

Senator J. Stuart Adams proposes the following substitute bill:

SUSTAINABLE TRANSPORTATION AND ENERGY PLAN ACT

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill amends provisions related to a public utility providing electrical service.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Public Service Commission to authorize a large-scale electric utility to implement tariffs to provide funding for a sustainable transportation and energy pilot program;
- ▶ allows an electrical corporation to recover 100% of the electrical corporation's prudently incurred costs in an energy balancing account;
- ▶ allows a large-scale electric utility to establish innovative electric efficiency technology programs;
- ▶ allows a large-scale electric utility to provide an incentive for:
 - a generation facility to curtail electricity generation to improve air quality; and
 - creation of an electric vehicle infrastructure;
- ▶ provides that the commission may authorize a large-scale electric utility to implement:
 - a clean coal program; and



- 26 • other utility programs;
- 27 ▶ provides a repeal date;
- 28 ▶ enacts a provision related to withdrawal of notice to transfer electric service; and
- 29 ▶ allows the commission to implement a conservation, efficiency, or technology
- 30 program if the program is cost-effective and in the public interest.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

- 37 **54-2-1**, as last amended by Laws of Utah 2014, Chapters 20, 381, and 388
- 38 **54-7-12.8**, as last amended by Laws of Utah 2009, Chapter 237
- 39 **54-7-13.5**, as enacted by Laws of Utah 2009, Chapter 319
- 40 **54-17-801**, as last amended by Laws of Utah 2014, Chapter 34
- 41 **63I-1-254**, as last amended by Laws of Utah 2013, Chapter 311

42 ENACTS:

- 43 **54-3-33**, Utah Code Annotated 1953
- 44 **54-17-806**, Utah Code Annotated 1953
- 45 **54-20-101**, Utah Code Annotated 1953
- 46 **54-20-102**, Utah Code Annotated 1953
- 47 **54-20-103**, Utah Code Annotated 1953
- 48 **54-20-104**, Utah Code Annotated 1953
- 49 **54-20-105**, Utah Code Annotated 1953
- 50 **54-20-106**, Utah Code Annotated 1953



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

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

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

55 As used in this title:

- 56 (1) "Avoided costs" means the incremental costs to an electrical corporation of electric

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

60 (2) "Clean coal technology" means a technology that may be researched, developed, or
61 used for reducing emissions or the rate of emissions from a thermal electric generation plant
62 that uses coal as a fuel source.

63 [~~2~~] (3) "Cogeneration facility":

64 (a) means a facility that produces:

65 (i) electric energy; and

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

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

69 [~~3~~] (4) "Commission" means the Public Service Commission [~~of Utah~~].

70 [~~4~~] (5) "Commissioner" means a member of the commission.

71 [~~5~~] (6) (a) "Corporation" includes an association and a joint stock company having
72 any powers or privileges not possessed by individuals or partnerships.

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

76 [~~6~~] (7) "Distribution electrical cooperative" includes an electrical corporation that:

77 (a) is a cooperative;

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

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

82 (i) members; or

83 (ii) patrons.

84 [~~7~~] (8) (a) "Electrical corporation" includes every corporation, cooperative
85 association, and person, their lessees, trustees, and receivers, owning, controlling, operating, or
86 managing any electric plant, or in any way furnishing electric power for public service or to its
87 consumers or members for domestic, commercial, or industrial use, within this state.

88 (b) "Electrical corporation" does not include:

89 (i) an independent energy producer;

90 (ii) where electricity is generated on or distributed by the producer solely for the
91 producer's own use, or the use of the producer's tenants, or the use of members of an
92 association of unit owners formed under Title 57, Chapter 8, Condominium Ownership Act,
93 and not for sale to the public generally;

94 (iii) an eligible customer who provides electricity for the eligible customer's own use or
95 the use of the eligible customer's tenant or affiliate; [~~or~~]

96 (iv) a nonutility energy supplier who sells or provides electricity to:

97 (A) an eligible customer who has transferred the eligible customer's service to the
98 nonutility energy supplier in accordance with Section 54-3-32; or

99 (B) the eligible customer's tenant or affiliate.

100 (c) "Electrical corporation" does not include an entity that sells electric vehicle battery
101 charging services, unless the entity conducts another activity in the state that subjects the entity
102 to the jurisdiction and regulation of the commission as an electrical corporation.

103 [~~(8)~~] (9) "Electric plant" includes all real estate, fixtures, and personal property owned,
104 controlled, operated, or managed in connection with or to facilitate the production, generation,
105 transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits,
106 ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying
107 conductors used or to be used for the transmission of electricity for light, heat, or power.

