

Representative V. Lowry Snow proposes the following substitute bill:

ELECTRIC VEHICLE CHARGING INFRASTRUCTURE

AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Lincoln Fillmore

LONG TITLE

General Description:

This bill modifies public utilities provisions relating to electric vehicle battery charging infrastructure and service.

Highlighted Provisions:

This bill:

▶ modifies the definitions of "electrical corporation" and "public utility" for purposes of public utility code provisions and expands the description of entities excluded from those definitions because they are entities that sell electric vehicle battery charging service;

▶ enacts definitions relating to electric vehicle battery charging station infrastructure and services;

▶ requires the Public Service Commission to authorize a large-scale electric utility's vehicle charging infrastructure program that allows for a \$50,000,000 investment, and provides for amendments to that program; and

▶ provides for a large-scale electric utility to recover the utility's investment in vehicle charging infrastructure.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **54-2-1**, as last amended by Laws of Utah 2019, Chapter 460

32 ENACTS:

33 **54-4-41**, Utah Code Annotated 1953



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

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

37 **54-2-1. Definitions.**

38 As used in this title:

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

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

46 (3) "Cogeneration facility":

47 (a) means a facility that produces:

48 (i) electric energy; and

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

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

52 (4) "Commission" means the Public Service Commission.

53 (5) "Commissioner" means a member of the commission.

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

56 (b) "Corporation" does not include towns, cities, counties, conservancy districts,

57 improvement districts, or other governmental units created or organized under any general or
58 special law of this state.

59 (7) "Distribution electrical cooperative" includes an electrical corporation that:

60 (a) is a cooperative;

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

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

65 (i) members; or

66 (ii) patrons.

67 (8) (a) "Electrical corporation" includes every corporation, cooperative association, and
68 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any
69 electric plant, or in any way furnishing electric power for public service or to its consumers or
70 members for domestic, commercial, or industrial use, within this state.

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

72 (i) an independent energy producer;

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

77 (iii) an eligible customer who provides electricity for the eligible customer's own use or
78 the use of the eligible customer's tenant or affiliate; or

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

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

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

83 (c) "Electrical corporation" does not include an entity that sells electric vehicle battery
84 charging services[;];

85 (i) if the entity obtains the electricity for the electric vehicle battery charging service,
86 including any electricity from an electricity storage device:

87 (A) from an electrical corporation in whose service area the electric vehicle battery

88 charging service is located; and

89 (B) under an established tariff for rates, charges, and conditions of service; and

90 (ii) unless the entity conducts another activity in the state that subjects the entity to the
91 jurisdiction and regulation of the commission as an electrical corporation.

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

97 (10) "Eligible customer" means a person who:

98 (a) on December 31, 2013:

99 (i) was a customer of a public utility that, on December 31, 2013, had more than
100 200,000 retail customers in this state; and

101 (ii) owned an electric plant that is an electric generation plant that, on December 31,
102 2013, had a generation name plate capacity of greater than 150 megawatts; and

103 (b) produces electricity:

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

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

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

107 (11) "Eligible customer's tenant or affiliate" means one or more tenants or affiliates:

108 (a) of an eligible customer; and

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

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

111 (ii) performed on real property that is:

112 (A) within a 25-mile radius of the electric plant described in Subsection (10)(a)(ii); and

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

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

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

119 private property:

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

122 (ii) not for sale to others;

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

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

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

130 (14) "Heat corporation" includes every corporation and person, their lessees, trustees,
131 and receivers, owning, controlling, operating, or managing any heating plant for public service
132 within this state.

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

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

138 (16) "Independent energy producer" means every electrical corporation, person,
139 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,
140 control, or manage an independent power production or cogeneration facility.

141 (17) "Independent power production facility" means a facility that:

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

145 (b) is a qualifying power production facility.

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

148 (19) "Large-scale natural gas utility" means a public utility that provides retail natural
149 gas service to more than 200,000 retail customers in the state.

150 (20) "Nonutility energy supplier" means a person that:

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

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

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

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

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

166 (22) (a) "Public utility" includes every railroad corporation, gas corporation, electrical
167 corporation, distribution electrical cooperative, wholesale electrical cooperative, telephone
168 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
169 and independent energy producer not described in Section 54-2-201 where the service is
170 performed for, or the commodity delivered to, the public generally, or in the case of a gas
171 corporation or electrical corporation where the gas or electricity is sold or furnished to any
172 member or consumers within the state for domestic, commercial, or industrial use.

173 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone
174 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
175 or independent energy producer not described in Section 54-2-201, performs a service for or
176 delivers a commodity to the public, it is considered to be a public utility, subject to the
177 jurisdiction and regulation of the commission and this title.

