

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

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**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 costs recovered under Subsection [54-7-12.8\(3\)](#), except the costs  
383 of 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 states 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 termination date stated in the contract; 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 five 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) \$10,000,000 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) \$4,000,000 annually for the electric vehicle incentive program described in Section  
467 54-20-103; and

- 468 (ii) an annual average of:
- 469 (A) \$500,000 for the clean coal technology program described in Section 54-20-104;

470 and  
471 (B) \$1,900,000 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 created by or arising from the Utah solar incentive program included in  
484 Subsection 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 an expenditure, cost, amortization, charge, or liability  
487 of any kind that is created by or arises in whole or in part from:

- 488 (i) any program created under Title 54, Chapter 20, Sustainable Transportation and  
489 Energy Plan Act; or
- 490 (ii) this section, except for costs created by or arising from the Utah solar incentive

491 program included in Subsection 54-7-12.8(3)(b).

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

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

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

497 ~~[(3)]~~ (10) Each electrical corporation proposing a tariff under this section shall, before  
498 submitting the tariff to the commission for approval, seek ~~[and receive]~~ input from:

499 (a) the Division of Public Utilities;

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

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

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

503 ~~[(4)]~~ (11) Before approving a tariff under this section, the commission shall hold a  
504 hearing if:

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

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

508 ~~[(5)]~~ (12) The commission may approve a demand side management tariff under this  
509 section either with or without a provision allowing an end-use customer to receive a credit  
510 against the charges imposed under the tariff for electric energy efficiency measures that:

511 (a) the customer implements or has implemented at the customer's expense; and

512 (b) qualify for the credit under criteria established by the ~~[Utah Public Service~~

513 ~~Commission]~~ commission.

514 ~~[(6)]~~ (13) In approving a tariff under this section, the commission may impose  
515 whatever conditions or limits it considers appropriate, including a maximum annual cost.

516 ~~[(7)]~~ (14) Unless otherwise ordered by the commission, each tariff under this section  
517 approved by the commission shall take effect no sooner than 30 days after the electrical  
518 corporation files the tariff with the commission.

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

520 **54-7-13.5. Energy balancing accounts.**

521 (1) As used in this section:

522 (a) "Base rates" [~~is as~~] means the same as that term is defined in Subsection  
523 54-7-12(1).

524 (b) "Energy balancing account" means an electrical corporation account for some or all  
525 components of the electrical corporation's incurred actual power costs, including:

526 (i) (A) fuel;

527 (B) purchased power; and

528 (C) wheeling expenses; and

529 (ii) the sum of the power costs described in Subsection (1)(b)(i) less wholesale  
530 revenues.

531 (c) "Gas balancing account" means a gas corporation account to recover on a  
532 dollar-for-dollar basis, purchased gas costs, and gas cost-related expenses.

533 (2) (a) The commission may authorize an electrical corporation to establish an energy  
534 balancing account.

535 (b) An energy balancing account shall become effective upon a commission finding  
536 that the energy balancing account is:

537 (i) in the public interest;

538 (ii) for prudently-incurred costs; and

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

540 (c) An electrical corporation:

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

542 (A) base rates;

543 (B) contract rates;

544 (C) surcredits; or

545 (D) surcharges; and

546 (ii) shall file a reconciliation of the energy balancing account with the commission at  
547 least annually with actual costs and revenues incurred by the electrical corporation.

548 (d) Beginning January 1, 2017, for an electrical corporation with an energy balancing  
549 account established before January 1, 2016, the commission shall allow an electrical  
550 corporation to recover 100% of the electrical corporation's prudently incurred costs as  
551 determined and approved by the commission under this section.

552 (e) (i) Except as provided in Subsections (2)(e)(ii) and (2)(e)(iii), a large-scale electric

553 utility may not file a request with the commission for a change in base rates if the proposed  
554 change in base rates would take effect before May 10, 2018.

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

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

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

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

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

563 (i) the standard for cost recovery; or

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

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

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

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

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

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

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

573 (ii) include a carrying charge.

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

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

576 and

577 (ii) include a carrying charge.

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

580 (i) determined by the commission; and

581 (ii) symmetrical for over or under collections.

582 (3) (a) The commission may:

583 (i) establish a gas balancing account for a gas corporation; and

584 (ii) set forth procedures for a gas corporation's gas balancing account in the gas  
585 corporation's commission-approved tariff.

586 (b) A gas balancing account may not alter:

587 (i) the standard of cost recovery; or

588 (ii) the gas corporation's burden of proof.

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

592 (b) The balance of an energy balancing account or gas balancing account may not be:

593 (i) transferred by the electrical corporation or gas corporation; or

594 (ii) used by the commission to impute earnings or losses to the electrical corporation or  
595 gas corporation.

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

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

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

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

606 **54-17-801. Definitions.**

607 As used in this part:

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

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

612 (3) "Renewable energy contract" means a contract under this part for the delivery of  
613 electricity from one or more renewable energy facilities to a contract customer requiring the use  
614 of a qualified utility's transmission or distribution system to deliver the electricity from a

615 renewable energy facility to the contract customer.

616 (4) "Renewable energy facility":

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

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

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

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

624 **54-17-806. Qualified utility renewable energy tariff.**

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

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

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

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

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

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

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

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

643 **54-20-101. Title.**

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

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

646 **54-20-102. Definitions.**

647 As used in this chapter:

648 (1) "Demand side management" means the same as that term is defined in Section  
649 54-7-12.8.

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

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

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

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

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

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

659 **54-20-103. Electric vehicle incentive program.**

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

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

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

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

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

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

674 (a) the Division of Public Utilities;

675 (b) the Office of Consumer Services;

676 (c) the Division of Air Quality; and

677 (d) any person that files a request for notice with the commission.

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

679 **54-20-104. Clean coal technology program.**

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

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

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

687 **54-20-105. Innovative utility programs.**

688 (1) The commission may authorize, subject to funding available under Section  
689 54-7-12.8(6)(c)(iii), a large-scale electric utility to implement programs that the commission  
690 determines are in the interest of large-scale electric utility customers to provide for the  
691 investigation, analysis, and implementation of:

692 (a) an economic development incentive rate;

693 (b) a solar generation incentive;

694 (c) a battery storage or electric grid related project;

695 (d) a commercial line extension pilot program; and

696 (e) a program to curtail emissions from thermal generation plant in the Salt Lake  
697 non-attainment area during a non-attainment event as defined by the Division of Air Quality;  
698 and

699 (f) any other technology program.

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

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

704 **54-20-106. Extension of Pilot Program.**

705 Before the first day of the legislative session in the final year of the pilot program  
706 period, the commission shall submit a report and recommendation to the Legislature regarding  
707 whether, in the discretion of the commission, the Legislature should, for the sustainable

708 transportation and energy plan:

709       (1) extend the plan or a portion of the plan as a ratepayer funded program;

710       (2) implement the plan or a portion of the plan as a state funded program; or

711       (3) discontinue the plan or a portion of the plan.