

1 **AMENDMENTS TO PUBLIC UTILITIES TITLE**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: J. Stuart Adams**

5 House Sponsor: Don L. Ipson

7 **LONG TITLE**

8 **General Description:**

9 This bill amends Title 54, Public Utilities, and related provisions.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms and modifies definitions, including addressing entities that are not
- 13 included in the definition of "electrical corporation" or "public utility";
- 14 ▶ provides that a public utility is not required to furnish or provide electric service
- 15 under certain circumstances;
- 16 ▶ provides procedures for certain customers to transfer service from a public utility to
- 17 a nonutility energy supplier;
- 18 ▶ addresses the applicability of certain provisions within the Public Utilities title; and
- 19 ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **17B-2a-406**, as last amended by Laws of Utah 2009, Chapter 384

27 **54-2-1**, as last amended by Laws of Utah 2010, Chapters 302 and 390

28 **54-3-8**, as last amended by Laws of Utah 2010, Chapter 390

29 **54-4-2**, as last amended by Laws of Utah 2010, Chapter 390

30 **54-15-108**, as enacted by Laws of Utah 2010, Chapter 302

31 ENACTS:

32 **54-3-32**, Utah Code Annotated 1953

33

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

35 Section 1. Section **17B-2a-406** is amended to read:

36 **17B-2a-406. Improvement districts providing electric service -- Public Service**

37 **Commission jurisdiction -- Exceptions.**

38 (1) As used in this section:

39 (a) "Commission" means the Public Service Commission of Utah established in

40 Section **54-1-1**.

41 (b) "Electric corporation" has the same meaning as "electrical corporation" defined in

42 Section **54-2-1**.

43 (c) "Electric improvement district" means an improvement district that provides

44 electric service as authorized under Subsection **17B-2a-403(1)(a)(iv)**.

45 (d) "Stranded asset" means an asset that:

46 (i) an electric corporation owns and operates;

47 (ii) is designed to serve an area that is:

48 (A) within the electric corporation's certificated service area before the area is removed

49 from the certificated service area by commission order as provided in Subsection

50 (3)(b)(i)(B)(II); and

51 (B) within the boundary of an electric improvement district; and

52 (iii) will not be useful to or used by the electric corporation after removal of the area

53 from the electric corporation's certificated service area.

54 (2) An electric improvement district is a public utility and subject to the jurisdiction of

55 the commission.

56 (3) (a) Except as provided in Subsection (3)(b), an electric improvement district:

57 (i) may include only an area where:

58 (A) no retail electricity has been provided to commercial, industrial, residential, and
59 other users of electricity from an investor-owned utility within any part of an area certificated
60 by the commission or an area adjacent to that area, municipal agency, or electric cooperative
61 within the five years immediately preceding September 1, 1985; and

62 (B) electric service is provided to at least one user of electricity within the electric
63 service district as of September 1, 1985; and

64 (ii) shall have filed an application for certification and received approval by the
65 commission by September 1, 1986.

66 (b) (i) An electric improvement district created after May 11, 2009 may provide
67 electric service within the boundary of the improvement district if:

68 (A) no part of the boundary of the electric improvement district is closer than 40 miles
69 to an existing service line of an electric corporation;

70 (B) (I) no part of the area within the boundary of the electric improvement district is
71 within the certificated service area of an electric corporation; or

72 (II) the area within the boundary of the electric improvement district that is also within
73 the certificated service area of an electric corporation is removed from the electric corporation's
74 certificated service area by commission order in a proceeding initiated by a petition filed by
75 and at the discretion of the electric corporation; and

76 (C) before January 1, 2010, the electric improvement district receives a certificate of
77 public convenience and necessity from the commission authorizing the electric improvement
78 district to provide electric service to the area within the boundary of the electric improvement
79 district.

80 (ii) An electric improvement district that provides electric service as provided in
81 Subsection (3)(b)(i) shall pay an electric corporation an amount equal to the fair market value
82 of each stranded asset of the electric corporation.

