

INTERLOCAL ENERGY AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Roger E. Barrus

LONG TITLE

General Description:

This bill addresses the provision of certain energy services by an interlocal entity.

Highlighted Provisions:

This bill:

- ▶ addresses the provision of retail electric service by an energy services interlocal entity;
- ▶ allows certain energy services interlocal entities to provide service outside their municipal members' boundaries under certain circumstances; and
- ▶ addresses the Public Service Commission's role in the provision of certain service by an energy services interlocal entity.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-13-204, as last amended by Laws of Utah 2009, Chapter 350

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

Section 1. Section **11-13-204** is amended to read:

11-13-204. Powers and duties of interlocal entities -- Additional powers of energy services interlocal entities -- Length of term of agreement and interlocal entity --

30 **Notice to lieutenant governor -- Recording requirements -- Public Service Commission.**

31 (1) (a) An interlocal entity:

32 (i) may:

33 (A) adopt, amend, and repeal rules, bylaws, policies, and procedures for the regulation
34 of its affairs and the conduct of its business;

35 (B) sue and be sued;

36 (C) have an official seal and alter that seal at will;

37 (D) make and execute contracts and other instruments necessary or convenient for the
38 performance of its duties and the exercise of its powers and functions;

39 (E) acquire real or personal property, or an undivided, fractional, or other interest in
40 real or personal property, necessary or convenient for the purposes contemplated in the
41 agreement creating the interlocal entity and sell, lease, or otherwise dispose of that property;

42 (F) directly or by contract with another:

43 (I) own and acquire facilities and improvements or an undivided, fractional, or other
44 interest in facilities and improvements;

45 (II) construct, operate, maintain, and repair facilities and improvements; and

46 (III) provide the services contemplated in the agreement creating the interlocal entity;

47 (G) borrow money, incur indebtedness, and issue revenue bonds, notes, or other
48 obligations and secure their payment by an assignment, pledge, or other conveyance of all or
49 any part of the revenues and receipts from the facilities, improvements, or services that the
50 interlocal entity provides;

51 (H) offer, issue, and sell warrants, options, or other rights related to the bonds, notes,
52 or other obligations issued by the interlocal entity; and

53 (I) sell or contract for the sale of the services, output, product, or other benefits
54 provided by the interlocal entity to:

55 (I) public agencies inside or outside the state; and

56 (II) with respect to any excess services, output, product, or benefits, any person on
57 terms that the interlocal entity considers to be in the best interest of the public agencies that

58 are parties to the agreement creating the interlocal entity; and
59 (ii) may not levy, assess, or collect ad valorem property taxes.
60 (b) An assignment, pledge, or other conveyance under Subsection (1)(a)(i)(G) may, to
61 the extent provided by the documents under which the assignment, pledge, or other
62 conveyance is made, rank prior in right to any other obligation except taxes or payments in
63 lieu of taxes payable to the state or its political subdivisions.
64 (2) An energy services interlocal entity:
65 (a) except with respect to any ownership interest it has in facilities providing
66 additional project capacity, is not subject to:
67 (i) Part 3, Project Entity Provisions; or
68 (ii) Title 59, Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to
69 Pay Corporate Franchise or Income Tax Act; and
70 (b) may:
71 (i) own, acquire, and, by itself or by contract with another, construct, operate, and
72 maintain a facility or improvement for the generation, transmission, and transportation of
73 electric energy or related fuel supplies;
74 (ii) enter into a contract to obtain a supply of electric power and energy and ancillary
75 services, transmission, and transportation services, and supplies of natural gas and fuels
76 necessary for the operation of generation facilities;
77 (iii) enter into a contract with public agencies, investor-owned or cooperative utilities,
78 and others, whether located in or out of the state, for the sale of wholesale services provided by
79 the energy services interlocal entity; and
80 (iv) adopt and implement risk management policies and strategies and enter into
81 transactions and agreements to manage the risks associated with the purchase and sale of
82 energy, including forward purchase and sale contracts, hedging, tolling and swap agreements,
83 and other instruments.
84 (3) Notwithstanding Section 11-13-216, an agreement creating an interlocal entity or
85 an amendment to that agreement may provide that the agreement may continue and the

