

1 **UTILITY RELATED EXEMPTIONS**

2 2010 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gregory H. Hughes**

5 Senate Sponsor: J. Stuart Adams

7 **LONG TITLE**

8 **General Description:**

9 This bill excludes from various public utility provisions certain entities producing
10 electricity.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ provides that certain entities providing electricity to certain owners and creditors
14 are not considered an electrical corporation or public utility under Title 54, Public
15 Utilities;
- 16 ▶ exempts from various regulatory provisions electricity provided to certain owners
17 and creditors; and
- 18 ▶ makes technical changes.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

- 25 **54-2-1**, as last amended by Laws of Utah 2008, Chapter 374
- 26 **54-3-8**, as last amended by Laws of Utah 2005, Chapter 5
- 27 **54-4-2**, Utah Code Annotated 1953

28
29 *Be it enacted by the Legislature of the state of Utah:*

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

31 **54-2-1. Definitions.**

32 As used in this title:

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

37 (2) "Cogeneration facility":

38 (a) means a facility which produces:

39 (i) electric energy; and

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

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

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

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

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

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

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

51 (a) is a cooperative;

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

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

56 (i) members; or

57 (ii) patrons.

58 (7) "Electrical corporation" includes every corporation, cooperative association, and
59 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any
60 electric plant, or in any way furnishing electric power for public service or to its consumers or
61 members for domestic, commercial, or industrial use, within this state, except independent
62 energy producers, and except where electricity is generated on or distributed by the producer
63 solely for the producer's own use, or the use of the producer's tenants, or for the use of
64 members of an association of unit owners formed under Title 57, Chapter 8, Condominium
65 Ownership Act, and not for sale to the public generally, and except where the electricity
66 generated is consumed by an owner, lessor, or interest holder, or by an affiliate of an owner,
67 lessor, or interest holder, who has provided at least \$25,000,000 in value, including credit
68 support, relating to the electric plant furnishing the electricity and whose consumption does
69 not exceed its long-term entitlement in the plant under a long-term arrangement other than a
70 power purchase agreement, except a power purchase agreement with an electrical corporation.

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

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

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

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

84 (ii) not for sale to others;

85 (b) gas is compressed on private property solely for the owner's own use or the use of

86 the owner's employees as a motor vehicle fuel; or

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

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

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

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

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

100 (13) "Independent energy producer" means every electrical corporation, person,
101 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,
102 control, or manage an independent power production or cogeneration facility.

103 (14) "Independent power production facility" means a facility that:

104 (a) produces electric energy solely by the use, as a primary energy source, of biomass,
105 waste, a renewable resource, a geothermal resource, or any combination of the preceding
106 sources; or

107 (b) is a qualifying power production facility.

108 (15) "Private telecommunications system" includes all facilities for the transmission of
109 signs, signals, writing, images, sounds, messages, data, or other information of any nature by
110 wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio facilities, that
111 are owned, controlled, operated, or managed by a corporation or person, including their
112 lessees, trustees, receivers, or trustees appointed by any court, for the use of that corporation or
113 person and not for the shared use with or resale to any other corporation or person on a regular

114 basis.

115 (16) (a) "Public utility" includes every railroad corporation, gas corporation, electrical
116 corporation, distribution electrical cooperative, wholesale electrical cooperative, telephone
117 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
118 and independent energy producer not described in Subsection (16)(d), where the service is
119 performed for, or the commodity delivered to, the public generally, or in the case of a gas
120 corporation or electrical corporation where the gas or electricity is sold or furnished to any
121 member or consumers within the state for domestic, commercial, or industrial use.

122 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone
123 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
124 or independent energy producer not described in Subsection (16)(d), performs a service for or
125 delivers a commodity to the public, it is considered to be a public utility, subject to the
126 jurisdiction and regulation of the commission and this title.

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

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

136 (d) An independent energy producer is exempt from the jurisdiction and regulations of
137 the commission with respect to an independent power production facility if it meets the
138 requirements of Subsection (16)(d)(i), (ii), or (iii), or any combination of these:

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

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

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

148 (B) the real property on which the service or commodity is used is contiguous to real
149 property which is owned or controlled by the independent energy producer. Parcels of real
150 property separated solely by public roads or easements for public roads shall be considered as
151 contiguous for purposes of this Subsection (16).

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

155 (f) (i) "Public utility" does not include any person that is otherwise considered a public
156 utility under this Subsection (16) solely because of that person's ownership of an interest in an
157 electric plant, cogeneration facility, or small power production facility in this state if all of the
158 following conditions are met:

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

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

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

164 (III) a combination of Subsections (16)(f)(i)(A)(I) and (II);

165 (B) the lessor of the ownership interest identified in Subsection (16)(f)(i)(A) is:

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

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

169 (C) the rent reserved under the lease does not include any amount based on or

170 determined by revenues or income of the lessee.

171 (ii) Any person that is exempt from classification as a public utility under Subsection
172 (16)(f)(i) shall continue to be so exempt from classification following termination of the
173 lessee's right to possession or use of the electric plant for so long as the former lessor does not
174 operate the electric plant or sell electricity from the electric plant. If the former lessor operates
175 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a
176 period of 90 days following termination, or for a longer period that is ordered by the
177 commission. This period may not exceed one year. A change in rates that would otherwise
178 require commission approval may not be effective during the 90-day or extended period
179 without commission approval.