83 (4) Nothing in this part may be construed to give the commission jurisdiction over:

84 (a) an improvement district, other than an electric improvement district;

85 (b) a municipality; or

86 (c) an association of municipalities organized under Title 11, Chapter 13, Interlocal
87 Cooperation Act.

88 (5) Before an electric improvement district serves any customer, the electric
89 improvement district shall obtain a certificate of public convenience and necessity from the
90 commission.

91 (6) (a) Section 54-7-12 does not apply to rate changes of an electric improvement
92 district if:

93 (i) the district is organized for the purpose of distributing electricity to customers
94 within the boundary of the district on a not-for-profit basis;

95 (ii) the schedule of new rates or other change that results in new rates has been
96 approved by the board of trustees of the district;

97 (iii) prior to the implementation of any rate increases, the district first holds a public
98 meeting for all its customers to whom mailed notice of the meeting is sent at least 10 days prior
99 to the meeting; and

100 (iv) the district has filed the schedule of new rates or other change with the
101 commission.

102 (b) The commission shall make the district's schedule of new rates or other change
103 available for public inspection.

104 Section 2. Section 54-2-1 is amended to read:

105 **54-2-1. Definitions.**

106 As used in this title:

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

111 (2) "Cogeneration facility":

112 (a) means a facility that produces:

113 (i) electric energy; and

114 (ii) steam or forms of useful energy, including heat, that are used for industrial,
115 commercial, heating, or cooling purposes; and

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

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

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

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

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

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

125 (a) is a cooperative;

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

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

130 (i) members; or

131 (ii) patrons.

132 (7) (a) "Electrical corporation" includes every corporation, cooperative association, and
133 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any
134 electric plant, or in any way furnishing electric power for public service or to its consumers or
135 members for domestic, commercial, or industrial use, within this state~~[, except]~~.

136 (b) "Electrical corporation" does not include:

137 (i) an independent energy ~~[producers, and except]~~ producer;

138 (ii) where electricity is generated on or distributed by the producer solely for the
139 producer's own use, or the use of the producer's tenants, or ~~[for]~~ the use of members of an
140 association of unit owners formed under Title 57, Chapter 8, Condominium Ownership Act,
141 and not for sale to the public generally~~[, and except where the electricity generated is consumed]~~

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

147 (iii) an eligible customer who provides electricity for the eligible customer's own use or
148 the use of the eligible customer's tenant or affiliate; or

149 (iv) a nonutility energy supplier who sells or provides electricity to:

150 (A) an eligible customer who has transferred the eligible customer's service to the
151 nonutility energy supplier in accordance with Section 54-3-32; or

152 (B) the eligible customer's tenant or affiliate.

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

158 (9) "Eligible customer" means a person who:

159 (a) on December 31, 2013:

160 (i) was a customer of a public utility that, on December 31, 2013, had more than
161 200,000 retail customers in this state; and

162 (ii) owned an electric plant that is an electric generation plant that, on December 31,
163 2013, had a generation name plate capacity of greater than 150 megawatts; and

164 (b) produces electricity:

165 (i) from a qualifying power production facility for sale to a public utility in this state;

166 (ii) primarily for the eligible customer's own use; or

167 (iii) for the use of the eligible customer's tenant or affiliate.

168 (10) "Eligible customer's tenant or affiliate" means one or more tenants or affiliates:

169 (a) of an eligible customer; and

- 170 (b) who are primarily engaged in an activity:
- 171 (i) related to the eligible customer's core mining or industrial businesses; and
- 172 (ii) performed on real property that is:
- 173 (A) within a 25-mile radius of the electric plant described in Subsection (9)(a)(ii); and
- 174 (B) owned by, controlled by, or under common control with, the eligible customer.

175 ~~[(9)]~~ (11) "Gas corporation" includes every corporation and person, their lessees,
176 trustees, and receivers, owning, controlling, operating, or managing any gas plant for public
177 service within this state or for the selling or furnishing of natural gas to any consumer or
178 consumers within the state for domestic, commercial, or industrial use, except in the situation
179 that:

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

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

184 (ii) not for sale to others;

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

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

189 ~~[(10)]~~ (12) "Gas plant" includes all real estate, fixtures, and personal property owned,
190 controlled, operated, or managed in connection with or to facilitate the production, generation,
191 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

192 ~~[(11)]~~ (13) "Heat corporation" includes every corporation and person, their lessees,
193 trustees, and receivers, owning, controlling, operating, or managing any heating plant for public
194 service within this state.