86 interlocal entity may remain in existence until the latest to occur of:

87 (a) 50 years after the date of the agreement or amendment;

88 (b) five years after the interlocal entity has fully paid or otherwise discharged all of its
89 indebtedness;

90 (c) five years after the interlocal entity has abandoned, decommissioned, or conveyed
91 or transferred all of its interest in its facilities and improvements; or

92 (d) five years after the facilities and improvements of the interlocal entity are no longer
93 useful in providing the service, output, product, or other benefit of the facilities and
94 improvements, as determined under the agreement governing the sale of the service, output,
95 product, or other benefit.

96 (4) (a) The governing body of each party to the agreement to approve the creation of
97 an interlocal entity, including an electric interlocal entity and an energy services interlocal
98 entity, under Section 11-13-203 shall:

99 (i) within 30 days after the date of the agreement, jointly file with the lieutenant
100 governor:

101 (A) a copy of a notice of an impending boundary action, as defined in Section
102 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and

103 (B) if less than all of the territory of any Utah public agency that is a party to the
104 agreement is included within the interlocal entity, a copy of an approved final local entity plat,
105 as defined in Section 67-1a-6.5; and

106 (ii) upon the lieutenant governor's issuance of a certificate of creation under Section
107 67-1a-6.5:

108 (A) if the interlocal entity is located within the boundary of a single county, submit to
109 the recorder of that county:

110 (I) the original:

111 (Aa) notice of an impending boundary action;

112 (Bb) certificate of creation; and

113 (Cc) approved final local entity plat, if an approved final local entity plat was required

114 to be filed with the lieutenant governor under Subsection (4)(a)(i)(B); and
115 (II) a certified copy of the agreement approving the creation of the interlocal entity; or
116 (B) if the interlocal entity is located within the boundaries of more than a single
117 county:
118 (I) submit to the recorder of one of those counties:
119 (Aa) the original of the documents listed in Subsections (4)(a)(ii)(A)(I)(Aa), (Bb), and
120 (Cc); and
121 (Bb) a certified copy of the agreement approving the creation of the interlocal entity;
122 and
123 (II) submit to the recorder of each other county:
124 (Aa) a certified copy of the documents listed in Subsections (4)(a)(ii)(A)(I)(Aa), (Bb),
125 and (Cc); and
126 (Bb) a certified copy of the agreement approving the creation of the interlocal entity.
127 (b) Upon the lieutenant governor's issuance of a certificate of creation under Section
128 67-1a-6.5, the interlocal entity is created.
129 (c) Until the documents listed in Subsection (4)(a)(ii) are recorded in the office of the
130 recorder of each county in which the property is located, a newly created interlocal entity may
131 not charge or collect a fee for service provided to property within the interlocal entity.
132 (5) Nothing in this section may be construed as expanding the rights of any
133 municipality or interlocal entity to sell or provide retail service.
134 (6) Except as provided in Subsection (7):
135 (a) nothing in this section may be construed to expand or limit the rights of a
136 municipality to sell or provide retail electric service; and
137 (b) an energy services interlocal entity may not provide retail electric service to
138 customers located outside the municipal boundaries of its members.
139 (7) (a) An energy services interlocal entity created before July 1, 2003, that is
140 comprised solely of Utah municipalities and that, for a minimum of 50 years before July 1,
141 2010, provided retail electric service to customers outside the municipal boundaries of its

142 members, may provide retail electric service outside the municipal boundaries of its members
143 if:

144 (i) the energy services interlocal entity:

145 (A) enters into a written agreement with each public utility holding a certificate of
146 public convenience and necessity issued by the Public Service Commission to provide service
147 within an agreed upon geographic area for the energy services interlocal entity to be
148 responsible to provide electric service in the agreed upon geographic area outside the
149 municipal boundaries of the members of the energy services interlocal entity; and

150 (B) obtains a franchise agreement, with the legislative body of the county or other
151 governmental entity for the geographic area in which the energy services interlocal entity
152 provides service outside the municipal boundaries of its members; and

153 (ii) each public utility described in Subsection (7)(a)(i)(A) applies for and obtains
154 from the Public Service Commission approval of the agreement specified in Subsection
155 (7)(a)(i)(A).

