ENGLISH RESOURCE AND CARBON EMISSION REDUCTION INITIATIVE

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: David Clark

Cosponsor: Mike Dmitrich

GENERAL DESCRIPTION:

This bill provides that an electrical corporation or municipal electric utility maintain a percentage of electricity sold in the form of renewable energy resources and makes other changes concerning the acquisition of energy resources.

HIGHLIGHTED PROVISIONS:

This bill:

- addresses independent and qualifying power producers;
- addresses the application of Title 54, Chapter 17, Energy Resource Procurement Act, to certain renewable energy resources;
- defines terms;
- provides that 20% of an electrical corporation's or municipal electric utility's adjusted retail electric sales beginning in the year 2025 come from qualifying electricity, including renewable energy resources, if cost effective;
- provides for the issuance and recognition of a renewable energy certificate for certain electrical generation and actions by an energy user;
- requires plans and reports concerning an electrical corporation's or municipal electric utility's progress in acquiring qualifying electricity;
- addresses cost recovery for certain energy resources;
- requires certain state agencies to make rules concerning carbon capture and geological storage of captured carbon emissions; and
S.B. 202

makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

54-2-1, as last amended by Laws of Utah 2001, Chapter 212
54-12-1, as enacted by Laws of Utah 1985, Chapter 180
54-12-2, as last amended by Laws of Utah 1989, Chapter 4
54-12-3, as enacted by Laws of Utah 1985, Chapter 180
54-17-201, as last amended by Laws of Utah 2007, Chapter 289
54-17-302, as last amended by Laws of Utah 2007, Chapter 289
54-17-303, as enacted by Laws of Utah 2005, Chapter 11

ENACTS:

10-19-101, Utah Code Annotated 1953
10-19-102, Utah Code Annotated 1953
10-19-201, Utah Code Annotated 1953
10-19-202, Utah Code Annotated 1953
10-19-301, Utah Code Annotated 1953
10-19-302, Utah Code Annotated 1953
54-17-502, Utah Code Annotated 1953
54-17-601, Utah Code Annotated 1953
54-17-602, Utah Code Annotated 1953
54-17-603, Utah Code Annotated 1953
54-17-604, Utah Code Annotated 1953
54-17-605, Utah Code Annotated 1953
54-17-606, Utah Code Annotated 1953
Be it enacted by the Legislature of the state of Utah:

Section 1. Section 10-19-101 is enacted to read:

CHAPTER 19. MUNICIPAL ELECTRIC UTILITY CARBON EMISSION REDUCTION ACT


10-19-101. Title.

This chapter is known as the "Municipal Electric Utility Carbon Emission Reduction Act."

Section 2. Section 10-19-102 is enacted to read:


As used in this chapter:

(1) "Adjusted retail electric sales" means the total kilowatt-hours of retail electric sales of a municipal electric utility to customers in this state in a calendar year, reduced by:

(a) the amount of those kilowatt-hours attributable to electricity generated or purchased in that calendar year from qualifying zero carbon emissions generation and qualifying carbon sequestration generation;

(b) the amount of those kilowatt-hours attributable to electricity generated or purchased in that calendar year from generation located within the geographic boundary of the Western Electricity Coordinating Council that derives its energy from one or more of the following but that does not satisfy the definition of a renewable energy source or that otherwise has not been used to satisfy Subsection 10-19-201(1):

(i) wind energy;

(ii) solar photovoltaic and solar thermal energy;

(iii) wave, tidal, and ocean thermal energy;

(iv) except for combustion of wood that has been treated with chemical preservatives
such as creosote, pentachlorophenol or chromated copper arsenate, biomass and biomass byproducts, including:

(A) organic waste;
(B) forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and to reduce wildfire risk;
(C) agricultural residues;
(D) dedicated energy crops; and
(E) landfill gas or biogas produced from organic matter, wastewater, anaerobic digesters, or municipal solid waste;
(v) geothermal energy;
(vi) hydro-electric energy; or
(vii) waste gas and waste heat capture or recovery; and
(c) the number of kilowatt-hours attributable to reductions in retail sales in that calendar year from activities or programs promoting electric energy efficiency or conservation or more efficient management of electric energy load.

(2) "Amount of kilowatt-hours attributable to electricity generated or purchased in that calendar year from qualifying carbon sequestration generation," for qualifying carbon sequestration generation, means the kilowatt-hours supplied by a facility during the calendar year multiplied by the ratio of the amount of carbon dioxide captured from the facility and sequestered to the sum of the amount of carbon dioxide captured from the facility and sequestered plus the amount of carbon dioxide emitted from the facility during the same calendar year.

(3) "Banked renewable energy certificate" means a bundled or unbundled renewable energy certificate that is:
(a) not used in a calendar year to comply with this part or with a renewable energy program in another state; and
(b) carried forward into a subsequent year.

(4) "Bundled renewable energy certificate" means a renewable energy certificate for
114 qualifying electricity that is acquired:
115 (a) by a municipal electric utility by a trade, purchase, or other transfer of electricity
116 that includes the renewable energy attributes of, or certificate that is issued for, the electricity;
117 or
118 (b) by a municipal electric utility by generating the electricity for which the renewable
119 energy certificate is issued.
120 (5) "Commission" means the Public Service Commission.
121 (6) "Municipal electric utility" means any municipality that owns, operates, controls, or
122 manages a facility that provides electric power for a retail customer, whether domestic,
123 commercial, industrial, or otherwise.
124 (7) "Qualifying carbon sequestration generation" means a fossil-fueled generating
125 facility located within the geographic boundary of the Western Electricity Coordinating Council
126 that:
127 (a) becomes operational or is retrofitted on or after January 1, 2008; and
128 (b) reduces carbon dioxide emissions into the atmosphere through permanent geological
129 sequestration or through other verifiably permanent reductions in carbon dioxide emissions
130 through the use of technology.
131 (8) "Qualifying electricity" means electricity generated on or after January 1, 1995 from
132 a renewable energy source if:
133 (a) (i) the renewable energy source is located within the geographic boundary of the
134 Western Electricity Coordinating Council; or
135 (ii) the qualifying electricity is delivered to the transmission system of a municipal
136 electric utility or a delivery point designated by the municipal electric utility for the purpose of
137 subsequent delivery to the municipal electric utility; and
138 (b) the renewable energy attributes of the electricity are not traded, sold, transferred, or
139 otherwise used to satisfy another state's renewable energy program.
140 (9) "Qualifying zero carbon emissions generation":
141 (a) means a generation facility located within the geographic boundary of the Western
Electricity Coordinating Council that:

(i) becomes operational on or after January 1, 2008; and
(ii) does not produce carbon as a byproduct of the generation process;
(b) includes generation powered by nuclear fuel; and
(c) does not include renewable energy sources used to satisfy a target established under Section 10-19-201.

(10) "Renewable energy certificate" means a certificate issued in accordance with the requirements of Sections 10-19-202 and 54-17-603.