195 ~~[(12)]~~ (14) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances,
196 and personal property controlled, operated, or managed in connection with or to facilitate the
197 production, generation, transmission, delivery, or furnishing of artificial heat.

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

200 ~~[(13)]~~ (15) "Independent energy producer" means every electrical corporation, person,
201 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,
202 control, or manage an independent power production or cogeneration facility.

203 ~~[(14)]~~ (16) "Independent power production facility" means a facility that:

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

207 (b) is a qualifying power production facility.

208 (17) "Nonutility energy supplier" means a person that:

209 (a) has received market-based rate authority from the Federal Energy Regulatory
210 Commission in accordance with 16 U.S.C. Sec. 824d, 18 C.F.R. Part 35, Filing of Rate
211 Schedules and Tariffs, or applicable Federal Energy Regulatory Commission orders; or

212 (b) owns, leases, operates, or manages an electric plant that is an electric generation
213 plant that:

214 (i) has a capacity of greater than 100 megawatts; and

215 (ii) is hosted on the site of an eligible customer that consumes the output of the electric
216 plant, in whole or in part, for the eligible customer's own use or the use of the eligible
217 customer's tenant or affiliate.

218 ~~[(15)]~~ (18) "Private telecommunications system" includes all facilities for the
219 transmission of signs, signals, writing, images, sounds, messages, data, or other information of
220 any nature by wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio
221 facilities, that are owned, controlled, operated, or managed by a corporation or person,
222 including their lessees, trustees, receivers, or trustees appointed by any court, for the use of that
223 corporation or person and not for the shared use with or resale to any other corporation or
224 person on a regular basis.

225 ~~[(16)]~~ (19) (a) "Public utility" includes every railroad corporation, gas corporation,

226 electrical corporation, distribution electrical cooperative, wholesale electrical cooperative,
227 telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat
228 corporation, and independent energy producer not described in Subsection [(16)] (19)(d),
229 where the service is performed for, or the commodity delivered to, the public generally, or in
230 the case of a gas corporation or electrical corporation where the gas or electricity is sold or
231 furnished to any member or consumers within the state for domestic, commercial, or industrial
232 use.

233 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone
234 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
235 or independent energy producer not described in Subsection [(16)] (19)(d), performs a service
236 for or delivers a commodity to the public, it is considered to be a public utility, subject to the
237 jurisdiction and regulation of the commission and this title.

238 (ii) If a gas corporation, independent energy producer not described in Subsection
239 [(16)] (19)(d), or electrical corporation sells or furnishes gas or electricity to any member or
240 consumers within the state, for domestic, commercial, or industrial use, for which any
241 compensation or payment is received, it is considered to be a public utility, subject to the
242 jurisdiction and regulation of the commission and this title.

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

247 (d) An independent energy producer is exempt from the jurisdiction and regulations of
248 the commission with respect to an independent power production facility if it meets the
249 requirements of Subsection [(16)] (19)(d)(i), (ii), (iii), or (iv), or any combination of these:

250 (i) the commodity or service is produced or delivered, or both, by an independent
251 energy producer solely for ~~[the uses exempted in Subsection (7)]~~ a use described in Subsections
252 (7)(b)(ii) through (iv) or for the use of state-owned facilities;

253 (ii) the commodity or service is sold by an independent energy producer solely to an

254 electrical corporation or other wholesale purchaser;

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

259 (B) the real property on which the service or commodity is used is contiguous to real
260 property [~~which~~] that is owned or controlled by the independent energy producer [~~Parcels of~~
261 ~~real property~~] or is separated [solely] only by a public [roads or easements for public roads
262 ~~shall be considered as contiguous for purposes of this Subsection (16)]~~ road or an easement for
263 a public road; or

