

1 ENERGY COST RECOVERY AND RENEWABLE

2 ENERGY PROVISIONS

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: David P. Hinkins

6 House Sponsor: \_\_\_\_\_

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8 LONG TITLE

9 General Description:

10 This bill addresses energy provisions in Title 54, Chapter 17, Energy Resource  
11 Procurement Act, including cost recovery for various forms of energy and renewable  
12 energy goals.

13 Highlighted Provisions:

14 This bill:

15 ▶ defines "category of resource" with regard to energy resources and cost recovery  
16 provisions;

17 ▶ provides that certain costs analyses performed by the Public Service Commission  
18 shall evaluate whether an energy resource is the lowest cost for that category of  
19 resource;

20 ▶ provides that no more than half of an electrical corporation's qualifying electricity or  
21 renewable energy certificates shall be from the same category of resource, for  
22 purposes of determining the electrical corporation's compliance with Title 54,  
23 Chapter 17, Part 6, Carbon Emission Reductions for Electrical Corporations; and

24 ▶ makes technical changes.

25 Monies Appropriated in this Bill:

26 None

27 Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **54-17-102**, as last amended by Laws of Utah 2008, Chapter 382

32 **54-17-201**, as last amended by Laws of Utah 2008, Chapters 374 and 382

33 **54-17-302**, as last amended by Laws of Utah 2008, Chapters 374 and 382

34 **54-17-402**, as last amended by Laws of Utah 2008, Chapter 382

35 **54-17-602**, as enacted by Laws of Utah 2008, Chapter 374



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

38 Section 1. Section **54-17-102** is amended to read:

39 **54-17-102. Definitions.**

40 As used in this chapter:

41 (1) "Affected electrical utility" means an electrical corporation with at least 200,000  
42 retail customers in the state.

43 (2) "Benchmark option" means an energy resource against which bids in an open bid  
44 process may be evaluated that:

- 45 (a) could be constructed or owned by:
  - 46 (i) an affected electrical utility; or
  - 47 (ii) an affiliate of an affected electrical utility; or
- 48 (b) may be a purchase of:
  - 49 (i) electricity;
  - 50 (ii) electric generating capacity; or
  - 51 (iii) electricity and electric generating capacity.

52 (3) "Category of resource" means a set of resources generally identifiable within one of  
53 the following:

- 54 (a) wind energy;
- 55 (b) solar energy;
- 56 (c) coal energy;
- 57 (d) biofuel energy;
- 58 (e) geothermal energy;

- 59            (f) natural gas energy;
- 60            (g) hydroelectric energy;
- 61            (h) diesel energy; or
- 62            (i) any other grouping of energy resources sharing the same general characteristics as
- 63 one another.

64            [~~3~~] (4) "Integrated resource plan" means a plan that contains:

65            (a) the demand and energy forecast by the affected electrical utility for at least a

66 ten-year period;

67            (b) the affected electrical utility's options for meeting the requirements shown in its

68 load and resource forecast in an economic and reliable manner, including:

69            (i) demand-side and supply-side options; and

70            (ii) a brief description and summary cost-benefit analysis, if available, of each option

71 that was considered;

72            (c) the affected electrical utility's assumptions and conclusions with respect to the

73 effect of the plan on the cost and reliability of energy service;

74            (d) a description of the external environmental and economic consequences of the plan

75 to the extent practicable; and

76            (e) any other data and analyses as the commission may require.

77            [~~4~~] (5) "Significant energy resource" for an affected electrical utility means a resource

78 that consists of:

79            (a) a total of 100 megawatts or more of new generating capacity that has a dependable

80 life of 10 or more years;

81            (b) a purchase of the following if the contract is for a term of 10 or more years and not

82 less than 100 megawatts:

83            (i) electricity;

84            (ii) electric generating capacity; or

85            (iii) electricity and electrical generating capacity;

86            (c) the purchase or lease by an affected electrical utility from an affiliated company of:

87            (i) a generating facility;

88            (ii) electricity;

89            (iii) electrical generating capacity; or

90 (iv) electricity and electrical generating capacity;

91 (d) a contract with an option for the affected electrical utility or an affiliate to purchase  
92 a resource that consists of not less than 100 megawatts or more of new generating capacity that  
93 has a remaining dependable life of 10 or more years; or

94 (e) a type of resource designated by the commission as a significant energy resource in  
95 rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative  
96 Rulemaking Act, after considering the affected electrical utility's integrated resource plan and  
97 action plan.