108 [~~(9)~~] (10) "Eligible customer" means a person who:

109 (a) on December 31, 2013:

110 (i) was a customer of a public utility that, on December 31, 2013, had more than
111 200,000 retail customers in this state; and

112 (ii) owned an electric plant that is an electric generation plant that, on December 31,
113 2013, had a generation name plate capacity of greater than 150 megawatts; and

114 (b) produces electricity:

115 (i) from a qualifying power production facility for sale to a public utility in this state;

116 (ii) primarily for the eligible customer's own use; or

117 (iii) for the use of the eligible customer's tenant or affiliate.

118 [~~(10)~~] (11) "Eligible customer's tenant or affiliate" means one or more tenants or

119 affiliates:

120 (a) of an eligible customer; and

121 (b) who are primarily engaged in an activity:

122 (i) related to the eligible customer's core mining or industrial businesses; and

123 (ii) performed on real property that is:

124 (A) within a 25-mile radius of the electric plant described in Subsection [~~9~~]

125 (10)(a)(ii); and

126 (B) owned by, controlled by, or under common control with, the eligible customer.

127 [~~11~~] (12) "Gas corporation" includes every corporation and person, their lessees,

128 trustees, and receivers, owning, controlling, operating, or managing any gas plant for public

129 service within this state or for the selling or furnishing of natural gas to any consumer or

130 consumers within the state for domestic, commercial, or industrial use, except in the situation

131 that:

132 (a) gas is made or produced on, and distributed by the maker or producer through,

133 private property:

134 (i) solely for the maker's or producer's own use or the use of the maker's or producer's

135 tenants; and

136 (ii) not for sale to others;

137 (b) gas is compressed on private property solely for the owner's own use or the use of

138 the owner's employees as a motor vehicle fuel; or

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

140 for sale as a motor vehicle fuel.

141 [~~12~~] (13) "Gas plant" includes all real estate, fixtures, and personal property owned,

142 controlled, operated, or managed in connection with or to facilitate the production, generation,

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

144 [~~13~~] (14) "Heat corporation" includes every corporation and person, their lessees,

145 trustees, and receivers, owning, controlling, operating, or managing any heating plant for public

146 service within this state.

147 [~~14~~] (15) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances,

148 and personal property controlled, operated, or managed in connection with or to facilitate the

149 production, generation, transmission, delivery, or furnishing of artificial heat.

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

152 [~~(15)~~] (16) "Independent energy producer" means every electrical corporation, person,
153 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,
154 control, or manage an independent power production or cogeneration facility.

155 [~~(16)~~] (17) "Independent power production facility" means a facility that:

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

159 (b) is a qualifying power production facility.

160 (18) "Large-scale electric utility" means a public utility that provides retail electric
161 service to more than 200,000 retail customers in the state.

162 [~~(17)~~] (19) "Nonutility energy supplier" means a person that:

163 (a) has received market-based rate authority from the Federal Energy Regulatory
164 Commission in accordance with 16 U.S.C. Sec. 824d, 18 C.F.R. Part 35, Filing of Rate
165 Schedules and Tariffs, or applicable Federal Energy Regulatory Commission orders; or

166 (b) owns, leases, operates, or manages an electric plant that is an electric generation
167 plant that:

168 (i) has a capacity of greater than 100 megawatts; and

169 (ii) is hosted on the site of an eligible customer that consumes the output of the electric
170 plant, in whole or in part, for the eligible customer's own use or the use of the eligible
171 customer's tenant or affiliate.

172 [~~(18)~~] (20) "Private telecommunications system" includes all facilities for the
173 transmission of signs, signals, writing, images, sounds, messages, data, or other information of
174 any nature by wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio
175 facilities, that are owned, controlled, operated, or managed by a corporation or person,
176 including their lessees, trustees, receivers, or trustees appointed by any court, for the use of that
177 corporation or person and not for the shared use with or resale to any other corporation or
178 person on a regular basis.

179 [~~(19)~~] (21) (a) "Public utility" includes every railroad corporation, gas corporation,
180 electrical corporation, distribution electrical cooperative, wholesale electrical cooperative,

181 telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat
182 corporation, and independent energy producer not described in Subsection [~~(19)~~] (21)(d),
183 where the service is performed for, or the commodity delivered to, the public generally, or in
184 the case of a gas corporation or electrical corporation where the gas or electricity is sold or
185 furnished to any member or consumers within the state for domestic, commercial, or industrial
186 use.

187 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone
188 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
189 or independent energy producer not described in Subsection [~~(19)~~] (21)(d), performs a service
190 for or delivers a commodity to the public, it is considered to be a public utility, subject to the
191 jurisdiction and regulation of the commission and this title.

192 (ii) If a gas corporation, independent energy producer not described in Subsection
193 [~~(19)~~] (21)(d), or electrical corporation sells or furnishes gas or electricity to any member or
194 consumers within the state, for domestic, commercial, or industrial use, for which any
195 compensation or payment is received, it is considered to be a public utility, subject to the
196 jurisdiction and regulation of the commission and this title.