264 (iv) the independent energy producer:

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

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

269 (II) an entity qualifying as a charitable organization under 26 U.S.C. Sec. 501(c)(3)
270 operated for religious, charitable, or educational purposes that is exempt from federal income
271 tax and able to demonstrate its tax-exempt status;

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

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

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

279 (II) the maximum size allowable under net metering provisions, defined in Section
280 54-15-102;

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

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

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

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

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

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

296 (f) (i) "Public utility" does not include any person that is otherwise considered a public
297 utility under this Subsection [~~(16)~~] (19) solely because of that person's ownership of an interest
298 in an electric plant, cogeneration facility, or small power production facility in this state if all of
299 the following conditions are met:

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

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

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

305 (III) a combination of Subsections [~~(16)~~] (19)(f)(i)(A)(I) and (II);

306 (B) the lessor of the ownership interest identified in Subsection [~~(16)~~] (19)(f)(i)(A) is:

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

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

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

312 (ii) Any person that is exempt from classification as a public utility under Subsection
313 ~~[(16)]~~ (19)(f)(i) shall continue to be so exempt from classification following termination of the
314 lessee's right to possession or use of the electric plant for so long as the former lessor does not
315 operate the electric plant or sell electricity from the electric plant. If the former lessor operates
316 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a
317 period of 90 days following termination, or for a longer period that is ordered by the
318 commission. This period may not exceed one year. A change in rates that would otherwise
319 require commission approval may not be effective during the 90-day or extended period
320 without commission approval.

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

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

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

336 ~~[(i) "Public utility" does not include any corporation, cooperative association, or
337 person, their affiliates, lessees, trustees, or receivers, owning, controlling, operating, or~~

338 ~~managing an electric plant or in any way furnishing electricity if the electricity is consumed by~~
339 ~~an owner, lessor, or interest holder or by an affiliate of an owner, lessor, or interest holder, who~~
340 ~~has provided at least \$25,000,000 in value, including credit support, relating to the electric~~
341 ~~plant furnishing **the** electricity and whose consumption does not exceed its long-term~~
342 ~~entitlement in the plant under a long-term arrangement other than a power purchase agreement,~~
343 ~~except a power purchase agreement with an electrical corporation.]~~

344 (i) "Public utility" does not include:

345 (i) an eligible customer who provides electricity for the eligible customer's own use or
346 the use of the eligible customer's tenant or affiliate; or

347 (ii) a nonutility energy supplier that sells or provides electricity to:

348 (A) an eligible customer who has transferred the eligible customer's service to the
349 nonutility energy supplier in accordance with Section [54-3-32](#); or

350 (B) the eligible customer's tenant or affiliate.

351 ~~[(17)]~~ (20) "Purchasing utility" means any electrical corporation that is required to
352 purchase electricity from small power production or cogeneration facilities pursuant to the
353 Public Utility Regulatory Policies Act, 16 U.S.C. Section 824a-3.

354 ~~[(18)]~~ (21) "Qualifying power producer" means a corporation, cooperative association,
355 or person, or the lessee, trustee, and receiver of the corporation, cooperative association, or
356 person, who owns, controls, operates, or manages any qualifying power production facility or
357 cogeneration facility.

358 ~~[(19)]~~ (22) "Qualifying power production facility" means a facility that:

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

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

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

365 ~~[(20)]~~ (23) "Railroad" includes every commercial, interurban, and other railway, other

366 than a street railway, and each branch or extension of a railway, by any power operated,
367 together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots,
368 union depots, yards, grounds, terminals, terminal facilities, structures, and equipment, and all
369 other real estate, fixtures, and personal property of every kind used in connection with a
370 railway owned, controlled, operated, or managed for public service in the transportation of
371 persons or property.

372 ~~[(21)]~~ (24) "Railroad corporation" includes every corporation and person, their lessees,
373 trustees, and receivers, owning, controlling, operating, or managing any railroad for public
374 service within this state.