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

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

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

195 (i) "Public utility" does not include any corporation, cooperative association, or
196 person, their affiliates, lessees, trustees, or receivers, owning, controlling, operating, or
197 managing an electric plant or in any way furnishing electricity if the electricity is consumed by

198 an owner, lessor, or interest holder or by an affiliate of an owner, lessor, or interest holder, who
199 has provided at least \$25,000,000 in value, including credit support, relating to the electric
200 plant furnishing the electricity and whose consumption does not exceed its long-term
201 entitlement in the plant under a long-term arrangement other than a power purchase
202 agreement, except a power purchase agreement with an electrical corporation.

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

206 (18) "Qualifying power producer" means a corporation, cooperative association, or
207 person, or the lessee, trustee, and receiver of the corporation, cooperative association, or
208 person, who owns, controls, operates, or manages any qualifying power production facility or
209 cogeneration facility.

210 (19) "Qualifying power production facility" means a facility that:

211 (a) produces electrical energy solely by the use, as a primary energy source, of
212 biomass, waste, a renewable resource, a geothermal resource, or any combination of the
213 preceding sources;

214 (b) has a power production capacity that, together with any other facilities located at
215 the same site, is no greater than 80 megawatts; and

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

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

224 (21) "Railroad corporation" includes every corporation and person, their lessees,
225 trustees, and receivers, owning, controlling, operating, or managing any railroad for public

226 service within this state.

227 (22) (a) "Sewerage corporation" includes every corporation and person, their lessees,
228 trustees, and receivers, owning, controlling, operating, or managing any sewerage system for
229 public service within this state.

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

234 (23) "Telegraph corporation" includes every corporation and person, their lessees,
235 trustees, and receivers, owning, controlling, operating, or managing any telegraph line for
236 public service within this state.

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

241 (25) (a) "Telephone corporation" means any corporation or person, and their lessees,
242 trustee, receivers, or trustees appointed by any court, who owns, controls, operates, manages,
243 or resells a public telecommunications service as defined in Section 54-8b-2.

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

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

250 (ii) Internet service; or

251 (iii) resold intrastate toll service.

252 (26) "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments,
253 and appliances, and all other real estate, fixtures, and personal property owned, controlled,

254 operated, or managed in connection with or to facilitate communication by telephone whether
255 that communication is had with or without the use of transmission wires.

256 (27) "Transportation of persons" includes every service in connection with or
257 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
258 carriage, and delivery of that person and that person's baggage.

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

263 (29) "Water corporation" includes every corporation and person, their lessees, trustees,
264 and receivers, owning, controlling, operating, or managing any water system for public service
265 within this state. It does not include private irrigation companies engaged in distributing
266 water only to their stockholders, or towns, cities, counties, water conservancy districts,
267 improvement districts, or other governmental units created or organized under any general or
268 special law of this state.

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

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

277 (31) "Wholesale electrical cooperative" includes every electrical corporation that is:

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

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

282 Section 2. Section **54-3-8** is amended to read:

283 **54-3-8. Preferences forbidden -- Power of commission to determine facts.**

284 (1) Except as provided in Chapter 8b, Public Telecommunications Law, a public
285 utility may not:

286 (a) as to rates, charges, service, facilities or in any other respect, make or grant any
287 preference or advantage to any person, or subject any person to any prejudice or disadvantage;
288 and

289 (b) establish or maintain any unreasonable difference as to rates, charges, service or
290 facilities, or in any other respect, either as between localities or as between classes of service.

291 (2) The commission shall have power to determine any question of fact arising under
292 this section.

293 (3) This section does not apply to, and the commission may not enforce this chapter
294 concerning, a schedule, classification, rate, price, charge, fare, toll, rental, rule, service,
295 facility, or contract of a public utility or electrical corporation furnishing electricity, if the
296 electricity is consumed by an owner, lessor, or interest holder or by an affiliate of an owner,
297 lessor, or interest holder, who has provided at least \$25,000,000 in value, including credit
298 support, relating to the electric plant furnishing the electricity and whose consumption does
299 not exceed its long-term entitlement in the plant under a long-term arrangement other than a
300 power purchase agreement, except a power purchase agreement with an electrical corporation.

301 Section 3. Section **54-4-2** is amended to read:

302 **54-4-2. Investigations -- Hearings and notice -- Findings.**

303 (1) Whenever the commission believes that in order to secure a compliance with the
304 provisions of this title or with the orders of the commission, or that it will be otherwise in the
305 interest of the public, an investigation should be made of any act or omission to act, or of
306 anything accomplished or proposed, or of any schedule, classification, rate, price, charge, fare,
307 toll, rental, rule, regulation, service or facility of any public utility, it shall investigate the same
308 upon its own motion, and may fix a time and place for a hearing thereof with notice to the
309 public utility concerning which such investigation shall be made, and upon such hearing shall

310 make such findings and orders as shall be just and reasonable with respect to any such matter.

311 (2) This chapter does not apply to a schedule, classification, rate, price, charge, fare,
312 toll, rental, rule, service, facility, or contract of a public utility or electrical corporation
313 furnishing electricity, if the electricity is consumed by an owner, lessor, or interest holder or by
314 an affiliate of an owner, lessor, or interest holder, who has provided at least \$25,000,000 in
315 value, including credit support, relating to the electric plant furnishing the electricity and
316 whose consumption does not exceed its long-term entitlement in the plant under a long-term
317 arrangement other than a power purchase agreement, except a power purchase agreement with
318 an electrical corporation.