

1 **INDEPENDENT ENERGY PRODUCER AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Francis D. Gibson**

5 Senate Sponsor: Wayne A. Harper

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to an independent energy producer.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ exempts, from regulation by the Public Service Commission as a public utility,
13 under certain conditions, an independent energy producer that provides energy to a
14 residential customer participating in a net metering program in an area served by an
15 electrical corporation with more than 200,000 retail customers in the state;
16 ▶ provides that an agreement between an independent energy producer and a customer
17 shall contain certain provisions; and
18 ▶ provides that a public utility is obligated to serve a customer in the public utility's
19 service area that is partially served by an independent energy producer.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **54-2-1**, as last amended by Laws of Utah 2014, Chapters 20, 381, and 388

27 **54-15-108**, as last amended by Laws of Utah 2014, Chapter 381



28 ENACTS:

29 **54-2-201**, Utah Code Annotated 1953



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

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

33 **54-2-1. Definitions.**

34 As used in this title:

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

39 (2) "Cogeneration facility":

40 (a) means a facility that produces:

41 (i) electric energy; and

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

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

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

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

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

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

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

53 (a) is a cooperative;

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

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

58 (i) members; or

59 (ii) patrons.

60 (7) (a) "Electrical corporation" includes every corporation, cooperative association, and
61 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any
62 electric plant, or in any way furnishing electric power for public service or to its consumers or
63 members for domestic, commercial, or industrial use, within this state.

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

65 (i) an independent energy producer;

66 (ii) where electricity is generated on or distributed by the producer solely for the
67 producer's own use, or the use of the producer's tenants, or the use of members of an
68 association of unit owners formed under Title 57, Chapter 8, Condominium Ownership Act,
69 and not for sale to the public generally;

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

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

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

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

76 (c) "Electrical corporation" does not include an entity that sells electric vehicle battery
77 charging services, unless the entity conducts another activity in the state that subjects the entity
78 to the jurisdiction and regulation of the commission as an electrical corporation.

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

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

85 (a) on December 31, 2013:

86 (i) was a customer of a public utility that, on December 31, 2013, had more than
87 200,000 retail customers in this state; and

88 (ii) owned an electric plant that is an electric generation plant that, on December 31,
89 2013, had a generation name plate capacity of greater than 150 megawatts; and

- 90 (b) produces electricity:
- 91 (i) from a qualifying power production facility for sale to a public utility in this state;
- 92 (ii) primarily for the eligible customer's own use; or
- 93 (iii) for the use of the eligible customer's tenant or affiliate.
- 94 (10) "Eligible customer's tenant or affiliate" means one or more tenants or affiliates:
- 95 (a) of an eligible customer; and
- 96 (b) who are primarily engaged in an activity:
- 97 (i) related to the eligible customer's core mining or industrial businesses; and
- 98 (ii) performed on real property that is:
- 99 (A) within a 25-mile radius of the electric plant described in Subsection (9)(a)(ii); and
- 100 (B) owned by, controlled by, or under common control with, the eligible customer.
- 101 (11) "Gas corporation" includes every corporation and person, their lessees, trustees,
- 102 and receivers, owning, controlling, operating, or managing any gas plant for public service
- 103 within this state or for the selling or furnishing of natural gas to any consumer or consumers
- 104 within the state for domestic, commercial, or industrial use, except in the situation that:
- 105 (a) gas is made or produced on, and distributed by the maker or producer through,
- 106 private property:
- 107 (i) solely for the maker's or producer's own use or the use of the maker's or producer's
- 108 tenants; and
- 109 (ii) not for sale to others;
- 110 (b) gas is compressed on private property solely for the owner's own use or the use of
- 111 the owner's employees as a motor vehicle fuel; or
- 112 (c) gas is compressed by a retailer of motor vehicle fuel on the retailer's property solely
- 113 for sale as a motor vehicle fuel.
- 114 (12) "Gas plant" includes all real estate, fixtures, and personal property owned,
- 115 controlled, operated, or managed in connection with or to facilitate the production, generation,
- 116 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.
- 117 (13) "Heat corporation" includes every corporation and person, their lessees, trustees,
- 118 and receivers, owning, controlling, operating, or managing any heating plant for public service
- 119 within this state.
- 120 (14) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances, and

121 personal property controlled, operated, or managed in connection with or to facilitate the
122 production, generation, transmission, delivery, or furnishing of artificial heat.

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

125 (15) "Independent energy producer" means every electrical corporation, person,
126 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,
127 control, or manage an independent power production or cogeneration facility.

