

Chapter 2 General Provisions

Part 1 Definitions

54-2-1 Definitions.

As used in this title:

- (1) "Avoided costs" means the incremental costs to an electrical corporation of electric energy or capacity or both that, due to the purchase of electric energy or capacity or both from small power production or cogeneration facilities, the electrical corporation would not have to generate itself or purchase from another electrical corporation.
- (2) "Clean coal technology" means a technology that may be researched, developed, or used for reducing emissions or the rate of emissions from a thermal electric generation plant that uses coal as a fuel source.
- (3) "Cogeneration facility":
 - (a) means a facility that produces:
 - (i) electric energy; and
 - (ii) steam or forms of useful energy, including heat, that are used for industrial, commercial, heating, or cooling purposes; and
 - (b) is a qualifying cogeneration facility under federal law.
- (4) "Commission" means the Public Service Commission.
- (5) "Commissioner" means a member of the commission.
- (6)
 - (a) "Corporation" includes an association and a joint stock company having any powers or privileges not possessed by individuals or partnerships.
 - (b) "Corporation" does not include towns, cities, counties, conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.
- (7) "Department" means the Department of Transportation created in Section 72-1-201.
- (8) "Distribution electrical cooperative" includes an electrical corporation that:
 - (a) is a cooperative;
 - (b) conducts a business that includes the retail distribution of electricity the cooperative purchases or generates for the cooperative's members; and
 - (c) is required to allocate or distribute savings in excess of additions to reserves and surplus on the basis of patronage to the cooperative's:
 - (i) members; or
 - (ii) patrons.
- (9)
 - (a) "Electrical corporation" includes every corporation, cooperative association, and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any electric plant, or in any way furnishing electric power for public service or to its consumers or members for domestic, commercial, or industrial use, within this state.
 - (b) "Electrical corporation" does not include:
 - (i) an independent energy producer;
 - (ii) where electricity is generated on or distributed by the producer solely for the producer's own use, or the use of the producer's tenants, or the use of members of an association of unit

- owners formed under Title 57, Chapter 8, Condominium Ownership Act, and not for sale to the public generally;
- (iii) an eligible customer who provides electricity for the eligible customer's own use or the use of the eligible customer's tenant or affiliate; or
 - (iv) a nonutility energy supplier who sells or provides electricity to:
 - (A) an eligible customer who has transferred the eligible customer's service to the nonutility energy supplier in accordance with Section 54-3-32; or
 - (B) the eligible customer's tenant or affiliate.
- (c) "Electrical corporation" does not include an entity that sells electric vehicle battery charging services:
- (i) if the entity obtains the electricity for the electric vehicle battery charging service, including any electricity from an electricity storage device:
 - (A) from an electrical corporation in whose service area the electric vehicle battery charging service is located; and
 - (B) under an established tariff for rates, charges, and conditions of service; and
 - (ii) unless the entity conducts another activity in the state that subjects the entity to the jurisdiction and regulation of the commission as an electrical corporation.
- (10) "Electric plant" includes all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying conductors used or to be used for the transmission of electricity for light, heat, or power.
- (11) "Eligible customer" means a person who:
- (a) on December 31, 2013:
 - (i) was a customer of a public utility that, on December 31, 2013, had more than 200,000 retail customers in this state; and
 - (ii) owned an electric plant that is an electric generation plant that, on December 31, 2013, had a generation name plate capacity of greater than 150 megawatts; and
 - (b) produces electricity:
 - (i) from a qualifying power production facility for sale to a public utility in this state;
 - (ii) primarily for the eligible customer's own use; or
 - (iii) for the use of the eligible customer's tenant or affiliate.
- (12) "Eligible customer's tenant or affiliate" means one or more tenants or affiliates:
- (a) of an eligible customer; and
 - (b) who are primarily engaged in an activity:
 - (i) related to the eligible customer's core mining or industrial businesses; and
 - (ii) performed on real property that is:
 - (A) within a 25-mile radius of the electric plant described in Subsection (11)(a)(ii); and
 - (B) owned by, controlled by, or under common control with, the eligible customer.
- (13) "Gas corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any gas plant for public service within this state or for the selling or furnishing of natural gas to any consumer or consumers within the state for domestic, commercial, or industrial use, except in the situation that:
- (a) gas is made or produced on, and distributed by the maker or producer through, private property:
 - (i) solely for the maker's or producer's own use or the use of the maker's or producer's tenants; and
 - (ii) not for sale to others;