375 ~~[(22)]~~ (25) (a) "Sewerage corporation" includes every corporation and person, their
376 lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage
377 system for public service within this state.

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

382 ~~[(23)]~~ (26) "Telegraph corporation" includes every corporation and person, their
383 lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line
384 for public service within this state.

385 ~~[(24)]~~ (27) "Telegraph line" includes all conduits, ducts, poles, wires, cables,
386 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
387 controlled, operated, or managed in connection with or to facilitate communication by
388 telegraph, whether that communication be had with or without the use of transmission wires.

389 ~~[(25)]~~ (28) (a) "Telephone corporation" means any corporation or person, and their
390 lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates,
391 manages, or resells a public telecommunications service as defined in Section [54-8b-2](#).

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

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

398 (ii) Internet service; or

399 (iii) resold intrastate toll service.

400 [~~(26)~~] (29) "Telephone line" includes all conduits, ducts, poles, wires, cables,
401 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
402 controlled, operated, or managed in connection with or to facilitate communication by
403 telephone whether that communication is had with or without the use of transmission wires.

404 [~~(27)~~] (30) "Transportation of persons" includes every service in connection with or
405 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
406 carriage, and delivery of that person and that person's baggage.

407 [~~(28)~~] (31) "Transportation of property" includes every service in connection with or
408 incidental to the transportation of property, including in particular its receipt, delivery,
409 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and
410 hauling, and the transmission of credit by express companies.

411 [~~(29)~~] (32) "Water corporation" includes every corporation and person, their lessees,
412 trustees, and receivers, owning, controlling, operating, or managing any water system for
413 public service within this state. It does not include private irrigation companies engaged in
414 distributing water only to their stockholders, or towns, cities, counties, water conservancy
415 districts, improvement districts, or other governmental units created or organized under any
416 general or special law of this state.

417 [~~(30)~~] (33) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
418 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,
419 and personal property owned, controlled, operated, or managed in connection with or to
420 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,
421 appointment, apportionment, or measurement of water for power, fire protection, irrigation,

422 reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

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

425 ~~[(31)]~~ (34) "Wholesale electrical cooperative" includes every electrical corporation that
426 is:

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

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

431 Section 3. Section 54-3-8 is amended to read:

432 **54-3-8. Preferences forbidden -- Power of commission to determine facts --**

433 **Applicability of section.**

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

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

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

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

443 (3) This section does not apply to, and the commission may not enforce this chapter
444 concerning, a schedule, classification, rate, price, charge, fare, toll, rental, rule, service, facility,
445 or contract of ~~[a public utility or electrical corporation furnishing electricity,]~~ an entity
446 described in Subsection 54-2-1(7)(b)(iii) or (iv), (17), or (19)(i), or if the electricity is
447 consumed by [an owner, lessor, or interest holder or by an affiliate of an owner, lessor, or
448 interest holder, who has provided at least \$25,000,000 in value, including credit support,
449 relating to the electric plant furnishing the electricity and whose consumption does not exceed

450 ~~its long-term entitlement in the plant under a long-term arrangement other than a power~~
451 ~~purchase agreement, except a power purchase agreement with an electrical corporation.] an~~
452 eligible customer for the eligible customer's own use or the use of the eligible customer's tenant
453 or affiliate.

454 Section 4. Section **54-3-32** is enacted to read:

455 **54-3-32. Public utility duties -- Procedure to transfer service to a nonutility energy**
456 **supplier.**

457 (1) A transmission provider shall offer to an eligible customer available transmission
458 service under the transmission provider's applicable Federal Energy Regulatory Commission
459 approved open access transmission tariff.

460 (2) Notwithstanding Section 54-3-1, and except for transmission service required to be
461 offered under Subsection (1), a public utility is not required to furnish or provide electric
462 service to an eligible customer if the eligible customer has transferred service to a nonutility
463 energy supplier in accordance with this section.

