

1                   **ENERGY RESOURCE AND CARBON EMISSION**  
2                                   **REDUCTION INITIATIVE**

3                                   2008 GENERAL SESSION

4                                   STATE OF UTAH

5                   **Chief Sponsor: Curtis S. Bramble**

6                                   House Sponsor: David Clark

7   Cosponsor:                   Mike Dmitrich

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8  
9   **LONG TITLE**

10 **General Description:**

11           This bill provides that an electrical corporation or municipal electric utility maintain a  
12 percentage of electricity sold in the form of renewable energy resources and makes other  
13 changes concerning the acquisition of energy resources.

14 **Highlighted Provisions:**

15           This bill:

- 16           ▶ addresses independent and qualifying power producers;
- 17           ▶ addresses the application of Title 54, Chapter 17, Energy Resource Procurement  
18 Act, to certain renewable energy resources;
- 19           ▶ defines terms;
- 20           ▶ provides that 20% of an electrical corporation's or municipal electric utility's  
21 adjusted retail electric sales beginning in the year 2025 come from qualifying  
22 electricity, including renewable energy resources, if cost effective;
- 23           ▶ provides for the issuance and recognition of a renewable energy certificate for  
24 certain electrical generation and actions by an energy user;
- 25           ▶ requires plans and reports concerning an electrical corporation's or municipal electric  
26 utility's progress in acquiring qualifying electricity;
- 27           ▶ addresses cost recovery for certain energy resources;
- 28           ▶ requires certain state agencies to make rules concerning carbon capture and  
29 geological storage of captured carbon emissions; and

30           ▶ makes technical changes.

31 **Monies Appropriated in this Bill:**

32           None

33 **Other Special Clauses:**

34           This bill provides an immediate effective date.

35 **Utah Code Sections Affected:**

36 **AMENDS:**

37           **54-2-1**, as last amended by Laws of Utah 2001, Chapter 212

38           **54-12-1**, as enacted by Laws of Utah 1985, Chapter 180

39           **54-12-2**, as last amended by Laws of Utah 1989, Chapter 4

40           **54-12-3**, as enacted by Laws of Utah 1985, Chapter 180

41           **54-17-201**, as last amended by Laws of Utah 2007, Chapter 289

42           **54-17-302**, as last amended by Laws of Utah 2007, Chapter 289

43           **54-17-303**, as enacted by Laws of Utah 2005, Chapter 11

44 **ENACTS:**

45           **10-19-101**, Utah Code Annotated 1953

46           **10-19-102**, Utah Code Annotated 1953

47           **10-19-201**, Utah Code Annotated 1953

48           **10-19-202**, Utah Code Annotated 1953

49           **10-19-301**, Utah Code Annotated 1953

50           **10-19-302**, Utah Code Annotated 1953

51           **54-17-502**, Utah Code Annotated 1953

52           **54-17-601**, Utah Code Annotated 1953

53           **54-17-602**, Utah Code Annotated 1953

54           **54-17-603**, Utah Code Annotated 1953

55           **54-17-604**, Utah Code Annotated 1953

56           **54-17-605**, Utah Code Annotated 1953

57           **54-17-606**, Utah Code Annotated 1953

58 54-17-607, Utah Code Annotated 1953

59 54-17-701, Utah Code Annotated 1953



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

62 Section 1. Section 10-19-101 is enacted to read:

63 **CHAPTER 19. MUNICIPAL ELECTRIC UTILITY CARBON**

64 **EMISSION REDUCTION ACT**

65 **Part 1. General Provisions**

66 **10-19-101. Title.**

67 This chapter is known as the "Municipal Electric Utility Carbon Emission Reduction

68 Act."

69 Section 2. Section 10-19-102 is enacted to read:

70 **10-19-102. Definitions.**

71 As used in this chapter:

72 (1) "Adjusted retail electric sales" means the total kilowatt-hours of retail electric sales  
73 of a municipal electric utility to customers in this state in a calendar year, reduced by:

74 (a) the amount of those kilowatt-hours attributable to electricity generated or purchased  
75 in that calendar year from qualifying zero carbon emissions generation and qualifying carbon  
76 sequestration generation;

77 (b) the amount of those kilowatt-hours attributable to electricity generated or purchased  
78 in that calendar year from generation located within the geographic boundary of the Western  
79 Electricity Coordinating Council that derives its energy from one or more of the following but  
80 that does not satisfy the definition of a renewable energy source or that otherwise has not been  
81 used to satisfy Subsection 10-19-201(1):

82 (i) wind energy;

83 (ii) solar photovoltaic and solar thermal energy;

84 (iii) wave, tidal, and ocean thermal energy;

85 (iv) except for combustion of wood that has been treated with chemical preservatives

86 such as creosote, pentachlorophenol or chromated copper arsenate, biomass and biomass  
87 byproducts, including:

88 (A) organic waste;

89 (B) forest or rangeland woody debris from harvesting or thinning conducted to improve  
90 forest or rangeland ecological health and to reduce wildfire risk;

91 (C) agricultural residues;

92 (D) dedicated energy crops; and

93 (E) landfill gas or biogas produced from organic matter, wastewater, anaerobic  
94 digesters, or municipal solid waste;

95 (v) geothermal energy;

96 (vi) hydro-electric energy; or

97 (vii) waste gas and waste heat capture or recovery; and

98 (c) the number of kilowatt-hours attributable to reductions in retail sales in that calendar  
99 year from activities or programs promoting electric energy efficiency or conservation or more  
100 efficient management of electric energy load.

101 (2) "Amount of kilowatt-hours attributable to electricity generated or purchased in that  
102 calendar year from qualifying carbon sequestration generation," for qualifying carbon  
103 sequestration generation, means the kilowatt-hours supplied by a facility during the calendar  
104 year multiplied by the ratio of the amount of carbon dioxide captured from the facility and  
105 sequestered to the sum of the amount of carbon dioxide captured from the facility and  
106 sequestered plus the amount of carbon dioxide emitted from the facility during the same  
107 calendar year.

108 (3) "Banked renewable energy certificate" means a bundled or unbundled renewable  
109 energy certificate that is:

110 (a) not used in a calendar year to comply with this part or with a renewable energy  
111 program in another state; and

112 (b) carried forward into a subsequent year.

113 (4) "Bundled renewable energy certificate" means a renewable energy certificate for

114 qualifying electricity that is acquired:

115 (a) by a municipal electric utility by a trade, purchase, or other transfer of electricity  
116 that includes the renewable energy attributes of, or certificate that is issued for, the electricity;

117 or

118 (b) by a municipal electric utility by generating the electricity for which the renewable  
119 energy certificate is issued.

120 (5) "Commission" means the Public Service Commission.

121 (6) "Municipal electric utility" means any municipality that owns, operates, controls, or  
122 manages a facility that provides electric power for a retail customer, whether domestic,  
123 commercial, industrial, or otherwise.

124 (7) "Qualifying carbon sequestration generation" means a fossil-fueled generating  
125 facility located within the geographic boundary of the Western Electricity Coordinating Council  
126 that:

127 (a) becomes operational or is retrofitted on or after January 1, 2008; and

128 (b) reduces carbon dioxide emissions into the atmosphere through permanent geological  
129 sequestration or through other verifiably permanent reductions in carbon dioxide emissions  
130 through the use of technology.

131 (8) "Qualifying electricity" means electricity generated on or after January 1, 1995 from  
132 a renewable energy source if:

133 (a) (i) the renewable energy source is located within the geographic boundary of the  
134 Western Electricity Coordinating Council; or

135 (ii) the qualifying electricity is delivered to the transmission system of a municipal  
136 electric utility or a delivery point designated by the municipal electric utility for the purpose of  
137 subsequent delivery to the municipal electric utility; and

138 (b) the renewable energy attributes of the electricity are not traded, sold, transferred, or  
139 otherwise used to satisfy another state's renewable energy program.

140 (9) "Qualifying zero carbon emissions generation":

141 (a) means a generation facility located within the geographic boundary of the Western

142 Electricity Coordinating Council that:

143 (i) becomes operational on or after January 1, 2008; and

144 (ii) does not produce carbon as a byproduct of the generation process;

145 (b) includes generation powered by nuclear fuel; and

146 (c) does not include renewable energy sources used to satisfy a target established under

147 Section 10-19-201.

148 (10) "Renewable energy certificate" means a certificate issued in accordance with the  
149 requirements of Sections 10-19-202 and 54-17-603.

