

Senator J. Stuart Adams proposes the following substitute bill:

SUSTAINABLE TRANSPORTATION AND ENERGY PLAN ACT

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill amends provisions related to a public utility providing electrical service.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Public Service Commission to authorize a large-scale electric utility to implement tariffs to provide funding for a sustainable transportation and energy pilot program;
- ▶ allows an electrical corporation to recover 100% of the electrical corporation's prudently incurred costs in an energy balancing account;
- ▶ allows a large-scale electric utility to establish innovative electric efficiency technology programs;
- ▶ allows a large-scale electric utility to provide an incentive for:
 - a generation facility to curtail electricity generation to improve air quality; and
 - creation of an electric vehicle infrastructure;
- ▶ provides that the commission may authorize a large-scale electric utility to implement:
 - a clean coal program; and



- 26 • other utility programs;
- 27 ▶ enacts a provision related to withdrawal of notice to transfer electric service; and
- 28 ▶ provides rulemaking authority for the Public Service Commission.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **54-2-1**, as last amended by Laws of Utah 2014, Chapters 20, 381, and 388

36 **54-7-12.8**, as last amended by Laws of Utah 2009, Chapter 237

37 **54-7-13.5**, as enacted by Laws of Utah 2009, Chapter 319

38 **54-17-801**, as last amended by Laws of Utah 2014, Chapter 34

39 ENACTS:

40 **54-3-33**, Utah Code Annotated 1953

41 **54-17-806**, Utah Code Annotated 1953

42 **54-20-101**, Utah Code Annotated 1953

43 **54-20-102**, Utah Code Annotated 1953

44 **54-20-103**, Utah Code Annotated 1953

45 **54-20-104**, Utah Code Annotated 1953

46 **54-20-105**, Utah Code Annotated 1953

47 **54-20-106**, Utah Code Annotated 1953



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

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

51 **54-2-1. Definitions.**

52 As used in this title:

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

57 (2) "Clean coal technology" means a technology that may be researched, developed, or
58 used for reducing emissions or the rate of emissions from a thermal electric generation plant
59 that uses coal as a fuel source.

60 ~~[(2)]~~ (3) "Cogeneration facility":

61 (a) means a facility that produces:

62 (i) electric energy; and

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

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

66 ~~[(3)]~~ (4) "Commission" means the Public Service Commission ~~[of Utah]~~.

67 ~~[(4)]~~ (5) "Commissioner" means a member of the commission.

68 ~~[(5)]~~ (6) (a) "Corporation" includes an association and a joint stock company having
69 any powers or privileges not possessed by individuals or partnerships.

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

73 ~~[(6)]~~ (7) "Distribution electrical cooperative" includes an electrical corporation that:

74 (a) is a cooperative;

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

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

79 (i) members; or

80 (ii) patrons.

81 ~~[(7)]~~ (8) (a) "Electrical corporation" includes every corporation, cooperative
82 association, and person, their lessees, trustees, and receivers, owning, controlling, operating, or
83 managing any electric plant, or in any way furnishing electric power for public service or to its
84 consumers or members for domestic, commercial, or industrial use, within this state.

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

86 (i) an independent energy producer;

87 (ii) where electricity is generated on or distributed by the producer solely for the

88 producer's own use, or the use of the producer's tenants, or the use of members of an
89 association of unit owners formed under Title 57, Chapter 8, Condominium Ownership Act,
90 and not for sale to the public generally;

91 (iii) an eligible customer who provides electricity for the eligible customer's own use or
92 the use of the eligible customer's tenant or affiliate; [~~or~~]

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

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

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

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

100 [~~(8)~~] (9) "Electric plant" includes all real estate, fixtures, and personal property owned,
101 controlled, operated, or managed in connection with or to facilitate the production, generation,
102 transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits,
103 ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying
104 conductors used or to be used for the transmission of electricity for light, heat, or power.