(11) "Renewable energy source" means:
(a) an electric generation facility or generation capability or upgrade that becomes operational on or after January 1, 1995 that derives its energy from one or more of the following:

(i) wind energy;
(ii) solar photovoltaic and solar thermal energy;
(iii) wave, tidal, and ocean thermal energy;
(iv) except for combustion of wood that has been treated with chemical preservatives such as creosote, pentachlorophenol or chromated copper arsenate, biomass and biomass byproducts, including:

(A) organic waste;
(B) forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and to reduce wildfire risk;
(C) agricultural residues;
(D) dedicated energy crops; and
(E) landfill gas or biogas produced from organic matter, wastewater, anaerobic digesters, or municipal solid waste;

(v) geothermal energy located outside the state;
(vi) waste gas and waste heat capture or recovery; or
(vii) efficiency upgrades to a hydroelectric facility, without regard to the date upon
which the facility became operational, if the upgrades become operational on or after January 1, 1995;

(b) any of the following:

(i) up to 50 average megawatts of electricity per year per municipal electric utility from a certified low-impact hydroelectric facility, without regard to the date upon which the facility becomes operational, if the facility is certified as a low-impact hydroelectric facility on or after January 1, 1995, by a national certification organization;

(ii) geothermal energy if located within the state, without regard to the date upon which the facility becomes operational; and

(iii) hydroelectric energy if located within the state, without regard to the date upon which the facility becomes operational;

(c) hydrogen gas derived from any source of energy described in Subsection (11)(a) or (b);

(d) if an electric generation facility employs multiple energy sources, that portion of the electricity generated that is attributable to energy sources described in Subsections (11)(a) through (c); and

(e) any of the following located in the state and owned by a user of energy:

(i) a demand side management measure, as defined by Subsection 54-7-12.8(1) with the quantity of renewable energy certificates to which the user is entitled determined by the equivalent energy saved by the measure;

(ii) a solar thermal system that reduces the consumption of fossil fuels, with the quantity of renewable energy certificates to which the user is entitled determined by the equivalent kilowatt-hours saved, except to the extent the commission determines otherwise with respect to net-metered energy;

(iii) a solar photovoltaic system that reduces the consumption of fossil fuels with the quantity of renewable energy certificates to which the user is entitled determined by the total production of the system, except to the extent the commission determines otherwise with respect to net-metered energy;
(iv) a hydroelectric or geothermal facility, with the quantity of renewable energy
certificates to which the user is entitled determined by the total production of the facility, except
to the extent the commission determines otherwise with respect to net-metered energy;
(v) a waste gas or waste heat capture or recovery system other than from a combined
cycle combustion turbine that does not use waste gas or waste heat, with the quantity of
renewable energy certificates to which the user is entitled determined by the total production of
the system, except to the extent the commission determines otherwise with respect to
net-metered energy; and
(vi) the station use of solar thermal energy, solar photovoltaic energy, hydroelectric
energy, geothermal energy, waste gas, or waste heat capture and recovery.

(12) "Unbundled renewable energy certificate" means a renewable energy certificate
associated with:
(a) qualifying electricity that is acquired by a municipal electric utility or other person
by trade, purchase, or other transfer without acquiring the electricity for which the certificate
was issued; or
(b) activities listed in Subsection (11)(e).

Section 3. Section 10-19-201 is enacted to read:


10-19-201. Target amount of qualifying electricity -- Renewable energy certificate
-- Cost-effectiveness.

(1) (a) To the extent that it is cost-effective to do so, beginning in 2025 the annual retail
electric sales in this state of each municipal electric utility shall consist of qualifying electricity or
renewable energy certificates in an amount equal to at least 20% of adjusted retail electric sales.
(b) The amount under Subsection (1)(a) is computed based upon adjusted retail sales
for the calendar year commencing 36 months before the first day of the year for which the target
calculated under Subsection (1)(a) applies.
(c) Notwithstanding Subsections (1)(a) and (b) an increase in the annual target from
one year to the next is limited to the greater of:
(i) 17,500 megawatt-hours; or
(ii) 20% of the prior year's amount under Subsections (1)(a) and (b).

(2) Cost-effectiveness under Subsection (1) is determined using any criteria applicable to the municipal electric utility's acquisition of a significant energy resource established by the municipality's legislative body.

(3) This section does not require a municipal electric utility to:
(a) substitute qualifying electricity for electricity from a generation source owned or contractually committed, or from a contractual commitment for a power purchase;
(b) enter into any additional electric sales commitment or any other arrangement for the sale or other disposition of electricity that is not already, or would not be, entered into by the municipal electric utility; or
(c) acquire qualifying electricity in excess of its adjusted retail electric sales.

(4) A municipal electrical corporation may combine the following to meet Subsection (1):
(a) qualifying electricity from a renewable energy source owned by the municipal electric utility;
(b) qualifying electricity acquired by the municipal electric utility through trade, power purchase, or other transfer; and
(c) a bundled or unbundled renewable energy certificate, including a banked renewable energy certificate.

(5) To meet Subsection (1), a municipal electric utility may also count:
(a) qualifying electricity generated or acquired or renewable energy certificates acquired for a program permitting the municipal electric utility's customers to voluntarily contribute to a renewable energy source; and
(b) electricity allocated to this state that is produced by a hydroelectric facility becoming operational after December 31, 2007 if the hydroelectric facility is located in any state in which the municipal electric utility, or the interlocal entity with which the municipal electric utility has a contract, provides electric service.
Section 4. Section 10-19-202 is enacted to read:

10-19-202. Renewable energy certificate -- Use to satisfy other requirements.

(1) A municipal electric utility may buy, sell, trade, or otherwise transfer a renewable energy certificate issued or recognized under Section 54-17-603.

(2) For the purpose of satisfying Subsection 10-19-201(1) and the issuance of a renewable energy certificate under Section 54-17-603:

(a) a renewable energy source located in this state that derives its energy from solar photovoltaic and solar thermal energy shall be credited for 2.4 kilowatt-hours of qualifying electricity for each 1.0 kilowatt-hour generated; and

(b) if two or more municipal electric utilities jointly own a renewable energy resource, each municipal electric utility shall be credited with 1.0 kilowatt-hour of qualifying electricity for 1.0 kilowatt-hour of the renewable energy resource allocated to the municipal electric utility by contract, unless the contract otherwise provides.

(3) A renewable energy certificate:

(a) may be used only once to satisfy Subsection 10-19-201(1);

(b) may be used to satisfy Subsection 10-19-201(1) and the qualifying electricity on which the renewable energy certificate is based may be used to satisfy any federal renewable energy requirement; and

(c) may not be used if it has been used to satisfy any other state's renewable energy requirement.

Section 5. Section 10-19-301 is enacted to read:


10-19-301. Plans and reports.

