

SUSTAINABLE TRANSPORTATION AND ENERGY PLAN ACT

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill amends provisions related to a public utility providing electrical service.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows the Public Service Commission to authorize a large-scale electric utility to implement tariffs to provide funding for a sustainable transportation and energy pilot program;
- ▶ allows an electrical corporation to recover 100% of the electrical corporation's prudently incurred costs in an energy balancing account;
- ▶ allows a large-scale electric utility to establish innovative electric efficiency technology programs;
- ▶ allows a large-scale electric utility to provide an incentive for:
 - a generation facility to curtail electricity generation to improve air quality; and
 - creation of an electric vehicle infrastructure;
- ▶ provides that the commission may authorize a large-scale electric utility to implement:
 - a clean coal program; and
 - other utility programs;
- ▶ provides a repeal date;
- ▶ enacts a provision related to withdrawal of notice to transfer electric service; and
- ▶ allows the commission to implement a conservation, efficiency, or technology

program if the program is cost-effective and in the public interest.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

54-2-1, as last amended by Laws of Utah 2014, Chapters 20, 381, and 388

54-7-12.8, as last amended by Laws of Utah 2009, Chapter 237

54-7-13.5, as enacted by Laws of Utah 2009, Chapter 319

54-17-801, as last amended by Laws of Utah 2014, Chapter 34

63I-1-254, as last amended by Laws of Utah 2013, Chapter 311

ENACTS:

54-3-33, Utah Code Annotated 1953

54-17-806, Utah Code Annotated 1953

54-20-101, Utah Code Annotated 1953

54-20-102, Utah Code Annotated 1953

54-20-103, Utah Code Annotated 1953

54-20-104, Utah Code Annotated 1953

54-20-105, Utah Code Annotated 1953

54-20-106, Utah Code Annotated 1953

54-20-107, Utah Code Annotated 1953

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

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

54-2-1. Definitions.

As used in this title:

(1) "Avoided costs" means the incremental costs to an electrical corporation of electric

energy or capacity or both that, due to the purchase of electric energy or capacity or both from small power production or cogeneration facilities, the electrical corporation would not have to generate itself or purchase from another electrical corporation.

(2) "Clean coal technology" means a technology that may be researched, developed, or used for reducing emissions or the rate of emissions from a thermal electric generation plant that uses coal as a fuel source.

~~[(2)]~~ (3) "Cogeneration facility":

(a) means a facility that produces:

(i) electric energy; and

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

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

~~[(3)]~~ (4) "Commission" means the Public Service Commission ~~[of Utah]~~.

~~[(4)]~~ (5) "Commissioner" means a member of the commission.

~~[(5)]~~ (6) (a) "Corporation" includes an association and a joint stock company having any powers or privileges not possessed by individuals or partnerships.

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

~~[(6)]~~ (7) "Distribution electrical cooperative" includes an electrical corporation that:

(a) is a cooperative;

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

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

(i) members; or

(ii) patrons.

~~[(7)]~~ (8) (a) "Electrical corporation" includes every corporation, cooperative

association, and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any electric plant, or in any way furnishing electric power for public service or to its consumers or members for domestic, commercial, or industrial use, within this state.

(b) "Electrical corporation" does not include:

(i) an independent energy producer;

(ii) where electricity is generated on or distributed by the producer solely for the producer's own use, or the use of the producer's tenants, or the use of members of an association of unit owners formed under Title 57, Chapter 8, Condominium Ownership Act, and not for sale to the public generally;

(iii) an eligible customer who provides electricity for the eligible customer's own use or the use of the eligible customer's tenant or affiliate; or

(iv) a nonutility energy supplier who sells or provides electricity to:

(A) an eligible customer who has transferred the eligible customer's service to the nonutility energy supplier in accordance with Section 54-3-32; or

(B) the eligible customer's tenant or affiliate.

(c) "Electrical corporation" does not include an entity that sells electric vehicle battery charging services, unless the entity conducts another activity in the state that subjects the entity to the jurisdiction and regulation of the commission as an electrical corporation.

[~~(8)~~] (9) "Electric plant" includes all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying conductors used or to be used for the transmission of electricity for light, heat, or power.