150 (11) "Renewable energy source" means:

151 (a) an electric generation facility or generation capability or upgrade that becomes  
152 operational on or after January 1, 1995 that derives its energy from one or more of the  
153 following:

154 (i) wind energy;

155 (ii) solar photovoltaic and solar thermal energy;

156 (iii) wave, tidal, and ocean thermal energy;

157 (iv) except for combustion of wood that has been treated with chemical preservatives  
158 such as creosote, pentachlorophenol or chromated copper arsenate, biomass and biomass  
159 byproducts, including:

160 (A) organic waste;

161 (B) forest or rangeland woody debris from harvesting or thinning conducted to improve  
162 forest or rangeland ecological health and to reduce wildfire risk;

163 (C) agricultural residues;

164 (D) dedicated energy crops; and

165 (E) landfill gas or biogas produced from organic matter, wastewater, anaerobic  
166 digesters, or municipal solid waste;

167 (v) geothermal energy located outside the state;

168 (vi) waste gas and waste heat capture or recovery; or

169 (vii) efficiency upgrades to a hydroelectric facility, without regard to the date upon

170 which the facility became operational, if the upgrades become operational on or after January 1,  
171 1995;

172 (b) any of the following:

173 (i) up to 50 average megawatts of electricity per year per municipal electric utility from  
174 a certified low-impact hydroelectric facility, without regard to the date upon which the facility  
175 becomes operational, if the facility is certified as a low-impact hydroelectric facility on or after  
176 January 1, 1995, by a national certification organization;

177 (ii) geothermal energy if located within the state, without regard to the date upon which  
178 the facility becomes operational; and

179 (iii) hydroelectric energy if located within the state, without regard to the date upon  
180 which the facility becomes operational;

181 (c) hydrogen gas derived from any source of energy described in Subsection (11)(a) or  
182 (b);

183 (d) if an electric generation facility employs multiple energy sources, that portion of the  
184 electricity generated that is attributable to energy sources described in Subsections (11)(a)  
185 through (c); and

186 (e) any of the following located in the state and owned by a user of energy:

187 (i) a demand side management measure, as defined by Subsection 54-7-12.8(1) with the  
188 quantity of renewable energy certificates to which the user is entitled determined by the  
189 equivalent energy saved by the measure;

190 (ii) a solar thermal system that reduces the consumption of fossil fuels, with the quantity  
191 of renewable energy certificates to which the user is entitled determined by the equivalent  
192 kilowatt-hours saved, except to the extent the commission determines otherwise with respect to  
193 net-metered energy;

194 (iii) a solar photovoltaic system that reduces the consumption of fossil fuels with the  
195 quantity of renewable energy certificates to which the user is entitled determined by the total  
196 production of the system, except to the extent the commission determines otherwise with  
197 respect to net-metered energy;

198 (iv) a hydroelectric or geothermal facility, with the quantity of renewable energy  
199 certificates to which the user is entitled determined by the total production of the facility, except  
200 to the extent the commission determines otherwise with respect to net-metered energy;

201 (v) a waste gas or waste heat capture or recovery system other than from a combined  
202 cycle combustion turbine that does not use waste gas or waste heat, with the quantity of  
203 renewable energy certificates to which the user is entitled determined by the total production of  
204 the system, except to the extent the commission determines otherwise with respect to  
205 net-metered energy; and

206 (vi) the station use of solar thermal energy, solar photovoltaic energy, hydroelectric  
207 energy, geothermal energy, waste gas, or waste heat capture and recovery.

208 (12) "Unbundled renewable energy certificate" means a renewable energy certificate  
209 associated with:

210 (a) qualifying electricity that is acquired by a municipal electric utility or other person  
211 by trade, purchase, or other transfer without acquiring the electricity for which the certificate  
212 was issued; or

213 (b) activities listed in Subsection (11)(e).

214 Section 3. Section **10-19-201** is enacted to read:

215 **Part 2. Renewable Energy Provisions**

216 **10-19-201. Target amount of qualifying electricity -- Renewable energy certificate**  
217 **-- Cost-effectiveness.**

218 (1) (a) To the extent that it is cost-effective to do so, beginning in 2025 the annual retail  
219 electric sales in this state of each municipal electric utility shall consist of qualifying electricity or  
220 renewable energy certificates in an amount equal to at least 20% of adjusted retail electric sales.

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

224 (c) Notwithstanding Subsections (1)(a) and (b) an increase in the annual target from  
225 one year to the next is limited to the greater of:



- 226 (i) 17,500 megawatt-hours; or
- 227 (ii) 20% of the prior year's amount under Subsections (1)(a) and (b).
- 228 (2) Cost-effectiveness under Subsection (1) is determined using any criteria applicable
- 229 to the municipal electric utility's acquisition of a significant energy resource established by the
- 230 municipality's legislative body.
- 231 (3) This section does not require a municipal electric utility to:
- 232 (a) substitute qualifying electricity for electricity from a generation source owned or
- 233 contractually committed, or from a contractual commitment for a power purchase;
- 234 (b) enter into any additional electric sales commitment or any other arrangement for the
- 235 sale or other disposition of electricity that is not already, or would not be, entered into by the
- 236 municipal electric utility; or
- 237 (c) acquire qualifying electricity in excess of its adjusted retail electric sales.
- 238 (4) A municipal electrical corporation may combine the following to meet Subsection
- 239 (1):
- 240 (a) qualifying electricity from a renewable energy source owned by the municipal
- 241 electric utility;
- 242 (b) qualifying electricity acquired by the municipal electric utility through trade, power
- 243 purchase, or other transfer; and
- 244 (c) a bundled or unbundled renewable energy certificate, including a banked renewable
- 245 energy certificate.
- 246 (5) To meet Subsection (1), a municipal electric utility may also count:
- 247 (a) qualifying electricity generated or acquired or renewable energy certificates acquired
- 248 for a program permitting the municipal electric utility's customers to voluntarily contribute to a
- 249 renewable energy source; and
- 250 (b) electricity allocated to this state that is produced by a hydroelectric facility
- 251 becoming operational after December 31, 2007 if the hydroelectric facility is located in any state
- 252 in which the municipal electric utility, or the interlocal entity with which the municipal electric
- 253 utility has a contract, provides electric service.

254 Section 4. Section **10-19-202** is enacted to read:

255 **10-19-202. Renewable energy certificate -- Use to satisfy other requirements.**

256 (1) A municipal electric utility may buy, sell, trade, or otherwise transfer a renewable  
257 energy certificate issued or recognized under Section 54-17-603.

258 (2) For the purpose of satisfying Subsection 10-19-201(1) and the issuance of a  
259 renewable energy certificate under Section 54-17-603:

260 (a) a renewable energy source located in this state that derives its energy from solar  
261 photovoltaic and solar thermal energy shall be credited for 2.4 kilowatt-hours of qualifying  
262 electricity for each 1.0 kilowatt-hour generated; and

263 (b) if two or more municipal electric utilities jointly own a renewable energy resource,  
264 each municipal electric utility shall be credited with 1.0 kilowatt-hour of qualifying electricity  
265 for 1.0 kilowatt-hour of the renewable energy resource allocated to the municipal electric utility  
266 by contract, unless the contract otherwise provides.

267 (3) A renewable energy certificate:

268 (a) may be used only once to satisfy Subsection 10-19-201(1);

269 (b) may be used to satisfy Subsection 10-19-201(1) and the qualifying electricity on  
270 which the renewable energy certificate is based may be used to satisfy any federal renewable  
271 energy requirement; and

272 (c) may not be used if it has been used to satisfy any other state's renewable energy  
273 requirement.

274 Section 5. Section **10-19-301** is enacted to read:

275 **Part 3. Administrative Provisions**

276 **10-19-301. Plans and reports.**

277 (1) A municipal electric utility shall develop and maintain a plan for implementing  
278 Subsection 10-19-201(1).

279 (2) A progress report concerning a plan under Subsection (1) shall be filed with the  
280 municipality's legislative body by January 1 of each of the years 2010, 2015, 2020, and 2024.

281 (3) The progress report under Subsection (2) shall contain:

- 282           (a) the actual and projected amount of qualifying electricity through 2025;
- 283           (b) the source of qualifying electricity;
- 284           (c) an estimate of the cost of achieving the target;
- 285           (d) a discussion of conditions impacting the renewable energy source and qualifying  
 286 electricity markets; and
- 287           (e) any recommendation for a suggested legislative or program change.
- 288           (4) The plan and progress report required by Subsections (1) and (2) may include  
 289 procedures that will be used by the municipal electric utility to identify and select any  
 290 cost-effective renewable energy resource and qualifying electricity.
- 291           (5) By July 1, 2026, the municipal electric utility shall file a final progress report  
 292 demonstrating:
- 293           (a) how Subsection 10-19-201(1) is satisfied for the year 2025; or
- 294           (b) the reason why Subsection 10-19-201(1) is not satisfied for the year 2025, if it is not  
 295 satisfied.
- 296           (6) The plan and any progress report filed under this section shall be publicly available  
 297 at the municipal legislative body's office.