(1) A municipal electric utility shall develop and maintain a plan for implementing Subsection 10-19-201(1).

(2) A progress report concerning a plan under Subsection (1) shall be filed with the municipality's legislative body by January 1 of each of the years 2010, 2015, 2020, and 2024.

(3) The progress report under Subsection (2) shall contain:
(a) the actual and projected amount of qualifying electricity through 2025;
(b) the source of qualifying electricity;
(c) an estimate of the cost of achieving the target;
(d) a discussion of conditions impacting the renewable energy source and qualifying electricity markets; and
(e) any recommendation for a suggested legislative or program change.

(4) The plan and progress report required by Subsections (1) and (2) may include procedures that will be used by the municipal electric utility to identify and select any cost-effective renewable energy resource and qualifying electricity.

(5) By July 1, 2026, the municipal electric utility shall file a final progress report demonstrating:
(a) how Subsection 10-19-201(1) is satisfied for the year 2025; or
(b) the reason why Subsection 10-19-201(1) is not satisfied for the year 2025, if it is not satisfied.

(6) The plan and any progress report filed under this section shall be publicly available at the municipal legislative body's office.

Section 6. Section 10-19-302 is enacted to read:

(1) The municipal legislative body may adopt procedures necessary to implement this chapter.
(2) Nothing in this chapter authorizes the commission to exercise any power over a municipal electric utility's electrical generation, demand-side management program, or other operation.

Section 7. Section 54-2-1 is amended to read:

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 which, due to the purchase of electric energy or capacity or both
(2) "Cogeneration facility":
(a) means a facility which produces:
(i) electric energy; and
(ii) steam or forms of useful energy, including heat, which are used for industrial,
commercial, heating, or cooling purposes; and
(b) is a qualifying cogeneration facility under federal law.

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

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

(5) (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.

(6) "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.

(7) "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, except independent
energy producers, and except 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 for 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.

(8) "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.

(9) "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.

(10) "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.

(11) "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.

(12) (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.

(13) "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.

(14) "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.

"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.

"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 Subsection (15)(d),
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 Subsection [(15)] (16)(d), 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 Subsection [(15)] (16)(d), or electrical corporation sells or furnishes gas or electricity to any member or consumer 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) An independent energy producer is exempt from the jurisdiction and regulations of the commission with respect to an independent power production facility if it meets the requirements of Subsection [(15)] (16)(d)(i), (ii), or (iii), or any combination of these:

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

(ii) the commodity or service is sold by an independent energy producer solely to an electrical corporation or other wholesale purchaser; or

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

(B) the real property on which the service or commodity is used is contiguous to real property which is owned or controlled by the independent energy producer. Parcels of real property separated solely by public roads or easements for public roads shall be considered as
(e) 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.

(f) (i) "Public utility" does not include any person that is otherwise considered a public utility under this Subsection [(15) (16)] 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 [(15) (16)(f)(i)(A)(I) and (II)];

(B) the lessor of the ownership interest identified in Subsection [(15) (16)(f)(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 [(15) (16)(f)(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
(g) "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 financer of an electric plant, small power production facility, or cogeneration facility, then that third-party financer 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.

(h) (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.

[(16) (17) "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. Section 824a-3.

(18) "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.

(19) "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.

[(17) (20) "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.

[(18) (21) "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.

[(19) (22) (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.

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

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

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

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

[(21) (23) "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.
"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.

"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.

"Telephone corporation" does not mean a corporation, partnership, or firm providing:

- 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;
- Internet service; or
- resold intrastate toll service.

"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.

"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.

"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.

[(28)] (30) (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.

[(29)] (31) "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.

Section 8. Section 54-12-1 is amended to read:

54-12-1. Legislative policy.

(1) The Legislature declares that in order to promote the more rapid development of
new sources of electrical energy, to maintain the economic vitality of the state through the
continuing production of goods and the employment of its people, and to promote the efficient
utilization and distribution of energy, it is desirable and necessary to encourage independent
energy producers to competitively develop sources of electric energy not otherwise available to
Utah businesses, residences, and industries served by electrical corporations, and to remove
unnecessary barriers to energy transactions involving independent energy producers and
electrical corporations.
(2) It is the policy of this state to encourage the development of independent and qualifying power production and cogeneration facilities, to promote a diverse array of economical and permanently sustainable energy resources in an environmentally acceptable manner, and to conserve our finite and expensive energy resources and provide for their most efficient and economic utilization.

Section 9. Section 54-12-2 is amended to read:

54-12-2. Purchase of power from qualifying power producers.
(1) Purchasing utilities shall offer to purchase power from qualifying power producers.

(2) The commission shall establish reasonable rates, terms, and conditions for the purchase or sale of electricity or electrical generating capacity, or both, between a purchasing utility and a qualifying power producer. In establishing these rates, terms, and conditions, the commission shall either establish a procedure under which qualifying power producers offer competitive bids for the sale of power to purchasing utilities or devise an alternative method which considers the purchasing utility's avoided costs. The capacity component of avoided costs shall reflect the purchasing utility's long-term deferral or cancellation of generating units which may result from the purchase of power from qualifying power producers.

(3) Purchasing utilities and qualifying power producers may agree to rates, terms, or conditions for the sale of electricity or electrical capacity which differ from the rates, terms, and conditions adopted by the commission under Subsection (2).

(4) The commission may adopt further rules which encourage the development of small power production and cogeneration facilities.

Section 10. Section 54-12-3 is amended to read:

54-12-3. Recovery of investment costs.
The commission may not consider any purchasing utility's purchase of power from a qualifying power producer as a reason for disallowing recovery of the purchasing utility's investment costs for facilities which are in use prior to signing a contract for
the purchase of power from an independent energy producer.

Section 11. Section 54-17-201 is amended to read:

54-17-201. Solicitation process required -- Exception.

(1) (a) An affected electrical utility shall comply with this chapter to acquire or construct a significant energy resource after February 25, 2005.

(b) Notwithstanding Subsection (1)(a), this chapter does not apply to a significant energy resource for which the affected electrical utility has issued a solicitation before February 25, 2005.

(2) (a) Except as provided in Subsection (3), to acquire or construct a significant energy resource, an affected electrical utility shall conduct a solicitation process that is approved by the commission.

(b) To obtain the approval of the commission of a solicitation process, the affected electrical utility shall file with the commission a request for approval that includes:

(i) a description of the solicitation process the affected electrical utility will use;

(ii) a complete proposed solicitation; and

(iii) any other information the commission requires by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(c) In ruling on the request for approval of a solicitation process, the commission shall determine whether the solicitation process:

(i) complies with this chapter and rules made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

(ii) is in the public interest taking into consideration:

(A) whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of an affected electrical utility located in this state;

(B) long-term and short-term impacts;

(C) risk;

(D) reliability;
(E) financial impacts on the affected electrical utility; and
(F) other factors determined by the commission to be relevant.