- (b) gas is compressed on private property solely for the owner's own use or the use of the owner's employees as a motor vehicle fuel; or
 - (c) gas is compressed by a retailer of motor vehicle fuel on the retailer's property solely for sale as a motor vehicle fuel.
- (14) "Gas plant" includes all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.
- (15) "Heat corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any heating plant for public service within this state.
- (16)
- (a) "Heating plant" includes all real estate, fixtures, machinery, appliances, and personal property controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of artificial heat.
 - (b) "Heating plant" does not include either small power production facilities or cogeneration facilities.
- (17) "Independent energy producer" means every electrical corporation, person, corporation, or government entity, their lessees, trustees, or receivers, that own, operate, control, or manage an independent power production or cogeneration facility.
- (18) "Independent power production facility" means a facility that:
- (a) produces electric energy solely by the use, as a primary energy source, of biomass, waste, a renewable resource, a geothermal resource, or any combination of the preceding sources; or
 - (b) is a qualifying power production facility.
- (19) "Large-scale electric utility" means a public utility that provides retail electric service to more than 200,000 retail customers in the state.
- (20) "Large-scale natural gas utility" means a public utility that provides retail natural gas service to more than 200,000 retail customers in the state.
- (21) "Nonutility energy supplier" means a person that:
- (a) has received market-based rate authority from the Federal Energy Regulatory Commission in accordance with 16 U.S.C. Sec. 824d, 18 C.F.R. Part 35, Filing of Rate Schedules and Tariffs, or applicable Federal Energy Regulatory Commission orders; or
 - (b) owns, leases, operates, or manages an electric plant that is an electric generation plant that:
 - (i) has a capacity of greater than 100 megawatts; and
 - (ii) is hosted on the site of an eligible customer that consumes the output of the electric plant, in whole or in part, for the eligible customer's own use or the use of the eligible customer's tenant or affiliate.
- (22) "Private telecommunications system" includes all facilities for the transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio facilities, that are owned, controlled, operated, or managed by a corporation or person, including their lessees, trustees, receivers, or trustees appointed by any court, for the use of that corporation or person and not for the shared use with or resale to any other corporation or person on a regular basis.
- (23)
- (a) "Public utility" includes every railroad corporation, gas corporation, electrical corporation, distribution electrical cooperative, wholesale electrical cooperative, telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, and independent energy producer not described in Section 54-2-201 where the service is performed for, or the commodity delivered to, the public generally, or in the case of a gas

corporation or electrical corporation where the gas or electricity is sold or furnished to any member or consumers within the state for domestic, commercial, or industrial use.

- (b)
- (i) If any railroad corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, or independent energy producer not described in Section 54-2-201, performs a service for or delivers a commodity to the public, it is considered to be a public utility, subject to the jurisdiction and regulation of the commission and this title.
 - (ii) If a gas corporation, independent energy producer not described in Section 54-2-201, or electrical corporation sells or furnishes gas or electricity to any member or consumers within the state, for domestic, commercial, or industrial use, for which any compensation or payment is received, it is considered to be a public utility, subject to the jurisdiction and regulation of the commission and this title.
- (c) Any corporation or person not engaged in business exclusively as a public utility as defined in this section is governed by this title in respect only to the public utility owned, controlled, operated, or managed by the corporation or person, and not in respect to any other business or pursuit.
- (d) Any person or corporation defined as an electrical corporation or public utility under this section may continue to serve its existing customers subject to any order or future determination of the commission in reference to the right to serve those customers.
- (e)
- (i) "Public utility" does not include any person that is otherwise considered a public utility under this Subsection (23) solely because of that person's ownership of an interest in an electric plant, cogeneration facility, or small power production facility in this state if all of the following conditions are met:
 - (A) the ownership interest in the electric plant, cogeneration facility, or small power production facility is leased to:
 - (I) a public utility, and that lease has been approved by the commission;
 - (II) a person or government entity that is exempt from commission regulation as a public utility; or
 - (III) a combination of Subsections (23)(e)(i)(A)(I) and (II);
 - (B) the lessor of the ownership interest identified in Subsection (23)(e)(i)(A) is:
 - (I) primarily engaged in a business other than the business of a public utility; or
 - (II) a person whose total equity or beneficial ownership is held directly or indirectly by another person engaged in a business other than the business of a public utility; and
 - (C) the rent reserved under the lease does not include any amount based on or determined by revenues or income of the lessee.
 - (ii) Any person that is exempt from classification as a public utility under Subsection (23)(e)(i) shall continue to be so exempt from classification following termination of the lessee's right to possession or use of the electric plant for so long as the former lessor does not operate the electric plant or sell electricity from the electric plant. If the former lessor operates the electric plant or sells electricity, the former lessor shall continue to be so exempt for a period of 90 days following termination, or for a longer period that is ordered by the commission. This period may not exceed one year. A change in rates that would otherwise require commission approval may not be effective during the 90-day or extended period without commission approval.
- (f) "Public utility" does not include any person that provides financing for, but has no ownership interest in an electric plant, small power production facility, or cogeneration facility. In