464 (3) An eligible customer may initiate the transfer of service to a nonutility energy
465 supplier by:

466 (a) providing written notice to the public utility that provides electric service to the
467 eligible customer:

468 (i) no later than 18 months before the date the eligible customer intends to transfer
469 service to the nonutility energy supplier; and

470 (ii) stating:

471 (A) that the eligible customer intends to receive service from the nonutility energy
472 supplier; and

473 (B) the date on which the eligible customer intends to commence receiving service
474 from the nonutility energy supplier; and

475 (b) filing a written application with the public utility's transmission provider in
476 accordance with the transmission provider's approved Federal Energy Regulatory Commission
477 open access transmission tariff no later than 240 days before the intended date of transfer of

478 service described in Subsection (3)(a)(ii).

479 (4) (a) Subject to Subsection (4)(c), an eligible customer shall provide written reports
480 to the commission and the public utility updating any change in the intended date of transfer of
481 service described in Subsection (3)(a)(ii):

482 (i) beginning nine months prior to the intended date of transfer of service described in
483 Subsection (3)(a)(ii); and

484 (ii) no less frequently than every three months after the first written report is submitted
485 in accordance with Subsection (4)(a)(i) until the sooner of:

486 (A) the date the notice described in Subsection (3)(a) is withdrawn in accordance with
487 this section; or

488 (B) the date the eligible customer's service is transferred to the nonutility energy
489 supplier.

490 (b) An eligible customer:

491 (i) may withdraw the notice described in Subsection (3)(a) at any time prior to
492 transferring service to a nonutility energy supplier; or

493 (ii) subject to Subsection (4)(c), may delay the intended date of transfer of service
494 described in Subsection (3)(a)(ii).

495 (c) Subject to Subsection (4)(d), the notice described in Subsection (3)(a) is considered
496 to be withdrawn if a transfer of service under this section does not occur before the earlier of:

497 (i) December 31, 2020; or

498 (ii) 18 months after the intended date of transfer of service described in Subsection
499 (3)(a)(ii).

500 (d) A time period provided in Subsection (4)(c) is tolled during any period of delay in a
501 transfer of service to a nonutility energy supplier if the delay is solely attributable to the public
502 utility, the public utility's transmission provider, or a contractor of the public utility or the
503 public utility's transmission provider, in fulfilling the public utility's or the public utility's
504 transmission provider's obligations under relevant law.

505 (5) An eligible customer that transfers service to a nonutility energy supplier shall pay,

506 or receive credit for:

507 (a) any amounts due to the public utility for electric service provided to the eligible
508 customer in accordance with a tariff or the eligible customer's contract for service;

509 (b) all balancing account costs, major plant addition costs, and any other surcharges or
510 credits:

511 (i) attributable to the service provided to the eligible customer; and

512 (ii) incurred prior to the eligible customer's transfer of service to the nonutility energy
513 supplier;

514 (c) all costs of metering, communication, and other facilities or equipment necessary to
515 transfer the eligible customer's service to the nonutility energy supplier;

516 (d) all costs of transmission and ancillary services necessary for the eligible customer
517 to receive service from the nonutility energy supplier; and

518 (e) any costs assessed to the eligible customer in accordance with Subsection (6).

519 (6) (a) The Division of Public Utilities shall file a petition with the commission as
520 provided in this section:

521 (i) no earlier than 12 months but no later than eight months before the later of:

522 (A) the intended date of transfer of service described in Subsection (3)(a)(ii); or

523 (B) if the eligible customer updates a change in the intended date of transfer of service
524 in accordance with Subsection (4), the intended date of transfer of service stated in the written
525 report described in Subsection (4); or

526 (ii) at any time earlier than the time period described in Subsection (6)(a)(i) if agreed to
527 by the public utility, the Division of Public Utilities, the Office of Consumer Services, and the
528 eligible customer.