(d) Before approving a solicitation process under this section the commission:
   (i) may hold a public hearing; and
   (ii) shall provide an opportunity for public comment.

(e) As part of its review of a solicitation process, the commission may provide the
affected electrical utility guidance on any additions or changes to its proposed solicitation
process.

(f) Unless the commission determines that additional time to analyze a solicitation
process is warranted and is in the public interest, within 60 days of the day on which the
affected electrical utility files a request for approval of the solicitation process, the commission
shall:
   (i) approve a proposed solicitation process;
   (ii) suggest modifications to a proposed solicitation process; or
   (iii) reject a proposed solicitation process.

(3) Notwithstanding Subsection (2), an affected electrical utility may acquire or
construct a significant energy resource without conducting a solicitation process if it obtains a
waiver of the solicitation requirement in accordance with Section 54-17-501.

(4) In accordance with the commission's authority under Subsection 54-12-2(2), the
commission shall determine:
   (a) whether this chapter or another competitive bidding procedure shall apply to a
purchase of a significant energy resource by an affected electrical utility from a small power
producer or cogenerator; and
   (b) if this chapter applies as provided in Subsection (4)(a), the manner in which this
chapter applies to a purchase of a significant energy resource by an affected electrical utility
from a small power producer or cogenerator.

Section 12. Section 54-17-302 is amended to read:

54-17-302. Approval of a significant energy resource decision required.
(1) If pursuant to Part 2, Solicitation Process, an affected electrical utility is required to
conduct a solicitation for a significant energy resource or obtains a waiver of the requirement to
conduct a solicitation under Section 54-17-501, but does not obtain a waiver of the requirement
to obtain approval of the significant energy resource decision under Section 54-17-501, the
affected electrical utility shall obtain approval of its significant energy resource decision:
(a) after the completion of the solicitation process, if the affected electrical utility is
required to conduct a solicitation; and
(b) before an affected electrical utility may construct or enter into a binding agreement
to acquire the significant energy resource.
(2) (a) To obtain the approval required by Subsection (1), the affected electrical utility
shall file a request for approval with the commission.
(b) The request for approval required by this section shall include any information
required by the commission by rule made in accordance with Title 63, Chapter 46a, Utah
Administrative Rulemaking Act.
(3) In ruling on a request for approval of a significant energy resource decision, the
commission shall determine whether the significant energy resource decision:
(a) is reached in compliance with this chapter and rules made in accordance with Title
63, Chapter 46a, Utah Administrative Rulemaking Act;
(b) (i) is reached in compliance with the solicitation process approved by the
commission in accordance with Part 2, Solicitation Process; or
(ii) is reached after the waiver of the solicitation process as provided in Subsection
54-17-201(3); and
(c) is in the public interest, taking into consideration:
(i) whether it will most likely result in the acquisition, production, and delivery of
electricity at the lowest reasonable cost to the retail customers of an affected electrical utility
located in this state;
(ii) long-term and short-term impacts;
(iii) risk;
(iv) reliability;
(v) financial impacts on the affected electrical utility; and
(vi) other factors determined by the commission to be relevant.

(4) The commission may not approve a significant energy resource decision under this section before holding a public hearing.

(5) Unless the commission determines that additional time to analyze a significant energy resource decision is warranted and is in the public interest, within [120] days of the day on which the affected electrical utility files a request for approval, the commission shall:

(a) approve the significant energy resource decision;
(b) approve the significant energy resource decision subject to conditions imposed by the commission; or
(c) disapprove the significant energy resource decision.

(6) The commission shall include in its order under this section:

(a) findings as to the total projected costs for construction or acquisition of an approved significant energy resource; and
(b) the basis upon which the findings described in Subsection (6)(a) are made.

(7) Notwithstanding any other provision of this part, an affected electrical utility may acquire a significant energy resource without obtaining approval pursuant to this section if it obtains a waiver of the requirement for approval in accordance with Section 54-17-501.

(8) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules regarding the process for approval of a significant energy resource decision under this section.

Section 13. Section 54-17-303 is amended to read:

54-17-303. Cost recovery.

(1) (a) Except as otherwise provided in this section, if the commission approves a significant energy resource decision under Section 54-17-302, the commission shall, in a general rate case or other appropriate commission proceeding, include in the affected electrical utility's retail electric rates the state's share of costs:
(ii) incurred by the affected electrical utility in constructing or acquiring the approved significant energy resource; and

(iii) up to the projected costs specified in the commission's order issued under Section 54-17-302.

(b) (i) The commission shall, in a general rate case or other appropriate commission proceeding, include in the affected electrical utility's retail electric rates the state's share of the incremental cost relevant to the proceeding that were prudently incurred by the affected electrical utility to identify, evaluate, and submit a reasonable benchmark option, whether or not the benchmark option is selected or becomes operational.

(ii) A recoverable cost under Subsection (1)(b)(i) shall be included in the affected electrical utility's project costs for the purpose of evaluating the project's cost-effectiveness.

(iii) A recoverable cost under Subsection (1)(b)(i) may not be added to the cost or otherwise considered in the evaluation of a project proposed by any person other than the affected electrical utility for the purpose of evaluating that person's proposal.

(c) Except to the extent that the commission enters an order under Section 54-17-304, an increase from the projected costs specified in the commission's order issued under Section 54-17-302 shall be subject to review by the commission as part of a rate hearing under Section 54-7-12.

(2) (a) Subsequent to the commission issuing an order described in Subsection (2)(a)(i) or (ii), the commission may disallow some or all costs incurred in connection with an approved significant energy resource decision if the commission finds that an affected electrical utility's actions in implementing an approved significant energy resource decision are not prudent because of new information or changed circumstances that occur after:

(i) the commission's approval of the significant energy resource decisions under Section 54-17-302; or

(ii) a commission order to proceed under Section 54-17-304.

(b) In making a determination of prudence under Subsection (2)(a), the commission
shall use the standards identified in Section 54-4-4.

(3) Notwithstanding any other provision of this chapter, the commission may disallow some or all of the costs incurred by an affected electrical utility in connection with an approved significant energy resource decision upon a finding by the commission that the affected electrical utility is responsible for a material misrepresentation or concealment in connection with an approval process under this chapter.

Section 14. Section 54-17-502 is enacted to read:

54-17-502. Renewable energy source -- Solicitation -- Consultant.

(1) Sections 54-17-102 through 54-17-404 do not apply to a significant energy resource that is a renewable energy source as defined in Section 54-17-601 if the nameplate capacity of the renewable energy source does not exceed 300 megawatts or, if applicable, the quantity of capacity that is the subject of a contract for the purchase of electricity from a renewable energy source does not exceed 300 megawatts.

(2) (a) (i) An affected electrical utility shall issue a public solicitation of bids for a renewable energy source up to 300 megawatts in size by January 31 of each year in which it reasonably anticipates that it will need to acquire or commence construction of a renewable energy resource.

