

1                    **AMENDMENTS TO DEFINITION OF PUBLIC UTILITY**

2    2014 GENERAL SESSION

3    STATE OF UTAH

4    **Chief Sponsor: Stephen H. Urquhart**

5    House Sponsor: Bradley G. Last

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7                    **LONG TITLE**

8                    **General Description:**

9                    This bill amends the definition of a "public utility."

10                   **Highlighted Provisions:**

11                   This bill:

- 12                   ▶ amends the definition of a "public utility"; and
- 13                   ▶ makes technical and conforming changes.

14                   **Money Appropriated in this Bill:**

15                   None

16                   **Other Special Clauses:**

17                   None

18                   **Utah Code Sections Affected:**

19                   AMENDS:

20                   **54-2-1**, as last amended by Laws of Utah 2010, Chapters 302 and 390

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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:

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

- 30 (2) "Cogeneration facility":  
31 (a) means a facility that produces:  
32 (i) electric energy; and  
33 (ii) steam or forms of useful energy, including heat, that are used for industrial,  
34 commercial, heating, or cooling purposes; and  
35 (b) is a qualifying cogeneration facility under federal law.  
36 (3) "Commission" means the Public Service Commission of Utah.  
37 (4) "Commissioner" means a member of the commission.  
38 (5) (a) "Corporation" includes an association and a joint stock company having any  
39 powers or privileges not possessed by individuals or partnerships.  
40 (b) "Corporation" does not include towns, cities, counties, conservancy districts,  
41 improvement districts, or other governmental units created or organized under any general or  
42 special law of this state.  
43 (6) "Distribution electrical cooperative" includes an electrical corporation that:  
44 (a) is a cooperative;  
45 (b) conducts a business that includes the retail distribution of electricity the cooperative  
46 purchases or generates for the cooperative's members; and  
47 (c) is required to allocate or distribute savings in excess of additions to reserves and  
48 surplus on the basis of patronage to the cooperative's:  
49 (i) members; or  
50 (ii) patrons.  
51 (7) "Electrical corporation" includes every corporation, cooperative association, and  
52 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any  
53 electric plant, or in any way furnishing electric power for public service or to its consumers or  
54 members for domestic, commercial, or industrial use, within this state, except independent  
55 energy producers, and except where electricity is generated on or distributed by the producer  
56 solely for the producer's own use, or the use of the producer's tenants, or for the use of  
57 members of an association of unit owners formed under Title 57, Chapter 8, Condominium

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

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

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

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

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

77 (ii) not for sale to others;

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

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

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

85 (11) "Heat corporation" includes every corporation and person, their lessees, trustees,

86 and receivers, owning, controlling, operating, or managing any heating plant for public service  
87 within this state.

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

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

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

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

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

100 (b) is a qualifying power production facility.

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

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

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

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

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

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

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

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

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

140 (B) the real property on which the service or commodity is used is contiguous to real  
141 property which is owned or controlled by the independent energy producer. Parcels of real

142 property separated solely by public roads or easements for public roads shall be considered as  
143 contiguous for purposes of this Subsection (16); or

144 (iv) the independent energy producer:

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

146 (I) a United States governmental entity, including an entity of the United States  
147 military, or a county, municipality, city, town, other political subdivision, local district, special  
148 service district, state institution of higher education, school district, charter school, or any  
149 entity within the state system of public education; or

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

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

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

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

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

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

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

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

168 (E) enters into and performs in accordance with an interconnection agreement with a  
169 public utility providing retail electric service where the real property on which the customer

170 generation system is located, with the rates, terms, and conditions of the retail service and  
171 interconnection agreement subject to approval by the governing authority of the public utility,  
172 as defined in Subsection 54-15-102(8); and

173 (F) installs the relevant customer generation system by December 31, [~~2015~~] 2021.

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

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

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

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

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

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

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

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

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

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

193 (ii) Any person that is exempt from classification as a public utility under Subsection  
194 (16)(f)(i) shall continue to be so exempt from classification following termination of the  
195 lessee's right to possession or use of the electric plant for so long as the former lessor does not  
196 operate the electric plant or sell electricity from the electric plant. If the former lessor operates  
197 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a

198 period of 90 days following termination, or for a longer period that is ordered by the  
199 commission. This period may not exceed one year. A change in rates that would otherwise  
200 require commission approval may not be effective during the 90-day or extended period  
201 without commission approval.

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

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

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

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

225 (17) "Purchasing utility" means any electrical corporation that is required to purchase



226 electricity from small power production or cogeneration facilities pursuant to the Public Utility  
227 Regulatory Policies Act, 16 U.S.C. Section 824a-3.

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

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

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

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

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

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

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

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

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

254 general or special law of this state.

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

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

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

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

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

271 (ii) Internet service; or

272 (iii) resold intrastate toll service.

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

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

280 (28) "Transportation of property" includes every service in connection with or  
281 incidental to the transportation of property, including in particular its receipt, delivery,

282 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and  
283 hauling, and the transmission of credit by express companies.

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

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

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

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

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

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