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

201 (d) An independent energy producer is exempt from the jurisdiction and regulations of
202 the commission with respect to an independent power production facility if it meets the
203 requirements of Subsection [~~(19)~~] (21)(d)(i), (ii), (iii), or (iv), or any combination of these:

204 (i) the commodity or service is produced or delivered, or both, by an independent
205 energy producer solely for a use described in Subsections [~~(7)~~] (8)(b)(ii) through (iv) or for the
206 use of state-owned facilities;

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

209 (iii) (A) the commodity or service produced or delivered by the independent energy
210 producer is delivered to an entity that controls, is controlled by, or affiliated with the
211 independent energy producer or to a user located on real property managed or controlled by the

212 independent energy producer; and

213 (B) the real property on which the service or commodity is used is contiguous to real
214 property that is owned or controlled by the independent energy producer or is separated only by
215 a public road or an easement for a public road; or

216 (iv) the independent energy producer:

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

218 (I) a United States governmental entity, including an entity of the United States
219 military, or a county, municipality, city, town, other political subdivision, local district, special
220 service district, state institution of higher education, school district, charter school, or any
221 entity within the state system of public education; or

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

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

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

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

232 (II) the maximum size allowable under net metering provisions, defined in Section
233 54-15-102;

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

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

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

240 (E) enters into and performs in accordance with an interconnection agreement with a
241 public utility providing retail electric service where the real property on which the customer
242 generation system is located, with the rates, terms, and conditions of the retail service and

243 interconnection agreement subject to approval by the governing authority of the public utility,
244 as defined in Subsection 54-15-102(8); and

245 (F) installs the relevant customer generation system by December 31, 2021.

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

249 (f) (i) "Public utility" does not include any person that is otherwise considered a public
250 utility under this Subsection [~~(19)~~] (21) solely because of that person's ownership of an interest
251 in an electric plant, cogeneration facility, or small power production facility in this state if all of
252 the following conditions are met:

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

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

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

258 (III) a combination of Subsections [~~(19)~~] (21)(f)(i)(A)(I) and (II);

259 (B) the lessor of the ownership interest identified in Subsection [~~(19)~~] (21)(f)(i)(A) is:

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

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

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

265 (ii) Any person that is exempt from classification as a public utility under Subsection
266 [~~(19)~~] (21)(f)(i) shall continue to be [~~so~~] exempt from classification following termination of
267 the lessee's right to possession or use of the electric plant for so long as the former lessor does
268 not operate the electric plant or sell electricity from the electric plant. If the former lessor
269 operates the electric plant or sells electricity, the former lessor shall continue to be so exempt
270 for a period of 90 days following termination, or for a longer period that is ordered by the
271 commission. This period may not exceed one year. A change in rates that would otherwise
272 require commission approval may not be effective during the 90-day or extended period
273 without commission approval.

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

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

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

289 (i) "Public utility" does not include:

290 (i) an eligible customer who provides electricity for the eligible customer's own use or
291 the use of the eligible customer's tenant or affiliate; or

292 (ii) a nonutility energy supplier that sells or provides electricity to:

293 (A) an eligible customer who has transferred the eligible customer's service to the
294 nonutility energy supplier in accordance with Section 54-3-32; or

295 (B) the eligible customer's tenant or affiliate.

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

299 ~~[(20)]~~ (22) "Purchasing utility" means any electrical corporation that is required to
300 purchase electricity from small power production or cogeneration facilities pursuant to the
301 Public Utility Regulatory Policies Act, 16 U.S.C. Section 824a-3.

302 ~~[(21)]~~ (23) "Qualifying power producer" means a corporation, cooperative association,
303 or person, or the lessee, trustee, and receiver of the corporation, cooperative association, or
304 person, who owns, controls, operates, or manages any qualifying power production facility or

305 cogeneration facility.

306 [~~(22)~~] (24) "Qualifying power production facility" means a facility that:

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

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

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

313 [~~(23)~~] (25) "Railroad" includes every commercial, interurban, and other railway, other
314 than a street railway, and each branch or extension of a railway, by any power operated,
315 together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots,
316 union depots, yards, grounds, terminals, terminal facilities, structures, and equipment, and all
317 other real estate, fixtures, and personal property of every kind used in connection with a
318 railway owned, controlled, operated, or managed for public service in the transportation of
319 persons or property.

320 [~~(24)~~] (26) "Railroad corporation" includes every corporation and person, their lessees,
321 trustees, and receivers, owning, controlling, operating, or managing any railroad for public
322 service within this state.

323 [~~(25)~~] (27) (a) "Sewerage corporation" includes every corporation and person, their
324 lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage
325 system for public service within this state.

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

330 [~~(26)~~] (28) "Telegraph corporation" includes every corporation and person, their
331 lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line
332 for public service within this state.

333 [~~(27)~~] (29) "Telegraph line" includes all conduits, ducts, poles, wires, cables,
334 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
335 controlled, operated, or managed in connection with or to facilitate communication by

336 telegraph, whether that communication be had with or without the use of transmission wires.

