

1                                   **ELECTRIC COOPERATIVE REGULATORY**

2   **FEES**

3   2001 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Gordon E. Snow**

6 **This act modifies the Public Utilities Code to adjust the fees paid by certain electrical**  
7 **cooperatives. This act amends definitions and makes technical and conforming amendments.**

8 **This act provides a coordination clause.**

9 This act affects sections of Utah Code Annotated 1953 as follows:

10 AMENDS:

11           **54-2-1**, as last amended by Chapter 55, Laws of Utah 2000

12           **54-5-1.5 (Repealed 07/01/01)**, as last amended by Chapter 170, Laws of Utah 1996

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

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

15           **54-2-1. Definitions.**

16           As used in this title:

17           (1) "Avoided costs" means the incremental costs to an electrical corporation of electric  
18 energy or capacity or both which, due to the purchase of electric energy or capacity or both from  
19 small power production or cogeneration facilities, the electrical corporation would not have to  
20 generate itself or purchase from another electrical corporation.

21           (2) "Cogeneration facility":

22           (a) means a facility which produces:

23           (i) electric energy; and

24           (ii) steam or forms of useful energy, including heat, which are used for industrial,  
25 commercial, heating, or cooling purposes; and

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

27           (3) "Commission" means the Public Service Commission of ~~[the state of]~~ Utah.

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

29 (5) (a) "Corporation" includes an association, and a joint stock company having any  
30 powers or privileges not possessed by individuals or partnerships. [~~It~~]

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

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

35 (a) is a cooperative;

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

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

40 (i) members; or

41 (ii) patrons.

42 [~~(6)~~] (7) "Electrical corporation" includes every corporation, cooperative association, and  
43 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any  
44 electric plant, or in any way furnishing electric power for public service or to its consumers or  
45 members for domestic, commercial, or industrial use, within this state, except independent energy  
46 producers, and except where electricity is generated on or distributed by the producer solely for  
47 [~~his~~] the producer's own use, or the use of [~~his~~] the producer's tenants, or for the use of members  
48 of an association of unit owners formed under Title 57, Chapter 8, Condominium Ownership Act,  
49 and not for sale to the public generally.

50 [~~(7)~~] (8) "Electric plant" includes all real estate, fixtures, and personal property owned,  
51 controlled, operated, or managed in connection with or to facilitate the production, generation,  
52 transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits, ducts,  
53 or other devices, materials, apparatus, or property for containing, holding, or carrying conductors  
54 used or to be used for the transmission of electricity for light, heat, or power.

55 [~~(8)~~] (9) "Gas corporation" includes every corporation and person, their lessees, trustees,  
56 and receivers, owning, controlling, operating, or managing any gas plant for public service within  
57 this state or for the selling or furnishing of natural gas to any consumer or consumers within the  
58 state for domestic, commercial, or industrial use, except in the situation that:

59 (a) gas is made or produced on, and distributed by the maker or producer through, private  
60 property[-];

61 (i) solely for [~~his~~] the maker's or producer's own use or the use of [~~his~~] the maker's or  
62 producer's tenants; and

63 (ii) not for sale to others;

64 (b) gas is compressed on private property solely for the owner's own use or the use of [~~his~~]  
65 the owner's employees as a motor vehicle fuel; or

66 (c) gas is compressed by a retailer of motor vehicle fuel on [~~his~~] the retailer's property  
67 solely for sale as a motor vehicle fuel.

68 [~~(9)~~] (10) "Gas plant" includes all real estate, fixtures, and personal property owned,  
69 controlled, operated, or managed in connection with or to facilitate the production, generation,  
70 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

71 [~~(10)~~] (11) "Heat corporation" includes every corporation and person, their lessees,  
72 trustees, and receivers, owning, controlling, operating, or managing any heating plant for public  
73 service within this state.

74 [~~(11)~~] (12) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances, and  
75 personal property controlled, operated, or managed in connection with or to facilitate the  
76 production, generation, transmission, delivery, or furnishing of artificial heat.

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

79 [~~(12)~~] (13) "Independent energy producer" means every electrical corporation, person,  
80 corporation, or government entity, their lessees, trustees, or receivers, that own, operate, control,  
81 or manage a small power production or cogeneration facility.

82 [~~(13)~~] (14) "Private telecommunications system" includes all facilities for the transmission  
83 of signs, signals, writing, images, sounds, messages, data, or other information of any nature by  
84 wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio facilities, that are  
85 owned, controlled, operated, or managed by a corporation or person, including their lessees,  
86 trustees, receivers, or trustees appointed by any court, for the use of that corporation or person and  
87 not for the shared use with or resale to any other corporation or person on a regular basis.