the event of a foreclosure in which an ownership interest in an electric plant, small power production facility, or cogeneration facility is transferred to a third-party financier of an electric plant, small power production facility, or cogeneration facility, then that third-party financier is exempt from classification as a public utility for 90 days following the foreclosure, or for a longer period that is ordered by the commission. This period may not exceed one year.

(g)

- (i) The distribution or transportation of natural gas for use as a motor vehicle fuel does not cause the distributor or transporter to be a "public utility," unless the commission, after notice and a public hearing, determines by rule that it is in the public interest to regulate the distributors or transporters, but the retail sale alone of compressed natural gas as a motor vehicle fuel may not cause the seller to be a "public utility."
- (ii) In determining whether it is in the public interest to regulate the distributors or transporters, the commission shall consider, among other things, the impact of the regulation on the availability and price of natural gas for use as a motor fuel.

(h) "Public utility" does not include:

- (i) an eligible customer who provides electricity for the eligible customer's own use or the use of the eligible customer's tenant or affiliate; or
 - (ii) a nonutility energy supplier that sells or provides electricity to:
 - (A) an eligible customer who has transferred the eligible customer's service to the nonutility energy supplier in accordance with Section 54-3-32; or
 - (B) the eligible customer's tenant or affiliate.
 - (i) "Public utility" does not include an entity that sells electric vehicle battery charging services:
 - (i) if the entity obtains the electricity for the electric vehicle battery charging service, including any electricity from an electricity storage device:
 - (A) from a large-scale electric utility or an electrical corporation in whose service area the electric vehicle battery charging service is located; and
 - (B) under an established tariff for rates, charges, and conditions of service; and
 - (ii) unless the entity conducts another activity in the state that subjects the entity to the jurisdiction and regulation of the commission as a public utility.
 - (j) "Public utility" does not include an independent energy producer that is not subject to regulation by the commission as a public utility under Section 54-2-201.
- (24) "Purchasing utility" means any electrical corporation that is required to purchase electricity from small power production or cogeneration facilities pursuant to the Public Utility Regulatory Policies Act, 16 U.S.C. Sec. 824a-3.
- (25) "Qualifying power producer" means a corporation, cooperative association, or person, or the lessee, trustee, and receiver of the corporation, cooperative association, or person, who owns, controls, operates, or manages any qualifying power production facility or cogeneration facility.
- (26) "Qualifying power production facility" means a facility that:
- (a) produces electrical energy solely by the use, as a primary energy source, of biomass, waste, a renewable resource, a geothermal resource, or any combination of the preceding sources;
 - (b) has a power production capacity that, together with any other facilities located at the same site, is no greater than 80 megawatts; and
 - (c) is a qualifying small power production facility under federal law.
- (27) "Railroad" includes every commercial, interurban, and other railway, other than a street railway, and each branch or extension of a railway, by any power operated, together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots, union depots, yards, grounds, terminals, terminal facilities, structures, and equipment, and all other real