128 (16) "Independent power production facility" means a facility that:

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

132 (b) is a qualifying power production facility.

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

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

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

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

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

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

149 (19) (a) "Public utility" includes every railroad corporation, gas corporation, electrical
150 corporation, distribution electrical cooperative, wholesale electrical cooperative, telephone
151 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,

152 and independent energy producer not described in [~~Subsection (19)(d)~~], [Section 54-2-201](#)
153 where the service is performed for, or the commodity delivered to, the public generally, or in
154 the case of a gas corporation or electrical corporation where the gas or electricity is sold or
155 furnished to any member or consumers within the state for domestic, commercial, or industrial
156 use.

157 (b) (i) If a railroad corporation, gas corporation, electrical corporation, telephone
158 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
159 or independent energy producer not described in [~~Subsection (19)(d)~~] [Section 54-2-201](#),
160 performs a service for or delivers a commodity to the public, it is considered to be a public
161 utility, subject to the jurisdiction and regulation of the commission and this title.

162 (ii) If a gas corporation, independent energy producer not described in [~~Subsection~~
163 ~~(19)(d)~~] [Section 54-2-201](#), or electrical corporation sells or furnishes gas or electricity to any
164 member or consumers within the state, for domestic, commercial, or industrial use, for which
165 any compensation or payment is received, it is considered to be a public utility, subject to the
166 jurisdiction and regulation of the commission and this title.

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

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

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

177 [~~(ii) the commodity or service is sold by an independent energy producer solely to an~~
178 ~~electrical corporation or other wholesale purchaser;]~~

179 [~~(iii) (A) the commodity or service produced or delivered by the independent energy~~
180 ~~producer is delivered to an entity that controls, is controlled by, or affiliated with the~~
181 ~~independent energy producer or to a user located on real property managed or controlled by the~~
182 ~~independent energy producer; and]~~

183 ~~[(B) the real property on which the service or commodity is used is contiguous to real~~
184 ~~property that is owned or controlled by the independent energy producer or is separated only by~~
185 ~~a public road or an easement for a public road; or]~~

186 ~~[(iv) the independent energy producer:]~~

187 ~~[(A) supplies energy for direct consumption by a customer that is:]~~

188 ~~[(f) a United States governmental entity, including an entity of the United States~~
189 ~~military, or a county, municipality, city, town, other political subdivision, local district, special~~
190 ~~service district, state institution of higher education, school district, charter school, or any~~
191 ~~entity within the state system of public education; or]~~

192 ~~[(H) an entity qualifying as a charitable organization under 26 U.S.C. Sec. 501(c)(3)~~
193 ~~operated for religious, charitable, or educational purposes that is exempt from federal income~~
194 ~~tax and able to demonstrate its tax-exempt status;]~~

195 ~~[(B) supplies energy to the customer through use of a customer generation system, as~~
196 ~~defined in Section 54-15-102, for use on the real property where the customer generation~~
197 ~~system is located;]~~

198 ~~[(C) supplies energy using a customer generation system designed to supply the lesser~~
199 ~~of:]~~

200 ~~[(f) no more than 90% of the average annual consumption of electricity by the~~
201 ~~customer at that site, based on an annualized billing period; or]~~

202 ~~[(H) the maximum size allowable under net metering provisions, defined in Section~~
203 ~~54-15-102;]~~

204 ~~[(D) notifies the customer before installing the customer generation system of:]~~

205 ~~[(f) all costs the customer is required to pay for the customer generation system,~~
206 ~~including any interconnection costs; and]~~

207 ~~[(H) the potential for future changes in amounts paid by the customer for energy~~
208 ~~received from the public utility and the possibility of changes to the customer fees or charges to~~
209 ~~the customer associated with net metering and generation;]~~

210 ~~[(E) enters into and performs in accordance with an interconnection agreement with a~~
211 ~~public utility providing retail electric service where the real property on which the customer~~
212 ~~generation system is located, with the rates, terms, and conditions of the retail service and~~
213 ~~interconnection agreement subject to approval by the governing authority of the public utility,~~

214 as defined in Subsection ~~54-15-102~~(8); and]

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

216 [~~(e)~~] (d) Any person or corporation defined as an electrical corporation or public utility
217 under this section may continue to serve its existing customers subject to any order or future
218 determination of the commission in reference to the right to serve those customers.