88 [~~(14)~~] (15) (a) "Public utility" includes every railroad corporation, gas corporation,  
89 electrical corporation, distribution electrical cooperative, wholesale electrical cooperative,

90 telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat  
91 corporation, and independent energy producer not described in Subsection [~~(14)~~] (15)(d), where  
92 the service is performed for, or the commodity delivered to, the public generally, or in the case of  
93 a gas corporation or electrical corporation where the gas or electricity is sold or furnished to any  
94 member or consumers within the state for domestic, commercial, or industrial use.

95 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone  
96 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, or  
97 independent energy producer not described in Subsection [~~(14)~~] (15)(d), performs a service for or  
98 delivers a commodity to the public, it is considered to be a public utility, subject to the jurisdiction  
99 and regulation of the commission and this title.

100 (ii) If a gas corporation, independent energy producer not described in Subsection [~~(14)~~]  
101 (15)(d), or electrical corporation sells or furnishes gas or electricity to any member or consumers  
102 within the state, for domestic, commercial, or industrial use, for which any compensation or  
103 payment is received, it is considered to be a public utility, subject to the jurisdiction and regulation  
104 of the commission and this title.

105 (c) Any corporation or person not engaged in business exclusively as a public utility as  
106 defined in this section is governed by this title in respect only to the public utility owned,  
107 controlled, operated, or managed by [~~it or by him~~] the corporation or person, and not in respect to  
108 any other business or pursuit.

109 (d) An independent energy producer is exempt from the jurisdiction and regulations of the  
110 commission if it meets the requirements of Subsection (15)(d)(i), (ii), or (iii), or any combination  
111 of these:

112 (i) the commodity or service is produced or delivered, or both, by an independent energy  
113 producer solely for the uses exempted in Subsection [~~(6)~~] (7) or for the use of state-owned  
114 facilities;

115 (ii) the commodity or service is sold by an independent energy producer to an electrical  
116 corporation; or

117 (iii) (A) the commodity or service delivered by the independent energy producer is  
118 delivered to an entity which controls, is controlled by, or affiliated with the independent energy  
119 producer or to a user located on real property managed by the independent energy producer; and

120 (B) the real property on which the service or commodity is used is contiguous to real

121 property which is owned or controlled by the independent energy producer. Parcels of real  
122 property separated solely by public roads or easements for public roads shall be considered as  
123 contiguous for purposes of this Subsection [~~(14)~~] (15).

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

127 (f) (i) "Public utility" does not include any person that is otherwise considered a public  
128 utility under [~~the provisions of~~] this Subsection [~~(14)~~] (15) solely because of [~~its~~] that person's  
129 ownership of an interest in an electric plant, cogeneration facility, or small power production  
130 facility in this state if all of the following conditions are met:

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

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

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

136 (III) a combination of Subsections [~~(14)~~] (15)(f)(i)(A)(I) and (II);

137 (B) the lessor of the ownership interest identified in Subsection [~~(14)~~] (15)(f)(i)(A) is:

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

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

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

143 (ii) Any person that is exempt from classification as a public utility under Subsection  
144 [~~(14)~~] (15)(f)(i) shall continue to be so exempt from classification following termination of the  
145 lessee's right to possession or use of the electric plant for so long as the former lessor does not  
146 operate the electric plant or sell electricity from the electric plant. If the former lessor operates the  
147 electric plant or sells electricity, the former lessor shall continue to be so exempt for a period of  
148 90 days following termination, or for a longer period that is ordered by the commission. This  
149 period may not exceed one year. [~~No~~] A change in rates that would otherwise require commission  
150 approval may not be effective during the 90-day or extended period without commission approval.

151 (g) "Public utility" does not include any person that provides financing for, but has no

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

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

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

166 [~~(15)~~] (16) "Purchasing utility" means any electrical corporation that is required to  
167 purchase electricity from small power production or cogeneration facilities pursuant to the Public  
168 Utility Regulatory Policies Act, 16 U.S.C. Section 824a-3.

169 [~~(16)~~] (17) "Railroad" includes every commercial, interurban, and other railway, other than  
170 a street railway, and each branch or extension of a railway, by any power operated, together with  
171 all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots, union depots, yards,  
172 grounds, terminals, terminal facilities, structures, and equipment, and all other real estate, fixtures,  
173 and personal property of every kind used in connection with a railway owned, controlled, operated,  
174 or managed for public service in the transportation of persons or property.

175 [~~(17)~~] (18) "Railroad corporation" includes every corporation and person, their lessees,  
176 trustees, and receivers, owning, controlling, operating, or managing any railroad for public service  
177 within this state.