Section 6. Section **10-19-302** is enacted to read:

**10-19-302. Municipal authority -- Commission authority.**

- 300           (1) The municipal legislative body may adopt procedures necessary to implement this  
 301 chapter.
- 302           (2) Nothing in this chapter authorizes the commission to exercise any power over a  
 303 municipal electric utility's electrical generation, demand-side management program, or other  
 304 operation.

Section 7. Section **54-2-1** is amended to read:

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

As used in this title:

- 308           (1) "Avoided costs" means the incremental costs to an electrical corporation of electric  
 309 energy or capacity or both which, due to the purchase of electric energy or capacity or both

310 from small power production or cogeneration facilities, the electrical corporation would not  
311 have to generate itself or purchase from another electrical corporation.

312 (2) "Cogeneration facility":

313 (a) means a facility which produces:

314 (i) electric energy; and

315 (ii) steam or forms of useful energy, including heat, which are used for industrial,  
316 commercial, heating, or cooling purposes; and

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

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

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

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

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

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

326 (a) is a cooperative;

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

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

331 (i) members; or

332 (ii) patrons.

333 (7) "Electrical corporation" includes every corporation, cooperative association, and  
334 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any  
335 electric plant, or in any way furnishing electric power for public service or to its consumers or  
336 members for domestic, commercial, or industrial use, within this state, except independent  
337 energy producers, and except where electricity is generated on or distributed by the producer

338 solely for the producer's own use, or the use of the producer's tenants, or for the use of  
339 members of an association of unit owners formed under Title 57, Chapter 8, Condominium  
340 Ownership Act, and not for sale to the public generally.

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

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

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

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

354 (ii) not for sale to others;

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

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

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

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

365 (12) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances, and

366 personal property controlled, operated, or managed in connection with or to facilitate the  
367 production, generation, transmission, delivery, or furnishing of artificial heat.

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

370 (13) "Independent energy producer" means every electrical corporation, person,  
371 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,  
372 control, or manage ~~[a small]~~ an independent power production or cogeneration facility.

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

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

377 (b) is a qualifying power production facility.

378 ~~[(14)]~~ (15) "Private telecommunications system" includes all facilities for the  
379 transmission of signs, signals, writing, images, sounds, messages, data, or other information of  
380 any nature by wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio  
381 facilities, that are owned, controlled, operated, or managed by a corporation or person,  
382 including their lessees, trustees, receivers, or trustees appointed by any court, for the use of that  
383 corporation or person and not for the shared use with or resale to any other corporation or  
384 person on a regular basis.

385 ~~[(15)]~~ (16) (a) "Public utility" includes every railroad corporation, gas corporation,  
386 electrical corporation, distribution electrical cooperative, wholesale electrical cooperative,  
387 telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat  
388 corporation, and independent energy producer not described in Subsection ~~[(15)]~~ (16)(d),  
389 where the service is performed for, or the commodity delivered to, the public generally, or in the  
390 case of a gas corporation or electrical corporation where the gas or electricity is sold or  
391 furnished to any member or consumers within the state for domestic, commercial, or industrial  
392 use.

393 (b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone

394 corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation,  
395 or independent energy producer not described in Subsection [~~(15)~~] (16)(d), performs a service  
396 for or delivers a commodity to the public, it is considered to be a public utility, subject to the  
397 jurisdiction and regulation of the commission and this title.

398 (ii) If a gas corporation, independent energy producer not described in Subsection  
399 [~~(15)~~] (16)(d), or electrical corporation sells or furnishes gas or electricity to any member or  
400 consumers within the state, for domestic, commercial, or industrial use, for which any  
401 compensation or payment is received, it is considered to be a public utility, subject to the  
402 jurisdiction and regulation of the commission and this title.

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

407 (d) An independent energy producer is exempt from the jurisdiction and regulations of  
408 the commission with respect to an independent power production facility if it meets the  
409 requirements of Subsection [~~(15)~~] (16)(d)(i), (ii), or (iii), or any combination of these:

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

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

415 (iii) (A) the commodity or service delivered by the independent energy producer is  
416 delivered to an entity which controls, is controlled by, or affiliated with the independent energy  
417 producer or to a user located on real property managed by the independent energy producer;  
418 and

419 (B) the real property on which the service or commodity is used is contiguous to real  
420 property which is owned or controlled by the independent energy producer. Parcels of real  
421 property separated solely by public roads or easements for public roads shall be considered as

422 contiguous for purposes of this Subsection [~~(15)~~] (16).

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

426 (f) (i) "Public utility" does not include any person that is otherwise considered a public  
427 utility under this Subsection [~~(15)~~] (16) solely because of that person's ownership of an interest  
428 in an electric plant, cogeneration facility, or small power production facility in this state if all of  
429 the following conditions are met:

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

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

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

435 (III) a combination of Subsections [~~(15)~~] (16)(f)(i)(A)(I) and (II);

436 (B) the lessor of the ownership interest identified in Subsection [~~(15)~~] (16)(f)(i)(A) is:

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

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

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

442 (ii) Any person that is exempt from classification as a public utility under Subsection  
443 [~~(15)~~] (16)(f)(i) shall continue to be so exempt from classification following termination of the  
444 lessee's right to possession or use of the electric plant for so long as the former lessor does not  
445 operate the electric plant or sell electricity from the electric plant. If the former lessor operates  
446 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a period  
447 of 90 days following termination, or for a longer period that is ordered by the commission. This  
448 period may not exceed one year. A change in rates that would otherwise require commission  
449 approval may not be effective during the 90-day or extended period without commission



450 approval.

451 (g) "Public utility" does not include any person that provides financing for, but has no  
452 ownership interest in an electric plant, small power production facility, or cogeneration facility.  
453 In the event of a foreclosure in which an ownership interest in an electric plant, small power  
454 production facility, or cogeneration facility is transferred to a third-party financier of an electric  
455 plant, small power production facility, or cogeneration facility, then that third-party financier is  
456 exempt from classification as a public utility for 90 days following the foreclosure, or for a  
457 longer period that is ordered by the commission. This period may not exceed one year.

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

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

466 ~~[(16)]~~ (17) "Purchasing utility" means any electrical corporation that is required to  
467 purchase electricity from small power production or cogeneration facilities pursuant to the  
468 Public Utility Regulatory Policies Act, 16 U.S.C. Section 824a-3.

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

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

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

477 (b) has a power production capacity that, together with any other facilities located at

478 the same site, is no greater than 80 megawatts; and

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

480 ~~[(17)]~~ (20) "Railroad" includes every commercial, interurban, and other railway, other  
481 than a street railway, and each branch or extension of a railway, by any power operated,  
482 together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots,  
483 union depots, yards, grounds, terminals, terminal facilities, structures, and equipment, and all  
484 other real estate, fixtures, and personal property of every kind used in connection with a railway  
485 owned, controlled, operated, or managed for public service in the transportation of persons or  
486 property.

487 ~~[(18)]~~ (21) "Railroad corporation" includes every corporation and person, their lessees,  
488 trustees, and receivers, owning, controlling, operating, or managing any railroad for public  
489 service within this state.

490 ~~[(19)]~~ (22) (a) "Sewerage corporation" includes every corporation and person, their  
491 lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage  
492 system for public service within this state.

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

497 ~~[(20) "Small power production facility" means a facility which:]~~

498 ~~[(a) produces electric energy solely by the use, as a primary energy source, of biomass,~~  
499 ~~waste, renewable resources, geothermal resources, or any combination of them;]~~

500 ~~[(b) has a power production capacity that, together with any other facilities located at~~  
501 ~~the same site, is not greater than 80 megawatts; and]~~

502 ~~[(c) is a qualifying small power production facility under federal law.]~~

503 ~~[(21)]~~ (23) "Telegraph corporation" includes every corporation and person, their  
504 lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line  
505 for public service within this state.

506            [~~(22)~~] (24) "Telegraph line" includes all conduits, ducts, poles, wires, cables,  
507 instruments, and appliances, and all other real estate, fixtures, and personal property owned,  
508 controlled, operated, or managed in connection with or to facilitate communication by  
509 telegraph, whether that communication be had with or without the use of transmission wires.

510            [~~(23)~~] (25) (a) "Telephone corporation" means any corporation or person, and their  
511 lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates,  
512 manages, or resells a public telecommunications service as defined in Section 54-8b-2.

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

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

519            (ii) Internet service; or

520            (iii) resold intrastate toll service.