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

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

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

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

228 (III) a combination of Subsections (19)[~~(F)~~](e)(i)(A)(I) and (II);

229 (B) the lessor of the ownership interest identified in Subsection (19)[~~(F)~~](e)(i)(A) is:

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

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

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

235 (ii) Any person that is exempt from classification as a public utility under Subsection
236 (19)[~~(F)~~](e)(i) shall continue to be so exempt from classification following termination of the
237 lessee's right to possession or use of the electric plant for so long as the former lessor does not
238 operate the electric plant or sell electricity from the electric plant. If the former lessor operates
239 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a
240 period of 90 days following termination, or for a longer period that is ordered by the
241 commission. This period may not exceed one year. A change in rates that would otherwise
242 require commission approval may not be effective during the 90-day or extended period
243 without commission approval.

244 [~~(g)~~] (f) "Public utility" does not include any person that provides financing for, but has

245 no ownership interest in an electric plant, small power production facility, or cogeneration
246 facility. In the event of a foreclosure in which an ownership interest in an electric plant, small
247 power production facility, or cogeneration facility is transferred to a third-party financier of an
248 electric plant, small power production facility, or cogeneration facility, then that third-party
249 financier is exempt from classification as a public utility for 90 days following the foreclosure,
250 or for a longer period that is ordered by the commission. This period may not exceed one year.

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

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

259 ~~(i)~~ (h) "Public utility" does not include:

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

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

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

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

266 ~~(j)~~ (i) "Public utility" does not include an entity that sells electric vehicle battery
267 charging services, unless the entity conducts another activity in the state that subjects the entity
268 to the jurisdiction and regulation of the commission as a public utility.

269 (j) "Public utility" does not include an independent energy producer that is not subject
270 to regulation by the commission as a public utility under Section [54-2-201](#).

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

274 (21) "Qualifying power producer" means a corporation, cooperative association, or
275 person, or the lessee, trustee, and receiver of the corporation, cooperative association, or

276 person, who owns, controls, operates, or manages any qualifying power production facility or
277 cogeneration facility.

278 (22) "Qualifying power production facility" means a facility that:

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

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

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

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

291 (24) "Railroad corporation" includes every corporation and person, their lessees,
292 trustees, and receivers, owning, controlling, operating, or managing any railroad for public
293 service within this state.

294 (25) (a) "Sewerage corporation" includes every corporation and person, their lessees,
295 trustees, and receivers, owning, controlling, operating, or managing any sewerage system for
296 public service within this state.

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

301 (26) "Telegraph corporation" includes every corporation and person, their lessees,
302 trustees, and receivers, owning, controlling, operating, or managing any telegraph line for
303 public service within this state.

304 (27) "Telegraph line" includes all conduits, ducts, poles, wires, cables, instruments, and
305 appliances, and all other real estate, fixtures, and personal property owned, controlled,
306 operated, or managed in connection with or to facilitate communication by telegraph, whether

307 that communication be had with or without the use of transmission wires.

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

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

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

317 (ii) Internet service; or

318 (iii) resold intrastate toll service.

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

323 (30) "Transportation of persons" includes every service in connection with or
324 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
325 carriage, and delivery of that person and that person's baggage.

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

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

336 (33) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes, headgates,
337 pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures, and personal

338 property owned, controlled, operated, or managed in connection with or to facilitate the
 339 diversion, development, storage, supply, distribution, sale, furnishing, carriage, appointment,
 340 apportionment, or measurement of water for power, fire protection, irrigation, reclamation, or
 341 manufacturing, or for municipal, domestic, or other beneficial use.

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

344 (34) "Wholesale electrical cooperative" includes every electrical corporation that is:

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

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

349 Section 2. Section **54-2-201** is enacted to read:

350 **Part 2. Exemption from Commission Jurisdiction**

351 **54-2-201. Independent energy producer --- Exemption from commission**
 352 **jurisdiction.**

353 (1) As used in this section:

354 (a) "Customer generation system" means the same as that term is defined in Section
 355 54-15-102.

356 (b) "Net metering program" means the same as that term is defined in Section
 357 54-15-102.