178 (ii) If a gas corporation, independent energy producer not described in Section
179 54-2-201, or electrical corporation sells or furnishes gas or electricity to any member or
180 consumers within the state, for domestic, commercial, or industrial use, for which any

181 compensation or payment is received, it is considered to be a public utility, subject to the
182 jurisdiction and regulation of the commission and this title.

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

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

190 (e) (i) "Public utility" does not include any person that is otherwise considered a public
191 utility under this Subsection (22) solely because of that person's ownership of an interest in an
192 electric plant, cogeneration facility, or small power production facility in this state if all of the
193 following conditions are met:

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

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

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

199 (III) a combination of Subsections (22)(e)(i)(A)(I) and (II);

200 (B) the lessor of the ownership interest identified in Subsection (22)(e)(i)(A) is:

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

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

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

206 (ii) Any person that is exempt from classification as a public utility under Subsection
207 (22)(e)(i) shall continue to be so exempt from classification following termination of the
208 lessee's right to possession or use of the electric plant for so long as the former lessor does not
209 operate the electric plant or sell electricity from the electric plant. If the former lessor operates
210 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a
211 period of 90 days following termination, or for a longer period that is ordered by the

212 commission. This period may not exceed one year. A change in rates that would otherwise
213 require commission approval may not be effective during the 90-day or extended period
214 without commission approval.

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

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

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

230 (h) "Public utility" does not include:

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

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

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

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

237 (i) "Public utility" does not include an entity that sells electric vehicle battery charging
238 services[;];

239 (i) if the entity obtains the electricity for the electric vehicle battery charging service,
240 including any electricity from an electricity storage device:

241 (A) from a large-scale electric utility or an electrical corporation in whose service area
242 the electric vehicle battery charging service is located; and

243 (B) under an established tariff for rates, charges, and conditions of service; and

244 (ii) unless the entity conducts another activity in the state that subjects the entity to the
245 jurisdiction and regulation of the commission as a public utility.

246 (j) "Public utility" does not include an independent energy producer that is not subject
247 to regulation by the commission as a public utility under Section 54-2-201.

248 (23) "Purchasing utility" means any electrical corporation that is required to purchase
249 electricity from small power production or cogeneration facilities pursuant to the Public Utility
250 Regulatory Policies Act, 16 U.S.C. Sec. 824a-3.

251 (24) "Qualifying power producer" means a corporation, cooperative association, or
252 person, or the lessee, trustee, and receiver of the corporation, cooperative association, or
253 person, who owns, controls, operates, or manages any qualifying power production facility or
254 cogeneration facility.

255 (25) "Qualifying power production facility" means a facility that:

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

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

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

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

268 (27) "Railroad corporation" includes every corporation and person, their lessees,
269 trustees, and receivers, owning, controlling, operating, or managing any railroad for public
270 service within this state.

271 (28) (a) "Sewerage corporation" includes every corporation and person, their lessees,
272 trustees, and receivers, owning, controlling, operating, or managing any sewerage system for
273 public service within this state.

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

278 (29) "Telegraph corporation" includes every corporation and person, their lessees,
279 trustees, and receivers, owning, controlling, operating, or managing any telegraph line for
280 public service within this state.

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

285 (31) "Telephone cooperative" means a telephone corporation that:

286 (a) is a cooperative; and

287 (b) is organized for the purpose of providing telecommunications service to the
288 telephone corporation's members and the public at cost plus a reasonable rate of return.

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

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

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

298 (ii) Internet service; or

299 (iii) resold intrastate toll service.

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

304 (34) "Transportation of persons" includes every service in connection with or

305 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
306 carriage, and delivery of that person and that person's baggage.

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

311 (36) "Utility-owned vehicle charging infrastructure" means all facilities, equipment,
312 and electrical systems owned and installed by a large-scale electric utility:

313 (a) on the customer's side or the large-scale electric utility's side of the electricity
314 metering equipment; and

315 (b) to provide utility vehicle charging service.

316 (37) "Utility vehicle charging service" means the furnishing of electricity:

317 (a) to an electric vehicle battery charging station:

318 (b) by a public utility in whose service area the charging station is located; and

319 (c) pursuant to a duly established tariff for rates, charges, and conditions of service for
320 the electricity.

321 [~~36~~] (38) "Water corporation" includes every corporation and person, their lessees,
322 trustees, and receivers, owning, controlling, operating, or managing any water system for
323 public service within this state. It does not include private irrigation companies engaged in
324 distributing water only to their stockholders, or towns, cities, counties, water conservancy
325 districts, improvement districts, or other governmental units created or organized under any
326 general or special law of this state.