521            [~~(24)~~] (26) "Telephone line" includes all conduits, ducts, poles, wires, cables,  
522 instruments, and appliances, and all other real estate, fixtures, and personal property owned,  
523 controlled, operated, or managed in connection with or to facilitate communication by  
524 telephone whether that communication is had with or without the use of transmission wires.

525            [~~(25)~~] (27) "Transportation of persons" includes every service in connection with or  
526 incidental to the safety, comfort, or convenience of the person transported, and the receipt,  
527 carriage, and delivery of that person and that person's baggage.

528            [~~(26)~~] (28) "Transportation of property" includes every service in connection with or  
529 incidental to the transportation of property, including in particular its receipt, delivery,  
530 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and  
531 hauling, and the transmission of credit by express companies.

532            [~~(27)~~] (29) "Water corporation" includes every corporation and person, their lessees,  
533 trustees, and receivers, owning, controlling, operating, or managing any water system for public

534 service within this state. It does not include private irrigation companies engaged in distributing  
535 water only to their stockholders, or towns, cities, counties, water conservancy districts,  
536 improvement districts, or other governmental units created or organized under any general or  
537 special law of this state.

538       ~~[(28)]~~ (30) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,  
539 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,  
540 and personal property owned, controlled, operated, or managed in connection with or to  
541 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,  
542 appointment, apportionment, or measurement of water for power, fire protection, irrigation,  
543 reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

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

546       ~~[(29)]~~ (31) "Wholesale electrical cooperative" includes every electrical corporation that  
547 is:

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

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

552       Section 8. Section **54-12-1** is amended to read:

553       **54-12-1. Legislative policy.**

554       (1) The Legislature declares that in order to promote the more rapid development of  
555 new sources of electrical energy, to maintain the economic vitality of the state through the  
556 continuing production of goods and the employment of its people, and to promote the efficient  
557 utilization and distribution of energy, it is desirable and necessary to encourage independent  
558 energy producers to competitively develop sources of electric energy not otherwise available to  
559 Utah businesses, residences, and industries served by electrical corporations, and to remove  
560 unnecessary barriers to energy transactions involving independent energy producers and  
561 electrical corporations.

562 (2) It is the policy of this state to encourage the development of [~~small~~] independent  
563 and qualifying power production and cogeneration facilities, to promote a diverse array of  
564 economical and permanently sustainable energy resources in an environmentally acceptable  
565 manner, and to conserve our finite and expensive energy resources and provide for their most  
566 efficient and economic utilization.

567 Section 9. Section **54-12-2** is amended to read:

568 **54-12-2. Purchase of power from qualifying power producers.**

569 (1) Purchasing utilities shall offer to purchase power from [~~independent energy~~]  
570 qualifying power producers.

571 (2) The commission shall establish reasonable rates, terms, and conditions for the  
572 purchase or sale of electricity or electrical generating capacity, or both, between a purchasing  
573 utility and [~~an independent energy~~] a qualifying power producer. In establishing these rates,  
574 terms, and conditions, the commission shall either establish a procedure under which [~~small~~]  
575 qualifying power producers [~~and cogenerators~~] offer competitive bids for the sale of power to  
576 purchasing utilities or devise an alternative method which considers the purchasing utility's  
577 avoided costs. The capacity component of avoided costs shall reflect the purchasing utility's  
578 long-term deferral or cancellation of generating units which may result from the purchase of  
579 power from [~~independent energy~~] qualifying power producers.

580 (3) Purchasing utilities and [~~independent energy~~] qualifying power producers may agree  
581 to rates, terms, or conditions for the sale of electricity or electrical capacity which differ from  
582 the rates, terms, and conditions adopted by the commission under Subsection (2).

583 (4) The commission may adopt further rules which encourage the development of small  
584 power production and cogeneration facilities.

585 Section 10. Section **54-12-3** is amended to read:

586 **54-12-3. Recovery of investment costs.**

587 The commission may not consider any purchasing utility's purchase of power from [~~an~~  
588 ~~independent energy~~] a qualifying power producer as a reason for disallowing recovery of the  
589 purchasing utility's investment costs for facilities which are in use prior to signing a contract for

590 the purchase of power from [~~an independent energy~~] a qualifying power producer.

591 Section 11. Section **54-17-201** is amended to read:

592 **54-17-201. Solicitation process required -- Exception.**

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

595 (b) Notwithstanding Subsection (1)(a), this chapter does not apply to a significant  
596 energy resource for which the affected electrical utility has issued a solicitation before February  
597 25, 2005.

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

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

- 603 (i) a description of the solicitation process the affected electrical utility will use;
- 604 (ii) a complete proposed solicitation; and
- 605 (iii) any other information the commission requires by rule made in accordance with  
606 Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

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

609 (i) complies with this chapter and rules made in accordance with Title 63, Chapter 46a,  
610 Utah Administrative Rulemaking Act; and

611 (ii) is in the public interest taking into consideration:

612 (A) whether it will most likely result in the acquisition, production, and delivery of  
613 electricity at the lowest reasonable cost to the retail customers of an affected electrical utility  
614 located in this state;

615 (B) long-term and short-term impacts;

616 (C) risk;

617 (D) reliability;

- 618 (E) financial impacts on the affected electrical utility; and
- 619 (F) other factors determined by the commission to be relevant.
- 620 (d) Before approving a solicitation process under this section the commission:
- 621 (i) may hold a public hearing; and
- 622 (ii) shall provide an opportunity for public comment.
- 623 (e) As part of its review of a solicitation process, the commission may provide the
- 624 affected electrical utility guidance on any additions or changes to its proposed solicitation
- 625 process.
- 626 (f) Unless the commission determines that additional time to analyze a solicitation
- 627 process is warranted and is in the public interest, within ~~[90]~~ 60 days of the day on which the
- 628 affected electrical utility files a request for approval of the solicitation process, the commission
- 629 shall:
- 630 (i) approve a proposed solicitation process;
- 631 (ii) suggest modifications to a proposed solicitation process; or
- 632 (iii) reject a proposed solicitation process.
- 633 (3) Notwithstanding Subsection (2), an affected electrical utility may acquire or
- 634 construct a significant energy resource without conducting a solicitation process if it obtains a
- 635 waiver of the solicitation requirement in accordance with Section 54-17-501.
- 636 (4) In accordance with the commission's authority under Subsection 54-12-2(2), the
- 637 commission shall determine:
- 638 (a) whether this chapter or another competitive bidding procedure shall apply to a
- 639 purchase of a significant energy resource by an affected electrical utility from a small power
- 640 producer or cogenerator; and
- 641 (b) if this chapter applies as provided in Subsection (4)(a), the manner in which this
- 642 chapter applies to a purchase of a significant energy resource by an affected electrical utility
- 643 from a small power producer or cogenerator.

644 Section 12. Section **54-17-302** is amended to read:

645 **54-17-302. Approval of a significant energy resource decision required.**

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

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

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

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

657 (b) The request for approval required by this section shall include any information  
658 required by the commission by rule made in accordance with Title 63, Chapter 46a, Utah  
659 Administrative Rulemaking Act.

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

662 (a) is reached in compliance with this chapter and rules made in accordance with Title  
663 63, Chapter 46a, Utah Administrative Rulemaking Act;

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

666 (ii) is reached after the waiver of the solicitation process as provided in Subsection  
667 54-17-201(3); and

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

669 (i) whether it will most likely result in the acquisition, production, and delivery of  
670 electricity at the lowest reasonable cost to the retail customers of an affected electrical utility  
671 located in this state;

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

673 (iii) risk;



- 674 (iv) reliability;
- 675 (v) financial impacts on the affected electrical utility; and
- 676 (vi) other factors determined by the commission to be relevant.
- 677 (4) The commission may not approve a significant energy resource decision under this
- 678 section before holding a public hearing.
- 679 (5) Unless the commission determines that additional time to analyze a significant
- 680 energy resource decision is warranted and is in the public interest, within [~~180~~] 120 days of the
- 681 day on which the affected electrical utility files a request for approval, the commission shall:
- 682 (a) approve the significant energy resource decision;
- 683 (b) approve the significant energy resource decision subject to conditions imposed by
- 684 the commission; or
- 685 (c) disapprove the significant energy resource decision.
- 686 (6) The commission shall include in its order under this section:
- 687 (a) findings as to the total projected costs for construction or acquisition of an
- 688 approved significant energy resource; and
- 689 (b) the basis upon which the findings described in Subsection (6)(a) are made.
- 690 (7) Notwithstanding any other provision of this part, an affected electrical utility may
- 691 acquire a significant energy resource without obtaining approval pursuant to this section if it
- 692 obtains a waiver of the requirement for approval in accordance with Section 54-17-501.
- 693 (8) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
- 694 commission shall make rules regarding the process for approval of a significant energy resource
- 695 decision under this section.