178 [~~(18)~~] (19) (a) "Sewerage corporation" includes every corporation and person, their lessees,  
179 trustees, and receivers, owning, controlling, operating, or managing any sewerage system for  
180 public service within this state. [It]

181 (b) "Sewerage corporation" does not include private sewerage companies engaged in  
182 disposing of sewage only for their stockholders, or towns, cities, counties, conservancy districts,

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

185 ~~[(19)]~~ (20) "Small power production facility" means a facility which:

186 (a) produces electric energy solely by the use, as a primary energy source, of biomass,  
187 waste, renewable resources, geothermal resources, or any combination of them;

188 (b) has a power production capacity ~~[which]~~ that, together with any other facilities located  
189 at the same site, is not greater than 80 megawatts; and

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

191 ~~[(20)]~~ (21) "Telegraph corporation" includes every corporation and person, their lessees,  
192 trustees, and receivers, owning, controlling, operating, or managing any telegraph line for public  
193 service within this state.

194 ~~[(21)]~~ (22) "Telegraph line" includes all conduits, ducts, poles, wires, cables, instruments,  
195 and appliances, and all other real estate, fixtures, and personal property owned, controlled,  
196 operated, or managed in connection with or to facilitate communication by telegraph, whether that  
197 communication be had with or without the use of transmission wires.

198 ~~[(22)]~~ (23) (a) "Telephone corporation" means any corporation or person, and their lessees,  
199 trustee, receivers, or trustees appointed by any court, who owns, controls, operates, manages, or  
200 resells a public telecommunications service as defined in Section 54-8b-2.

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

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

205 (ii) Internet service; or

206 (iii) resold intrastate toll service.

207 ~~[(23)]~~ (24) "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments,  
208 and appliances, and all other real estate, fixtures, and personal property owned, controlled,  
209 operated, or managed in connection with or to facilitate communication by telephone whether that  
210 communication is had with or without the use of transmission wires.

211 ~~[(24)]~~ (25) "Transportation of persons" includes every service in connection with or  
212 incidental to the safety, comfort, or convenience of the person transported, and the receipt,  
213 carriage, and delivery of that person and ~~[his]~~ that person's baggage.

214 [(25)] (26) "Transportation of property" includes every service in connection with or  
215 incidental to the transportation of property, including in particular its receipt, delivery, elevation,  
216 transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and hauling, and  
217 the transmission of credit by express companies.

218 [(26)] (27) "Water corporation" includes every corporation and person, their lessees,  
219 trustees, and receivers, owning, controlling, operating, or managing any water system for public  
220 service within this state. It does not include private irrigation companies engaged in distributing  
221 water only to their stockholders, or towns, cities, counties, water conservancy districts,  
222 improvement districts, or other governmental units created or organized under any general or  
223 special law of this state.

224 [(27)] (28) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,  
225 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures, and  
226 personal property owned, controlled, operated, or managed in connection with or to facilitate the  
227 diversion, development, storage, supply, distribution, sale, furnishing, carriage, appointment,  
228 apportionment, or measurement of water for power, fire protection, irrigation, reclamation, or  
229 manufacturing, or for municipal, domestic, or other beneficial use. [H]

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

232 [(28)] (29) "Wholesale electrical cooperative" includes every electrical corporation that  
233 is:

234 (a) [~~which is~~] in the business of the wholesale distribution of electricity it has purchased  
235 or generated to its members and the public; and

236 (b) [~~which is~~] required to distribute or allocate savings in excess of additions to reserves  
237 and surplus to members or patrons on the basis of patronage.

238 Section 2. Section **54-5-1.5 (Repealed 07/01/01)** is amended to read:

239 **54-5-1.5 (Repealed 07/01/01). Special regulation fee -- Supplemental Levy Committee**  
240 **-- Supplemental fee -- Fee for electrical cooperatives.**

241 (1) (a) A special fee to defray the cost of regulation is imposed upon all public utilities  
242 subject to the jurisdiction of the Public Service Commission.

243 (b) The special fee is in addition to any charge now assessed, levied, or required by law.

244 (2) (a) The executive director of the Department of Commerce shall determine the special

245 fee for the Department of Commerce.

246 (b) The [~~chairman~~] chair of the Public Service Commission shall determine the special fee  
247 for the Public Service Commission.

248 (c) The fee shall be assessed as a uniform percentage of the gross operating revenue for  
249 the preceding calendar year derived from each public utility's business and operations during that  
250 period within this state, excluding income derived from interstate business. Gross operating  
251 revenue [~~shall~~] may not include income to a wholesale electric cooperative derived from the sale  
252 of power to a rural electric cooperative which resells that power within the state.