529 (b) A petition under Subsection (6)(a) shall seek a determination by the commission of
530 whether the eligible customer's intended transfer of service to a nonutility energy supplier will
531 result in:

532 (i) costs or credits allocated to Utah under any interjurisdictional cost allocation
533 methodology the commission reasonably expects to be in effect as of:

534 (A) the intended date of transfer of service described in Subsection (3)(a)(ii); or
535 (B) if the eligible customer updates a change in the intended date of transfer of service
536 in accordance with Subsection (4), the intended date of transfer of service stated in the written
537 report described in Subsection (4);

538 (ii) (A) costs of facilities used to serve the eligible customer if the costs will not be
539 recovered from the eligible customer and the facilities will not be used by other customers as a
540 direct result of the eligible customer transferring service to a nonutility energy supplier; and
541 (B) any credits to offset the costs of facilities described in Subsection (6)(b)(ii)(A); and
542 (iii) any other costs to the public utility or to other customers of the public utility.

543 (c) In making its determination under Subsection (6)(b), the commission may consider:
544 (i) the benefits from resources, the costs of which are attributable to the eligible
545 customer's load;
546 (ii) the cost of resources attributable to the eligible customer's load compared to the
547 cost of new resources;
548 (iii) other credits and public interest considerations related to the eligible customer; and
549 (iv) any other issue raised by a party to the proceeding or any other issue the
550 commission determines to be relevant.

551 (d) If the eligible customer's load was not substantially offset by the eligible customer's
552 generation in the public utility's load forecast used in the public utility's 2013 integrated
553 resource plan, the commission shall require the eligible customer to pay to the public utility, for
554 the benefit of Utah customers, any costs described in Subsection (6)(b) the commission orders
555 the eligible customer to pay.

556 (e) If the eligible customer's load was substantially offset by the eligible customer's
557 generation in the public utility's load forecast used in the public utility's 2013 integrated
558 resource plan, the commission, in its discretion, based on substantial evidence and taking into
559 consideration the public interest, shall determine the reasonable amount:

560 (i) (A) the eligible customer is required to pay to the public utility, for the benefit of
561 Utah customers, for the costs the commission determines in accordance with Subsection

562 (6)(b)(i); and

563 (B) the public utility is required to pay to the eligible customer, at a cost to be
564 recovered from Utah customers, for any credits the commission determines in accordance with
565 Subsection (6)(b)(i);

566 (ii) the following are required to pay to the public utility, for the costs or credits the
567 commission determines in accordance with Subsection (6)(b)(ii):

568 (A) the eligible customer;

569 (B) other customers of the public utility; or

570 (C) the eligible customer and other customers of the public utility; and

571 (iii) the other customers of the public utility are required to pay to the public utility, for
572 any costs the commission determines in accordance with Subsection (6)(b)(iii).

573 (f) (i) The commission shall issue a decision on the petition filed in accordance with
574 Subsection (6)(a) no later than 180 days after the Division of Public Utilities files the petition.

575 (ii) If the commission does not issue a decision within the time period required by
576 Subsection (6)(f)(i), the commission shall allow the public utility to recover costs the
577 commission determines in accordance with Subsection (6)(b), but may not impose any of those
578 costs on the eligible customer.

579 (7) A public utility and an eligible customer may agree in writing to waive a time
580 period described in Subsection (4) as necessary to facilitate the eligible customer to receive
581 service from a nonutility energy supplier.

582 (8) (a) Subject to Subsection (8)(b), an eligible customer shall arrange for the
583 installation of any facilities and equipment necessary for the eligible customer to receive
584 service from a nonutility energy supplier:

585 (i) at the cost of the eligible customer; and

586 (ii) in compliance with the public utility's applicable equipment standards and industry
587 codes.

588 (b) The facilities and equipment described in Subsection (8)(a) may be installed by:

589 (i) the public utility;

590 (ii) the nonutility energy supplier; or

591 (iii) a third party contractor.