696 Section 13. Section **54-17-303** is amended to read:

697 **54-17-303. Cost recovery.**

- 698 (1) (a) Except as otherwise provided in this section, if the commission approves a
- 699 significant energy resource decision under Section 54-17-302, the commission shall, in a general
- 700 rate case or other appropriate commission proceeding, include in the affected electrical utility's
- 701 retail electric rates the state's share of costs:

702 (i) relevant to the proceeding;  
703 (ii) incurred by the affected electrical utility in constructing or acquiring the approved  
704 significant energy resource; and  
705 (iii) up to the projected costs specified in the commission's order issued under Section  
706 54-17-302.

707 (b) (i) The commission shall, in a general rate case or other appropriate commission  
708 proceeding, include in the affected electrical utility's retail electric rates the state's share of the  
709 incremental cost relevant to the proceeding that were prudently incurred by the affected  
710 electrical utility to identify, evaluate, and submit a reasonable benchmark option, whether or not  
711 the benchmark option is selected or becomes operational.

712 (ii) A recoverable cost under Subsection (1)(b)(i) shall be included in the affected  
713 electrical utility's project costs for the purpose of evaluating the project's cost-effectiveness.

714 (iii) A recoverable cost under Subsection (1)(b)(i) may not be added to the cost or  
715 otherwise considered in the evaluation of a project proposed by any person other than the  
716 affected electrical utility for the purpose of evaluating that person's proposal.

717 [~~(b)~~] (c) Except to the extent that the commission enters an order under Section  
718 54-17-304, an increase from the projected costs specified in the commission's order issued  
719 under Section 54-17-302 shall be subject to review by the commission as part of a rate hearing  
720 under Section 54-7-12.

721 (2) (a) Subsequent to the commission issuing an order described in Subsection (2)(a)(i)  
722 or (ii), the commission may disallow some or all costs incurred in connection with an approved  
723 significant energy resource decision if the commission finds that an affected electrical utility's  
724 actions in implementing an approved significant energy resource decision are not prudent  
725 because of new information or changed circumstances that occur after:

726 (i) the commission's approval of the significant energy resource decisions under Section  
727 54-17-302; or

728 (ii) a commission order to proceed under Section 54-17-304.

729 (b) In making a determination of prudence under Subsection (2)(a), the commission

730 shall use the standards identified in Section 54-4-4.

731 (3) Notwithstanding any other provision of this chapter, the commission may disallow  
732 some or all of the costs incurred by an affected electrical utility in connection with an approved  
733 significant energy resource decision upon a finding by the commission that the affected electrical  
734 utility is responsible for a material misrepresentation or concealment in connection with an  
735 approval process under this chapter.

736 Section 14. Section **54-17-502** is enacted to read:

737 **54-17-502. Renewable energy source -- Solicitation -- Consultant.**

738 (1) Sections 54-17-102 through 54-17-404 do not apply to a significant energy resource  
739 that is a renewable energy source as defined in Section 54-17-601 if the nameplate capacity of  
740 the renewable energy source does not exceed 300 megawatts or, if applicable, the quantity of  
741 capacity that is the subject of a contract for the purchase of electricity from a renewable energy  
742 source does not exceed 300 megawatts.

743 (2) (a) (i) An affected electrical utility shall issue a public solicitation of bids for a  
744 renewable energy source up to 300 megawatts in size by January 31 of each year in which it  
745 reasonably anticipates that it will need to acquire or commence construction of a renewable  
746 energy resource.

747 (ii) A solicitation for a renewable energy source issued by January 31, 2008 for up to 99  
748 megawatts satisfies the requirement of this Subsection (2) for the year 2008 if:

749 (A) not later than 30 days after the day on which this section takes effect, the affected  
750 electrical utility amends the solicitation or initiates a new solicitation to seek bids for renewable  
751 energy source projects up to 300 megawatts in size; and

752 (B) within 60 days after the day on which this section takes effect and as soon as  
753 practicable, the commission retains a consultant in accordance with Subsection (3).

754 (b) A consultant hired under Subsection (2)(a)(ii)(B) shall perform the consultant's  
755 duties under Subsection (3) in relation to the status of the solicitation process at the time the  
756 consultant is retained and may not unreasonably delay the solicitation process.

757 (c) For a solicitation issued after January 31, 2008:

758 (i) the affected electrical utility shall develop a reasonable process for pre-approval of  
759 bidders; and

760 (ii) in addition to publicly issuing the solicitation in Subsection (2)(a)(i), the affected  
761 electrical utility shall send copies of the solicitation to each potential bidder who is  
762 pre-approved.

763 (d) The affected electrical utility shall evaluate in good faith each bid that is received  
764 and negotiate in good faith with each bidder whose bid appears to be cost effective, as defined  
765 in Section 54-17-602.

766 (e) Beginning on August 1, 2008, and on each August 1 thereafter, the affected  
767 electrical utility shall file a notice with the commission indicating whether it reasonably  
768 anticipates that it will need to acquire or commence construction of a renewable energy  
769 resource during the following year.

770 (3) (a) If the commission receives a notice under Subsection (2)(e) that the affected  
771 electrical utility reasonably anticipates that it will need to acquire or commence construction of  
772 a renewable energy source during the following year, the commission shall promptly retain a  
773 consultant to:

774 (i) validate that the affected electrical utility is following the bidder pre-approval  
775 process developed pursuant to Subsection (2)(c) and make recommendations for changes to the  
776 pre-approval process for future solicitations;

777 (ii) monitor and document all material aspects of the bids, bid evaluations, and bid  
778 negotiations between the affected electrical utility and any bidders in the solicitation process;

779 (iii) maintain adequate documentation of each bid, including the solicitation, evaluation,  
780 and negotiation processes and the reason for the conclusion of negotiations, which  
781 documentation shall be transmitted to the commission at the conclusion of all negotiations in the  
782 solicitation; and

783 (iv) be available to testify under oath before the commission in any relevant proceeding  
784 concerning all aspects of the public solicitation process.

785 (b) The commission and the consultant shall use all reasonable efforts to not delay the

786 solicitation process.

787 (4) Documentation provided to the commission by the consultant shall be available to  
788 the affected electrical utility, any bidder, or other interested person under terms and conditions  
789 and at times determined appropriate by the commission.

790 (5) (a) The commission and the consultant shall execute a contract approved by the  
791 commission with terms and conditions approved by the commission.

792 (b) Unless otherwise provided by contract, an invoice for the consultant's services shall  
793 be sent to the Division of Public Utilities for review and approval.

794 (c) After approval under Subsection (5)(b), the invoice shall be forwarded to the  
795 affected electrical utility for payment to the consultant.

796 (d) The affected electrical utility may, in a general rate case or other appropriate  
797 commission proceeding, include, and the commission shall allow, recovery by the affected  
798 electrical utility of any amount paid by the affected electrical utility for the consultant.

799 (6) (a) Nothing in this section precludes an affected electrical utility from constructing  
800 or acquiring any renewable energy source project outside the solicitation process provided for in  
801 this section, including purchasing electricity from any renewable energy source project that  
802 chooses to self-certify as a qualifying facility under the federal Public Utility Regulatory Policies  
803 Act of 1978.

804 (b) An affected electrical utility that constructs a renewable energy source outside the  
805 solicitation process of this section or Section 54-17-201 shall file a notice with the commission  
806 at least 60 days before the date of commencement of construction, indicating the size and  
807 location of the renewable energy source.

808 (c) The date of commencement of construction under Subsection (6)(b) is the date of  
809 any directive from an affected electrical utility to the person responsible for the construction of  
810 the renewable energy source authorizing or directing the person to proceed with construction.

811 (d) For an affected electrical utility whose rates are regulated by the commission, the  
812 utility has the burden of proving in a rate case or other appropriate commission proceeding the  
813 prudence, reasonableness, and cost-effectiveness of construction under this Subsection (6).

814 including the method used to evaluate the risks and value of any bid submitted in the solicitation  
815 under this section.

816 (7) Nothing in this section requires an affected electrical utility to enter into any  
817 transaction that it reasonably believes is not cost effective or otherwise is not in the public  
818 interest.

