

Representative Gregory H. Hughes proposes the following substitute bill:

UTILITY RELATED EXEMPTIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory H. Hughes

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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



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 cooperative
53 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 not
69 exceed its long term entitlement in the plant under a long term arrangement other than a power
70 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, and
77 receivers, owning, controlling, operating, or managing any gas plant for public service within
78 this state or for the selling or furnishing of natural gas to any consumer or consumers within the
79 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 lessees,
112 trustees, receivers, or trustees appointed by any court, for the use of that corporation or person
113 and not for the shared use with or resale to any other corporation or person on a regular basis.

114 (16) (a) "Public utility" includes every railroad corporation, gas corporation, electrical
115 corporation, distribution electrical cooperative, wholesale electrical cooperative, telephone
116 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
117 and independent energy producer not described in Subsection (16)(d), where the service is
118 performed for, or the commodity delivered to, the public generally, or in the case of a gas

119 corporation or electrical corporation where the gas or electricity is sold or furnished to any
120 member or consumers within the state for domestic, commercial, or industrial use.

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

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

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

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

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

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

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

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

150 contiguous for purposes of this Subsection (16).

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

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

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

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

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

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

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

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

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

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

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

179 (g) "Public utility" does not include any person that provides financing for, but has no
180 ownership interest in an electric plant, small power production facility, or cogeneration facility.

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

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

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

194 (i) "Public utility" does not include any corporation, cooperative association, or person,
195 their affiliates, lessees, trustees, or receivers, owning, controlling, operating, or managing an
196 electric plant or in any way furnishing electricity if the electricity is consumed by an owner,
197 lessor, or interest holder or by an affiliate of an owner, lessor, or interest holder, who has
198 provided at least \$25,000,000 in value, including credit support, relating to the electric plant
199 furnishing the electricity and whose consumption does not exceed its long term entitlement in
200 the plant under a long term arrangement other than a power purchase agreement, except a
201 power purchase agreement with an electrical corporation.

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

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

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

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

212 sources;

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

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

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

222 (21) "Railroad corporation" includes every corporation and person, their lessees,
223 trustees, and receivers, owning, controlling, operating, or managing any railroad for public
224 service within this state.

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

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

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

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

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

242 (b) "Telephone corporation" does not mean a corporation, partnership, or firm

243 providing:

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

248 (ii) Internet service; or

249 (iii) resold intrastate toll service.

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

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

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

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

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

273 (b) "Water system" does not include private irrigation companies engaged in

274 distributing water only to their stockholders.

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

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

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

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

281 **54-3-8. Preferences forbidden -- Power of commission to determine facts.**

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

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

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

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

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

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

300 **54-4-2. Investigations -- Hearings and notice -- Findings.**

301 (1) Whenever the commission believes that in order to secure a compliance with the
302 provisions of this title or with the orders of the commission, or that it will be otherwise in the
303 interest of the public, an investigation should be made of any act or omission to act, or of
304 anything accomplished or proposed, or of any schedule, classification, rate, price, charge, fare,

305 toll, rental, rule, regulation, service or facility of any public utility, it shall investigate the same
306 upon its own motion, and may fix a time and place for a hearing thereof with notice to the
307 public utility concerning which such investigation shall be made, and upon such hearing shall
308 make such findings and orders as shall be just and reasonable with respect to any such matter.

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

H.B. 335 1st Sub. (Buff) - Utility Related Exemptions

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