98 [~~5~~] (6) "Solicitation" means a request for proposals or other invitation for persons to  
99 submit a bid or proposal through an open bid process for construction or acquisition of a  
100 significant energy resource.

101 Section 2. Section **54-17-201** is amended to read:

102 **54-17-201. Solicitation process required -- Exception.**

103 (1) (a) An affected electrical utility shall comply with this chapter to acquire or  
104 construct a significant energy resource after February 25, 2005.

105 (b) Notwithstanding Subsection (1)(a), this chapter does not apply to a significant  
106 energy resource for which the affected electrical utility has issued a solicitation before February  
107 25, 2005.

108 (2) (a) Except as provided in Subsection (3), to acquire or construct a significant  
109 energy resource, an affected electrical utility shall conduct a solicitation process that is  
110 approved by the commission.

111 (b) To obtain the approval of the commission of a solicitation process, the affected  
112 electrical utility shall file with the commission a request for approval that includes:

113 (i) a description of the solicitation process the affected electrical utility will use;

114 (ii) a complete proposed solicitation; and

115 (iii) any other information the commission requires by rule made in accordance with  
116 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

117 (c) In ruling on the request for approval of a solicitation process, the commission shall  
118 determine whether the solicitation process:

119 (i) complies with this chapter and rules made in accordance with Title 63G, Chapter 3,  
120 Utah Administrative Rulemaking Act; and

121 (ii) is in the public interest taking into consideration:  
122 (A) whether it will most likely result in the acquisition, production, and delivery of  
123 electricity at the lowest reasonable cost for that category of resource to the retail customers of  
124 an affected electrical utility located in this state;

- 125 (B) long-term and short-term impacts;
- 126 (C) risk;
- 127 (D) reliability;
- 128 (E) financial impacts on the affected electrical utility; and
- 129 (F) other factors determined by the commission to be relevant.

130 (d) Before approving a solicitation process under this section the commission:

- 131 (i) may hold a public hearing; and
- 132 (ii) shall provide an opportunity for public comment.

133 (e) As part of its review of a solicitation process, the commission may provide the  
134 affected electrical utility guidance on any additions or changes to its proposed solicitation  
135 process.

136 (f) Unless the commission determines that additional time to analyze a solicitation  
137 process is warranted and is in the public interest, within 60 days of the day on which the  
138 affected electrical utility files a request for approval of the solicitation process, the commission  
139 shall:

- 140 (i) approve a proposed solicitation process;
- 141 (ii) suggest modifications to a proposed solicitation process; or
- 142 (iii) reject a proposed solicitation process.

143 (3) Notwithstanding Subsection (2), an affected electrical utility may acquire or  
144 construct a significant energy resource without conducting a solicitation process if it obtains a  
145 waiver of the solicitation requirement in accordance with Section 54-17-501.

146 (4) In accordance with the commission's authority under Subsection 54-12-2(2), the  
147 commission shall determine:

148 (a) whether this chapter or another competitive bidding procedure shall apply to a  
149 purchase of a significant energy resource by an affected electrical utility from a small power  
150 producer or cogenerator; and

151 (b) if this chapter applies as provided in Subsection (4)(a), the manner in which this

152 chapter applies to a purchase of a significant energy resource by an affected electrical utility  
153 from a small power producer or cogenerator.

154 Section 3. Section **54-17-302** is amended to read:

155 **54-17-302. Approval of a significant energy resource decision required.**

156 (1) If pursuant to Part 2, Solicitation Process, an affected electrical utility is required to  
157 conduct a solicitation for a significant energy resource or obtains a waiver of the requirement to  
158 conduct a solicitation under Section 54-17-501, but does not obtain a waiver of the requirement  
159 to obtain approval of the significant energy resource decision under Section 54-17-501, the  
160 affected electrical utility shall obtain approval of its significant energy resource decision:

161 (a) after the completion of the solicitation process, if the affected electrical utility is  
162 required to conduct a solicitation; and

163 (b) before an affected electrical utility may construct or enter into a binding agreement  
164 to acquire the significant energy resource.

165 (2) (a) To obtain the approval required by Subsection (1), the affected electrical utility  
166 shall file a request for approval with the commission.

167 (b) The request for approval required by this section shall include any information  
168 required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah  
169 Administrative Rulemaking Act.