- estate, fixtures, and personal property of every kind used in connection with a railway owned, controlled, operated, or managed for public service in the transportation of persons or property.
- (28) "Railroad corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any railroad for public service within this state.
- (29)
- (a) "Sewerage corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage system for public service within this state.
- (b) "Sewerage corporation" does not include private sewerage companies engaged in disposing of sewage only for their stockholders, or towns, cities, counties, conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.
- (30) "Telegraph corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line for public service within this state.
- (31) "Telegraph line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telegraph, whether that communication be had with or without the use of transmission wires.
- (32) "Telephone cooperative" means a telephone corporation that:
- (a) is a cooperative; and
- (b) is organized for the purpose of providing telecommunications service to the telephone corporation's members and the public at cost plus a reasonable rate of return.
- (33)
- (a) "Telephone corporation" means any corporation or person, and their lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates, manages, or resells a public telecommunications service as defined in Section 54-8b-2.
- (b) "Telephone corporation" does not mean a corporation, partnership, or firm providing:
- (i) intrastate telephone service offered by a provider of cellular, personal communication systems (PCS), or other commercial mobile radio service as defined in 47 U.S.C. Sec. 332 that has been issued a covering license by the Federal Communications Commission;
- (ii) Internet service; or
- (iii) resold intrastate toll service.
- (34) "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone whether that communication is had with or without the use of transmission wires.
- (35) "Transportation of persons" includes every service in connection with or incidental to the safety, comfort, or convenience of the person transported, and the receipt, carriage, and delivery of that person and that person's baggage.
- (36) "Transportation of property" includes every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and hauling, and the transmission of credit by express companies.
- (37) "Utility-owned vehicle charging infrastructure" means all facilities, equipment, and electrical systems owned and installed by a large-scale electric utility:

- (a) on the customer's side or the large-scale electric utility's side of the electricity metering equipment; and
 - (b) to facilitate utility vehicle charging service or other electric vehicle battery charging service.
- (38) "Utility vehicle charging service" means the furnishing of electricity:
- (a) to an electric vehicle battery charging station;
 - (b) by a public utility in whose service area the charging station is located; and
 - (c) pursuant to a duly established tariff for rates, charges, and conditions of service for the electricity.
- (39) "Water corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any water system for public service within this state. It does not include private irrigation companies engaged in distributing water only to their stockholders, or towns, cities, counties, water conservancy districts, improvement districts, or other governmental units created or organized under any general or special law of this state.
- (40)
- (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, appointment, apportionment, or measurement of water for power, fire protection, irrigation, reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.
 - (b) "Water system" does not include private irrigation companies engaged in distributing water only to their stockholders.
- (41) "Wholesale electrical cooperative" includes every electrical corporation that is:
- (a) in the business of the wholesale distribution of electricity it has purchased or generated to its members and the public; and
 - (b) required to distribute or allocate savings in excess of additions to reserves and surplus to members or patrons on the basis of patronage.

Amended by Chapter 314, 2022 General Session

54-2-2 Definition of "person."

As used in this chapter, "person" includes all individuals, corporations, partnerships, associations, trusts, and companies and their lessees, trustees, and receivers.

Enacted by Chapter 20, 1989 General Session

Part 2 Exemption from Commission Jurisdiction

54-2-201 Independent energy producer --- Exemption from commission jurisdiction.

- (1) As used in this section:
- (a) "Customer generation system" means the same as that term is defined in Section 54-15-102.
 - (b) "Net metering program" means the same as that term is defined in Section 54-15-102.