(ii) A solicitation for a renewable energy source issued by January 31, 2008 for up to 99 megawatts satisfies the requirement of this Subsection (2) for the year 2008 if:

(A) not later than 30 days after the day on which this section takes effect, the affected electrical utility amends the solicitation or initiates a new solicitation to seek bids for renewable energy source projects up to 300 megawatts in size; and

(B) within 60 days after the day on which this section takes effect and as soon as practicable, the commission retains a consultant in accordance with Subsection (3).

(b) A consultant hired under Subsection (2)(a)(ii)(B) shall perform the consultant's duties under Subsection (3) in relation to the status of the solicitation process at the time the consultant is retained and may not unreasonably delay the solicitation process.

(c) For a solicitation issued after January 31, 2008:
(i) the affected electrical utility shall develop a reasonable process for pre-approval of
bidders; and
(ii) in addition to publicly issuing the solicitation in Subsection (2)(a)(i), the affected
electrical utility shall send copies of the solicitation to each potential bidder who is
pre-approved.
(d) The affected electrical utility shall evaluate in good faith each bid that is received
and negotiate in good faith with each bidder whose bid appears to be cost effective, as defined
in Section 54-17-602.
(e) Beginning on August 1, 2008, and on each August 1 thereafter, the affected
electrical utility shall file a notice with the commission indicating whether it reasonably
anticipates that it will need to acquire or commence construction of a renewable energy
resource during the following year.
(3) (a) If the commission receives a notice under Subsection (2)(e) that the affected
electrical utility reasonably anticipates that it will need to acquire or commence construction of
a renewable energy source during the following year, the commission shall promptly retain a
consultant to:
(i) validate that the affected electrical utility is following the bidder pre-approval
process developed pursuant to Subsection (2)(c) and make recommendations for changes to the
pre-approval process for future solicitations;
(ii) monitor and document all material aspects of the bids, bid evaluations, and bid
negotiations between the affected electrical utility and any bidders in the solicitation process;
(iii) maintain adequate documentation of each bid, including the solicitation, evaluation,
and negotiation processes and the reason for the conclusion of negotiations, which
documentation shall be transmitted to the commission at the conclusion of all negotiations in the
solicitation; and
(iv) be available to testify under oath before the commission in any relevant proceeding
concerning all aspects of the public solicitation process.
(b) The commission and the consultant shall use all reasonable efforts to not delay the
solicitation process.

(4) Documentation provided to the commission by the consultant shall be available to
the affected electrical utility, any bidder, or other interested person under terms and conditions
and at times determined appropriate by the commission.

(5) (a) The commission and the consultant shall execute a contract approved by the
commission with terms and conditions approved by the commission.

(b) Unless otherwise provided by contract, an invoice for the consultant's services shall
be sent to the Division of Public Utilities for review and approval.

(c) After approval under Subsection (5)(b), the invoice shall be forwarded to the
affected electrical utility for payment to the consultant.

(d) The affected electrical utility may, in a general rate case or other appropriate
commission proceeding, include, and the commission shall allow, recovery by the affected
electrical utility of any amount paid by the affected electrical utility for the consultant.

(6) (a) Nothing in this section precludes an affected electrical utility from constructing
or acquiring any renewable energy source project outside the solicitation process provided for in
this section, including purchasing electricity from any renewable energy source project that
chooses to self-certify as a qualifying facility under the federal Public Utility Regulatory Policies

(b) An affected electrical utility that constructs a renewable energy source outside the
solicitation process of this section or Section 54-17-201 shall file a notice with the commission
at least 60 days before the date of commencement of construction, indicating the size and
location of the renewable energy source.

(c) The date of commencement of construction under Subsection (6)(b) is the date of
any directive from an affected electrical utility to the person responsible for the construction of
the renewable energy source authorizing or directing the person to proceed with construction.

(d) For an affected electrical utility whose rates are regulated by the commission, the
utility has the burden of proving in a rate case or other appropriate commission proceeding the
prudence, reasonableness, and cost-effectiveness of construction under this Subsection (6).
including the method used to evaluate the risks and value of any bid submitted in the solicitation under this section.

(7) Nothing in this section requires an affected electrical utility to enter into any transaction that it reasonably believes is not cost effective or otherwise is not in the public interest.

Section 15. Section 54-17-601 is enacted to read:

**Part 6. Carbon Emission Reductions for Electrical Corporations**

**54-17-601. Definitions.**

As used in this part:

(1) "Adjusted retail electric sales" means the total kilowatt-hours of retail electric sales of an electrical corporation to customers in this state in a calendar year, reduced by:

(a) the amount of those kilowatt-hours attributable to electricity generated or purchased in that calendar year from qualifying zero carbon emissions generation and qualifying carbon sequestration generation;

(b) the amount of those kilowatt-hours attributable to electricity generated or purchased in that calendar year from generation located within the geographic boundary of the Western Electricity Coordinating Council that derives its energy from one or more of the following but that does not satisfy the definition of a renewable energy source or that otherwise has not been used to satisfy Subsection 54-17-602(1):

(i) wind energy;

(ii) solar photovoltaic and solar thermal energy;

(iii) wave, tidal, and ocean thermal energy;

(iv) except for combustion of wood that has been treated with chemical preservatives such as creosote, pentachlorophenol or chromated copper arsenate, biomass and biomass byproducts, including:

(A) organic waste;

(B) forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and to reduce wildfire risk;
(C) agricultural residues;
(D) dedicated energy crops; and
(E) landfill gas or biogas produced from organic matter, wastewater, anaerobic
digesters, or municipal solid waste;
(v) geothermal energy;
(vi) hydroelectric energy; or
(vii) waste gas and waste heat capture or recovery; and
(c) the number of kilowatt-hours attributable to reductions in retail sales in that calendar
year from demand side management as defined in Section 54-7-12.8, with the kilowatt-hours for
an electrical corporation whose rates are regulated by the commission and adjusted by the
commission to exclude kilowatt-hours for which a renewable energy certificate is issued under
Subsection 54-17-603(4)(b).

(2) "Amount of kilowatt-hours attributable to electricity generated or purchased in that
calendar year from qualifying carbon sequestration generation," for qualifying carbon
sequestration generation, means the kilowatt-hours supplied by a facility during the calendar
year multiplied by the ratio of the amount of carbon dioxide captured from the facility and
sequestered to the sum of the amount of carbon dioxide captured from the facility and
sequestered plus the amount of carbon dioxide emitted from the facility during the same
calendar year.

(3) "Banked renewable energy certificate" means a bundled or unbundled renewable
energy certificate that is:
(a) not used in a calendar year to comply with this part or with a renewable energy
program in another state; and
(b) carried forward into a subsequent year.

(4) "Bundled renewable energy certificate" means a renewable energy certificate for
qualifying electricity that is acquired:
(a) by an electrical corporation by a trade, purchase, or other transfer of electricity that
includes the renewable energy attributes of, or certificate that is issued for, the electricity; or
(b) by an electrical corporation by generating the electricity for which the renewable energy certificate is issued.

