

1 **TELECOMMUNICATIONS REGULATORY AMENDMENTS**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: John Dougall

6

LONG TITLE

7 **General Description:**

8 This bill modifies the regulatory authority of the Public Service Commission.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ amends the definition of a telephone corporation;
- 12 ▶ defines Internet service including Internet protocol and Internet protocol enabled
- 13 services, and
- 14 ▶ exempts regulation by the Public Service Commission.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **54-2-1**, as last amended by Laws of Utah 2010, Chapters 302 and 390

22

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

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

24 **54-2-1. Definitions.**

25 As used in this title:



28 (1) "Avoided costs" means the incremental costs to an electrical corporation of electric
29 energy or capacity or both that, due to the purchase of electric energy or capacity or both from
30 small power production or cogeneration facilities, the electrical corporation would not have to
31 generate itself or purchase from another electrical corporation.

32 (2) "Cogeneration facility":

33 (a) means a facility that produces:

34 (i) electric energy; and

35 (ii) steam or forms of useful energy, including heat, that are used for industrial,

36 commercial, heating, or cooling purposes; and

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

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

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

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

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

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

46 (a) is a cooperative;

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

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

51 (i) members; or

52 (ii) patrons.

53 (7) "Electrical corporation" includes every corporation, cooperative association, and
54 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any
55 electric plant, or in any way furnishing electric power for public service or to its consumers or
56 members for domestic, commercial, or industrial use, within this state, except independent
57 energy producers, and except where electricity is generated on or distributed by the producer
58 solely for the producer's own use, or the use of the producer's tenants, or for the use of

59 members of an association of unit owners formed under Title 57, Chapter 8, Condominium
60 Ownership Act, and not for sale to the public generally, and except where the electricity
61 generated is consumed by an owner, lessor, or interest holder, or by an affiliate of an owner,
62 lessor, or interest holder, who has provided at least \$25,000,000 in value, including credit
63 support, relating to the electric plant furnishing the electricity and whose consumption does not
64 exceed its long-term entitlement in the plant under a long-term arrangement other than a power
65 purchase agreement, except a power purchase agreement with an electrical corporation.

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

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

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

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

79 (ii) not for sale to others;

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

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

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

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

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

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

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

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

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

102 (b) is a qualifying power production facility.

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

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

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

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

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

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

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

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

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

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

146 (iv) the independent energy producer:

147 (A) supplies energy for direct consumption by a customer that is:

148 (I) a county, municipality, city, town, other political subdivision, local district, special
149 service district, state institution of higher education, school district, charter school, or any
150 entity within the state system of public education; or

151 (II) an entity qualifying as a charitable organization under 26 U.S.C. Sec. 501(c)(3)

152 operated for religious, charitable, or educational purposes that is exempt from federal income
153 tax and able to demonstrate its tax-exempt status;

154 (B) supplies energy to the customer through use of a customer generation system, as
155 defined in Section 54-15-102, for use on the real property where the customer generation
156 system is located;

157 (C) supplies energy using a customer generation system designed to supply the lesser
158 of:

159 (I) no more than 90% of the average annual consumption of electricity by the customer
160 at that site, based on an annualized billing period; or

161 (II) the maximum size allowable under net metering provisions, defined in Section
162 54-15-102;

163 (D) notifies the customer before installing the customer generation system of:

164 (I) all costs the customer is required to pay for the customer generation system,
165 including any interconnection costs; and

166 (II) the potential for future changes in amounts paid by the customer for energy
167 received from the public utility and the possibility of changes to the customer fees or charges to
168 the customer associated with net metering and generation;

169 (E) enters into and performs in accordance with an interconnection agreement with a
170 public utility providing retail electric service where the real property on which the customer
171 generation system is located, with the rates, terms, and conditions of the retail service and
172 interconnection agreement subject to approval by the governing authority of the public utility,
173 as defined in Subsection 54-15-102(8); and

174 (F) installs the relevant customer generation system by December 31, 2015.

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

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

182 (A) the ownership interest in the electric plant, cogeneration facility, or small power

183 production facility is leased to:

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

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

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

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

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

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

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

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

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

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

214 vehicle fuel may not cause the seller to be a "public utility."

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

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

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

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

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

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

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

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

240 (20) "Railroad" includes every commercial, interurban, and other railway, other than a
241 street railway, and each branch or extension of a railway, by any power operated, together with
242 all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots, union depots,
243 yards, grounds, terminals, terminal facilities, structures, and equipment, and all other real
244 estate, fixtures, and personal property of every kind used in connection with a railway owned,

245 controlled, operated, or managed for public service in the transportation of persons or property.

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

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

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

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

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

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

267 (b) "Telephone corporation" includes a telecommunication corporation and does not
268 mean a corporation, partnership, or firm providing:

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

273 (ii) Internet service[; or], including Internet Protocol-enabled service, means any
274 service, functionality, or application that uses Internet Protocol, or successor Internet Protocol,
275 that enables an end user to send or receive a voice, data, or video communication via Internet

276 Protocol. This subsection shall not:

277 (A) affect or limit the application or enforcement of criminal or other laws that apply to
278 the conduct of business in the state, including without limitation, consumer protection or unfair
279 or deceptive trade protections;

280 (B) affect, mandate, or prohibit the assessment of taxes, nondiscriminatory 911 fees,
281 telecommunication relay service fees, or other fees of general applicability;

282 (C) modify or affect the rights or obligations of any telephone or telecommunications
283 corporation, or any duties or power of the Public Service Commission, under 47 U.S.C. Sec.
284 251 or 47 U.S.C. Sec. 252, as applicable;

285 (D) affect the authority of the state or its political subdivisions, as applicable, to
286 manage the use of public rights-of-way, including but not limited to, any requirement for the
287 joint use of utility poles or other structures in rights-of-way; and

288 (E) affect or modify any obligations for the provision of video services by any party
289 under applicable law; or

290 (iii) resold intrastate toll service.

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

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

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

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

307 this state.

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

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

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

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

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

Legislative Review Note
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Office of Legislative Research and General Counsel