819 Section 15. Section **54-17-601** is enacted to read:

820 **Part 6. Carbon Emission Reductions for Electrical Corporations**

821 **54-17-601. Definitions.**

822 As used in this part:

823 (1) "Adjusted retail electric sales" means the total kilowatt-hours of retail electric sales  
824 of an electrical corporation to customers in this state in a calendar year, reduced by:

825 (a) the amount of those kilowatt-hours attributable to electricity generated or purchased  
826 in that calendar year from qualifying zero carbon emissions generation and qualifying carbon  
827 sequestration generation;

828 (b) the amount of those kilowatt-hours attributable to electricity generated or purchased  
829 in that calendar year from generation located within the geographic boundary of the Western  
830 Electricity Coordinating Council that derives its energy from one or more of the following but  
831 that does not satisfy the definition of a renewable energy source or that otherwise has not been  
832 used to satisfy Subsection 54-17-602(1):

833 (i) wind energy;

834 (ii) solar photovoltaic and solar thermal energy;

835 (iii) wave, tidal, and ocean thermal energy;

836 (iv) except for combustion of wood that has been treated with chemical preservatives  
837 such as creosote, pentachlorophenol or chromated copper arsenate, biomass and biomass  
838 byproducts, including:

839 (A) organic waste;

840 (B) forest or rangeland woody debris from harvesting or thinning conducted to improve  
841 forest or rangeland ecological health and to reduce wildfire risk;

- 842           (C) agricultural residues;
- 843           (D) dedicated energy crops; and
- 844           (E) landfill gas or biogas produced from organic matter, wastewater, anaerobic
- 845 digesters, or municipal solid waste;
- 846           (v) geothermal energy;
- 847           (vi) hydroelectric energy; or
- 848           (vii) waste gas and waste heat capture or recovery; and
- 849           (c) the number of kilowatt-hours attributable to reductions in retail sales in that calendar
- 850 year from demand side management as defined in Section 54-7-12.8, with the kilowatt-hours for
- 851 an electrical corporation whose rates are regulated by the commission and adjusted by the
- 852 commission to exclude kilowatt-hours for which a renewable energy certificate is issued under
- 853 Subsection 54-17-603(4)(b).
- 854           (2) "Amount of kilowatt-hours attributable to electricity generated or purchased in that
- 855 calendar year from qualifying carbon sequestration generation," for qualifying carbon
- 856 sequestration generation, means the kilowatt-hours supplied by a facility during the calendar
- 857 year multiplied by the ratio of the amount of carbon dioxide captured from the facility and
- 858 sequestered to the sum of the amount of carbon dioxide captured from the facility and
- 859 sequestered plus the amount of carbon dioxide emitted from the facility during the same
- 860 calendar year.
- 861           (3) "Banked renewable energy certificate" means a bundled or unbundled renewable
- 862 energy certificate that is:
- 863           (a) not used in a calendar year to comply with this part or with a renewable energy
- 864 program in another state; and
- 865           (b) carried forward into a subsequent year.
- 866           (4) "Bundled renewable energy certificate" means a renewable energy certificate for
- 867 qualifying electricity that is acquired:
- 868           (a) by an electrical corporation by a trade, purchase, or other transfer of electricity that
- 869 includes the renewable energy attributes of, or certificate that is issued for, the electricity; or

870 (b) by an electrical corporation by generating the electricity for which the renewable  
871 energy certificate is issued.

872 (5) "Electrical corporation":

873 (a) is as defined in Section 54-2-1; and

874 (b) does not include a person generating electricity that is not for sale to the public.

875 (6) "Qualifying carbon sequestration generation" means a fossil-fueled generating  
876 facility located within the geographic boundary of the Western Electricity Coordinating Council  
877 that:

878 (a) becomes operational or is retrofitted on or after January 1, 2008; and

879 (b) reduces carbon dioxide emissions into the atmosphere through permanent geological  
880 sequestration or through another verifiably permanent reduction in carbon dioxide emissions  
881 through the use of technology.

882 (7) "Qualifying electricity" means electricity generated on or after January 1, 1995 from  
883 a renewable energy source if:

884 (a) (i) the renewable energy source is located within the geographic boundary of the  
885 Western Electricity Coordinating Council; or

886 (ii) the qualifying electricity is delivered to the transmission system of an electrical  
887 corporation or a delivery point designated by the electrical corporation for the purpose of  
888 subsequent delivery to the electrical corporation; and

889 (b) the renewable energy attributes of the electricity are not traded, sold, transferred, or  
890 otherwise used to satisfy another state's renewable energy program.

891 (8) "Qualifying zero carbon emissions generation":

892 (a) means a generation facility located within the geographic boundary of the Western  
893 Electricity Coordinating Council that:

894 (i) becomes operational on or after January 1, 2008; and

895 (ii) does not produce carbon as a byproduct of the generation process;

896 (b) includes generation powered by nuclear fuel; and

897 (c) does not include renewable energy sources used to satisfy the requirement



898 established under Subsection 54-17-602(1).

899 (9) "Renewable energy certificate" means a certificate issued under Section 54-17-603.

900 (10) "Renewable energy source" means:

901 (a) an electric generation facility or generation capability or upgrade that becomes

902 operational on or after January 1, 1995 that derives its energy from one or more of the

903 following:

904 (i) wind energy;

905 (ii) solar photovoltaic and solar thermal energy;

906 (iii) wave, tidal, and ocean thermal energy;

907 (iv) except for combustion of wood that has been treated with chemical preservatives

908 such as creosote, pentachlorophenol or chromated copper arsenate, biomass and biomass

909 byproducts, including:

910 (A) organic waste;

911 (B) forest or rangeland woody debris from harvesting or thinning conducted to improve

912 forest or rangeland ecological health and to reduce wildfire risk;

913 (C) agricultural residues;

914 (D) dedicated energy crops; and

915 (E) landfill gas or biogas produced from organic matter, wastewater, anaerobic

916 digesters, or municipal solid waste;

917 (v) geothermal energy located outside the state;

918 (vi) waste gas and waste heat capture or recovery; or

919 (vii) efficiency upgrades to a hydroelectric facility, without regard to the date upon

920 which the facility became operational, if the upgrades become operational on or after January 1,

921 1995;

922 (b) any of the following:

923 (i) up to 50 average megawatts of electricity per year per electrical corporation from a

924 certified low-impact hydroelectric facility, without regard to the date upon which the facility

925 becomes operational, if the facility is certified as a low-impact hydroelectric facility on or after

926 January 1, 1995, by a national certification organization;

927 (ii) geothermal energy if located within the state, without regard to the date upon which  
928 the facility becomes operational; or

929 (iii) hydroelectric energy if located within the state, without regard to the date upon  
930 which the facility becomes operational;

931 (c) hydrogen gas derived from any source of energy described in Subsection (10)(a) or  
932 (b);

933 (d) if an electric generation facility employs multiple energy sources, that portion of the  
934 electricity generated that is attributable to energy sources described in Subsections (10)(a)  
935 through (c); and

936 (e) any of the following located in the state and owned by a user of energy:

937 (i) a demand side management measure, as defined by Subsection 54-7-12.8(1), with  
938 the quantity of renewable energy certificates to which the user is entitled determined by the  
939 equivalent energy saved by the measure;

940 (ii) a solar thermal system that reduces the consumption of fossil fuels, with the quantity  
941 of renewable energy certificates to which the user is entitled determined by the equivalent  
942 kilowatt-hours saved, except to the extent the commission determines otherwise with respect to  
943 net-metered energy;

944 (iii) a solar photovoltaic system that reduces the consumption of fossil fuels with the  
945 quantity of renewable energy certificates to which the user is entitled determined by the total  
946 production of the system, except to the extent the commission determines otherwise with  
947 respect to net-metered energy;

948 (iv) a hydroelectric or geothermal facility with the quantity of renewable energy  
949 certificates to which the user is entitled determined by the total production of the facility, except  
950 to the extent the commission determines otherwise with respect to net-metered energy;

951 (v) a waste gas or waste heat capture or recovery system, other than from a combined  
952 cycle combustion turbine that does not use waste gas or waste heat, with the quantity of  
953 renewable energy certificates to which the user is entitled determined by the total production of

954 the system, except to the extent the commission determines otherwise with respect to  
 955 net-metered energy; and

956 (vi) the station use of solar thermal energy, solar photovoltaic energy, hydroelectric  
 957 energy, geothermal energy, waste gas, or waste heat capture and recovery.

958 (11) "Unbundled renewable energy certificate" means a renewable energy certificate  
 959 associated with:

960 (a) qualifying electricity that is acquired by an electrical corporation or other person by  
 961 trade, purchase, or other transfer without acquiring the electricity for which the certificate was  
 962 issued; or

963 (b) activities listed in Subsection (10)(e).

964 Section 16. Section **54-17-602** is enacted to read:

965 **54-17-602. Target amount of qualifying electricity -- Renewable energy certificate**  
 966 **-- Cost-effectiveness -- Cooperatives.**

967 (1) (a) To the extent that it is cost effective to do so, beginning in 2025 the annual retail  
 968 electric sales in this state of each electrical corporation shall consist of qualifying electricity or  
 969 renewable energy certificates in an amount equal to at least 20% of adjusted retail electric sales.