592 (9) An eligible customer may commence service from a nonutility energy supplier if:

593 (a) the eligible customer makes the payments described in Subsection (5);

594 (b) the eligible customer meets the requirements of Subsection (3);

595 (c) the eligible customer, or a designee of the eligible customer, enters into any

596 necessary agreements for:

597 (i) the public utility's transmission provider to provide transmission service; and

598 (ii) the nonutility energy supplier to provide service;

599 (d) the installation described in Subsection (8) is completed; and

600 (e) the notice described in Subsection (3)(a) is not considered to be withdrawn under

601 Subsection (4).

602 (10) (a) If an eligible customer that has been receiving electricity from a nonutility

603 energy supplier gives the public utility and the commission at least 36 months' prior written

604 notice of the eligible customer's intention to reinstate electric service from the public utility, the

605 public utility shall reinstate electric service to the eligible customer:

606 (i) under substantially the same terms as a new customer;

607 (ii) beginning 36 months after the date the public utility receives the written notice; and

608 (iii) (A) at rates stated in the public utility's applicable rate schedule; or

609 (B) at a special contract rate agreed upon by the public utility and the eligible customer

610 and approved by the commission.

611 (b) The notice described in Subsection (10)(a) is irrevocable unless, during the time

612 period beginning on the date the eligible customer provides the notice described in Subsection

613 (10)(a) and ending on the date the public utility reinstates service, the public utility is no longer

614 a vertically integrated utility providing electric service that includes generation and

615 transmission.

616 (c) If an eligible customer that has transferred service to a nonutility energy supplier

617 elects to reinstate electric service from a public utility and receives the electric service from the

618 public utility, the eligible customer may not transfer service to a nonutility energy supplier
619 under this section.

620 Section 5. Section **54-4-2** is amended to read:

621 **54-4-2. Investigations -- Hearings and notice -- Findings -- Applicability of**
622 **chapter.**

623 (1) (a) ~~[Whenever the commission believes that in order]~~ The commission may
624 conduct an investigation if the commission determines an investigation:

625 (i) is necessary to secure [a] compliance with ~~[the provisions of]~~ this title or with ~~[the~~
626 ~~orders]~~ an order of the commission~~[-or that it will be otherwise in the interest of the public, an~~
627 ~~investigation];~~

628 (ii) is in the public interest; or

629 (iii) should be made of any act or omission to act, or of anything accomplished or
630 proposed, or of any schedule, classification, rate, price, charge, fare, toll, rental, rule,
631 regulation, service, or facility of any public utility~~[-it shall investigate the same upon its own~~
632 ~~motion, and may fix].~~

633 (b) If the commission conducts an investigation under Subsection (1)(a), the
634 commission may:

635 (i) establish a time and place for a hearing ~~[thereof with];~~

636 (ii) provide notice to the public utility concerning ~~[which such investigation shall be~~
637 ~~made, and upon such hearing shall make such]~~ the investigation; and

638 (iii) make findings and orders ~~[as shall be]~~ that are just and reasonable with respect to
639 [any such matter] the investigation.

640 (2) This chapter does not apply to a schedule, classification, rate, price, charge, fare,
641 toll, rental, rule, service, facility, or contract of ~~[a public utility or electrical corporation~~
642 ~~furnishing electricity;]~~ an entity described in Subsection 54-2-1(7)(b)(iii) or (iv), (17), or
643 (19)(i), or if the electricity is consumed by [an owner, lessor, or interest holder or by an affiliate
644 of an owner, lessor, or interest holder, who has provided at least \$25,000,000 in value,
645 including credit support, relating to the electric plant furnishing the electricity and whose

646 consumption does not exceed its long-term entitlement in the plant under a long-term
647 arrangement other than a power purchase agreement, except a power purchase agreement with
648 an electrical corporation.] an eligible customer for the eligible customer's own use or the use of
649 the eligible customer's tenant or affiliate.

650 Section 6. Section **54-15-108** is amended to read:

651 **54-15-108. Damages and fines for connecting a customer generation system to**
652 **more than one customer.**

653 If an independent energy producer defined in [~~Subsection 54-2-1(13)~~] Section 54-2-1
654 that is supplying energy to a customer [~~under~~] as described in Subsection
655 54-2-1[(16)](19)(d)(iv) violates the limitations set forth in Subsection
656 54-2-1[(16)](19)(d)(iv)(B), the commission may:

657 (1) award damages to an electrical corporation for actual and consequential damages to
658 the electrical corporation; and

659 (2) assess a fine against the independent energy producer or person responsible for the
660 violation.