358 (2) An independent energy producer is exempt from regulation by the commission as a
 359 public utility for an independent power production facility if the independent energy producer
 360 produces a commodity or delivers a service:

361 (a) solely for the use of a state-owned facility;

362 (b) not for sale to the public, without charge, solely for the use of:

363 (i) the independent energy producer;

364 (ii) an independent energy producer's tenant; or

365 (iii) an association of unit owners formed under Title 57, Chapter 8, Condominium

366 Ownership Act;

367 (c) for sale solely to an electrical corporation or other wholesale purchaser; ~~or~~ or

368 (d) (i) for use by:

369 (A) an entity the independent energy producer controls, is controlled by, or is an
 370 affiliate of; or

371 (B) a user located on real property that the independent energy producer manages or
 372 controls; and

373 (ii) for use on real property that is contiguous to, or is separated only by a public road
 374 or easement from, real property that the independent energy producer owns or controls
 374a ~~H→ [;or] .~~

375 ~~[(e) to a customer in an area served by an entity that is not regulated by the~~
 375a ~~commission.] ←H~~

376 (3) In addition to the exemptions described in Subsection (2), an independent energy
 377 producer that supplies energy, for direct consumption by a customer, via a customer generation
 378 system, is exempt from regulation by the commission as a public utility for an independent
 379 power production facility if:

380 (a) the customer is:

381 (i) a United States governmental entity, including an entity of the United States
 382 military;

383 (ii) a state entity, including a political subdivision of the state;

384 (iii) a state institution of higher education;

385 (iv) a school district, charter school, or an entity within the state system of public
 386 education;

387 (v) a federal income tax exempt charitable organization under U.S.C. Sec. 501(c)(3)
 388 that can provide proof of the entity's tax-exempt status; or

389 (vi) a residential customer participating in a net metering program in an area served by
 390 an electrical corporation with more than 200,000 retail customers in the state;

391 (b) the customer generation system is:

392 (i) for use on the real property where the customer generation system is located; and

393 (ii) designed to supply a maximum amount of electricity equal to the lesser of:

394 (A) 90% of the customer's average annual electricity consumption, based on an
 395 annualized billing period; or

396 (B) the maximum amount allowed under a net metering program, as defined in Section
 397 [54-15-102](#);

398 (c) the independent energy producer notifies the customer, before installing the
 399 customer generation system, of:

400 (i) the total cost a customer is required to pay for the customer generation system,
 401 including an interconnection cost; and

402 (ii) the potential for a change in:

403 (A) the amount the customer pays for energy from a public utility; and

404 (B) customer fees associated with net metering and generation;

405 (d) the independent energy producer enters into an interconnection agreement:

406 (i) with a public utility that provides retail electric service to the real property on which
 407 the customer generation system is located; and

408 (ii) that is subject to approval by a public utility's governing authority; and

409 (e) except for a customer described in Subsection (3)(a)(vi), the independent energy
 410 producer installs the customer generation system by December 31, 2021.

411 (4) An independent energy producer that supplies electric service to a customer
 412 described in Subsection (3)(a)(vi) via a customer generation system shall provide the electric
 413 service under an agreement that includes:

414 (a) the notification described in Subsection (3)(c);

415 (b) a description of the incentives, including any renewable energy certificate,
 416 generated by the agreement, or by the installation or use of the customer generation system;

417 (c) a description of an incentive described in Subsection (4)(b) that the customer
 418 forfeits or assigns to the independent energy producer under the agreement;

419 (d) the property, equipment, or liability that the independent energy producer will
 420 insure under the agreement, and what property, equipment, or liability that the customer is
 421 responsible for insuring; and

422 (e) the Internet address of a Division of Public Utilities website, if any, that describes
 423 considerations for a net metering customer.

424 (5) An independent energy producer may not provide electric service to a customer
 425 described in Subsection (3)(a)(vi) until the commission makes ~~the final~~ the first
 425a determination ~~about a net metering program under which the independent energy~~
 425b producer will provide service ~~required~~

426 by Section ~~54-15-105.1~~ 54-15-105.1(2) , and the determination becomes final
 426a agency action. ~~required~~

427 (6) A public utility shall serve a customer in the public utility's service area that is
 428 partially served by an independent energy producer.

429 Section 3. Section 54-15-108 is amended to read:

430 **54-15-108. Damages and fines for connecting a customer generation system to**

431 **more than one customer.**

432 If an independent energy producer [~~defined in Section 54-2-1~~] that is supplying energy
433 to a customer [~~as described in Subsection 54-2-1(19)(d)(iv)~~] described in Subsection
434 54-2-201(3)(a) violates the [~~limitations set forth in Subsection 54-2-1(19)(d)(iv)(B)~~] limitation
435 described in Subsection 54-2-201(3)(b)(i), the commission may:

436 (1) award damages to an electrical corporation for actual and consequential damages to
437 the electrical corporation; and

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

Legislative Review Note
Office of Legislative Research and General Counsel