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

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

975 (i) 17,500 megawatt-hours; or

976 (ii) 20% of the prior year's amount under Subsections (1)(a) and (b).

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

980 (b) For an electrical corporation that is a cooperative association, cost-effectiveness is  
 981 determined using criteria applicable to the cooperative association's acquisition of a significant

982 energy resource established by the cooperative association's board of directors.

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

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

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

989 (c) acquire qualifying electricity in excess of its adjusted retail electric sales.

990 (4) For the purpose of Subsection (1), an electrical corporation may combine the  
991 following:

992 (a) qualifying electricity from a renewable energy source owned by the electrical  
993 corporation;

994 (b) qualifying electricity acquired by the electrical corporation through trade, power  
995 purchase, or other transfer; and

996 (c) a bundled or unbundled renewable energy certificate, including a banked renewable  
997 energy certificate.

998 (5) For an electrical corporation whose rates the commission regulates, the following  
999 rules concerning renewable energy certificates apply:

1000 (a) a banked renewable energy certificate with an older issuance date shall be used  
1001 before any other banked renewable energy certificate issued at a later date is used; and

1002 (b) the total of all unbundled renewable energy certificates, including unbundled banked  
1003 renewable energy certificates, may not exceed 20% of the amount of the annual target provided  
1004 for in Subsection (1).

1005 (6) An electrical corporation that is a cooperative association may count towards  
1006 Subsection (1) any of the following:

1007 (a) electric production allocated to this state from hydroelectric facilities becoming  
1008 operational after December 31, 2007 if the facilities are located in any state in which the  
1009 cooperative association, or a generation and transmission cooperative with which the

1010 cooperative association has a contract, provides electric service;

1011 (b) qualifying electricity generated or acquired or renewable energy certificates acquired  
1012 for a program that permits a retail customer to voluntarily contribute to a renewable energy  
1013 source; and

1014 (c) notwithstanding Subsection 54-17-601(7), an unbundled renewable energy  
1015 certificate purchased from a renewable energy source located outside the geographic boundary  
1016 of the Western Electricity Coordinating Council if the electricity on which the unbundled  
1017 renewable energy certificate is based would be considered qualifying electricity if the renewable  
1018 energy source was located within the geographic boundary of the Western Electricity  
1019 Coordinating Council.

1020 (7) The use of the renewable attributes associated with qualifying electricity to satisfy  
1021 any federal renewable energy requirement does not preclude the electricity from being qualifying  
1022 electricity for the purpose of this chapter.

1023 Section 17. Section **54-17-603** is enacted to read:

1024 **54-17-603. Renewable energy certificate -- Issuance -- Use to satisfy other**  
1025 **requirements.**

1026 (1) The commission shall establish a process for issuance or recognition of a renewable  
1027 energy certificate.

1028 (2) The commission process under Subsection (1) shall provide for the issuance,  
1029 monitoring, accounting, transfer, and use of a renewable energy certificate, including in  
1030 electronic form.

1031 (3) The commission:

1032 (a) may consult with another state or a federal agency and any regional system or  
1033 trading program to fulfil Subsection (1); and

1034 (b) allow use of a renewable energy certificate that is issued, monitored, accounted for,  
1035 or transferred by or through a regional system or trading program, including the Western  
1036 Renewable Energy Generation Information System, to fulfil this part's provisions.

1037 (4) A renewable energy certificate shall be issued for:

- 1038 (a) qualifying electricity generated on and after January 1, 1995; and  
1039 (b) the activities of an energy user described in Subsections 10-19-102(11)(e) and  
1040 54-17-601(10)(e) on and after January 1, 1995.
- 1041 (5) The person requesting a renewable energy certificate shall affirm that the renewable  
1042 energy attributes of the electricity have not been traded, sold, transferred, or otherwise used to  
1043 satisfy another state's renewable energy requirements.
- 1044 (6) (a) For the purpose of satisfying Subsection 54-17-602(1) and the issuance of a  
1045 renewable energy certificate under this section, a renewable energy source located in this state  
1046 that derives its energy from solar photovoltaic or solar thermal energy shall be credited for 2.4  
1047 kilowatt-hours of qualifying electricity for each 1.0 kilowatt-hour generated.
- 1048 (b) Notwithstanding Subsection (6)(a), the acquisition or construction by an electrical  
1049 corporation of a renewable energy source that derives its energy from solar photovoltaic or  
1050 solar thermal energy shall comply with the cost-effectiveness criteria of Subsection  
1051 54-17-201(2)(c)(ii).
- 1052 (7) A renewable energy certificate issued under this section:  
1053 (a) does not expire; and  
1054 (b) may be banked.
- 1055 (8) The commission may recognize a renewable energy certificate that is issued,  
1056 monitored, accounted for, or transferred by or through another state or a regional system or  
1057 trading program, including the Western Renewable Energy Generation Information System, if  
1058 the renewable energy certificate is for qualifying electricity.
- 1059 (9) A renewable energy certificate:  
1060 (a) may be used only once to satisfy Subsection 54-17-602(1);  
1061 (b) may be used for the purpose of Subsection 54-17-602(1) and the qualifying  
1062 electricity on which the renewable energy certificate is based may be used to satisfy any federal  
1063 renewable energy requirement; and  
1064 (c) may not be used if it has been used to satisfy any other state's renewable energy  
1065 requirement.

1066           (10) The commission shall establish procedures and reasonable rates permitting an  
1067 electrical corporation that is a purchasing utility under Section 54-12-2 to acquire or retain a  
1068 renewable energy certificate associated with the purchase of power from an independent energy  
1069 producer.

1070           Section 18. Section **54-17-604** is enacted to read:

1071           **54-17-604. Plans and reports.**

1072           (1) An electrical corporation shall develop and maintain a plan for implementing  
1073 Subsection 54-17-602(1), consistent with the cost-effectiveness criteria of Subsection  
1074 54-17-201(2)(c)(ii).

1075           (2) (a) A progress report concerning a plan under Subsection (1) for other than a  
1076 cooperative association shall be filed with the commission by January 1 of each of the years  
1077 2010, 2015, 2020, and 2024.

1078           (b) For an electrical corporation that is a cooperative association, a progress report  
1079 shall be filed with the cooperative association's board of directors by January 1 of each of the  
1080 years 2010, 2015, 2020, and 2024.

1081           (3) The progress report under Subsection (2) shall contain:

1082           (a) the actual and projected amount of qualifying electricity through 2025;

1083           (b) the source of qualifying electricity;

1084           (c) (i) an analysis of the cost-effectiveness of renewable energy sources for other than a  
1085 cooperative association; or

1086           (ii) an estimate of the cost of achieving the target for an electrical corporation that is a  
1087 cooperative association;

1088           (d) a discussion of conditions impacting the renewable energy source and qualifying  
1089 electricity markets;

1090           (e) any recommendation for a suggested legislative or program change; and

1091           (f) for other than a cooperative association, any other information requested by the  
1092 commission or considered relevant by the electrical corporation.

1093           (4) The plan and progress report required by Subsections (1) and (2) may include

1094 procedures that will be used by the electrical corporation to identify and select any renewable  
1095 energy resource and qualifying electricity that satisfy the criteria of Subsection  
1096 54-17-201(2)(c)(ii).

1097 (5) By July 1, 2026, each electrical corporation shall file a final progress report  
1098 demonstrating:

1099 (a) how Subsection 54-17-602(1) is satisfied for the year 2025; or

1100 (b) the reason why Subsection 54-17-602(1) is not satisfied for the year 2025, if it is not  
1101 satisfied.

1102 (6) By January 1 of each of the years 2011, 2016, 2021, and 2025, the Division of  
1103 Public Utilities shall submit to the Legislature a report containing a summary of any progress  
1104 report filed under Subsections (2) through (5).

1105 (7) The summary required by Subsection (6) shall include any recommendation for  
1106 legislative changes.

1107 (8) (a) By July 1, 2027, the commission shall submit to the Legislature a report  
1108 summarizing the final progress reports and recommending any legislative changes.

1109 (b) The 2027 summary may contain a recommendation to the Legislature concerning  
1110 any action to be taken with respect to an electrical corporation that does not satisfy Subsection  
1111 54-17-602(1) for 2025.

1112 (c) The commission shall provide an opportunity for public comment and take evidence  
1113 before recommending any action to be taken with respect to an electrical corporation that does  
1114 not satisfy Subsection 54-17-602(1) for 2025.

1115 (9) If a recommendation containing a penalty for failure to satisfy Subsection  
1116 54-17-602(1) is made under Subsection (8), the proposal shall require that any amount paid by  
1117 an electrical corporation as a penalty be utilized to fund demand-side management for the retail  
1118 customers of the electrical corporation paying the penalty.