337 ~~[(28)]~~ (30) (a) "Telephone corporation" means any corporation or person, and their
338 lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates,
339 manages, or resells a public telecommunications service as defined in Section 54-8b-2.

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

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

346 (ii) Internet service; or

347 (iii) resold intrastate toll service.

348 ~~[(29)]~~ (31) "Telephone line" includes all conduits, ducts, poles, wires, cables,
349 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
350 controlled, operated, or managed in connection with or to facilitate communication by
351 telephone whether that communication is had with or without the use of transmission wires.

352 ~~[(30)]~~ (32) "Transportation of persons" includes every service in connection with or
353 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
354 carriage, and delivery of that person and that person's baggage.

355 ~~[(31)]~~ (33) "Transportation of property" includes every service in connection with or
356 incidental to the transportation of property, including in particular its receipt, delivery,
357 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and
358 hauling, and the transmission of credit by express companies.

359 ~~[(32)]~~ (34) "Water corporation" includes every corporation and person, their lessees,
360 trustees, and receivers, owning, controlling, operating, or managing any water system for
361 public service within this state. It does not include private irrigation companies engaged in
362 distributing water only to their stockholders, or towns, cities, counties, water conservancy
363 districts, improvement districts, or other governmental units created or organized under any
364 general or special law of this state.

365 ~~[(33)]~~ (35) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
366 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,

367 and personal property owned, controlled, operated, or managed in connection with or to
368 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,
369 appointment, apportionment, or measurement of water for power, fire protection, irrigation,
370 reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

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

373 [~~34~~] (36) "Wholesale electrical cooperative" includes every electrical corporation that
374 is:

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

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

379 Section 2. Section **54-3-33** is enacted to read:

380 **54-3-33. Eligible customer energy supply contract.**

381 (1) The commission may approve a contract between a large-scale electric utility and a
382 customer of a large-scale electric utility that is eligible to transfer electric service to a
383 non-utility energy supplier under Section [54-3-32](#).

384 (2) The commission shall exempt a customer that enters into a contract described in
385 Subsection (1) from paying the costs recovered under Subsection [54-7-12.8\(3\)](#), except the costs
386 of the Utah solar incentive program included in Subsection [54-7-12.8\(3\)\(b\)](#).

387 (3) If an eligible customer that enters into a contract described in Subsection (1) has
388 provided notice to the commission under Subsection [54-3-32\(3\)](#), the notice is not considered
389 withdrawn under Subsection [54-3-32\(4\)\(c\)](#) by the customer entering into the contract.

390 (4) Notwithstanding Subsection [54-3-32\(4\)\(c\)](#), if the commission approves a contract
391 under this section for an eligible customer that states a contract termination date that is after
392 December 31, 2020, the notice described in Subsection [54-3-32\(3\)\(a\)](#) is considered to be
393 withdrawn if a transfer of service under Section [54-3-32](#) does not occur before the later of:

394 (a) the day three years after the termination date stated in the contract; or

395 (b) 18 months after the intended date of transfer of service described in Subsection
396 [54-3-32\(3\)\(a\)\(ii\)](#).

397 Section 3. Section **54-7-12.8** is amended to read:

398 **54-7-12.8. Electric energy efficiency, sustainable transportation and energy, and**
399 **conservation tariff.**

400 (1) As used in this section~~[-,"demand"]~~:

401 (a) "Demand side management" means [activities or programs that promote] an activity
402 or program that promotes electric energy efficiency or conservation or more efficient
403 management of electric energy loads.

404 (b) "Pilot program period" means a period of five years, beginning on January 1, 2017,
405 during which the sustainable transportation and energy plan is effective.

406 (c) "Sustainable transportation and energy plan" means the same as that term is defined
407 in Section [54-20-102](#).

408 (d) "Utah solar incentive program" means the eligible utility rooftop solar pilot
409 program established by commission order in 2012.

410 (2) (a) As provided in this section, the commission may approve a tariff under which
411 an electrical corporation includes a line item charge on [its] the electrical corporation's
412 customers' bills to recover costs incurred by the electrical corporation for demand side
413 management.

414 (b) The commission shall authorize a large-scale electric utility that is allowed to
415 charge a customer for demand side management under Subsection (2)(a) to:

416 (i) if requested by the large-scale electric utility, capitalize the annual costs incurred for
417 demand side management provided in Subsection (2)(a);

418 (ii) amortize the annual cost for demand side management over a period of 10 years;

419 (iii) apply a carrying charge to the unamortized balance that is equal to the large-scale
420 electric utility's pretax weighted average cost of capital approved by the commission in the
421 large-scale electric utility's most recent general rate proceeding; and

422 (iv) recover the amortization cost described in Subsection (2)(b)(ii) and the carrying
423 charge described in Subsection (2)(b)(iii) in customer rates.