156 (b) (i) The Public Service Commission shall, after a public hearing held in accordance
157 with Title 52, Chapter 4, Open and Public Meetings Act, approve an agreement described in
158 Subsection (7)(a)(ii) if it determines that the agreement is in the public interest in that it
159 incorporates the customer protections described in Subsection (7)(c) and the franchise
160 agreement described in Subsection (7)(a)(i)(B) provides a reasonable mechanism using a
161 neutral arbiter or ombudsman for resolving potential future complaints by customers of the
162 energy services interlocal entity.

163 (ii) In approving an agreement, the Public Service Commission shall also amend the
164 certificate of public convenience and necessity of any public utility described in Subsection
165 (7)(a)(i) to delete from the geographic area specified in the certificate or certificates of the
166 public utility the geographic area that the energy services interlocal entity has agreed to serve.

167 (c) In providing retail electric service to customers outside of the municipal
168 boundaries of its members, but not within the municipal boundaries of another municipality
169 that grants a franchise agreement in accordance with Subsection (7)(a)(i)(B), an energy

170 services interlocal entity shall comply with the following:

171 (i) the rates and conditions of service for customers outside the municipal boundaries
172 of the members shall be at least as favorable as the rates and conditions of service for similarly
173 situated customers within the municipal boundaries of the members;

174 (ii) the energy services interlocal entity shall operate as a single entity providing
175 service both inside and outside of the municipal boundaries of its members;

176 (iii) a general rebate, refund, or other payment made to customers located within the
177 municipal boundaries of the members shall also be provided to similarly situated customers
178 located outside the municipal boundaries of the members;

179 (iv) a schedule of rates and conditions of service, or any change to the rates and
180 conditions of service, shall be approved by the governing body of the energy services
181 interlocal entity;

182 (v) before implementation of any rate increase, the governing body of the energy
183 services interlocal entity shall first hold a public meeting to take public comment on the
184 proposed increase, after providing at least 20 days and not more than 60 days' advance written
185 notice to its customers on the ordinary billing and on the Utah Public Notice Website, created
186 by Section 63F-1-701; and

187 (vi) the energy services interlocal entity shall file with the Public Service Commission
188 its current schedule of rates and conditions of service.

189 (d) The Public Service Commission shall make the schedule of rates and conditions of
190 service of the energy services interlocal entity available for public inspection.

191 (e) Nothing in this section:

192 (i) gives the Public Service Commission jurisdiction over the provision of retail
193 electric service by an energy services interlocal entity within the municipal boundaries of its
194 members; or

195 (ii) makes an energy services interlocal entity a public utility under Title 54, Public
196 Utilities.

197 (f) Nothing in this section expands or diminishes the jurisdiction of the Public Service

198 Commission over a municipality or an association of municipalities organized under Title 11,
199 Chapter 13, Interlocal Cooperation Act, except as specifically authorized by this section's
200 language.

201 (g) (i) An energy services interlocal entity described in Subsection (7)(a) retains its
202 authority to provide electric service to the extent authorized by Sections 11-13-202 and
203 11-13-203 and Subsections 11-13-204 (1) through (5).

204 (ii) Notwithstanding Subsection (7)(g)(i), if the Public Service Commission approves
205 the agreement described in Subsection (7)(a)(i), the energy services interlocal entity may not
206 provide retail electric service to customers located outside the municipal boundaries of its
207 members, except for customers located within the geographic area described in the agreement.