

1                                   **WATER SHARES IN A MUNICIPAL WATER**  
2   **COMPANY**

3   2004 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Gregory H. Hughes**

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7   **LONG TITLE**

8   **General Description:**

9                   This bill modifies the definition of a water corporation for purposes of the Public  
10 Utilities Code.

11 **Highlighted Provisions:**

12                   This bill:

13                   ▶ provides that a mutual water company is not a water corporation for purposes of the  
14 Public Utilities Code if the mutual water company operates:

- 15                   • under a commonality of interest; and
- 16                   • with equal ownership and control rights among all members.

17 **Monies Appropriated in this Bill:**

18                   None

19 **Other Special Clauses:**

20                   None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23                   **54-2-1**, as last amended by Chapter 212, Laws of Utah 2001

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

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

27                   **54-2-1. Definitions.**



28 As used in this title:

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

33 (2) "Cogeneration facility":

34 (a) means a facility which produces:

35 (i) electric energy; and

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

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

39 (3) "Commission" means the Public Service Commission of Utah.

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

41 (5) (a) "Corporation" includes an association, and a joint stock company having any  
42 powers or privileges not possessed by individuals or partnerships.

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

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

47 (a) is a cooperative;

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

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

52 (i) members; or

53 (ii) patrons.

54 (7) "Electrical corporation" includes every corporation, cooperative association, and  
55 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any  
56 electric plant, or in any way furnishing electric power for public service or to its consumers or  
57 members for domestic, commercial, or industrial use, within this state, except independent  
58 energy producers, and except where electricity is generated on or distributed by the producer

59 solely for the producer's own use, or the use of the producer's tenants, or for the use of  
60 members of an association of unit owners formed under Title 57, Chapter 8, Condominium  
61 Ownership Act, and not for sale to the public generally.

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

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

71 (a) gas is made or produced on, and distributed by the maker or producer through,  
72 private property:

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

75 (ii) not for sale to others;

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

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

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

83 (11) "Heat corporation" includes every corporation and person, their lessees, trustees,  
84 and receivers, owning, controlling, operating, or managing any heating plant for public service  
85 within this state.

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

89 (b) "Heating plant" does not include either small power production facilities or

90 cogeneration facilities.

91 (13) "Independent energy producer" means every electrical corporation, person,  
92 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,  
93 control, or manage a small power production or cogeneration facility.

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

100 (15) (a) "Public utility" includes every railroad corporation, gas corporation, electrical  
101 corporation, distribution electrical cooperative, wholesale electrical cooperative, telephone  
102 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,  
103 and independent energy producer not described in Subsection (15)(d), where the service is  
104 performed for, or the commodity delivered to, the public generally, or in the case of a gas  
105 corporation or electrical corporation where the gas or electricity is sold or furnished to any  
106 member or consumers within the state for domestic, commercial, or industrial use.

107 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone  
108 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,  
109 or independent energy producer not described in Subsection (15)(d), performs a service for or  
110 delivers a commodity to the public, it is considered to be a public utility, subject to the  
111 jurisdiction and regulation of the commission and this title.

112 (ii) If a gas corporation, independent energy producer not described in Subsection  
113 (15)(d), or electrical corporation sells or furnishes gas or electricity to any member or  
114 consumers within the state, for domestic, commercial, or industrial use, for which any  
115 compensation or payment is received, it is considered to be a public utility, subject to the  
116 jurisdiction and regulation of the commission and this title.

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

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

124 (i) the commodity or service is produced or delivered, or both, by an independent  
125 energy producer solely for the uses exempted in Subsection (7) or for the use of state-owned  
126 facilities;

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

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

133 (B) the real property on which the service or commodity is used is contiguous to real  
134 property which is owned or controlled by the independent energy producer. Parcels of real  
135 property separated solely by public roads or easements for public roads shall be considered as  
136 contiguous for purposes of this Subsection (15).

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

140 (f) (i) "Public utility" does not include any person that is otherwise considered a public  
141 utility under this Subsection (15) solely because of that person's ownership of an interest in an  
142 electric plant, cogeneration facility, or small power production facility in this state if all of the  
143 following conditions are met:

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

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

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

149 (III) a combination of Subsections (15)(f)(i)(A)(I) and (II);

150 (B) the lessor of the ownership interest identified in Subsection (15)(f)(i)(A) is:

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

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

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

156 (ii) Any person that is exempt from classification as a public utility under Subsection  
157 (15)(f)(i) shall continue to be so exempt from classification following termination of the  
158 lessee's right to possession or use of the electric plant for so long as the former lessor does not  
159 operate the electric plant or sell electricity from the electric plant. If the former lessor operates  
160 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a  
161 period of 90 days following termination, or for a longer period that is ordered by the  
162 commission. This period may not exceed one year. A change in rates that would otherwise  
163 require commission approval may not be effective during the 90-day or extended period  
164 without commission approval.

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

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

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

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

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

189 (18) "Railroad corporation" includes every corporation and person, their lessees,  
190 trustees, and receivers, owning, controlling, operating, or managing any railroad for public  
191 service within this state.

192 (19) (a) "Sewerage corporation" includes every corporation and person, their lessees,  
193 trustees, and receivers, owning, controlling, operating, or managing any sewerage system for  
194 public service within this state.

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

199 (20) "Small power production facility" means a facility which:

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

202 (b) has a power production capacity that, together with any other facilities located at  
203 the same site, is not greater than 80 megawatts; and

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

205 (21) "Telegraph corporation" includes every corporation and person, their lessees,  
206 trustees, and receivers, owning, controlling, operating, or managing any telegraph line for  
207 public service within this state.

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

212 (23) (a) "Telephone corporation" means any corporation or person, and their lessees,  
213 trustee, receivers, or trustees appointed by any court, who owns, controls, operates, manages, or

214 resells a public telecommunications service as defined in Section 54-8b-2.

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

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

221 (ii) Internet service; or

222 (iii) resold intrastate toll service.

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

227 (25) "Transportation of persons" includes every service in connection with or  
 228 incidental to the safety, comfort, or convenience of the person transported, and the receipt,  
 229 carriage, and delivery of that person and that person's baggage.

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

234 (27) (a) "Water corporation" includes every corporation and person, their lessees,  
 235 trustees, and receivers, owning, controlling, operating, or managing any water system for  
 236 public service within this state. [H]

237 (b) "Water corporation" does not include:

238 (i) private irrigation companies engaged in distributing water only to their  
 239 stockholders[-or];

240 (ii) towns, cities, counties, water conservancy districts, improvement districts, or other  
 241 governmental units created or organized under any general or special law of this state[-]; or

242 (iii) a mutual water company operating:

242a **§ (A) IN A COUNTY OF THE FIRST CLASS;**

243 ~~[(A)]~~ **(B) §** under a commonality of interest; and

244 **§** ~~[(B)]~~ **(C) §** with equal ownership and control rights among all members **§** ~~[(H) RECEIVING~~

244a **WATER**

244a **UTILITY SERVICES** ~~h~~ **§** .





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

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

253 (29) "Wholesale electrical cooperative" includes every electrical corporation that is:

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

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

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**Legislative Review Note**  
**as of 2-4-04 12:50 PM**

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

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0158**

**Water Shares in a Municipal Water Company**

*09-Feb-04*

*12:49 PM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**