424 (3) The commission shall, before January 1, 2017, authorize a large-scale electric
425 utility to implement a combined line item charge on the large-scale electric utility's customers'
426 bills to recover the cost to the large-scale electric utility of:

427 (a) demand side management, including the cost of amortizing a deferred balance;

428 (b) the sustainable transportation and energy plan; and

429 (c) the additional expense described in Subsection (5)(a)(i).

430 (4) On December 31, 2016, the commission shall end the Utah solar incentive program
431 and surcharge tariff and the large-scale electric utility shall stop accepting new applications for
432 solar incentive program incentives.

433 (5) (a) The commission may authorize a large-scale electric utility that capitalizes
434 demand side management costs under Subsection (2)(b) to:

435 (i) recognize the difference between the annual revenues the large-scale electric utility
436 collects for demand side management and the annual amount of the large-scale electric utility's
437 demand side management cost amortization expense as an additional expense;

438 (ii) establish and fund, via the additional expense described in Subsection (5)(a)(i), a
439 regulatory liability; and

440 (iii) use the regulatory liability described in Subsection (5)(a)(ii) to depreciate thermal
441 generation plant.

442 (b) (i) The commission shall authorize the large-scale electric utility to use the
443 regulatory liability described in Subsection (5)(a)(ii) to depreciate thermal generation plant for
444 which the commission determines depreciation is in the public interest for compliance with an
445 environmental regulation or another purpose.

446 (ii) The commission may not consider the existence of the regulatory liability described
447 in Subsection (5)(a)(ii) in a determination to accelerate depreciation under Subsection (5)(b)(i).

448 (c) The commission shall allow the large-scale electric utility to apply a carrying
449 charge to the regulatory liability described in Subsection (5)(a)(ii) in an amount equal to the
450 large-scale electric utility's pretax average weighted cost of capital approved by the
451 commission in the large-scale electric utility's most recent general rate proceeding.

452 (d) The commission shall allow a large-scale electric utility to use the regulatory
453 liability described in Subsection (5)(c) to offset the carrying charge described in Subsection
454 (2)(b)(iii).

455 (e) The large-scale electric utility shall apply the carrying charge described in
456 Subsection (5)(c) to funds that a large-scale electric utility is authorized to use to depreciate
457 thermal generation plant under Subsection (5)(a) until the reduction in the large-scale electric
458 utility's rate base associated with the thermal generation plant depreciation for which the funds
459 are used is reflected in the large-scale electric utility's customers' rates.

460 (f) If the commission determines that funds established in the regulatory liability under
461 Subsection (5)(a) are no longer needed for the purpose of depreciating thermal generation
462 plant, the large-scale electric utility shall use the balance of the funds in the regulatory liability
463 to offset the capitalized demand side management costs described in Subsection (2)(b)(i).

464 (6) (a) During the pilot program period, of the funds a large-scale electric utility
465 collects via the line item charge described in Subsection (3), the commission shall authorize the
466 large-scale electric utility to allocate on an annual basis:

467 (i) \$10,000,000 to the sustainable transportation and energy plan; and

468 (ii) the funds not allocated to the sustainable transportation and energy plan to demand
469 side management.

470 (b) The commission shall authorize a large-scale electric utility to spend up to:

471 (i) \$2,000,000 annually for the electric vehicle incentive program described in Section
472 [54-20-103](#); and

473 (ii) an annual average of:

474 (A) \$500,000 for the clean coal technology program described in Section [54-20-104](#);

475 and

476 (B) \$3,900,000 for the innovative utility programs described in Section [54-20-105](#).

477 (c) The commission shall authorize a large-scale electric utility to recoup the
478 large-scale electric utility's unrecovered costs paid through the Utah solar incentive program
479 from the funds allocated under Subsection (6)(a)(i).

480 (7) A large-scale electric utility shall establish a balancing account that includes:

481 (a) funds allocated under Subsection (6)(a)(i);

482 (b) the program expenditures described in Subsection (6)(b);

483 (c) the unrecovered Utah solar incentive program costs described in Subsection (6)(c);

484 and

485 (d) a carrying charge in an amount determined by the commission.

486 (8) A customer that is paying a contract rate under an agreement with a large-scale
487 electric utility as of January 1, 2016, is exempt from the costs recovered under Subsection (3),
488 except for costs created by or arising from the Utah solar incentive program included in
489 Subsection [54-7-12.8\(3\)\(b\)](#).

490 (9) (a) In any proceeding commenced under Section [54-3-32](#), the commission may not

491 consider or assess to an eligible customer an expenditure, cost, amortization, charge, or liability
 492 of any kind that is created by or arises in whole or in part from:

493 (i) any program created under Title 54, Chapter 20, Sustainable Transportation and
 494 Energy Plan Act; or

495 (ii) this section, except for costs created by or arising from the Utah solar incentive
 496 program included in Subsection 54-7-12.8(3)(b).