327 [~~37~~] (39) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
328 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,
329 and personal property owned, controlled, operated, or managed in connection with or to
330 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,
331 appointment, apportionment, or measurement of water for power, fire protection, irrigation,
332 reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

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

335 [~~38~~] (40) "Wholesale electrical cooperative" includes every electrical corporation that

336 is:

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

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

341 Section 2. Section **54-4-41** is enacted to read:

342 **54-4-41. Recovery of investment in utility-owned vehicle charging infrastructure.**

343 (1) As used in this section:

344 (a) "Charging infrastructure program" means the program described in Subsection (2).

345 (b) "Charging system investment" means the costs, expenses, and other investment in
346 utility-owned vehicle charging infrastructure and the charging infrastructure program.

347 (2) The commission shall authorize a large-scale electric utility program that:

348 (a) allows for funding from large-scale electric utility customers of up to \$50,000,000
349 for large-scale electric utility infrastructure that supports utility-owned vehicle charging
350 infrastructure and utility vehicle charging service;

351 (b) creates a new customer class for electric vehicle battery charging customers, with a
352 transitional rate structure that:

353 (i) is expected to allow the large-scale electric utility to recover, through charges to
354 electric vehicle battery charging customers, the large-scale electric utility's full cost of service
355 for utility-owned vehicle charging infrastructure and utility vehicle charging service over a
356 reasonable time frame determined by the commission; and

357 (ii) may allow different rates for large-scale electric utility customers to reflect
358 contributions to investment; and

359 (c) includes a transportation plan that promotes:

360 (i) the deployment of utility-owned vehicle charging infrastructure in the public
361 interest; and

362 (ii) the availability of utility vehicle charging service.

363 (3) Before submitting a proposed charging infrastructure program to the commission
364 for commission approval under Subsection (2), a large-scale electric utility shall seek and
365 consider input from:

366 (a) the Division of Public Utilities, established in Section [54-4a-1](#);

- 367 (b) the Office of Consumer Services, created in Section 54-10a-201;
368 (c) the Division of Air Quality, created in Section 19-1-105;
369 (d) the Department of Transportation, created in Section 72-1-201;
370 (e) the Governor's Office of Economic Development, created in Section 63N-1-201;
371 (f) the Office of Energy Development, created in Section 63M-4-401;
372 (g) the board of the Utah Inland Port Authority, created in Section 11-58-201;
373 (h) representatives of the Point of the Mountain State Land Development Authority,
374 created in Section 11-59-201;
375 (i) third-party electric vehicle battery charging service operators; and
376 (j) any other person who files a request for notice with the commission.
377 (4) The commission shall find a charging infrastructure program to be in the public
378 interest if the charging infrastructure program:
379 (a) increases the availability of electric vehicle battery charging service in the state;
380 (b) enables the significant deployment of infrastructure that supports electric vehicle
381 battery charging service and utility-owned vehicle charging infrastructure in a manner
382 reasonably expected to increase electric vehicle adoption;
383 (c) includes an evaluation of investments in the areas of the authority jurisdictional
384 land, as defined in Section 11-58-102, and the point of the mountain state land, as defined in
385 Section 11-59-102;
386 (d) enables customer choice for electric vehicle battery charging services, while
387 promoting low-cost services for electric vehicle battery charging customers; and
388 (e) provides for ongoing coordination with the Department of Transportation, created
389 in Section 72-1-201.
390 (5) The commission may, consistent with Subsection (2), approve an amendment to the
391 charging infrastructure program if the large-scale electric utility demonstrates that the
392 amendment:
393 (i) is prudent;
394 (ii) will provide net benefits to customers; and
395 (iii) is otherwise consistent with the requirements of Subsection (2).
396 (6) The commission shall authorize recovery of a large-scale electric utility's
397 investment in utility-owned vehicle charging infrastructure through a balancing account or

398 other ratemaking treatment that reflects:

399 (a) charging infrastructure program costs associated with prudent investment, including
400 the large-scale electric utility's pre-tax average weighted cost of capital approved by the
401 commission in the large-scale electric utility's most recent general rate proceeding, and
402 associated revenue and prudently incurred expenses; and

403 (b) a carrying charge.

404 (7) A large-scale electric utility's investment in utility-owned vehicle charging
405 infrastructure is prudently made if the large-scale electric utility demonstrates in a formal
406 adjudicative proceeding before the commission that the investment can reasonably be
407 anticipated to:

408 (a) result in one or more projects that are in the public interest of the large-scale
409 electric utility's customers to reduce transportation sector emissions over a reasonable time
410 period as determined by the commission;

411 (b) provide the large-scale electric utility's customers significant benefits that may
412 include revenue from utility vehicle charging service that offsets the large-scale electric utility's
413 costs and expenses; and

414 (c) facilitate any other measure that the commission determines:

415 (i) promotes deployment of utility-owned vehicle charging infrastructure; or

416 (ii) creates significant benefits in the long term for customers of the large-scale electric
417 utility.