105 [~~(9)~~] (10) "Eligible customer" means a person who:

106 (a) on December 31, 2013:

107 (i) was a customer of a public utility that, on December 31, 2013, had more than
108 200,000 retail customers in this state; and

109 (ii) owned an electric plant that is an electric generation plant that, on December 31,
110 2013, had a generation name plate capacity of greater than 150 megawatts; and

111 (b) produces electricity:

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

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

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

115 [~~(10)~~] (11) "Eligible customer's tenant or affiliate" means one or more tenants or
116 affiliates:

117 (a) of an eligible customer; and

118 (b) who are primarily engaged in an activity:

119 (i) related to the eligible customer's core mining or industrial businesses; and
120 (ii) performed on real property that is:
121 (A) within a 25-mile radius of the electric plant described in Subsection [~~(9)~~]
122 (10)(a)(ii); and
123 (B) owned by, controlled by, or under common control with, the eligible customer.
124 [~~(11)~~] (12) "Gas corporation" includes every corporation and person, their lessees,
125 trustees, and receivers, owning, controlling, operating, or managing any gas plant for public
126 service within this state or for the selling or furnishing of natural gas to any consumer or
127 consumers within the state for domestic, commercial, or industrial use, except in the situation
128 that:
129 (a) gas is made or produced on, and distributed by the maker or producer through,
130 private property:
131 (i) solely for the maker's or producer's own use or the use of the maker's or producer's
132 tenants; and
133 (ii) not for sale to others;
134 (b) gas is compressed on private property solely for the owner's own use or the use of
135 the owner's employees as a motor vehicle fuel; or
136 (c) gas is compressed by a retailer of motor vehicle fuel on the retailer's property solely
137 for sale as a motor vehicle fuel.
138 [~~(12)~~] (13) "Gas plant" includes all real estate, fixtures, and personal property owned,
139 controlled, operated, or managed in connection with or to facilitate the production, generation,
140 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.
141 [~~(13)~~] (14) "Heat corporation" includes every corporation and person, their lessees,
142 trustees, and receivers, owning, controlling, operating, or managing any heating plant for public
143 service within this state.
144 [~~(14)~~] (15) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances,
145 and personal property controlled, operated, or managed in connection with or to facilitate the
146 production, generation, transmission, delivery, or furnishing of artificial heat.
147 (b) "Heating plant" does not include either small power production facilities or
148 cogeneration facilities.
149 [~~(15)~~] (16) "Independent energy producer" means every electrical corporation, person,

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

152 [~~(16)~~] (17) "Independent power production facility" means a facility that:

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

156 (b) is a qualifying power production facility.

157 (18) "Large-scale electric utility" means a public utility that provides retail electric
158 service to more than 200,000 retail customers in the state.

159 [~~(17)~~] (19) "Nonutility energy supplier" means a person that:

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

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

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

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

169 [~~(18)~~] (20) "Private telecommunications system" includes all facilities for the
170 transmission of signs, signals, writing, images, sounds, messages, data, or other information of
171 any nature by wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio
172 facilities, that are owned, controlled, operated, or managed by a corporation or person,
173 including their lessees, trustees, receivers, or trustees appointed by any court, for the use of that
174 corporation or person and not for the shared use with or resale to any other corporation or
175 person on a regular basis.

176 [~~(19)~~] (21) (a) "Public utility" includes every railroad corporation, gas corporation,
177 electrical corporation, distribution electrical cooperative, wholesale electrical cooperative,
178 telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat
179 corporation, and independent energy producer not described in Subsection [~~(19)~~] (21)(d),
180 where the service is performed for, or the commodity delivered to, the public generally, or in

181 the case of a gas corporation or electrical corporation where the gas or electricity is sold or
182 furnished to any member or consumers within the state for domestic, commercial, or industrial
183 use.

184 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone
185 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,
186 or independent energy producer not described in Subsection [~~(19)~~] (21)(d), performs a service
187 for or delivers a commodity to the public, it is considered to be a public utility, subject to the
188 jurisdiction and regulation of the commission and this title.

189 (ii) If a gas corporation, independent energy producer not described in Subsection
190 [~~(19)~~] (21)(d), or electrical corporation sells or furnishes gas or electricity to any member or
191 consumers within the state, for domestic, commercial, or industrial use, for which any
192 compensation or payment is received, it is considered to be a public utility, subject to the
193 jurisdiction and regulation of the commission and this title.

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

198 (d) An independent energy producer is exempt from the jurisdiction and regulations of
199 the commission with respect to an independent power production facility if it meets the
200 requirements of Subsection [~~(19)~~] (21)(d)(i), (ii), (iii), or (iv), or any combination of these:

201 (i) the commodity or service is produced or delivered, or both, by an independent
202 energy producer solely for a use described in Subsections [~~(7)~~] (8)(b)(ii) through (iv) or for the
203 use of state-owned facilities;

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

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

210 (B) the real property on which the service or commodity is used is contiguous to real
211 property that is owned or controlled by the independent energy producer or is separated only by

212 a public road or an easement for a public road; or

213 (iv) the independent energy producer:

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

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

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

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

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

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

229 (II) the maximum size allowable under net metering provisions, defined in Section
230 54-15-102;

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

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

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

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

242 (F) installs the relevant customer generation system by December 31, 2021.