253 (3) (a) The executive director of the Department of Commerce shall notify each public  
254 utility subject to the provisions of this chapter of the amount of the fee.

255 (b) The fee is due and payable on or before July 1 of each year.

256 (4) (a) It is the intent of the Legislature that the public utilities provide all of the funds for  
257 the administration, support, and maintenance of:

258 (i) the Public Service Commission;

259 (ii) state agencies within the Department of Commerce involved in the regulation of public  
260 utilities; and

261 (iii) expenditures by the attorney general for utility regulation.

262 (b) [~~The~~] Notwithstanding Subsection (4)(a), the fee imposed by [this section] Subsection  
263 (1) may not [be] exceed the greater [than 3/10 of 1%] of:

264 (i) (A) for a public utility other than an electrical cooperative, .3% of the public utility's  
265 gross operating revenues for the preceding calendar year[;]; or

266 (B) for an electrical cooperative, .15% of the electrical cooperative's gross operating  
267 revenues for the preceding calendar; or

268 (ii) \$50[, whichever is greater].

269 (5) (a) There is created a Supplemental Levy Committee to levy additional assessments  
270 on public utilities when unanticipated costs of regulation occur in any fiscal year.

271 (b) The Supplemental Levy Committee shall consist of:

272 (i) one member selected by the executive director of the Department of Commerce;

273 (ii) one member selected by the chairman of the Public Service Commission;

274 (iii) two members selected by the three public utilities that paid the largest percent of the  
275 current regulatory fee; and

276 (iv) one member selected by the four appointed members.

277 (c) (i) The members of the Supplemental Levy Committee shall be selected within ten  
278 working days after the executive director of the Department of Commerce gives written notice to  
279 the Public Service Commission and the public utilities that a supplemental levy committee is  
280 needed.

281 (ii) If the members of the Supplemental Levy Committee have not been appointed within  
282 the time prescribed, the governor shall appoint the members of the Supplemental Levy Committee.

283 (d) (i) During any state fiscal year, the Supplemental Levy Committee, by a majority vote  
284 and subject to audit by the state auditor, may impose a supplemental fee on the regulated utilities  
285 for the purpose of defraying any increased cost of regulation.

286 (ii) The supplemental fee imposed upon the utilities shall equal a percentage of their gross  
287 operating revenue for the preceding calendar year.

288 (iii) The aggregate of all fees, including any supplemental fees assessed, [~~shall~~] may not  
289 exceed [~~3/10 of 1%~~] .3% of the gross operating revenue of the utilities assessed for the preceding  
290 calendar year.

291 (iv) Payment of the supplemental fee is due within 30 days after receipt of the assessment.

292 (v) The utility may, within ten days after receipt of assessment, request a hearing before  
293 the Public Service Commission if it questions the need for, or the reasonableness of, the  
294 supplemental fee.

295 (e) (i) Any supplemental fee collected to defray the cost of regulation shall be transferred  
296 to the state treasurer as a departmental collection according to the provisions of Section 63-38-9.

297 (ii) Supplemental fees are excess collections, credited according to the procedures of  
298 Section 63-38-9.

299 (iii) Charges billed to the Department of Commerce by any other state department,  
300 institution, or agency for services rendered in connection with regulation of a utility shall be  
301 credited by the state treasurer from the special or supplemental fees collected to the appropriations  
302 account of the entity providing that service according to the procedures provided in Title 63,  
303 Chapter 38, Budgetary Procedures Act.

304 (6) (a) For purposes of this section, "electrical cooperative" means:

305 (i) a distribution electrical cooperative; or

306 (ii) a wholesale electrical cooperative.

307           (b) Subject to Subsection (6)(c), if the regulation of one or more electrical cooperatives  
308 causes unanticipated costs of regulation in a fiscal year, the commission may impose a  
309 supplemental fee on the one or more electrical cooperatives in this state responsible for the  
310 increased cost of regulation.

311           (c) The aggregate of all fees imposed under this section on an electrical cooperative in a  
312 calendar year may not exceed the greater of:

313           (i) .3% of the electrical cooperative's gross operating revenues for the preceding calendar  
314 year; or

315           (ii) \$50.

316           Section 3. **Coordination clause.**

317           If this bill and H.B. 184, Public Utilities Amendments - Repeal, both pass, it is the intent  
318 of the Legislature that Section 54-5-1.5 not be repealed and the amendments in this bill will  
319 continue in effect after July 1, 2001.

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**Legislative Review Note**  
**as of 1-24-01 2:28 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**