(5) "Electrical corporation":
(a) is as defined in Section 54-2-1; and
(b) does not include a person generating electricity that is not for sale to the public.

(6) "Qualifying carbon sequestration generation" means a fossil-fueled generating facility located within the geographic boundary of the Western Electricity Coordinating Council that:
(a) becomes operational or is retrofitted on or after January 1, 2008; and
(b) reduces carbon dioxide emissions into the atmosphere through permanent geological sequestration or through another verifiably permanent reduction in carbon dioxide emissions through the use of technology.

(7) "Qualifying electricity" means electricity generated on or after January 1, 1995 from a renewable energy source if:
(a) (i) the renewable energy source is located within the geographic boundary of the Western Electricity Coordinating Council; or
(ii) the qualifying electricity is delivered to the transmission system of an electrical corporation or a delivery point designated by the electrical corporation for the purpose of subsequent delivery to the electrical corporation; and
(b) the renewable energy attributes of the electricity are not traded, sold, transferred, or otherwise used to satisfy another state's renewable energy program.

(8) "Qualifying zero carbon emissions generation":
(a) means a generation facility located within the geographic boundary of the Western Electricity Coordinating Council that:
(i) becomes operational on or after January 1, 2008; and
(ii) does not produce carbon as a byproduct of the generation process;
(b) includes generation powered by nuclear fuel; and
(c) does not include renewable energy sources used to satisfy the requirement
established under Subsection 54-17-602(1).

(9) "Renewable energy certificate" means a certificate issued under Section 54-17-603.

(10) "Renewable energy source" means:

(a) an electric generation facility or generation capability or upgrade that becomes operational on or after January 1, 1995 that derives its energy from one or more of the following:

(i) wind energy;

(ii) solar photovoltaic and solar thermal energy;

(iii) wave, tidal, and ocean thermal energy;

(iv) except for combustion of wood that has been treated with chemical preservatives such as creosote, pentachlorophenol or chromated copper arsenate, biomass and biomass byproducts, including:

(A) organic waste;

(B) forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and to reduce wildfire risk;

(C) agricultural residues;

(D) dedicated energy crops; and

(E) landfill gas or biogas produced from organic matter, wastewater, anaerobic digesters, or municipal solid waste;

(v) geothermal energy located outside the state;

(vi) waste gas and waste heat capture or recovery; or

(vii) efficiency upgrades to a hydroelectric facility, without regard to the date upon which the facility became operational, if the upgrades become operational on or after January 1, 1995;

(b) any of the following:

(i) up to 50 average megawatts of electricity per year per electrical corporation from a certified low-impact hydroelectric facility, without regard to the date upon which the facility becomes operational, if the facility is certified as a low-impact hydroelectric facility on or after
January 1, 1995, by a national certification organization;

(ii) geothermal energy if located within the state, without regard to the date upon which
the facility becomes operational; or

(iii) hydroelectric energy if located within the state, without regard to the date upon
which the facility becomes operational;

(c) hydrogen gas derived from any source of energy described in Subsection (10)(a) or
(b);

(d) if an electric generation facility employs multiple energy sources, that portion of the
electricity generated that is attributable to energy sources described in Subsections (10)(a)
through (c); and

(e) any of the following located in the state and owned by a user of energy:

(i) a demand side management measure, as defined by Subsection 54-7-12.8(1), with
the quantity of renewable energy certificates to which the user is entitled determined by the
equivalent energy saved by the measure;

(ii) a solar thermal system that reduces the consumption of fossil fuels, with the quantity
of renewable energy certificates to which the user is entitled determined by the equivalent
kilowatt-hours saved, except to the extent the commission determines otherwise with respect to
net-metered energy;

(iii) a solar photovoltaic system that reduces the consumption of fossil fuels with the
quantity of renewable energy certificates to which the user is entitled determined by the total
production of the system, except to the extent the commission determines otherwise with
respect to net-metered energy;

(iv) a hydroelectric or geothermal facility with the quantity of renewable energy
certificates to which the user is entitled determined by the total production of the facility, except
to the extent the commission determines otherwise with respect to net-metered energy;

(v) a waste gas or waste heat capture or recovery system, other than from a combined
cycle combustion turbine that does not use waste gas or waste heat, with the quantity of
renewable energy certificates to which the user is entitled determined by the total production of
the system, except to the extent the commission determines otherwise with respect to net-metered energy; and

(vi) the station use of solar thermal energy, solar photovoltaic energy, hydroelectric energy, geothermal energy, waste gas, or waste heat capture and recovery.

(11) "Unbundled renewable energy certificate" means a renewable energy certificate associated with:

(a) qualifying electricity that is acquired by an electrical corporation or other person by trade, purchase, or other transfer without acquiring the electricity for which the certificate was issued; or

(b) activities listed in Subsection (10)(e).

Section 16. Section 54-17-602 is enacted to read:

54-17-602. Target amount of qualifying electricity -- Renewable energy certificate -- Cost-effectiveness -- Cooperatives.

(1) (a) To the extent that it is cost effective to do so, beginning in 2025 the annual retail electric sales in this state of each electrical corporation shall consist of qualifying electricity or renewable energy certificates in an amount equal to at least 20% of adjusted retail electric sales.

(b) The amount under Subsection (1)(a) is computed based upon adjusted retail electric sales for the calendar year commencing 36 months before the first day of the year for which the target calculated under Subsection (1)(a) applies.

(c) Notwithstanding Subsections (1)(a) and (b), an increase in the annual target from one year to the next may not exceed the greater of:

(i) 17,500 megawatt-hours; or

(ii) 20% of the prior year's amount under Subsections (1)(a) and (b).

(2) (a) Cost-effectiveness under Subsection (1) for other than a cooperative association is determined in comparison to other viable resource options using the criteria provided by Subsection 54-17-201(2)(c)(ii).

(b) For an electrical corporation that is a cooperative association, cost-effectiveness is determined using criteria applicable to the cooperative association's acquisition of a significant...
energy resource established by the cooperative association's board of directors.

(3) This section does not require an electrical corporation to:

(a) substitute qualifying electricity for electricity from a generation source owned or contractually committed, or from a contractual commitment for a power purchase;

(b) enter into any additional electric sales commitment or any other arrangement for the sale or other disposition of electricity that is not already, or would not be, entered into by the electrical corporation; or

(c) acquire qualifying electricity in excess of its adjusted retail electric sales.

(4) For the purpose of Subsection (1), an electrical corporation may combine the following:

(a) qualifying electricity from a renewable energy source owned by the electrical corporation;

(b) qualifying electricity acquired by the electrical corporation through trade, power purchase, or other transfer; and

(c) a bundled or unbundled renewable energy certificate, including a banked renewable energy certificate.