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

246 (f) (i) "Public utility" does not include any person that is otherwise considered a public
247 utility under this Subsection [~~(19)~~] (21) solely because of that person's ownership of an interest
248 in an electric plant, cogeneration facility, or small power production facility in this state if all of
249 the following conditions are met:

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

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

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

255 (III) a combination of Subsections [~~(19)~~] (21)(f)(i)(A)(I) and (II);

256 (B) the lessor of the ownership interest identified in Subsection [~~(19)~~] (21)(f)(i)(A) is:

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

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

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

262 (ii) Any person that is exempt from classification as a public utility under Subsection
263 [~~(19)~~] (21)(f)(i) shall continue to be [~~so~~] exempt from classification following termination of
264 the lessee's right to possession or use of the electric plant for so long as the former lessor does
265 not operate the electric plant or sell electricity from the electric plant. If the former lessor
266 operates the electric plant or sells electricity, the former lessor shall continue to be so exempt
267 for a period of 90 days following termination, or for a longer period that is ordered by the
268 commission. This period may not exceed one year. A change in rates that would otherwise
269 require commission approval may not be effective during the 90-day or extended period
270 without commission approval.

271 (g) "Public utility" does not include any person that provides financing for, but has no
272 ownership interest in an electric plant, small power production facility, or cogeneration facility.
273 In the event of a foreclosure in which an ownership interest in an electric plant, small power

274 production facility, or cogeneration facility is transferred to a third-party financier of an electric
275 plant, small power production facility, or cogeneration facility, then that third-party financier is
276 exempt from classification as a public utility for 90 days following the foreclosure, or for a
277 longer period that is ordered by the commission. This period may not exceed one year.

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

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

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

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

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

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

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

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

296 [~~(20)~~] (22) "Purchasing utility" means any electrical corporation that is required to
297 purchase electricity from small power production or cogeneration facilities pursuant to the
298 Public Utility Regulatory Policies Act, 16 U.S.C. Section 824a-3.

299 [~~(21)~~] (23) "Qualifying power producer" means a corporation, cooperative association,
300 or person, or the lessee, trustee, and receiver of the corporation, cooperative association, or
301 person, who owns, controls, operates, or manages any qualifying power production facility or
302 cogeneration facility.

303 [~~(22)~~] (24) "Qualifying power production facility" means a facility that:

304 (a) produces electrical energy solely by the use, as a primary energy source, of biomass,

305 waste, a renewable resource, a geothermal resource, or any combination of the preceding
306 sources;

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

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

310 [~~(23)~~] (25) "Railroad" includes every commercial, interurban, and other railway, other
311 than a street railway, and each branch or extension of a railway, by any power operated,
312 together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots,
313 union depots, yards, grounds, terminals, terminal facilities, structures, and equipment, and all
314 other real estate, fixtures, and personal property of every kind used in connection with a
315 railway owned, controlled, operated, or managed for public service in the transportation of
316 persons or property.

317 [~~(24)~~] (26) "Railroad corporation" includes every corporation and person, their lessees,
318 trustees, and receivers, owning, controlling, operating, or managing any railroad for public
319 service within this state.

320 [~~(25)~~] (27) (a) "Sewerage corporation" includes every corporation and person, their
321 lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage
322 system for public service within this state.

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

327 [~~(26)~~] (28) "Telegraph corporation" includes every corporation and person, their
328 lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line
329 for public service within this state.

330 [~~(27)~~] (29) "Telegraph line" includes all conduits, ducts, poles, wires, cables,
331 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
332 controlled, operated, or managed in connection with or to facilitate communication by
333 telegraph, whether that communication be had with or without the use of transmission wires.

334 [~~(28)~~] (30) (a) "Telephone corporation" means any corporation or person, and their
335 lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates,

336 manages, or resells a public telecommunications service as defined in Section 54-8b-2.

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

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

343 (ii) Internet service; or

344 (iii) resold intrastate toll service.

345 ~~[(29)]~~ (31) "Telephone line" includes all conduits, ducts, poles, wires, cables,
346 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
347 controlled, operated, or managed in connection with or to facilitate communication by
348 telephone whether that communication is had with or without the use of transmission wires.