170 (3) In ruling on a request for approval of a significant energy resource decision, the  
171 commission shall determine whether the significant energy resource decision:

172 (a) is reached in compliance with this chapter and rules made in accordance with Title  
173 63G, Chapter 3, Utah Administrative Rulemaking Act;

174 (b) (i) is reached in compliance with the solicitation process approved by the  
175 commission in accordance with Part 2, Solicitation Process; or

176 (ii) is reached after the waiver of the solicitation process as provided in Subsection  
177 54-17-201(3); and

178 (c) is in the public interest, taking into consideration:

179 (i) whether it will most likely result in the acquisition, production, and delivery of  
180 electricity at the lowest reasonable cost for that category of resource to the retail customers of  
181 an affected electrical utility located in this state;

182 (ii) long-term and short-term impacts;

- 183 (iii) risk;  
184 (iv) reliability;  
185 (v) financial impacts on the affected electrical utility; and  
186 (vi) other factors determined by the commission to be relevant.

187 (4) The commission may not approve a significant energy resource decision under this  
188 section before holding a public hearing.

189 (5) Unless the commission determines that additional time to analyze a significant  
190 energy resource decision is warranted and is in the public interest, within 120 days of the day  
191 on which the affected electrical utility files a request for approval, the commission shall:

- 192 (a) approve the significant energy resource decision;  
193 (b) approve the significant energy resource decision subject to conditions imposed by  
194 the commission; or  
195 (c) disapprove the significant energy resource decision.

196 (6) The commission shall include in its order under this section:

197 (a) findings as to the total projected costs for construction or acquisition of an  
198 approved significant energy resource; and

199 (b) the basis upon which the findings described in Subsection (6)(a) are made.

200 (7) Notwithstanding any other provision of this part, an affected electrical utility may  
201 acquire a significant energy resource without obtaining approval pursuant to this section if it  
202 obtains a waiver of the requirement for approval in accordance with Section 54-17-501.

203 (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
204 commission shall make rules regarding the process for approval of a significant energy  
205 resource decision under this section.

206 Section 4. Section **54-17-402** is amended to read:

207 **54-17-402. Request for review of resource decision.**

208 (1) Beginning on February 25, 2005, before implementing a resource decision, an  
209 energy utility may request that the commission approve all or part of a resource decision in  
210 accordance with this part.

211 (2) (a) To obtain the approval permitted by Subsection (1), the energy utility shall file a  
212 request for approval with the commission.

213 (b) The request for approval required by this section shall include any information

214 required by the commission by rule made in accordance with Title 63G, Chapter 3, Utah  
215 Administrative Rulemaking Act.

216 (3) In ruling on a request for approval of a resource decision, the commission shall  
217 determine whether the decision:

218 (a) is reached in compliance with this chapter and rules made in accordance with Title  
219 63G, Chapter 3, Utah Administrative Rulemaking Act; and

220 (b) is in the public interest, taking into consideration:

221 (i) whether it will most likely result in the acquisition, production, and delivery of  
222 utility services at the lowest reasonable cost for that category of resource to the retail customers  
223 of an energy utility located in this state;

224 (ii) long-term and short-term impacts;

225 (iii) risk;

226 (iv) reliability;

227 (v) financial impacts on the energy utility; and

228 (vi) other factors determined by the commission to be relevant.

229 (4) (a) If the commission approves a proposed resource decision only in part, the  
230 commission shall explain in the order issued under this section why the commission does not  
231 approve the resource decision in total.

232 (b) Recovery of expenses incurred in connection with parts of a resource decision that  
233 are not approved is subject to the review of the commission as part of a rate hearing under  
234 Section 54-7-12.

235 (5) The commission may not approve a resource decision in whole or in part under this  
236 section before holding a public hearing.

237 (6) Unless the commission determines that additional time to analyze a resource  
238 decision is warranted and is in the public interest, within 180 days of the day on which the  
239 energy utility files a request for approval, the commission shall:

240 (a) approve all or part of the resource decision;

241 (b) approve all or part of the resource decision subject to conditions imposed by the  
242 commission; or

243 (c) disapprove all or part of the resource decision.

244 (7) The commission shall include in its order under this section:



- 245 (a) findings as to the approved projected costs of a resource decision; and
- 246 (b) the basis upon which the findings described in Subsection (7)(a) are made.
- 247 (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 248 commission shall make rules regarding the process for approval of a resource decision under
- 249 this section.