497 (b) Except as provided in Subsection (9)(a) and in Section 54-3-33, this section and
 498 Title 54, Chapter 20, Sustainable Transportation and Energy Plan Act, do not:

499 (i) amend or repeal any provision of Section 54-3-32; or

500 (ii) affect any right, defense, or credit available to an eligible customer under Section
 501 54-3-32.

502 ~~[(3)]~~ (10) Each electrical corporation proposing a tariff under this section shall, before
 503 submitting the tariff to the commission for approval, seek ~~[and receive]~~ input from:

504 (a) the Division of Public Utilities;

505 (b) the Office of Consumer Services ~~[created in Section 54-10a-201]~~; and

506 ~~[(c) other interested parties.]~~

507 (c) a person that files a request for notice with the commission.

508 ~~[(4)]~~ (11) Before approving a tariff under this section, the commission shall hold a
 509 hearing if:

510 (a) requested in writing by the electrical corporation, a customer of the electrical
 511 corporation, or any other interested party within 15 days after the tariff filing; or

512 (b) the commission determines that a hearing is appropriate.

513 ~~[(5)]~~ (12) The commission may approve a demand side management tariff under this
 514 section either with or without a provision allowing an end-use customer to receive a credit
 515 against the charges imposed under the tariff for electric energy efficiency measures that:

516 (a) the customer implements or has implemented at the customer's expense; and

517 (b) qualify for the credit under criteria established by the ~~[Utah Public Service~~
 518 ~~Commission]~~ commission.

519 ~~[(6)]~~ (13) In approving a tariff under this section, the commission may impose
 520 whatever conditions or limits it considers appropriate, including a maximum annual cost.

521 ~~[(7)]~~ (14) Unless otherwise ordered by the commission, each tariff under this section

522 approved by the commission shall take effect no sooner than 30 days after the electrical
523 corporation files the tariff with the commission.

524 Section 4. Section **54-7-13.5** is amended to read:

525 **54-7-13.5. Energy balancing accounts.**

526 (1) As used in this section:

527 (a) "Base rates" [~~is as~~] means the same as that term is defined in Subsection
528 [54-7-12](#)(1).

529 (b) "Energy balancing account" means an electrical corporation account for some or all
530 components of the electrical corporation's incurred actual power costs, including:

531 (i) (A) fuel;

532 (B) purchased power; and

533 (C) wheeling expenses; and

534 (ii) the sum of the power costs described in Subsection (1)(b)(i) less wholesale
535 revenues.

536 (c) "Gas balancing account" means a gas corporation account to recover on a
537 dollar-for-dollar basis, purchased gas costs, and gas cost-related expenses.

538 (2) (a) The commission may authorize an electrical corporation to establish an energy
539 balancing account.

540 (b) An energy balancing account shall become effective upon a commission finding
541 that the energy balancing account is:

542 (i) in the public interest;

543 (ii) for prudently-incurred costs; and

544 (iii) implemented at the conclusion of a general rate case.

545 (c) An electrical corporation:

546 (i) may, with approval from the commission, recover costs under this section through:

547 (A) base rates;

548 (B) contract rates;

549 (C) surcredits; or

550 (D) surcharges; and

551 (ii) shall file a reconciliation of the energy balancing account with the commission at
552 least annually with actual costs and revenues incurred by the electrical corporation.

553 (d) Beginning June 1, 2016, for an electrical corporation with an energy balancing
554 account established before January 1, 2016, the commission shall allow an electrical
555 corporation to recover 100% of the electrical corporation's prudently incurred costs as
556 determined and approved by the commission under this section.

557 (e) (i) Except as provided in Subsections (2)(e)(ii) and (2)(e)(iii), a large-scale electric
558 utility may not file a request with the commission for a change in base rates if the proposed
559 change in base rates would take effect before May 10, 2018.

560 (ii) If a person requests or the commission initiates a proceeding for a change in base
561 rates that would take effect before May 10, 2018:

562 (A) a large-scale electric utility may participate in the proceeding; and

563 (B) a large-scale electric utility may, after the proceeding, file a request with the
564 commission for a change in base rates that would take effect before May 10, 2018.

565 (iii) (A) A large-scale electric utility may file a request with the commission to initiate
566 a cost of service proceeding for approval and implementation of a net metering tariff under
567 Section [54-15-105.1](#).

568 (B) A large-scale electric utility shall defer the difference in revenue collected from a
569 net metering customer and the revenue that would have been collected from the net metering
570 customer prior to a net metering tariff change adopted pursuant to a request under Subsection
571 [54-7-13.5](#)(e)(iii)(A) until the next change in base rates.

572 (C) The large-scale electric utility shall allocate the deferred amounts described in
573 Subsection [54-7-13.5](#)(e)(iii)(B) to the large-scale electric utility's customers as determined by
574 the commission in the next general rate case proceeding.

575 (D) The commission may authorize a change in the tariff rate for a net metering
576 customer without initiating a general rate case proceeding.

