

## Chapter 9 Electric Power Facilities Act

### 54-9-101 Title.

This chapter is known as the "Electric Power Facilities Act."

Enacted by Chapter 286, 2002 General Session

### 54-9-102 Definitions.

As used in this chapter:

- (1) "Common facilities" means all works and facilities:
  - (a) owned or used by two or more public power entities or power utilities; and
  - (b) necessary to the generation, transmission, or distribution of electric power and energy.
- (2) "Interlocal entity" has the same meaning as provided in Section 11-13-103.
- (3) "Power utility":
  - (a) means a public agency, as defined in Section 11-13-103, or other person engaged in generating, transmitting, distributing, or marketing electric power and energy; and
  - (b) does not include a public power entity.
- (4) "Public power entity" means:
  - (a) a city or town that owns a system for the generation, transmission, or distribution of electric power and energy for public or private use; and
  - (b) an interlocal entity.

Amended by Chapter 345, 2012 General Session

### 54-9-103 Public power entity authority regarding common facilities -- Determination of needs -- Agreement requirements -- Ownership interest.

- (1)
  - (a) Notwithstanding Title 11, Chapter 13, Interlocal Cooperation Act, and Subsection 11-14-103(1)(b)(xi), and in addition to all other powers conferred on public power entities, a public power entity may:
    - (i) plan, finance, construct, acquire, operate, own, and maintain an undivided interest in common facilities;
    - (ii) participate in and enter into agreements with one or more public power entities or power utilities; and
    - (iii) enter into contracts and agreements as may be necessary or appropriate for the joint planning, financing, construction, operation, ownership, or maintenance of common facilities.
  - (b)
    - (i) Before entering into an agreement providing for common facilities, the governing body of each public power entity shall determine the needs of the public power entity for electric power and energy based on engineering studies and reports.
    - (ii) In determining the future electric power and energy requirements of a public power entity, the governing body shall consider:
      - (A) the economies and efficiencies of scale to be achieved in constructing or acquiring common facilities for the generation and transmission of electric power and energy;

- (B) the public power entity's need for reserve and peaking capacity, and to meet obligations under pooling and reserve sharing agreements reasonably related to the needs of the public power entity for power and energy;
- (C) the estimated useful life of the common facilities;
- (D) the estimated time necessary for the planning, financing, construction, and acquisition of the common facilities and the estimated timing of the need for an additional power supply; and
- (E) the reliability and availability of existing or alternate power supply sources and the cost of those existing or alternate power supply sources.

- (2)
- (a) Each agreement providing for common facilities shall:
    - (i) contain provisions not inconsistent with this chapter that the governing body of the public power entity determines to be in the interests of the public power entity, including:
      - (A) the purposes of the agreement;
      - (B) the duration of the agreement;
      - (C) the method of appointing or employing the personnel necessary in connection with the common facilities;
      - (D) the method of financing the common facilities, including the apportionment of costs of construction and operation;
      - (E) the ownership interests of the owners in the common facilities and other property used or useful in connection with the common facilities and the procedures for disposition of the common facilities and other property when the agreement expires or is terminated or when the common facilities are abandoned, decommissioned, or dismantled;
      - (F) any agreement of the parties prohibiting or restricting the alienation or partition of the undivided interests of an owner in the common facilities;
      - (G) the construction and repair of the common facilities, including, if the parties agree, a determination that a power utility or public power entity may construct or repair the common facilities as agent for all parties to the agreement;
      - (H) the administration, operation, and maintenance of the common facilities, including, if the parties agree, a determination that a power utility or public power entity may administer, operate, and maintain the common facilities as agent for all parties to the agreement;
      - (I) the creation of a committee of representatives of the parties to the agreement;
      - (J) if the parties agree, a provision that if any party defaults in the performance or discharge of its obligations with respect to the common facilities, the other parties may perform or assume, pro rata or otherwise, the obligations of the defaulting party and may, if the defaulting party fails to remedy the default, succeed to or require the disposition of the rights and interests of the defaulting party in the common facilities;
      - (K) provisions for indemnification of construction, operation, and administration agents, for completion of construction, for handling emergencies, and for allocation of output of the common facilities among the parties to the agreement according to the ownership interests of the parties;
      - (L) methods for amending and terminating the agreement; and
      - (M) any other matter, not inconsistent with this chapter, determined by the parties to the agreement to be necessary and proper;
    - (ii) clearly disclose the ownership interest of each party;
    - (iii) provide for an equitable method of allocating operation, repair, and maintenance costs of the common facilities; and
    - (iv) be approved or ratified by resolution of the governing body of the public power entity.