- (2) An independent energy producer is exempt from regulation by the commission as a public utility for an independent power production facility if the independent energy producer produces a commodity or delivers a service:
 - (a) solely for the use of a state-owned facility;
 - (b) not for sale to the public, without charge, solely for the use of:
 - (i) the independent energy producer;
 - (ii) an independent energy producer's tenant; or
 - (iii) an association of unit owners formed under Title 57, Chapter 8, Condominium Ownership Act;
 - (c) for sale solely to an electrical corporation or other wholesale purchaser; or
 - (d)
 - (i) for use by:
 - (A) an entity the independent energy producer controls, is controlled by, or is an affiliate of; or
 - (B) a user located on real property that the independent energy producer manages or controls; and
 - (ii) for use on real property that is contiguous to, or is separated only by a public road or easement from, real property that the independent energy producer owns or controls.
- (3) In addition to the exemptions described in Subsection (2), an independent energy producer that supplies energy, for direct consumption by a customer, via a customer generation system, is exempt from regulation by the commission as a public utility for an independent power production facility if:
 - (a) the customer is:
 - (i) a United States governmental entity, including an entity of the United States military;
 - (ii) a state entity, including a political subdivision of the state;
 - (iii) a state institution of higher education;
 - (iv) a school district, charter school, or an entity within the state system of public education;
 - (v) a federal income tax exempt charitable organization under 26 U.S.C. Sec. 501(c)(3) that can provide proof of the entity's tax-exempt status; or
 - (vi) a residential customer participating in a net metering program in an area served by an electrical corporation with more than 200,000 retail customers in the state;
 - (b) the customer generation system is:
 - (i) for use on the real property where the customer generation system is located; and
 - (ii) designed to supply a maximum amount of electricity equal to the lesser of:
 - (A) 90% of the customer's average annual electricity consumption, based on an annualized billing period; or
 - (B) the maximum amount allowed under a net metering program, as defined in Section 54-15-102;
 - (c) the independent energy producer notifies the customer, before installing the customer generation system, of:
 - (i) the total cost a customer is required to pay for the customer generation system, including an interconnection cost; and
 - (ii) the potential for a change in:
 - (A) the amount the customer pays for energy from a public utility; and
 - (B) customer fees associated with net metering and generation;
 - (d) the independent energy producer enters into an interconnection agreement:
 - (i) with a public utility that provides retail electric service to the real property on which the customer generation system is located; and
 - (ii) that is subject to approval by a public utility's governing authority; and

- (e) except for a customer described in Subsection (3)(a)(vi), the independent energy producer installs the customer generation system by December 31, 2021.
- (4) An independent energy producer that supplies electric service to a customer described in Subsection (3)(a)(vi) via a customer generation system shall provide the electric service under an agreement that includes:
 - (a) the notification described in Subsection (3)(c);
 - (b) a description of the incentives, including any renewable energy certificate, generated by the agreement, or by the installation or use of the customer generation system;
 - (c) a description of an incentive described in Subsection (4)(b) that the customer forfeits or assigns to the independent energy producer under the agreement;
 - (d) the property, equipment, or liability that the independent energy producer will insure under the agreement, and what property, equipment, or liability that the customer is responsible for insuring; and
 - (e) the Internet address of a Division of Public Utilities website, if any, that describes considerations for a net metering customer.
- (5) An independent energy producer may not provide electric service to a customer described in Subsection (3)(a)(vi) until the commission makes the first determination about a net metering program under which the independent energy producer will provide service required by Subsection 54-15-105.1(2), and the determination becomes final agency action.
- (6) A public utility shall serve a customer in the public utility's service area that is partially served by an independent energy producer.

Enacted by Chapter 267, 2016 General Session

54-2-202 Out-of-state distribution electrical cooperative -- Exemption from commission jurisdiction.

- (1) As used in this section, "out-of-state distribution electrical cooperative" means an electrical corporation that:
 - (a) is a distribution electrical cooperative;
 - (b) is headquartered and maintains its principal place of business in a state adjoining Utah; and
 - (c) provides electric services to consumers located in Utah.
- (2) An out-of-state distribution electrical cooperative is exempt from regulation by the commission if the out-of-state distribution electrical cooperative:
 - (a) has not previously been headquartered or maintained its principal place of business in Utah;
 - (b) serves fewer than 25,000 total customers;
 - (c) provides less than 20% of the out-of-state distribution electrical cooperative's total power sales in Utah; and
 - (d) provides and maintains on file with the commission written documentation certifying that the out-of-state distribution electrical cooperative is subject to the applicable laws, rules, and regulations of the state where the out-of state distribution electrical cooperative's principal place of business is located.
- (3) Notwithstanding the other provisions of this section, the commission may exercise the commission's authority applicable to a distribution electrical cooperative pursuant to this title if:
 - (a) the out-of-state distribution electrical cooperative fails to meet any of the qualifications of Subsection (2); or
 - (b) a complaint is filed against the out-of-state distribution electrical cooperative by one of the out-of-state distribution electrical cooperative's customers within Utah.

Enacted by Chapter 332, 2018 General Session