141 independent energy producer or to a user located on real property managed or controlled by the
142 independent energy producer; and

143 (B) the real property on which the service or commodity is used is contiguous to real
144 property which is owned or controlled by the independent energy producer. Parcels of real
145 property separated solely by public roads or easements for public roads shall be considered as
146 contiguous for purposes of this Subsection (16); or

147 (iv) the independent energy producer:

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

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

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

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

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

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

162 (II) the maximum size allowable under net metering provisions, defined in Section
163 54-15-102;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

211 (h) (i) The distribution or transportation of natural gas for use as a motor vehicle fuel
212 does not cause the distributor or transporter to be a "public utility," unless the commission,
213 after notice and a public hearing, determines by rule that it is in the public interest to regulate

214 the distributors or transporters, but the retail sale alone of compressed natural gas as a motor
215 vehicle fuel may not cause the seller to be a "public utility."

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

219 (i) "Public utility" does not include any corporation, cooperative association, or person,
220 their affiliates, lessees, trustees, or receivers, owning, controlling, operating, or managing an
221 electric plant or in any way furnishing electricity if the electricity is consumed by an owner,
222 lessor, or interest holder or by an affiliate of an owner, lessor, or interest holder, who has
223 provided at least \$25,000,000 in value, including credit support, relating to the electric plant
224 furnishing the electricity and whose consumption does not exceed its long-term entitlement in
225 the plant under a long-term arrangement other than a power purchase agreement, except a
226 power purchase agreement with an electrical corporation.

227 (j) "Public utility" does not include an entity that sells electric vehicle battery charging
228 services, unless the entity conducts another activity in the state that subjects the entity to the
229 jurisdiction and regulation of the commission as a public utility.

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

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

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

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

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

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

244 (20) "Railroad" includes every commercial, interurban, and other railway, other than a

245 street railway, and each branch or extension of a railway, by any power operated, together with
246 all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots, union depots,
247 yards, grounds, terminals, terminal facilities, structures, and equipment, and all other real
248 estate, fixtures, and personal property of every kind used in connection with a railway owned,
249 controlled, operated, or managed for public service in the transportation of persons or property.

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

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

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

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

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

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

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

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

276 (ii) Internet service; or
277 (iii) resold intrastate toll service.

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

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

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

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

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

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

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

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

306 (b) required to distribute or allocate savings in excess of additions to reserves and

307 surplus to members or patrons on the basis of patronage.

Legislative Review Note
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Office of Legislative Research and General Counsel