(5) For an electrical corporation whose rates the commission regulates, the following rules concerning renewable energy certificates apply:

(a) a banked renewable energy certificate with an older issuance date shall be used before any other banked renewable energy certificate issued at a later date is used; and

(b) the total of all unbundled renewable energy certificates, including unbundled banked renewable energy certificates, may not exceed 20% of the amount of the annual target provided for in Subsection (1).

(6) An electrical corporation that is a cooperative association may count towards Subsection (1) any of the following:

(a) electric production allocated to this state from hydroelectric facilities becoming operational after December 31, 2007 if the facilities are located in any state in which the cooperative association, or a generation and transmission cooperative with which the
cooperative association has a contract, provides electric service;

(b) qualifying electricity generated or acquired or renewable energy certificates acquired for a program that permits a retail customer to voluntarily contribute to a renewable energy source; and

(c) notwithstanding Subsection 54-17-601(7), an unbundled renewable energy certificate purchased from a renewable energy source located outside the geographic boundary of the Western Electricity Coordinating Council if the electricity on which the unbundled renewable energy certificate is based would be considered qualifying electricity if the renewable energy source was located within the geographic boundary of the Western Electricity Coordinating Council.

(7) The use of the renewable attributes associated with qualifying electricity to satisfy any federal renewable energy requirement does not preclude the electricity from being qualifying electricity for the purpose of this chapter.

Section 17. Section 54-17-603 is enacted to read:

54-17-603. Renewable energy certificate -- Issuance -- Use to satisfy other requirements.

(1) The commission shall establish a process for issuance or recognition of a renewable energy certificate.

(2) The commission process under Subsection (1) shall provide for the issuance, monitoring, accounting, transfer, and use of a renewable energy certificate, including in electronic form.

(3) The commission:

(a) may consult with another state or a federal agency and any regional system or trading program to fulfil Subsection (1); and

(b) allow use of a renewable energy certificate that is issued, monitored, accounted for, or transferred by or through a regional system or trading program, including the Western Renewable Energy Generation Information System, to fulfil this part's provisions.

(4) A renewable energy certificate shall be issued for:
(a) qualifying electricity generated on and after January 1, 1995; and
(b) the activities of an energy user described in Subsections 10-19-102(11)(e) and
54-17-601(10)(e) on and after January 1, 1995.

(5) The person requesting a renewable energy certificate shall affirm that the renewable
energy attributes of the electricity have not been traded, sold, transferred, or otherwise used to
satisfy another state's renewable energy requirements.

(6) (a) For the purpose of satisfying Subsection 54-17-602(1) and the issuance of a
renewable energy certificate under this section, a renewable energy source located in this state
that derives its energy from solar photovoltaic or solar thermal energy shall be credited for 2.4
kilowatt-hours of qualifying electricity for each 1.0 kilowatt-hour generated.

(b) Notwithstanding Subsection (6)(a), the acquisition or construction by an electrical
corporation of a renewable energy source that derives its energy from solar photovoltaic or
solar thermal energy shall comply with the cost-effectiveness criteria of Subsection
54-17-201(2)(c)(ii).

(7) A renewable energy certificate issued under this section:
(a) does not expire; and
(b) may be banked.

(8) The commission may recognize a renewable energy certificate that is issued,
monitored, accounted for, or transferred by or through another state or a regional system or
trading program, including the Western Renewable Energy Generation Information System, if
the renewable energy certificate is for qualifying electricity.

(9) A renewable energy certificate:
(a) may be used only once to satisfy Subsection 54-17-602(1);
(b) may be used for the purpose of Subsection 54-17-602(1) and the qualifying
electricity on which the renewable energy certificate is based may be used to satisfy any federal
renewable energy requirement; and
(c) may not be used if it has been used to satisfy any other state's renewable energy
requirement.
(10) The commission shall establish procedures and reasonable rates permitting an electrical corporation that is a purchasing utility under Section 54-12-2 to acquire or retain a renewable energy certificate associated with the purchase of power from an independent energy producer.

Section 18. Section 54-17-604 is enacted to read:

54-17-604. Plans and reports.

(1) An electrical corporation shall develop and maintain a plan for implementing Subsection 54-17-602(1), consistent with the cost-effectiveness criteria of Subsection 54-17-201(2)(c)(ii).

(2) (a) A progress report concerning a plan under Subsection (1) for other than a cooperative association shall be filed with the commission by January 1 of each of the years 2010, 2015, 2020, and 2024.

(b) For an electrical corporation that is a cooperative association, a progress report shall be filed with the cooperative association's board of directors by January 1 of each of the years 2010, 2015, 2020, and 2024.

(3) The progress report under Subsection (2) shall contain:

(a) the actual and projected amount of qualifying electricity through 2025;

(b) the source of qualifying electricity;

(c) (i) an analysis of the cost-effectiveness of renewable energy sources for other than a cooperative association; or

(ii) an estimate of the cost of achieving the target for an electrical corporation that is a cooperative association;

(d) a discussion of conditions impacting the renewable energy source and qualifying electricity markets;

(e) any recommendation for a suggested legislative or program change; and

(f) for other than a cooperative association, any other information requested by the commission or considered relevant by the electrical corporation.

(4) The plan and progress report required by Subsections (1) and (2) may include...
procedures that will be used by the electrical corporation to identify and select any renewable energy resource and qualifying electricity that satisfy the criteria of Subsection 54-17-201(2)(c)(ii).

(5) By July 1, 2026, each electrical corporation shall file a final progress report demonstrating:

(a) how Subsection 54-17-602(1) is satisfied for the year 2025; or
(b) the reason why Subsection 54-17-602(1) is not satisfied for the year 2025, if it is not satisfied.

(6) By January 1 of each of the years 2011, 2016, 2021, and 2025, the Division of Public Utilities shall submit to the Legislature a report containing a summary of any progress report filed under Subsections (2) through (5).

(7) The summary required by Subsection (6) shall include any recommendation for legislative changes.

(8) (a) By July 1, 2027, the commission shall submit to the Legislature a report summarizing the final progress reports and recommending any legislative changes.
(b) The 2027 summary may contain a recommendation to the Legislature concerning any action to be taken with respect to an electrical corporation that does not satisfy Subsection 54-17-602(1) for 2025.

(c) The commission shall provide an opportunity for public comment and take evidence before recommending any action to be taken with respect to an electrical corporation that does not satisfy Subsection 54-17-602(1) for 2025.

(9) If a recommendation containing a penalty for failure to satisfy Subsection 54-17-602(1) is made under Subsection (8), the proposal shall require that any amount paid by an electrical corporation as a penalty be utilized to fund demand-side management for the retail customers of the electrical corporation paying the penalty.

(10) A penalty may not be proposed under this section if an electrical corporation's failure to satisfy Subsection 54-17-602(1) is due to:

(a) a lack of cost-effective means to satisfy the requirement; or
(b) force majeure.

