

1                   **RENEWABLE ENERGY FINANCING PROVISIONS**

2                                   2010 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Bradley G. Last**

5                                   Senate Sponsor: Stephen H. Urquhart

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7 **LONG TITLE**

8 **General Description:**

9           This bill addresses the definition of a public utility and definitions related to net  
10 metering programs.

11 **Highlighted Provisions:**

12           This bill:

13           ▶ excludes from the definition of a "public utility" an independent energy producer  
14 that provides service to a customer on the real property where an independent power  
15 production facility is located;

16           ▶ changes definitions to provide that a facility used to supply energy for a specific  
17 customer may qualify as a customer generation system under Title 54, Chapter 15,

18 Net Metering of Electricity; and

19           ▶ makes technical changes.

20 **Monies Appropriated in this Bill:**

21           None

22 **Other Special Clauses:**

23           None

24 **Utah Code Sections Affected:**

25 **AMENDS:**

26           **54-2-1**, as last amended by Laws of Utah 2008, Chapter 374

27           **54-15-102**, as last amended by Laws of Utah 2008, Chapter 244



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

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

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

As used in this title:

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

(2) "Cogeneration facility":

(a) means a facility [~~which~~] that produces:

(i) electric energy; and

(ii) steam or forms of useful energy, including heat, [~~which~~] that are used for industrial, commercial, heating, or cooling purposes; and

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

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

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

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

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

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

(a) is a cooperative;

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

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

(i) members; or

(ii) patrons.

(7) "Electrical corporation" includes every corporation, cooperative association, and

59 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any  
60 electric plant, or in any way furnishing electric power for public service or to its consumers or  
61 members for domestic, commercial, or industrial use, within this state, except independent  
62 energy producers, and except where electricity is generated on or distributed by the producer  
63 solely for the producer's own use, or the use of the producer's tenants, or for the use of  
64 members of an association of unit owners formed under Title 57, Chapter 8, Condominium  
65 Ownership Act, and not for sale to the public generally.

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

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

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

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

79 (ii) not for sale to others;

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

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

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

87 (11) "Heat corporation" includes every corporation and person, their lessees, trustees,  
88 and receivers, owning, controlling, operating, or managing any heating plant for public service  
89 within this state.

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

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

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

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

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

102 (b) is a qualifying power production facility.

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

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

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

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

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

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

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

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

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

142 (B) the real property on which the service or commodity is used is contiguous to real  
143 property which is owned or controlled by the independent energy producer. Parcels of real  
144 property separated solely by public roads or easements for public roads shall be considered as  
145 contiguous for purposes of this Subsection (16)~~[-]~~; or

146 (iv) the commodity or service produced or delivered by the independent energy  
147 producer is for the independent energy producer's own use or the use of an independent energy  
148 producer's customer that uses the commodity or service on the real property where the power  
149 production facility is located, provided that the power production facility is a customer  
150 generation system as described in Chapter 15, Net Metering of Electricity, except that excess  
151 electricity not used in accordance with this Subsection (16)(d)(iv) may be supplied to an

152 electrical corporation where the independent energy producer's customer participates in a net  
153 metering program in accordance with Chapter 15, Net Metering of Electricity.

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

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

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

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

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

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

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

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

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

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

173 (ii) Any person that is exempt from classification as a public utility under Subsection  
174 (16)(f)(i) shall continue to be so exempt from classification following termination of the  
175 lessee's right to possession or use of the electric plant for so long as the former lessor does not  
176 operate the electric plant or sell electricity from the electric plant. If the former lessor operates  
177 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a  
178 period of 90 days following termination, or for a longer period that is ordered by the  
179 commission. This period may not exceed one year. A change in rates that would otherwise  
180 require commission approval may not be effective during the 90-day or extended period  
181 without commission approval.

182 (g) "Public utility" does not include any person that provides financing for, but has no

183 ownership interest in an electric plant, small power production facility, or cogeneration facility.  
184 In the event of a foreclosure in which an ownership interest in an electric plant, small power  
185 production facility, or cogeneration facility is transferred to a third-party financier of an electric  
186 plant, small power production facility, or cogeneration facility, then that third-party financier is  
187 exempt from classification as a public utility for 90 days following the foreclosure, or for a  
188 longer period that is ordered by the commission. This period may not exceed one year.

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

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

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

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

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

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

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

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

211 (20) "Railroad" includes every commercial, interurban, and other railway, other than a  
212 street railway, and each branch or extension of a railway, by any power operated, together with  
213 all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots, union depots,

214 yards, grounds, terminals, terminal facilities, structures, and equipment, and all other real  
215 estate, fixtures, and personal property of every kind used in connection with a railway owned,  
216 controlled, operated, or managed for public service in the transportation of persons or property.

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

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

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

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

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

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

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

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

243 (ii) Internet service; or

244 (iii) resold intrastate toll service.