- (b) A provision under Subsection (2)(a)(i)(F) in an agreement providing for common facilities under this Subsection (2) is not subject to any law restricting covenants against alienation or partition.
- (c) Each committee created under Subsection (2)(a)(i)(I) in an agreement providing for common facilities under this Subsection (2) shall have the powers, not inconsistent with this chapter, regarding the construction and operation of the common facilities that the agreement provides.
- (d)
  - (i) The ownership interest of a public power entity in the common facilities may not be less than the proportion of the funds or the value of property supplied by it for the acquisition, construction, and operation of the common facilities.
  - (ii) Each public power entity shall own and control the same proportion of the electrical output from the common facilities as its ownership interest in them.
- (3) Notwithstanding any other provision of this chapter, an interlocal entity may not act in a manner inconsistent with any provision of the agreement under which it was created.

Amended by Chapter 306, 2007 General Session

**54-9-104 Joint owners to supply materials, arrange for own financing, and share in costs and taxes -- Public power entity authority to finance through financing agent -- Common facilities owners authority to appoint an agent.**

- (1) The joint owners of the common facilities shall supply the materials and make the payments provided for in the agreement.
- (2) Each owner shall arrange its own funding and financing and be responsible for all the costs, interest, and payments required in connection with its share of the funding for the planning, acquisition, construction, operation, repairs, and improvements, and each participant shall pay its share of taxes or charges in lieu of taxes in connection with the common facilities.
- (3) Notwithstanding any other provision of this section, a public power entity may finance its funding share with one or more other owners through a financing agent, as long as no public power entity is liable for more than its proportionate share of the debt service with respect to the financing.
- (4)
  - (a) The owners of common facilities may appoint as their agent:
    - (i) a public power entity or power utility that owns an interest in common facilities;
    - (ii) an interlocal entity of which a public power entity that owns an interest in the common facilities is a member;
    - (iii) an interlocal entity that owns electric generation or transmission facilities that are located on a site adjacent to the common facilities; or
    - (iv) a public agency that is an owner of the common facilities or that purchases power from a public agency that is an owner of the common facilities.
  - (b) One or more agents under Subsection (4)(a) may be appointed, as determined by the owners of the common facilities, for one or more of the following purposes:
    - (i) the construction, repair, administration, operation, or maintenance of the common facilities;
    - (ii) the administration and payment of, and any challenge or dispute regarding, any tax, fee in lieu of any tax, impact alleviation payment, or other fee or payment imposed by the state or a political subdivision of the state that relates to the common facilities; or
    - (iii) the financing of all or part of the common facilities under Subsection (3).

Renumbered and Amended by Chapter 286, 2002 General Session

**54-9-105 Limitations on liability.**

- (1)
  - (a) Each public power entity and power utility may be held liable only for its own acts, omissions, and obligations with respect to the planning, financing, construction, acquisition, administration, operation, ownership, repair, or maintenance of the common facilities and may not be jointly or severally liable for the acts, omissions, or obligations of others.
  - (b) Subsection (1)(a) may not be construed to:
    - (i) affect the liability of a public power entity or power utility with respect to its contractual obligations, including a contractual obligation to indemnify a construction, operation, or administrative agent for the common facilities; or
    - (ii) affect an immunity or other protection that may be available to a public power entity or power utility under applicable law.
- (2) No money, materials, or other contribution supplied by a public power entity may be credited or otherwise applied to the account of any other owner in the common facilities, nor may the undivided share of a public power entity be charged, directly or indirectly, with any debt or obligation of any other owner or be subject to any lien as a result thereof.
- (3) No action in connection with common facilities may be binding upon a public power entity unless the action or the agreement under which the action is taken is authorized or approved by a resolution or ordinance of its governing body.