349 ~~[(30)]~~ (32) "Transportation of persons" includes every service in connection with or
350 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
351 carriage, and delivery of that person and that person's baggage.

352 ~~[(31)]~~ (33) "Transportation of property" includes every service in connection with or
353 incidental to the transportation of property, including in particular its receipt, delivery,
354 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and
355 hauling, and the transmission of credit by express companies.

356 ~~[(32)]~~ (34) "Water corporation" includes every corporation and person, their lessees,
357 trustees, and receivers, owning, controlling, operating, or managing any water system for
358 public service within this state. It does not include private irrigation companies engaged in
359 distributing water only to their stockholders, or towns, cities, counties, water conservancy
360 districts, improvement districts, or other governmental units created or organized under any
361 general or special law of this state.

362 ~~[(33)]~~ (35) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
363 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,
364 and personal property owned, controlled, operated, or managed in connection with or to
365 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,
366 appointment, apportionment, or measurement of water for power, fire protection, irrigation,

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

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

370 ~~[(34)]~~ (36) "Wholesale electrical cooperative" includes every electrical corporation that
371 is:

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

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

376 Section 2. Section **54-3-33** is enacted to read:

377 **54-3-33. Eligible customer energy supply contract.**

378 (1) The commission may approve a contract between a large-scale electric utility and a
379 customer of a large-scale electric utility that is eligible to transfer electric service to a
380 non-utility energy supplier under Section [54-3-32](#).

381 (2) The commission shall exempt a customer that enters into a contract described in
382 Subsection (1) from paying the line item charges described in Subsection [54-7-12.8\(3\)](#), except
383 costs related to the Utah Solar Incentive program included in Subsection [54-7-12.8\(3\)\(b\)](#).

384 (3) If an eligible customer that enters into a contract described in Subsection (1) has
385 provided notice to the commission under Subsection [54-3-32\(3\)](#), the notice is not considered
386 withdrawn under Subsection [54-3-32\(4\)\(c\)](#) by the customer entering into the contract.

387 (4) Notwithstanding Subsection [54-3-32\(4\)\(c\)](#), if the commission approves a contract
388 under this section for an eligible customer that has a contract termination date that is after
389 December 31, 2020, the notice described in Subsection [54-3-32\(3\)\(a\)](#) is considered to be
390 withdrawn if a transfer of service under Section [54-3-32](#) does not occur before the later of:

391 (a) the day three years after the day on which the contract terminates; or

392 (b) 18 months after the intended date of transfer of service described in Subsection
393 [54-3-32\(3\)\(a\)\(ii\)](#).

394 Section 3. Section **54-7-12.8** is amended to read:

395 **54-7-12.8. Electric energy efficiency, sustainable transportation and energy, and**
396 **conservation tariff.**

397 (1) As used in this section~~[-,"demand"]~~:

398 (a) "Demand side management" means [activities or programs that promote] an activity
399 or program that promotes electric energy efficiency or conservation or more efficient
400 management of electric energy loads.

401 (b) "Pilot program period" means a period of 5 years, beginning on January 1, 2017,
402 during which the sustainable transportation and energy plan is effective.

403 (c) "Sustainable transportation and energy plan" means the same as that term is defined
404 in Section 54-20-102.

405 (d) "Utah solar incentive program" means the eligible utility rooftop solar pilot
406 program established by commission order in 2012.

407 (2) (a) As provided in this section, the commission may approve a tariff under which
408 an electrical corporation includes a line item charge on [its] the electrical corporation's
409 customers' bills to recover costs incurred by the electrical corporation for demand side
410 management.

411 (b) The commission shall authorize a large-scale electric utility that is allowed to
412 charge a customer for demand side management under Subsection (2)(a) to:

413 (i) if requested by the large-scale electric utility, capitalize the annual costs incurred for
414 demand side management provided in Subsection (2)(a);

415 (ii) amortize the annual cost for demand side management over a period of 10 years;

416 (iii) apply a carrying charge to the unamortized balance that is equal to the large-scale
417 electric utility's pretax weighted average cost of capital approved by the commission in the
418 large-scale electric utility's most recent general rate proceeding; and

419 (iv) recover the amortization cost described in Subsection (2)(b)(ii) and the carrying
420 charge described in Subsection (2)(b)(iii) in customer rates.