577 ~~[(d)]~~ (f) An energy balancing account may not alter:

578 (i) the standard for cost recovery; or

579 (ii) the electrical corporation's burden of proof.

580 ~~[(e)]~~ (g) The collection method described in Subsection (2)(c)(i) shall:

581 (i) apply to the appropriate billing components in base rates; and

582 (ii) be incorporated into base rates in an appropriate commission proceeding.

583 ~~[(f)]~~ (h) The collection of costs related to an energy balancing account from customers

584 paying contract rates shall be governed by the terms of the contract.

585 [~~(g)~~] (i) Revenues collected in excess of prudently incurred actual costs shall:

586 (i) be refunded as a bill surcredit to an electrical corporation's customers over a period
587 specified by the commission; and

588 (ii) include a carrying charge.

589 [~~(h)~~] (j) Prudently incurred actual costs in excess of revenues collected shall:

590 (i) be recovered as a bill surcharge over a period to be specified by the commission;

591 and

592 (ii) include a carrying charge.

593 [~~(i)~~] (k) The carrying charge applied to the balance in an energy balancing account
594 shall be:

595 (i) determined by the commission; and

596 (ii) symmetrical for over or under collections.

597 (3) (a) The commission may:

598 (i) establish a gas balancing account for a gas corporation; and

599 (ii) set forth procedures for a gas corporation's gas balancing account in the gas
600 corporation's commission-approved tariff.

601 (b) A gas balancing account may not alter:

602 (i) the standard of cost recovery; or

603 (ii) the gas corporation's burden of proof.

604 (4) (a) All allowed costs and revenues associated with an energy balancing account or
605 gas balancing account shall remain in the respective balancing account until charged or
606 refunded to customers.

607 (b) The balance of an energy balancing account or gas balancing account may not be:

608 (i) transferred by the electrical corporation or gas corporation; or

609 (ii) used by the commission to impute earnings or losses to the electrical corporation or
610 gas corporation.

611 (c) An energy balancing account or gas balancing account that is formed and
612 maintained in accordance with this section does not constitute impermissible retroactive
613 ratemaking or single-issue ratemaking.

614 (5) This section does not create a presumption for or against approval of an energy

615 balancing account.

616 (6) The commission shall report to the Public Utilities and Technology Interim
617 Committee before December 1 in 2017 and 2018 regarding whether allowing an electrical
618 corporation to continue to recover costs under Subsection (2)(d) is reasonable and in the public
619 interest.

620 Section 5. Section **54-17-801** is amended to read:

621 **54-17-801. Definitions.**

622 As used in this part:

623 (1) "Contract customer" means a person who executes or will execute a renewable
624 energy contract with a qualified utility.

625 (2) "Qualified utility" means an electric corporation that serves more than 200,000
626 retail customers in the state.

627 (3) "Renewable energy contract" means a contract under this part for the delivery of
628 electricity from one or more renewable energy facilities to a contract customer requiring the use
629 of a qualified utility's transmission or distribution system to deliver the electricity from a
630 renewable energy facility to the contract customer.

631 (4) "Renewable energy facility":

632 (a) except as provided in Subsection (4)(b), means a renewable energy source defined
633 in Section **54-17-601** that is located in the state; and

634 (b) does not include an electric generating facility whose costs have been included in a
635 qualified utility's rates as a facility providing electric service to the qualified utility's system.

636 (5) "Renewable energy tariff" means a tariff offered by a qualified utility that allows
637 the qualified utility to procure renewable generation on behalf of and to serve its customers.

638 Section 6. Section **54-17-806** is enacted to read:

639 **54-17-806. Qualified utility renewable energy tariff.**

640 (1) The commission may authorize a qualified utility to implement a renewable energy
641 tariff in accordance with this section if the commission determines the tariff that the qualified
642 utility proposes is reasonable and in the public interest.

643 (2) If a tariff is authorized under Subsection (1), a qualified utility customer with an
644 aggregated electrical load of at least five megawatts and who agrees to service that is subject to
645 the renewable energy tariff shall pay:

- 646 (a) the customer's normal tariff rate;
- 647 (b) an incremental charge in an amount equal to the difference between the cost to the
- 648 qualified utility to supply renewable generation to the renewable energy tariff customer and the
- 649 qualified utility's avoided costs as defined in Subsection [54-2-1\(1\)](#), or a different methodology
- 650 recommended by the qualified utility; and
- 651 (c) an administrative fee in an amount approved by the commission.
- 652 (3) The commission shall allow a qualified utility to recover the qualified utility's
- 653 prudently incurred cost of renewable generation procured pursuant to the tariff established in
- 654 this section that is not otherwise recovered from the proceeds of the tariff paid by customers
- 655 agreeing to service that is subject to the renewable energy tariff.