Renumbered and Amended by Chapter 286, 2002 General Session

**54-9-106 Funding -- Power sales contracts -- Revenue bonds -- Fee in lieu of ad valorem property taxes -- Bond issues -- Public purpose.**

- (1) A public power entity participating in common facilities under this chapter may furnish money and provide property, both real and personal, and, in addition to any other authority now existing, may issue and sell, either at public or privately negotiated sale, general obligation bonds or revenue bonds, pledging either the revenues of its entire electric system or only its interest or share of the revenues derived from the common facilities in order to pay its respective share of the costs of the planning, financing, acquisition, construction, repair, and replacement of common facilities.
- (2)
  - (a) Capacity or output derived by a public power entity from its ownership share of common facilities not then required by the public power entity for its own use and for the use of its customers may be sold or exchanged for a consideration, for a period, and upon other terms and conditions as may be determined by the parties prior to the sale and as embodied in a power sales contract.
  - (b) Any revenues arising under a power sales contract under Subsection (2)(a) may be pledged by the public power entity to the payment of revenue bonds issued to pay its respective share of the costs of the common facilities.
- (c)
  - (i) As used in this Subsection (2)(c), "nonexempt purchaser" means a purchaser that is not exempt from property taxes under Utah Constitution Article XIII, Section 2.
  - (ii)

- (A) Each power sales contract between a public power entity and a nonexempt purchaser shall contain a provision requiring the nonexempt purchaser to pay an annual fee to the public power entity in lieu of ad valorem property taxes.
  - (B) The amount of the fee in lieu of ad valorem property taxes under Subsection (2)(c)(ii)(A) shall be based on the taxable value of the public power entity's percentage ownership of the common facilities used to produce the capacity or output that the public power entity sells to or exchanges with the nonexempt purchaser.
  - (iii) The public power entity shall pay over to the county treasurer each fee in lieu of ad valorem property taxes that it receives from a nonexempt purchaser for distribution in the same manner as other ad valorem tax revenues.
  - (iv) This Subsection (2)(c) does not apply to a public power entity to the extent that its interest in common facilities is subject to or exempt from the fee in lieu of ad valorem property taxes under Section 11-13-302.
- (3) A public power entity acquiring or owning an undivided interest in common facilities may contract with a county to pay, solely from the revenues derived from the interest of the public power entity in the common facilities, to the county or counties in which the common facilities are located, an annual fee in lieu of ad valorem property taxes based upon the taxable value of the percentage of the ownership share of the public power entity in the common facilities, which fee in lieu of ad valorem property taxes shall be paid over by the public power entity to the county treasurer of the county or counties in which the common facilities are located for distribution as per distribution of other ad valorem tax revenues.
- (4)
- (a) Bonds issued by a city or town shall be issued under the applicable provisions of Title 11, Chapter 14, Local Government Bonding Act, authorizing the issuance of bonds for the acquisition and construction of electric public utility properties by cities or towns.
  - (b) Bonds or other debt instruments issued by an interlocal entity shall be issued under Title 11, Chapter 13, Interlocal Cooperation Act, or other applicable law.
- (5) All money paid or property supplied by a public power entity for the purpose of carrying out powers conferred by this chapter is declared to be for a public purpose.

Amended by Chapter 342, 2011 General Session

**54-9-107 Disposition of proceeds and revenues.**

All money belonging to a public power entity in connection with common facilities, including the proceeds of the sale of bonds and the revenues arising from the operation of common facilities:

- (1) may be deposited in a bank or trust company doing business within or without the state; and
- (2) shall be accounted for and disbursed in accordance with applicable law and the provisions of the resolution or indenture authorizing the issuance of the bonds.

Renumbered and Amended by Chapter 286, 2002 General Session

**54-9-108 Scope -- Ownership or use of works or facilities.**

- (1) Nothing in this chapter may be construed as imposing on an interlocal entity, as defined in Section 11-13-101, created on or before January 1, 1981, under Laws of Utah 1977, Chapter 47, Section 3, as amended, or in an agreement to which an interlocal entity is a party, any duty, requirement, or restriction other than those imposed by Title 11, Chapter 13, Interlocal Cooperation Act.

- (2) For purposes of this chapter, a person does not own or use works or facilities if the person is a party to a power sales contract to purchase output generated by, the capacity of, or an entitlement in the works or facilities.

Enacted by Chapter 345, 2012 General Session