421 (3) The commission shall, before January 1, 2017, authorize a large-scale electric
422 utility to implement a combined line item charge on the large-scale electric utility's customers'
423 bills to recover the cost to the large-scale electric utility of:

424 (a) demand side management, including the cost of amortizing a deferred balance;

425 (b) the sustainable transportation and energy plan; and

426 (c) the additional expense described in Subsection (5)(a)(i).

427 (4) On December 31, 2016, the commission shall end the Utah solar incentive program
428 and surcharge tariff and the large-scale electric utility shall stop accepting new applications for

429 solar incentive program incentives.

430 (5) (a) The commission may authorize a large-scale electric utility that capitalizes

431 demand side management costs under Subsection (2)(b) to:

432 (i) recognize the difference between the annual revenues the large-scale electric utility
433 collects for demand side management and the annual amount of the large-scale electric utility's
434 demand side management cost amortization expense as an additional expense;

435 (ii) establish and fund, via the additional expense described in Subsection (5)(a)(i), a
436 regulatory liability; and

437 (iii) use the regulatory liability described in Subsection (5)(a)(ii) to depreciate thermal
438 generation plant.

439 (b) The commission shall authorize the large-scale electric utility to use the regulatory
440 liability described in Subsection (5)(a)(ii) to depreciate thermal generation plant determined by
441 the commission to be in the public interest for compliance with an environmental regulation or
442 another purpose.

443 (c) The commission shall allow the large-scale electric utility to apply a carrying
444 charge to the regulatory liability described in Subsection (5)(a)(ii) in an amount equal to the
445 large-scale electric utility's pretax average weighted cost of capital approved by the
446 commission in the large-scale electric utility's most recent general rate proceeding.

447 (d) The commission shall allow a large-scale electric utility to use the regulatory
448 liability described in Subsection (5)(c) to offset the carrying charge described in Subsection
449 (2)(b)(iii).

450 (e) The large-scale electric utility shall apply the carrying charge described in
451 Subsection (5)(c) to funds that a large-scale electric utility is authorized to use to depreciate
452 thermal generation plant under Subsection (5)(a) until the reduction in the large-scale electric
453 utility's rate base associated with the thermal generation plant depreciation for which the funds
454 are used is reflected in the large-scale electric utility's customers' rates.

455 (f) If the commission determines that funds established in the regulatory liability under
456 Subsection (5)(a) are no longer needed for the purpose of depreciating thermal generation
457 plant, the large-scale electric utility shall use the balance of the funds in the regulatory liability
458 to offset the capitalized demand side management costs described in Subsection (2)(b)(i).

459 (6) (a) During the pilot program period, of the funds a large-scale electric utility

460 collects via the line item charge described in Subsection (3), the commission shall authorize the
461 large-scale electric utility to allocate on an annual basis:

462 (i) \$10 million to the sustainable transportation and energy plan; and

463 (ii) the funds not allocated to the sustainable transportation and energy plan to demand
464 side management.

465 (b) The commission shall authorize a large-scale electric utility to spend up to:

466 (i) \$4.0 million annually for the electric vehicle incentive program described in Section
467 54-20-103; and

468 (ii) an annual average of:

469 (A) \$0.5 million for the clean coal technology program described in Section
470 54-20-104; and

471 (B) \$1.9 million for the innovative utility programs described in Section 54-20-105;

472 (c) The commission shall authorize a large-scale electric utility to recoup the
473 large-scale electric utility's unrecovered costs paid through the Utah solar incentive program
474 from the funds allocated under Subsection (6)(a)(i).

475 (7) A large-scale electric utility shall establish a balancing account that includes:

476 (a) funds allocated under Subsection (6)(a)(i);

477 (b) the program expenditures described in Subsection (6)(b);

478 (c) the unrecovered Utah solar incentive program costs described in Subsection (6)(c);

479 and

480 (d) a carrying charge in an amount determined by the commission.

481 (8) A customer that is paying a contract rate under an agreement with a large-scale
482 electric utility as of January 1, 2016, is exempt from the costs recovered under Subsection (3),
483 except for costs related to the Utah Solar Incentive Program included in Subsection
484 54-7-12.8(3)(b).

485 (9) (a) In any proceeding commenced under Section 54-3-32, the commission may not
486 consider or assess to an eligible customer:

487 (i) an expenditure, cost, amortization, charge or liability that is created by or arises
488 from:

489 (A) a program created under Title 54, Chapter 20, Sustainable Transportation and
490 Energy Plan Act; or

491 (B) this section, except for costs related to the Utah Solar Incentive Program included
 492 in Subsection 54-7-12.8(3)(b).

