

ELECTRIC POWER FACILITIES AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts language related to an interlocal entity that provides replacement project capacity and the Electric Power Facilities Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions in the Interlocal Cooperation Act that govern a project entity;
- ▶ excludes certain facilities that provide replacement project capacity from the certificate of public convenience and necessity requirement;
- ▶ describes the scope of the Electric Power Facilities Act;
- ▶ describes a person's ownership or use of works or facilities; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-13-103, as last amended by Laws of Utah 2008, Chapter 250

11-13-301, as last amended by Laws of Utah 2003, Chapter 21



28 11-13-304, as renumbered and amended by Laws of Utah 2002, Chapter 286

29 54-9-102, as renumbered and amended by Laws of Utah 2002, Chapter 286

30 ENACTS:

31 54-9-108, Utah Code Annotated 1953



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

34 Section 1. Section 11-13-103 is amended to read:

35 **11-13-103. Definitions.**

36 As used in this chapter:

37 (1) (a) "Additional project capacity" means electric generating capacity provided by a
38 generating unit that first produces electricity on or after May 6, 2002, and that is constructed or
39 installed at or adjacent to the site of a project that first produced electricity before May 6, 2002,
40 regardless of whether:

41 ~~(a)~~ (i) the owners of the new generating unit are the same as or different from the
42 owner of the project; and

43 ~~(b)~~ (ii) the purchasers of electricity from the new generating unit are the same as or
44 different from the purchasers of electricity from the project.

45 (b) "Additional project capacity" does not mean or include replacement project
46 capacity.

47 (2) "Board" means the Permanent Community Impact Fund Board created by Section
48 9-4-304, and its successors.

49 (3) "Candidate" means one or more of:

50 (a) the state;

51 (b) a county, municipality, school district, local district, special service district, or other
52 political subdivision of the state; and

53 (c) a prosecution district.

54 (4) "Commercial project entity" means a project entity, defined in Subsection (12),
55 that:

56 (a) has no taxing authority; and

57 (b) is not supported in whole or in part by and does not expend or disburse tax
58 revenues.

59 (5) "Direct impacts" means an increase in the need for public facilities or services that
60 is attributable to the project or facilities providing additional project capacity, except impacts
61 resulting from the construction or operation of a facility that is:

62 (a) owned by an owner other than the owner of the project or of the facilities providing
63 additional project capacity; and

64 (b) used to furnish fuel, construction, or operation materials for use in the project.

65 (6) "Electric interlocal entity" means an interlocal entity described in Subsection
66 11-13-203(3).

67 (7) "Energy services interlocal entity" means an interlocal entity that is described in
68 Subsection 11-13-203(4).

69 (8) (a) "Estimated electric requirements," when used with respect to a qualified energy
70 services interlocal entity, includes any of the following that meets the requirements of
71 Subsection (8)(b):

72 (i) generation capacity;

73 (ii) generation output; or

74 (iii) an electric energy production facility.

75 (b) An item listed in Subsection (8)(a) is included in "estimated electric requirements"
76 if it is needed by the qualified energy services interlocal entity to perform the qualified energy
77 services interlocal entity's contractual or legal obligations to any of its members.

78 (9) "Interlocal entity" means:

79 (a) a Utah interlocal entity, an electric interlocal entity, or an energy services interlocal
80 entity; or

81 (b) a separate legal or administrative entity created under Section 11-13-205.

82 (10) "Out-of-state public agency" means a public agency as defined in Subsection
83 (13)(c), (d), or (e).

84 (11) (a) "Project":

85 (i) means an electric generation and transmission facility owned by a Utah interlocal
86 entity or an electric interlocal entity; and

87 (ii) includes fuel or fuel transportation facilities and water facilities owned by that Utah
88 interlocal entity or electric interlocal entity and required for the generation and transmission
89 facility.

90 (b) "Project" includes a project entity's ownership interest in:

91 (i) facilities that provide additional project capacity; ~~and~~

92 (ii) facilities that provide replacement project capacity; and

93 ~~(ii)~~ (iii) additional generating, transmission, fuel, fuel transportation, water, or other
94 facilities added to a project.

95 (12) "Project entity" means a Utah interlocal entity or an electric interlocal entity that
96 owns a project.

97 (13) "Public agency" means:

98 (a) a city, town, county, school district, local district, special service district, or other
99 political subdivision of the state;

100 (b) the state or any department, division, or agency of the state;

101 (c) any agency of the United States;

102 (d) any political subdivision or agency of another state or the District of Columbia
103 including any interlocal cooperation or joint powers agency formed under the authority of the
104 law of the other state or the District of Columbia; and

105 (e) any Indian tribe, band, nation, or other organized group or community which is
106 recognized as eligible for the special programs and services provided by the United States to
107 Indians because of their status as Indians.

108 (14) "Qualified energy services interlocal entity" means an energy services interlocal
109 entity that at the time that the energy services interlocal entity acquires its interest in facilities
110 providing additional project capacity has at least five members that are Utah public agencies.

111 (15) "Replacement project capacity" means electric generating capacity or transmission
112 capacity that:

113 (a) replaces all or a portion of the existing electric generating or transmission capacity
114 of a project; and

115 (b) is provided by a facility that is constructed, reconstructed, converted, repowered, or
116 installed in a location adjacent to or in proximity to or interconnected with the site of a project,
117 regardless of whether the capacity replacing existing capacity is less than or exceeds the
118 generating or transmission capacity of the project prior to installation of the capacity replacing
119 existing capacity.