1119 (10) A penalty may not be proposed under this section if an electrical corporation's  
1120 failure to satisfy Subsection 54-17-602(1) is due to:

1121 (a) a lack of cost-effective means to satisfy the requirement; or



1122 (b) force majeure.  
1123 (11) By July 1, 2026, an electrical corporation that is a cooperative association shall file  
1124 a final progress report demonstrating:

1125 (a) how Subsection 54-17-602(1) is satisfied for the year 2025; or  
1126 (b) the reason why Subsection 54-17-602(1) is not satisfied for the year 2025 if it is not  
1127 satisfied.

1128 (12) The plan and any progress report file under this section by an electrical corporation  
1129 that is cooperative association shall be publicly available at the cooperative association's office  
1130 or posted on the cooperative association's website.

1131 Section 19. Section **54-17-605** is enacted to read:

1132 **54-17-605. Recovery of costs for renewable energy activities.**

1133 (1) In accordance with other law, the commission shall include in the retail electric rates  
1134 of an electrical corporation whose rates the commission regulates the state's share of any of the  
1135 costs listed in Subsection (2) that are relevant to the proceeding in which the commission is  
1136 considering the electrical corporation's rates:

1137 (a) if the costs are prudently incurred by the electrical corporation in connection with:

1138 (i) the acquisition of a renewable energy certificate;

1139 (ii) the acquisition of qualifying electricity for which a renewable energy certificate will  
1140 be issued after the acquisition; and

1141 (iii) the acquisition, construction, and use of a renewable energy source; and

1142 (b) to the extent any qualifying electricity or renewable energy source under Subsection  
1143 (1)(a) satisfies the cost-effectiveness criteria of Subsection 54-17-201(2)(c)(ii).

1144 (2) The following are costs that may be recoverable under Subsection (1):

1145 (a) a cost of siting, acquisition of property rights, equipment, design, licensing,  
1146 permitting, construction, owning, operating, or otherwise acquiring a renewable energy source  
1147 and any associated asset, including transmission;

1148 (b) a cost to acquire qualifying electricity through trade, power purchase, or other  
1149 transfer;

1150 (c) a cost to acquire a bundled or unbundled renewable energy certificate, if any net  
1151 revenue from the sale of a renewable energy certificate allocable to this state is also included in  
1152 rates;

1153 (d) a cost to interconnect a renewable energy source to the electrical corporation's  
1154 transmission and distribution system;

1155 (e) a cost associated with using a physical or financial asset to integrate, firm, or shape  
1156 a renewable energy source on a firm annual basis to meet a retail electricity need; and

1157 (f) any cost associated with transmission and delivery of qualifying electricity to a retail  
1158 electricity consumer.

1159 (3) (a) The commission may allow an electrical corporation to use an adjustment  
1160 mechanism or reasonable method other than a rate case under Sections 54-4-4 and 54-7-12 to  
1161 allow recovery of costs identified in Subsection (2).

1162 (b) If the commission allows the use of an adjustment mechanism, both the costs and  
1163 any associated benefit shall be reflected in the mechanism, to the extent practicable.

1164 (c) This Subsection (3) creates no presumption for or against the use of an adjustment  
1165 mechanism.

1166 (4) (a) The commission may permit an electrical corporation to include in its retail  
1167 electric rates the state's share of costs prudently incurred by the electrical corporation in  
1168 connection with a renewable energy source, whether or not the renewable energy source  
1169 ultimately becomes operational, including costs of:

1170 (i) siting;

1171 (ii) property acquisition;

1172 (iii) equipment;

1173 (iv) design;

1174 (v) licensing;

1175 (vi) permitting; and

1176 (vii) other reasonable items related to the renewable energy source.

1177 (b) Subsection (4)(a) creates no presumption concerning the prudence or recoverability

1178 of the costs identified.

1179 (c) To the extent deferral is consistent with other applicable law, the commission may  
1180 allow an electrical corporation to defer costs recoverable under Subsection (4)(a) until the  
1181 recovery of the deferred costs can be considered in a rate proceeding or an adjustment  
1182 mechanism created under Subsection (3).

1183 (d) An application to defer costs shall be filed within 60 days after the day on which the  
1184 electrical corporation determines that the renewable energy source project is impaired under  
1185 generally accepted accounting principles and will not become operational.

1186 (e) Notwithstanding the opportunity to defer costs under Subsection (4)(c), a cost  
1187 incurred by an electrical corporation for siting, property acquisition, equipment, design,  
1188 licensing, and permitting of a renewable energy source that the electrical corporation proposes  
1189 to construct shall be included in the electrical corporation's project costs for the purpose of  
1190 evaluating the project's cost-effectiveness.

1191 (f) A deferred cost under Subsection (4)(a) may not be added to, or otherwise  
1192 considered in the evaluation of, the cost of a project proposed by any person other than the  
1193 electrical corporation for the purpose of evaluating that person's proposal.

1194 Section 20. Section **54-17-606** is enacted to read:

1195 **54-17-606. Commission rules.**

1196 The commission shall make rules as necessary to implement this part.

1197 Section 21. Section **54-17-607** is enacted to read:

1198 **54-17-607. Procedure and appeals under this chapter.**

1199 (1) The governing authority, as defined in Section 54-15-102, has primary jurisdiction  
1200 concerning issues of interpretation, implementation, and administration of this chapter.

1201 (2) An appeal of a commission order under this chapter is governed by Chapter 7,  
1202 Hearings, Practice, and Procedure.

1203 Section 22. Section **54-17-701** is enacted to read:

1204 **Part 7. Carbon Sequestration**

1205 **54-17-701. Rules for carbon capture and geological storage.**

1206 (1) By January 1, 2011, the Division of Water Quality and the Division of Air Quality,  
1207 on behalf of the Board of Water Quality and the Board of Air Quality, respectively, in  
1208 collaboration with the commission and the Division of Oil, Gas and Mining and the Utah  
1209 Geological Survey, shall present recommended rules to the Legislature's Administrative Rules  
1210 Review Committee for the following in connection with carbon capture and accompanying  
1211 geological sequestration of captured carbon:

- 1212 (a) site characterization approval;  
1213 (b) geomechanical, geochemical, and hydrogeological simulation;  
1214 (c) risk assessment;  
1215 (d) mitigation and remediation protocols;  
1216 (e) issuance of permits for test, injection, and monitoring wells;  
1217 (f) specifications for the drilling, construction, and maintenance of wells;  
1218 (g) issues concerning ownership of subsurface rights and pore space;  
1219 (h) allowed composition of injected matter;  
1220 (i) testing, monitoring, measurement, and verification for the entirety of the carbon  
1221 capture and geologic sequestration chain of operations, from the point of capture of the carbon  
1222 dioxide to the sequestration site;  
1223 (j) closure and decommissioning procedure;  
1224 (k) short- and long-term liability and indemnification for sequestration sites;  
1225 (l) conversion of enhanced oil recovery operations to carbon dioxide geological  
1226 sequestration sites; and  
1227 (m) other issues as identified.

1228 (2) The entities listed in Subsection (1) shall report to the Legislature's Administrative  
1229 Rules Review Committee any proposals for additional statutory changes needed to implement  
1230 rules contemplated under Subsection (1).

1231 (3) On or before July 1, 2009, the entities listed in Subsection (1) shall submit to the  
1232 Legislature's Public Utilities and Technology and Natural Resources, Agriculture, and  
1233 Environment Interim Committees a progress report on the development of the recommended

1234 rules required by this part.

1235 (4) The recommended rules developed under this section apply to the injection of  
1236 carbon dioxide and other associated injectants in allowable types of geological formations for  
1237 the purpose of reducing emissions to the atmosphere through long-term geological  
1238 sequestration as required by law or undertaken voluntarily or for subsequent beneficial reuse.

1239 (5) The recommended rules developed under this section do not apply to the injection  
1240 of fluids through the use of Class II injection wells as defined in 40 C.F.R. 144.69(b) for the  
1241 purpose of enhanced hydrocarbon recovery.

1242 (6) Rules recommended under this section shall:

1243 (a) ensure that adequate health and safety standards are met;

1244 (b) minimize the risk of unacceptable leakage from the injection well and injection zone  
1245 for carbon capture and geologic sequestration; and

1246 (c) provide adequate regulatory oversight and public information concerning carbon  
1247 capture and geologic sequestration.

1248 **Section 23. Effective date.**

1249 If approved by two-thirds of all the members elected to each house, this bill takes effect  
1250 upon approval by the governor, or the day following the constitutional time limit of Utah  
1251 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
1252 the date of veto override.