493 (b) Except as provided in Subsection (9)(a) and in Section 54-3-33, this section and
 494 Title 54, Chapter 20, Sustainable Transportation and Energy Plan Act do not:

495 (i) amend or repeal any provision of Section 54-3-32; or

496 (ii) affect any right, defense, or credit available to an eligible customer under Section
 497 54-3-32.

498 ~~[(3)]~~ (10) Each electrical corporation proposing a tariff under this section shall, before
 499 submitting the tariff to the commission for approval, seek ~~[and receive]~~ input from:

500 (a) the Division of Public Utilities;

501 (b) the Office of Consumer Services ~~[created in Section 54-10a-201]~~; and

502 ~~[(c) other interested parties.]~~

503 (c) a person that files a request for notice with the commission.

504 ~~[(4)]~~ (11) Before approving a tariff under this section, the commission shall hold a
 505 hearing if:

506 (a) requested in writing by the electrical corporation, a customer of the electrical
 507 corporation, or any other interested party within 15 days after the tariff filing; or

508 (b) the commission determines that a hearing is appropriate.

509 ~~[(5)]~~ (12) The commission may approve a demand side management tariff under this
 510 section:

511 (a) either with or without a provision allowing an end-use customer to receive a credit
 512 against the charges imposed under the tariff for electric energy efficiency measures that:

513 ~~[(a)]~~ (i) the customer implements or has implemented at the customer's expense; and

514 ~~[(b)]~~ (ii) qualify for the credit under criteria established by the ~~[Utah Public Service~~
 515 ~~Commission]~~ commission.

516 ~~[(6)]~~ (13) In approving a tariff under this section, the commission may impose
 517 whatever conditions or limits it considers appropriate, including a maximum annual cost.

518 ~~[(7)]~~ (14) Unless otherwise ordered by the commission, each tariff under this section
 519 approved by the commission shall take effect no sooner than 30 days after the electrical
 520 corporation files the tariff with the commission.

521 Section 4. Section 54-7-13.5 is amended to read:

522 **54-7-13.5. Energy balancing accounts.**

523 (1) As used in this section:

524 (a) "Base rates" [is] means the same as that term is as defined in Subsection
525 54-7-12(1).526 (b) "Energy balancing account" means an electrical corporation account for some or all
527 components of the electrical corporation's incurred actual power costs, including:

528 (i) (A) fuel;

529 (B) purchased power; and

530 (C) wheeling expenses; and

531 (ii) the sum of the power costs described in Subsection (1)(b)(i) less wholesale
532 revenues.533 (c) "Gas balancing account" means a gas corporation account to recover on a
534 dollar-for-dollar basis, purchased gas costs, and gas cost-related expenses.535 (2) (a) The commission may authorize an electrical corporation to establish an energy
536 balancing account.537 (b) An energy balancing account shall become effective upon a commission finding
538 that the energy balancing account is:

539 (i) in the public interest;

540 (ii) for prudently-incurred costs; and

541 (iii) implemented at the conclusion of a general rate case.

542 (c) An electrical corporation:

543 (i) may, with approval from the commission, recover costs under this section through:

544 (A) base rates;

545 (B) contract rates;

546 (C) surcredits; or

547 (D) surcharges; and

548 (ii) shall file a reconciliation of the energy balancing account with the commission at
549 least annually with actual costs and revenues incurred by the electrical corporation.550 (d) Beginning January 1, 2017, for an electrical corporation with an energy balancing
551 account established before January 1, 2016, the commission shall allow an electrical
552 corporation to recover 100% of the electrical corporation's prudently incurred costs as

553 determined and approved by the commission under this section.

554 (e) (i) Except as provided in Subsections (2)(e)(ii) and (2)(e)(iii), a large-scale electric
555 utility may not file a request with the commission for a change in base rates if the proposed
556 change in base rates would take effect before May 10, 2018.

557 (ii) If a person requests or the commission initiates a proceeding for a change in base
558 rates that would take effect before May 10, 2018:

559 (A) a large-scale electric utility may participate in the proceeding; and

560 (B) a large-scale electric utility may, after the proceeding, file a request with the
561 commission for a change in base rates that would take effect before May 10, 2018.

562 (iii) a large-scale electric utility may file a request with the commission to initiate a
563 cost of service proceeding for approval of a net metering tariff under Section [54-15-105.1](#)

564 ~~[(d)]~~ (f) An energy balancing account may not alter:

565 (i) the standard for cost recovery; or

566 (ii) the electrical corporation's burden of proof.