656 Section 7. Section **54-20-101** is enacted to read:

657 **CHAPTER 20. SUSTAINABLE TRANSPORTATION AND ENERGY PLAN ACT**

658 **54-20-101. Title.**

659 This chapter is known as the "Sustainable Transportation and Energy Plan Act."

660 Section 8. Section **54-20-102** is enacted to read:

661 **54-20-102. Definitions.**

662 As used in this chapter:

- 663 (1) "Demand side management" means the same as that term is defined in Section
- 664 [54-7-12.8](#).
- 665 (2) "Pilot program period" means a period of 5 years, beginning on January 1, 2017,
- 666 during which the sustainable transportation and energy plan is effective.
- 667 (3) "Sustainable transportation and energy plan" means the programs approved by the
- 668 commission and undertaken by a large-scale electric utility during the pilot program period,
- 669 including:
 - 670 (a) the electric vehicle incentive program described in Section [54-20-103](#);
 - 671 (b) the clean coal technology program described in Section [54-20-104](#); and
 - 672 (c) the innovative technology programs described in Section [54-20-105](#).
- 673 Section 9. Section **54-20-103** is enacted to read:
- 674 **54-20-103. Electric vehicle incentive program.**
- 675 (1) The commission shall, before July 1, 2017, authorize a large-scale electric utility to
- 676 establish a program that promotes customer choice in electric vehicle charging equipment and

677 service that includes:

678 (a) an incentive to a large-scale electric utility customer to install or provide electric
679 vehicle infrastructure;

680 (b) time of use pricing for electric vehicle charging;

681 (c) any measure that the commission determines is in the public interest that
682 incentivizes the competitive deployment of electric vehicle charging infrastructure.

683 (2) The commission may review the expenditures made by a large-scale electric utility
684 for the program described in Subsection (1) in order to determine if the large-scale electric
685 utility made the expenditures prudently in accordance with the purposes of the program.

686 (3) A large-scale electric utility proposing a program for approval by the commission
687 under this section shall, before submitting the program to the commission for approval, seek
688 input from:

689 (a) the Division of Public Utilities;

690 (b) the Office of Consumer Services;

691 (c) the Division of Air Quality; and

692 (d) any person that files a request for notice with the commission.

693 Section 10. Section **54-20-104** is enacted to read:

694 **54-20-104. Clean coal technology program.**

695 (1) Subject to Subsection (2), the commission shall authorize, before July 1, 2017, and
696 subject to funding, approve a program that authorizes a large-scale electric utility to
697 investigate, analyze, and research clean coal technology.

698 (2) The commission may review the expenditures made by a large-scale electric utility
699 for a program described in Subsection (1) in order to determine if the large-scale electric utility
700 made the expenditures prudently in accordance with the purposes of the program.

701 Section 11. Section **54-20-105** is enacted to read:

702 **54-20-105. Innovative utility programs.**

703 (1) The commission may authorize, subject to funding available under Section
704 [54-7-12.8\(6\)\(b\)\(ii\)\(B\)](#), a large-scale electric utility to implement programs that the commission
705 determines are in the interest of large-scale electric utility customers to provide for the
706 investigation, analysis, and implementation of:

707 (a) an economic development incentive rate;

- 708 (b) a solar generation incentive;
- 709 (c) a battery storage or electric grid related project;
- 710 (d) a commercial line extension pilot program;
- 711 (e) a program to curtail emissions from thermal generation plant in the Salt Lake
- 712 non-attainment area during a non-attainment event as defined by the Division of Air Quality;
- 713 (f) an additional electric vehicle incentive program incremental to the program
- 714 described in Section [54-20-103](#);
- 715 (g) an additional clean coal program incremental to the program described in Section
- 716 [54-20-104](#); and
- 717 (h) any other technology program.

718 (2) The commission may review the expenditures made by a large-scale electric utility
719 for a program described in Subsection (1) in order to determine if the large-scale electric utility
720 made the expenditures prudently in accordance with the purposes of the program.

721 (3) The commission may authorize and establish funding for a conservation, efficiency,
722 or new technology program in addition the programs described in this chapter if the
723 conservation, efficiency, or new technology program is cost-effective and in the public interest.

724 Section 12. Section **54-20-106** is enacted to read:

725 **54-20-106. Extension of Pilot Program.**

726 Before the first day of the legislative session in the final year of the pilot program
727 period, the commission shall submit a report and recommendation to the Legislature regarding
728 whether, in the discretion of the commission, the Legislature should, for the sustainable
729 transportation and energy plan:

- 730 (1) extend the plan or a portion of the plan as a ratepayer funded program;
- 731 (2) implement the plan or a portion of the plan as a state funded program; or
- 732 (3) discontinue the plan or a portion of the plan.

733 Section 13. Section **63I-1-254** is amended to read:

734 **63I-1-254. Repeal dates -- Title 54.**

735 (1) The language of Subsection [54-4-13.4](#)(1)(a)(ii) after "do not exceed \$5,000,000 in
736 any calendar year" is repealed July 1, 2018.

737 (2) Subsection [54-7-13.5](#)(2)(d) is repealed on December 31, 2019.