250 Section 5. Section **54-17-602** is amended to read:

251 **54-17-602. Target amount of qualifying electricity -- Renewable energy certificate**  
252 **-- Cost-effectiveness -- Cooperatives.**

253 (1) (a) To the extent that it is cost effective to do so, beginning in 2025 the annual retail  
254 electric sales in this state of each electrical corporation shall consist of qualifying electricity or  
255 renewable energy certificates in an amount equal to at least 20% of adjusted retail electric  
256 sales, no more than 10% of which may derive from the same category of resource.

257 (b) The amount under Subsection (1)(a) is computed based upon adjusted retail electric  
258 sales for the calendar year commencing 36 months before the first day of the year for which the  
259 target calculated under Subsection (1)(a) applies.

260 (c) Notwithstanding Subsections (1)(a) and (b), an increase in the annual target from  
261 one year to the next may not exceed the greater of:

- 262 (i) 17,500 megawatt-hours; or
- 263 (ii) 20% of the prior year's amount under Subsections (1)(a) and (b).

264 (2) (a) Cost-effectiveness under Subsection (1) for other than a cooperative association  
265 is determined in comparison to other viable resource options using the criteria provided by  
266 Subsection 54-17-201(2)(c)(ii).

267 (b) For an electrical corporation that is a cooperative association, cost-effectiveness is  
268 determined using criteria applicable to the cooperative association's acquisition of a significant  
269 energy resource established by the cooperative association's board of directors.

270 (3) This section does not require an electrical corporation to:

271 (a) substitute qualifying electricity for electricity from a generation source owned or  
272 contractually committed, or from a contractual commitment for a power purchase;

273 (b) enter into any additional electric sales commitment or any other arrangement for the  
274 sale or other disposition of electricity that is not already, or would not be, entered into by the  
275 electrical corporation; or

- 276 (c) acquire qualifying electricity in excess of its adjusted retail electric sales.
- 277 (4) For the purpose of Subsection (1), an electrical corporation may combine the  
278 following:
- 279 (a) qualifying electricity from a renewable energy source owned by the electrical  
280 corporation;
- 281 (b) qualifying electricity acquired by the electrical corporation through trade, power  
282 purchase, or other transfer; and
- 283 (c) a bundled or unbundled renewable energy certificate, including a banked renewable  
284 energy certificate.
- 285 (5) For an electrical corporation whose rates the commission regulates, the following  
286 rules concerning renewable energy certificates apply:
- 287 (a) a banked renewable energy certificate with an older issuance date shall be used  
288 before any other banked renewable energy certificate issued at a later date is used; and
- 289 (b) the total of all unbundled renewable energy certificates, including unbundled  
290 banked renewable energy certificates, may not exceed 20% of the amount of the annual target  
291 provided for in Subsection (1).
- 292 (6) An electrical corporation that is a cooperative association may count towards  
293 Subsection (1) any of the following:
- 294 (a) electric production allocated to this state from hydroelectric facilities becoming  
295 operational after December 31, 2007 if the facilities are located in any state in which the  
296 cooperative association, or a generation and transmission cooperative with which the  
297 cooperative association has a contract, provides electric service;
- 298 (b) qualifying electricity generated or acquired or renewable energy certificates  
299 acquired for a program that permits a retail customer to voluntarily contribute to a renewable  
300 energy source; and
- 301 (c) notwithstanding Subsection 54-17-601(7), an unbundled renewable energy  
302 certificate purchased from a renewable energy source located outside the geographic boundary  
303 of the Western Electricity Coordinating Council if the electricity on which the unbundled  
304 renewable energy certificate is based would be considered qualifying electricity if the  
305 renewable energy source was located within the geographic boundary of the Western  
306 Electricity Coordinating Council.

307           (7) The use of the renewable attributes associated with qualifying electricity to satisfy  
308 any federal renewable energy requirement does not preclude the electricity from being  
309 qualifying electricity for the purpose of this chapter.

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**Legislative Review Note**  
**as of 2-1-10 9:42 AM**

**Office of Legislative Research and General Counsel**

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**S.B. 131 - Energy Cost Recovery and Renewable Energy Provisions**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

To the extent that energy resource allocations required by the bill impact utility rates, state agencies may incur additional costs.

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

To the extent that energy resource allocations required by the bill impact utility rates, individuals, businesses and local governments may incur additional costs.