567 ~~[(e)]~~ (g) The collection method described in Subsection (2)(c)(i) shall:

568 (i) apply to the appropriate billing components in base rates; and

569 (ii) be incorporated into base rates in an appropriate commission proceeding.

570 ~~[(f)]~~ (h) The collection of costs related to an energy balancing account from customers
571 paying contract rates shall be governed by the terms of the contract.

572 ~~[(g)]~~ (i) Revenues collected in excess of prudently incurred actual costs shall:

573 (i) be refunded as a bill surcredit to an electrical corporation's customers over a period
574 specified by the commission; and

575 (ii) include a carrying charge.

576 ~~[(h)]~~ (j) Prudently incurred actual costs in excess of revenues collected shall:

577 (i) be recovered as a bill surcharge over a period to be specified by the commission;

578 and

579 (ii) include a carrying charge.

580 ~~[(i)]~~ (k) The carrying charge applied to the balance in an energy balancing account
581 shall be:

582 (i) determined by the commission; and

583 (ii) symmetrical for over or under collections.

584 (3) (a) The commission may:
585 (i) establish a gas balancing account for a gas corporation; and
586 (ii) set forth procedures for a gas corporation's gas balancing account in the gas
587 corporation's commission-approved tariff.

588 (b) A gas balancing account may not alter:
589 (i) the standard of cost recovery; or
590 (ii) the gas corporation's burden of proof.

591 (4) (a) All allowed costs and revenues associated with an energy balancing account or
592 gas balancing account shall remain in the respective balancing account until charged or
593 refunded to customers.

594 (b) The balance of an energy balancing account or gas balancing account may not be:
595 (i) transferred by the electrical corporation or gas corporation; or
596 (ii) used by the commission to impute earnings or losses to the electrical corporation or
597 gas corporation.

598 (c) An energy balancing account or gas balancing account that is formed and
599 maintained in accordance with this section does not constitute impermissible retroactive
600 ratemaking or single-issue ratemaking.

601 (5) This section does not create a presumption for or against approval of an energy
602 balancing account.

603 (6) In the year two years after the commission allows an electrical corporation to
604 recover costs under Subsection (2)(d), the commission shall report to the Public Utilities and
605 Technology Interim Committee regarding whether allowing an electrical corporation to
606 continue to recover costs under Subsection (2)(d) is reasonable and in the public interest.

607 Section 5. Section **54-17-801** is amended to read:

608 **54-17-801. Definitions.**

609 As used in this part:

610 (1) "Contract customer" means a person who executes or will execute a renewable
611 energy contract with a qualified utility.

612 (2) "Qualified utility" means an electric corporation that serves more than 200,000
613 retail customers in the state.

614 (3) "Renewable energy contract" means a contract under this part for the delivery of

615 electricity from one or more renewable energy facilities to a contract customer requiring the use
616 of a qualified utility's transmission or distribution system to deliver the electricity from a
617 renewable energy facility to the contract customer.

618 (4) "Renewable energy facility":

619 (a) except as provided in Subsection (4)(b), means a renewable energy source defined
620 in Section [54-17-601](#) that is located in the state; and

621 (b) does not include an electric generating facility whose costs have been included in a
622 qualified utility's rates as a facility providing electric service to the qualified utility's system.

623 (5) "Renewable energy tariff" means a tariff offered by a qualified utility that allows
624 the qualified utility to procure renewable generation on behalf of and to serve its customers.

625 Section 6. Section **54-17-806** is enacted to read:

626 **54-17-806. Qualified utility renewable energy tariff.**

627 (1) The commission may authorize a qualified utility to implement a renewable energy
628 tariff in accordance with this section if the commission determines the tariff that the qualified
629 utility proposes is reasonable and in the public interest.

630 (2) If a tariff is authorized under Subsection (1), a qualified utility customer with an
631 electrical load of at least five megawatts and who agrees to service that is subject to the
632 renewable energy tariff shall pay:

633 (a) the customer's normal tariff rate;

634 (b) an incremental charge in an amount equal to the difference between the cost to the
635 qualified utility to supply renewable generation to the renewable energy tariff customer and the
636 qualified utility's avoided costs as defined in Subsection [54-2-1](#)(1), or a different methodology
637 recommended by the qualified utility; and

638 (c) an administrative fee in an amount approved by the commission.

