

**UTILITY REVISIONS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Scott K. Jenkins**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses utility service territory boundaries and the provision of surplus electrical power by a city outside the city boundaries.

**Highlighted Provisions:**

This bill:

- ▶ prohibits a city from operating, owning, or leasing an electrical power facility for the purpose of selling surplus electrical power to entities outside the city boundaries except under limited conditions;
- ▶ provides for Public Service Commission oversight of the consent process; and
- ▶ makes technical corrections.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**10-8-14**, as last amended by Laws of Utah 2001, Chapter 83

**54-2-1**, as last amended by Laws of Utah 2008, Chapter 374

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



28 Section 1. Section **10-8-14** is amended to read:

29 **10-8-14. Water, sewer, gas, electricity, and public transportation -- Service**  
30 **beyond city limits -- Retainage -- Cable television and public telecommunications**  
31 **services.**

32 (1) A city may:

33 (a) construct, maintain, and operate waterworks, sewer collection, sewer treatment  
34 systems, gas works, electric light works, telecommunications lines, cable television lines, or  
35 public transportation systems;

36 (b) authorize the construction, maintenance and operation of the works or systems  
37 listed in Subsection (1)(a) by others;

38 (c) purchase or lease the works or systems listed in Subsection (1)(a) from any person  
39 or corporation; and

40 (d) sell and deliver the surplus product or service capacity of any works or system  
41 listed in Subsection (1)(a), not required by the city or the city's [~~inhabitants~~] residents, to others  
42 beyond the limits of the city, except:

43 (i) the sale and delivery of surplus electric power is governed by Subsection (2); and

44 (ii) the sale and delivery of cable television services or public telecommunications  
45 services is governed by Subsection (3).

46 (2) (a) A city may not construct, purchase, lease, maintain, or operate any electrical  
47 power distribution facilities or purchase electrical power for sale to customers located outside  
48 of its municipal boundaries except that in providing for the reasonably anticipated future  
49 electrical power needs of the city and its residents, a city may sell power that is surplus to its  
50 current needs:

51 (i) on a wholesale basis to another city operating electrical power facilities under  
52 Subsection (1)(a); or

53 (ii) on a retail basis to customers located outside of a city municipal boundary, if:

54 (A) the city first enters into a written agreement with the electrical power provider  
55 operating under a Public Service Commission granted certificate of public convenience and  
56 necessity that:

57 (I) authorizes the city to serve customers located in a geographic area beyond the city  
58 municipal boundary; and

59 (II) terminates the electrical power provider's obligation under the certificate of public  
60 convenience and necessity to be the provider of last resort to those customers outside the city  
61 municipal boundaries; and

62 (B) the electrical power provider files an application for approval of the written  
63 agreement with the Public Service Commission.

64 (b) The Public Service Commission may approve the agreement if the commission  
65 concludes the agreement is in the public's interest.

66 (c) Public Service Commission approval of the written agreement provided for in  
67 Subsections (2)(a)(ii)(A)(I) and (II) does not affect the jurisdiction of the commission over the  
68 public electrical power provider, including the commission's right to revoke its approval of the  
69 written agreement following a hearing in which the commission concludes the agreement is no  
70 longer in the public interest.

71 (d) (i) A city that is providing electrical power outside of its municipal boundaries as of  
72 July 1, 2010, shall enter into an agreement by July 1, 2011, with the electrical power provider  
73 holding a certificate of public convenience and necessity for that geographic area in order to  
74 continue to provide electric power to those customers; and

75 (ii) The agreement is subject to Public Service Commission approval as provided in  
76 Subsections (2)(a)(i)(A)(I) and (II).

77 [~~2~~] (3) If any payment on a contract with a private person, firm, or corporation to  
78 construct waterworks, sewer collection, sewer treatment systems, gas works, electric light  
79 works, telecommunications lines, cable television lines, or public transportation systems is  
80 retained or withheld, it shall be retained or withheld and released as provided in Section  
81 13-8-5.

82 [~~3~~] (4) A city's actions under this section related to works or systems involving public  
83 telecommunications services or cable television services are subject to the requirements of  
84 Chapter 18, Municipal Cable Television and Public Telecommunications Services Act.

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

86 **54-2-1. Definitions.**

87 As used in this title:

88 (1) "Avoided costs" means the incremental costs to an electrical corporation of electric  
89 energy or capacity or both which, due to the purchase of electric energy or capacity or both

90 from small power production or cogeneration facilities, the electrical corporation would not  
91 have to generate itself or purchase from another electrical corporation.

92 (2) "Cogeneration facility":

93 (a) means a facility which produces:

94 (i) electric energy; and

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

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

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

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

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

102 (b) "Corporation" does not include towns, cities, counties, conservancy districts,  
103 improvement districts, or other governmental units created or organized under any general or  
104 special law of this state to the extent of their performance of government functions authorized  
105 by law.

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

107 (a) is a cooperative;

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

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

112 (i) members; or

113 (ii) patrons.

114 (7) "Electrical corporation" includes every corporation, cooperative association, and  
115 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any  
116 electric plant, or in any way furnishing electric power for public service or to its consumers or  
117 members for domestic, commercial, or industrial use, within this state, except independent  
118 energy producers, and except where electricity is generated on or distributed by the producer  
119 solely for the producer's own use, or the use of the producer's tenants, or for the use of  
120 members of an association of unit owners formed under Title 57, Chapter 8, Condominium

121 Ownership Act, and not for sale to the public generally.

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

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

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

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

135 (ii) not for sale to others;

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

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

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

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

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

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

151 (13) "Independent energy producer" means every electrical corporation, person,

152 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,  
153 control, or manage an independent power production or cogeneration facility.

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

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

158 (b) is a qualifying power production facility.

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

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

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

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

182 (c) Any corporation or person not engaged in business exclusively as a public utility as

183 defined in this section is governed by this title in respect only to the public utility owned,  
184 controlled, operated, or managed by the corporation or person, and not in respect to any other  
185 business or pursuit.

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

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

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

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

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

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

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

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

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

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

214 (III) a combination of Subsections (16)(f)(i)(A)(I) and (II);  
215 (B) the lessor of the ownership interest identified in Subsection (16)(f)(i)(A) is:  
216 (I) primarily engaged in a business other than the business of a public utility; or  
217 (II) a person whose total equity or beneficial ownership is held directly or indirectly by  
218 another person engaged in a business other than the business of a public utility; and  
219 (C) the rent reserved under the lease does not include any amount based on or  
220 determined by revenues or income of the lessee.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

275 (23) "Telegraph corporation" includes every corporation and person, their lessees,

276 trustees, and receivers, owning, controlling, operating, or managing any telegraph line for  
277 public service within this state.

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

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

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

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

291 (ii) Internet service; or

292 (iii) resold intrastate toll service.

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

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

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

304 (29) "Water corporation" includes every corporation and person, their lessees, trustees,  
305 and receivers, owning, controlling, operating, or managing any water system for public service  
306 within this state. It does not include private irrigation companies engaged in distributing water

307 only to their stockholders, or towns, cities, counties, water conservancy districts, improvement  
308 districts, or other governmental units created or organized under any general or special law of  
309 this state.

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

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

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

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

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

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**Legislative Review Note**  
as of 2-16-10 4:19 PM

**Office of Legislative Research and General Counsel**

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**S.B. 176 - Utility Revisions**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**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.

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