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

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

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

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

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

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

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

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

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

275 Section 2. Section **54-15-102** is amended to read:

276 **54-15-102. Definitions.**

277 As used in this chapter:

278 (1) "Annualized billing period" means a 12-month billing cycle beginning on April 1 of  
279 one year and ending on March 31 of the following year.

280 (2) "Customer-generated electricity" means electricity that:

281 (a) is generated by a customer generation system for a customer participating in a net  
282 metering program [~~from a customer generation system~~];

283 (b) exceeds the electricity the customer needs for the customer's own use; and

284 (c) is supplied to the electrical corporation administering the net metering program.

285 (3) "Customer generation system":

286 (a) means [~~a customer-owned or customer-leased~~] an eligible facility [~~, operated by the~~  
287 ~~customer;~~] that is used to supply energy to or for a specific customer that:

288 (i) has a generating capacity of:

289 (A) not more than 25 kilowatts for a residential facility; or

290 (B) not more than 2 megawatts for a non-residential facility, unless the governing  
291 authority approves a greater generation capacity;292 (ii) is located on, or adjacent to, the premises of the electrical corporation's customer,  
293 subject to the electrical corporation's service requirements;294 (iii) operates in parallel and is interconnected with the electrical corporation's  
295 distribution facilities;296 (iv) is intended primarily to offset part or all of the customer's requirements for  
297 electricity; and

298 (v) is controlled by an inverter or switchgear; and

299 (b) includes an electric generator and its accompanying equipment package.

300 (4) "Eligible facility" means a facility that uses energy derived from one of the  
301 following to generate electricity:

302 (a) solar photovoltaic and solar thermal energy;

303 (b) wind energy;

304 (c) hydrogen;

305 (d) organic waste;

306 (e) hydroelectric energy;

- 307 (f) waste gas and waste heat capture or recovery;
- 308 (g) biomass and biomass byproducts, except for the combustion of:
- 309 (i) wood that has been treated with chemical preservatives such as creosote,
- 310 pentachlorophenol, or chromated copper arsenate; or
- 311 (ii) municipal waste in a solid form;
- 312 (h) forest or rangeland woody debris from harvesting or thinning conducted to improve
- 313 forest or rangeland ecological health and to reduce wildfire risk;
- 314 (i) agricultural residues;
- 315 (j) dedicated energy crops;
- 316 (k) landfill gas or biogas produced from organic matter, wastewater, anaerobic
- 317 digesters, or municipal solid waste; or
- 318 (l) geothermal energy.
- 319 (5) "Equipment package" means a group of components connecting an electric
- 320 generator to an electric distribution system, including all interface equipment and the interface
- 321 equipment's controls, switchgear, inverter, and other interface devices.
- 322 (6) "Excess customer-generated electricity" means the amount of customer-generated
- 323 electricity in excess of the customer's consumption from the customer generation system during
- 324 a monthly billing period, as measured at the electrical corporation's meter.
- 325 (7) "Fuel cell" means a device in which the energy of a reaction between a fuel and an
- 326 oxidant is converted directly and continuously into electrical energy.
- 327 (8) "Governing authority" means:
- 328 (a) for a distribution electrical cooperative, its board of directors; and
- 329 (b) for each other electrical corporation, the Public Service Commission.
- 330 (9) "Inverter" means a device that:
- 331 (a) converts direct current power into alternating current power that is compatible with
- 332 power generated by an electrical corporation; and
- 333 (b) has been designed, tested, and UL certified to UL1741 and installed and operated in
- 334 accordance with IEEE1547 standards.
- 335 (10) "Net electricity" means the difference, as measured at the meter owned by the
- 336 electrical corporation between:
- 337 (a) the amount of electricity that an electrical corporation supplies to a customer

- 338 participating in a net metering program; and
- 339 (b) the amount of customer-generated electricity delivered to the electrical corporation.
- 340 (11) "Net metering" means measuring the amount of net electricity for the applicable
- 341 billing period.
- 342 (12) "Net metering program" means a program administered by an electrical
- 343 corporation whereby a customer with a customer generation system may:
- 344 (a) generate electricity primarily for the customer's own use;
- 345 (b) supply customer-generated electricity to the electrical corporation; and
- 346 (c) if net metering results in excess customer-generated electricity during a billing
- 347 period, receive a credit under Section 54-15-104.
- 348 (13) "Switchgear" means the combination of electrical disconnects, fuses, or circuit
- 349 breakers:
- 350 (a) used to:
- 351 (i) isolate electrical equipment; and
- 352 (ii) de-energize equipment to allow work to be performed or faults downstream to be
- 353 cleared; and
- 354 (b) that is:
- 355 (i) designed, tested, and UL certified to UL1741; and
- 356 (ii) installed and operated in accordance with IEEE1547 standards.

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**Legislative Review Note**  
**as of 2-12-10 3:55 PM**

**Office of Legislative Research and General Counsel**

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**H.B. 145 - Renewable Energy Financing Provisions**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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