(11) By July 1, 2026, an electrical corporation that is a cooperative association shall file a final progress report demonstrating:

(a) how Subsection 54-17-602(1) is satisfied for the year 2025; or

(b) the reason why Subsection 54-17-602(1) is not satisfied for the year 2025 if it is not satisfied.

(12) The plan and any progress report file under this section by an electrical corporation that is cooperative association shall be publicly available at the cooperative association's office or posted on the cooperative association's website.

Section 19. Section 54-17-605 is enacted to read:

54-17-605. Recovery of costs for renewable energy activities.

(1) In accordance with other law, the commission shall include in the retail electric rates of an electrical corporation whose rates the commission regulates the state's share of any of the costs listed in Subsection (2) that are relevant to the proceeding in which the commission is considering the electrical corporation's rates:

(a) if the costs are prudently incurred by the electrical corporation in connection with:

(i) the acquisition of a renewable energy certificate;

(ii) the acquisition of qualifying electricity for which a renewable energy certificate will be issued after the acquisition; and

(iii) the acquisition, construction, and use of a renewable energy source; and

(b) to the extent any qualifying electricity or renewable energy source under Subsection (1)(a) satisfies the cost-effectiveness criteria of Subsection 54-17-201(2)(c)(ii).

(2) The following are costs that may be recoverable under Subsection (1):

(a) a cost of siting, acquisition of property rights, equipment, design, licensing, permitting, construction, owning, operating, or otherwise acquiring a renewable energy source and any associated asset, including transmission;

(b) a cost to acquire qualifying electricity through trade, power purchase, or other transfer:
(c) a cost to acquire a bundled or unbundled renewable energy certificate, if any net revenue from the sale of a renewable energy certificate allocable to this state is also included in rates;
(d) a cost to interconnect a renewable energy source to the electrical corporation's transmission and distribution system;
(e) a cost associated with using a physical or financial asset to integrate, firm, or shape a renewable energy source on a firm annual basis to meet a retail electricity need; and
(f) any cost associated with transmission and delivery of qualifying electricity to a retail electricity consumer.

(3) (a) The commission may allow an electrical corporation to use an adjustment mechanism or reasonable method other than a rate case under Sections 54-4-4 and 54-7-12 to allow recovery of costs identified in Subsection (2).
(b) If the commission allows the use of an adjustment mechanism, both the costs and any associated benefit shall be reflected in the mechanism, to the extent practicable.
(c) This Subsection (3) creates no presumption for or against the use of an adjustment mechanism.

(4) (a) The commission may permit an electrical corporation to include in its retail electric rates the state's share of costs prudently incurred by the electrical corporation in connection with a renewable energy source, whether or not the renewable energy source ultimately becomes operational, including costs of:
(i) siting;
(ii) property acquisition;
(iii) equipment;
(iv) design;
(v) licensing;
(vi) permitting; and
(vii) other reasonable items related to the renewable energy source.
(b) Subsection (4)(a) creates no presumption concerning the prudence or recoverability
of the costs identified.

(c) To the extent deferral is consistent with other applicable law, the commission may allow an electrical corporation to defer costs recoverable under Subsection (4)(a) until the recovery of the deferred costs can be considered in a rate proceeding or an adjustment mechanism created under Subsection (3).

(d) An application to defer costs shall be filed within 60 days after the day on which the electrical corporation determines that the renewable energy source project is impaired under generally accepted accounting principles and will not become operational.

(e) Notwithstanding the opportunity to defer costs under Subsection (4)(c), a cost incurred by an electrical corporation for siting, property acquisition, equipment, design, licensing, and permitting of a renewable energy source that the electrical corporation proposes to construct shall be included in the electrical corporation's project costs for the purpose of evaluating the project's cost-effectiveness.

(f) A deferred cost under Subsection (4)(a) may not be added to, or otherwise considered in the evaluation of, the cost of a project proposed by any person other than the electrical corporation for the purpose of evaluating that person's proposal.

Section 20. Section 54-17-606 is enacted to read:

54-17-606. Commission rules.
The commission shall make rules as necessary to implement this part.

Section 21. Section 54-17-607 is enacted to read:

54-17-607. Procedure and appeals under this chapter.

(1) The governing authority, as defined in Section 54-15-102, has primary jurisdiction concerning issues of interpretation, implementation, and administration of this chapter.

(2) An appeal of a commission order under this chapter is governed by Chapter 7, Hearings, Practice, and Procedure.

Section 22. Section 54-17-701 is enacted to read:

Part 7. Carbon Sequestration

54-17-701. Rules for carbon capture and geological storage.
By January 1, 2011, the Division of Water Quality and the Division of Air Quality, on behalf of the Board of Water Quality and the Board of Air Quality, respectively, in collaboration with the commission and the Division of Oil, Gas and Mining and the Utah Geological Survey, shall present recommended rules to the Legislature's Administrative Rules Review Committee for the following in connection with carbon capture and accompanying geological sequestration of captured carbon:

(a) site characterization approval;
(b) geomechanical, geochemical, and hydrogeological simulation;
(c) risk assessment;
(d) mitigation and remediation protocols;
(e) issuance of permits for test, injection, and monitoring wells;
(f) specifications for the drilling, construction, and maintenance of wells;
(g) issues concerning ownership of subsurface rights and pore space;
(h) allowed composition of injected matter;
(i) testing, monitoring, measurement, and verification for the entirety of the carbon capture and geologic sequestration chain of operations, from the point of capture of the carbon dioxide to the sequestration site;
(j) closure and decommissioning procedure;
(k) short- and long-term liability and indemnification for sequestration sites;
(l) conversion of enhanced oil recovery operations to carbon dioxide geological sequestration sites; and
(m) other issues as identified.

The entities listed in Subsection (1) shall report to the Legislature's Administrative Rules Review Committee any proposals for additional statutory changes needed to implement rules contemplated under Subsection (1).

On or before July 1, 2009, the entities listed in Subsection (1) shall submit to the Legislature's Public Utilities and Technology and Natural Resources, Agriculture, and Environment Interim Committees a progress report on the development of the recommended
rules required by this part.

(4) The recommended rules developed under this section apply to the injection of carbon dioxide and other associated injectants in allowable types of geological formations for the purpose of reducing emissions to the atmosphere through long-term geological sequestration as required by law or undertaken voluntarily or for subsequent beneficial reuse.

(5) The recommended rules developed under this section do not apply to the injection of fluids through the use of Class II injection wells as defined in 40 C.F.R. 144.69(b) for the purpose of enhanced hydrocarbon recovery.

(6) Rules recommended under this section shall:
   (a) ensure that adequate health and safety standards are met;
   (b) minimize the risk of unacceptable leakage from the injection well and injection zone for carbon capture and geologic sequestration; and
   (c) provide adequate regulatory oversight and public information concerning carbon capture and geologic sequestration.

Section 23. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.