120 ~~(15)~~ (16) "Utah interlocal entity":

121 (a) means an interlocal entity described in Subsection 11-13-203(2); and

122 (b) includes a separate legal or administrative entity created under Laws of Utah 1977,
123 Chapter 47, Section 3, as amended.

124 ~~[(16)]~~ (17) "Utah public agency" means a public agency under Subsection (13)(a) or
125 (b).

126 Section 2. Section 11-13-301 is amended to read:

127 **11-13-301. Project entity and generation output requirements.**

128 (1) Each project entity:

129 (a) shall:

130 ~~[(a)]~~ (i) except for construction of facilities to provide replacement project capacity,
131 before undertaking the construction of a project [or] and before undertaking the construction of
132 facilities to provide additional project capacity, offer to sell or make available at least 50% of
133 the generation output of or electric energy produced by the project or additional project
134 capacity, respectively;

135 ~~[(b)]~~ (ii) establish rules and procedures for an offer under Subsection (1)(a)(i) that
136 provide at least 60 days for a prospective power purchaser to accept the offer before the offer is
137 considered rejected; and

138 ~~[(c)]~~ (iii) make each offer under Subsection (1)(a)(i):

139 ~~[(1)]~~ (A) under a long-term arrangement that may be an undivided ownership interest, a
140 participation interest, a power sales agreement, or otherwise; and

141 ~~[(2)]~~ (B) to one or more power purchasers in the state that supply electric energy at
142 wholesale or retail[-]; and

143 (b) may undertake construction of facilities to provide replacement project capacity for
144 its project.

145 (2) (a) The generation output or electric energy production available to power
146 purchasers in the state from a project shall be at least 5% of the total generation output or
147 electric energy production of the project.

148 (b) (i) Subject to Subsection (2)(b)(ii)(B), at least a majority of the generation capacity,
149 generation output, or electric energy production facilities providing additional project capacity
150 shall be:

151 (A) made available as needed to meet the estimated electric requirements of entities or

152 consumers within the state; and

153 (B) owned, purchased, or consumed by entities or consumers within the state.

154 (ii) (A) As used in this Subsection (2)(b)(ii), "default provision" means a provision
155 authorizing a nondefaulting party to succeed to or require the disposition of the rights and
156 interests of a defaulting party.

157 (B) The requirements of Subsection (2)(b)(i) do not apply to the extent that those
158 requirements are not met due to the operation of a default provision in an agreement providing
159 for ownership or other interests in facilities providing additional project capacity.

160 Section 3. Section **11-13-304** is amended to read:

161 **11-13-304. Certificate of public convenience and necessity required -- Exceptions.**

162 (1) Before proceeding with the construction of any electrical generating plant or
163 transmission line, each interlocal entity and each out-of-state public agency shall first obtain
164 from the public service commission a certificate, after hearing, that public convenience and
165 necessity requires such construction and in addition that such construction will in no way
166 impair the public convenience and necessity of electrical consumers of the state of Utah at the
167 present time or in the future.

168 (2) The requirement to obtain a certificate of public convenience and necessity applies
169 to each project initiated after the section's effective date but does not apply to:

170 (a) a project for which a feasibility study was initiated prior to the effective date;

171 (b) any facilities providing additional project capacity; [~~or~~]

172 (c) any facilities providing replacement project capacity; or

173 [~~(c)~~] (d) transmission lines required for the delivery of electricity from a project
174 described in Subsection (2)(a) or facilities providing additional project capacity or replacement
175 project capacity within the corridor of a transmission line, with reasonable deviation, of a
176 project producing as of April 21, 1987.

177 Section 4. Section **54-9-102** is amended to read:

178 **54-9-102. Definitions.**

179 As used in this chapter:

180 (1) "Common facilities" means all works and facilities;

181 (a) owned or used by two or more public power entities or power utilities; and

182 (b) necessary to the generation, transmission, or distribution of electric power and

183 energy.

184 (2) "Interlocal entity" has the same meaning as provided in Section 11-13-103.

185 (3) "Power utility":

186 (a) means a public agency, as defined in Section 11-13-103, or other person engaged in
187 generating, transmitting, distributing, or marketing electric power and energy; and

188 (b) does not include a public power entity.

189 (4) "Public power entity" means:

190 (a) a city or town that owns a system for the generation, transmission, or distribution of
191 electric power and energy for public or private use; and

192 (b) an interlocal entity.

193 Section 5. Section **54-9-108** is enacted to read:

194 **54-9-108. Scope -- Ownership or use of works or facilities.**

195 (1) Nothing in this chapter may be construed as imposing on an interlocal entity, as
196 defined in Section 11-13-101, created on or before January 1, 1981, under Laws of Utah 1977,
197 Chapter 47, Section 3, as amended, or in an agreement to which an interlocal entity is a party,
198 any duty, requirement, or restriction other than those imposed by Title 11, Chapter 13,
199 Interlocal Cooperation Act.

200 (2) For purposes of this chapter, a person does not own or use works or facilities if the
201 person is a party to a power sales contract to purchase output generated by, the capacity of, or
202 an entitlement in the works or facilities.

Legislative Review Note
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Office of Legislative Research and General Counsel