639 (3) The commission shall allow a qualified utility to recover the qualified utility's
640 prudently incurred cost of renewable generation procured pursuant to the tariff established in
641 this section that is not otherwise recovered from the proceeds of the tariff paid by customers
642 agreeing to service that is subject to the renewable energy tariff.

643 Section 7. Section **54-20-101** is enacted to read:

644 **CHAPTER 20. SUSTAINABLE TRANSPORTATION AND ENERGY PLAN ACT**

645 **54-20-101. Title.**

646 This chapter is known as the "Sustainable Transportation and Energy Plan Act."

647 Section 8. Section **54-20-102** is enacted to read:

648 **54-20-102. Definitions.**

649 As used in this chapter:

650 (1) "Demand side management" means the same as that term is defined in Section
651 54-7-12.8.

652 (2) "Pilot program period" means a period of 5 years, beginning on January 1, 2017,
653 during which the sustainable transportation and energy plan is effective.

654 (3) "Sustainable transportation and energy plan" means the programs approved by the
655 commission and undertaken by a large-scale electric utility during the pilot program period,
656 including:

657 (a) the electric vehicle incentive program described in Section 54-20-103;

658 (b) the clean coal technology program described in Section 54-20-104; and

659 (c) the innovative technology programs described in Section 54-20-105.

660 Section 9. Section **54-20-103** is enacted to read:

661 **54-20-103. Electric vehicle incentive program.**

662 (1) The commission shall, before July 1, 2017, authorize a large-scale electric utility to
663 establish a program that promotes customer choice in electric vehicle charging equipment and
664 service that includes:

665 (a) an incentive to a large-scale electric utility customer to install or provide electric
666 vehicle infrastructure;

667 (b) time of use pricing for electric vehicle charging;

668 (c) any measure that the commission determines is in the public interest that
669 incentivizes the competitive deployment of electric vehicle charging infrastructure.

670 (2) The commission may review the expenditures made by a large-scale electric utility
671 for the program described in Subsection (1) in order to determine if the large-scale electric
672 utility made the expenditures prudently in accordance with the purposes of the program.

673 (3) A large-scale electric utility proposing a program for approval by the commission
674 under this section shall, before submitting the program to the commission for approval, seek
675 input from:

676 (a) the Division of Public Utilities;

- 677 (b) the Office of Consumer Services;
- 678 (c) the Division of Air Quality; and
- 679 (d) any person that files a request for notice with the commission.

680 Section 10. Section **54-20-104** is enacted to read:

681 **54-20-104. Clean coal technology program.**

682 (1) Subject to Subsection (2), the commission shall authorize, before July 1, 2017, and
683 subject to funding, approve a program that authorizes a large-scale electric utility to
684 investigate, analyze, and research clean coal technology.

685 (2) The commission may review the expenditures made by a large-scale electric utility
686 for a program described in Subsection (1) in order to determine if the large-scale electric utility
687 made the expenditures prudently in accordance with the purposes of the program.

688 Section 11. Section **54-20-105** is enacted to read:

689 **54-20-105. Innovative utility programs.**

690 (1) The commission may authorize, subject to funding available under Section
691 54-7-12.8(6)(c)(iii), a large-scale electric utility to implement programs that the commission
692 determines are in the interest of large-scale electric utility customers to provide for the
693 investigation, analysis, and implementation of:

- 694 (a) an economic development incentive rate;
- 695 (b) a solar generation incentive;
- 696 (c) a battery storage or electric grid related project;
- 697 (d) a commercial line extension pilot program; and
- 698 (e) a program to curtail emissions from thermal generation plant in the Salt Lake
699 non-attainment area during a non-attainment event as defined by the Division of Air Quality;
700 and

701 (f) any other technology program.

702 (2) The commission may review the expenditures made by a large-scale electric utility
703 for a program described in Subsection (1) in order to determine if the large-scale electric utility
704 made the expenditures prudently in accordance with the purposes of the program.

705 Section 12. Section **54-20-106** is enacted to read:

706 **54-20-106. Extension of Pilot Program.**

707 Before the first day of the legislative session in the final year of the pilot program

708 period, the commission shall submit a report and recommendation to the Legislature regarding
709 whether, in the discretion of the commission, the Legislature should, for the sustainable
710 transportation and energy plan:

- 711 (1) extend the plan or a portion of the plan as a ratepayer funded program;
712 (2) implement the plan or a portion of the plan as a state funded program; or
713 (3) discontinue the plan or a portion of the plan.