[~~(9)~~] (10) "Eligible customer" means a person who:

(a) on December 31, 2013:

(i) was a customer of a public utility that, on December 31, 2013, had more than 200,000 retail customers in this state; and

(ii) owned an electric plant that is an electric generation plant that, on December 31,

2013, had a generation name plate capacity of greater than 150 megawatts; and

(b) produces electricity:

(i) from a qualifying power production facility for sale to a public utility in this state;

(ii) primarily for the eligible customer's own use; or

(iii) for the use of the eligible customer's tenant or affiliate.

~~[(10)]~~ (11) "Eligible customer's tenant or affiliate" means one or more tenants or affiliates:

(a) of an eligible customer; and

(b) who are primarily engaged in an activity:

(i) related to the eligible customer's core mining or industrial businesses; and

(ii) performed on real property that is:

(A) within a 25-mile radius of the electric plant described in Subsection ~~[(9)]~~
(10)(a)(ii); and

(B) owned by, controlled by, or under common control with, the eligible customer.

~~[(11)]~~ (12) "Gas corporation" includes every corporation and person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any gas plant for public service within this state or for the selling or furnishing of natural gas to any consumer or consumers within the state for domestic, commercial, or industrial use, except in the situation that:

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

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

(ii) not for sale to others;

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

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

142 ~~[(12)]~~ (13) "Gas plant" includes all real estate, fixtures, and personal property owned,
143 controlled, operated, or managed in connection with or to facilitate the production, generation,
144 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

145 ~~[(13)]~~ (14) "Heat corporation" includes every corporation and person, their lessees,
146 trustees, and receivers, owning, controlling, operating, or managing any heating plant for public
147 service within this state.

148 ~~[(14)]~~ (15) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances,
149 and personal property controlled, operated, or managed in connection with or to facilitate the
150 production, generation, transmission, delivery, or furnishing of artificial heat.

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

153 ~~[(15)]~~ (16) "Independent energy producer" means every electrical corporation, person,
154 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,
155 control, or manage an independent power production or cogeneration facility.

156 ~~[(16)]~~ (17) "Independent power production facility" means a facility that:

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

160 (b) is a qualifying power production facility.

161 (18) "Large-scale electric utility" means a public utility that provides retail electric
162 service to more than 200,000 retail customers in the state.

163 ~~[(17)]~~ (19) "Nonutility energy supplier" means a person that:

164 (a) has received market-based rate authority from the Federal Energy Regulatory
165 Commission in accordance with 16 U.S.C. Sec. 824d, 18 C.F.R. Part 35, Filing of Rate
166 Schedules and Tariffs, or applicable Federal Energy Regulatory Commission orders; or

167 (b) owns, leases, operates, or manages an electric plant that is an electric generation
168 plant that:

169 (i) has a capacity of greater than 100 megawatts; and

(ii) is hosted on the site of an eligible customer that consumes the output of the electric plant, in whole or in part, for the eligible customer's own use or the use of the eligible customer's tenant or affiliate.

~~[(18)]~~ (20) "Private telecommunications system" includes all facilities for the transmission of signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, or other electromagnetic means, excluding mobile radio facilities, that are owned, controlled, operated, or managed by a corporation or person, including their lessees, trustees, receivers, or trustees appointed by any court, for the use of that corporation or person and not for the shared use with or resale to any other corporation or person on a regular basis.

~~[(19)]~~ (21) (a) "Public utility" includes every railroad corporation, gas corporation, electrical corporation, distribution electrical cooperative, wholesale electrical cooperative, telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, and independent energy producer not described in Subsection ~~[(19)]~~ (21)(d), where the service is performed for, or the commodity delivered to, the public generally, or in the case of a gas corporation or electrical corporation where the gas or electricity is sold or furnished to any member or consumers within the state for domestic, commercial, or industrial use.

(b) (i) If any railroad corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewerage corporation, heat corporation, or independent energy producer not described in Subsection ~~[(19)]~~ (21)(d), performs a service for or delivers a commodity to the public, it is considered to be a public utility, subject to the jurisdiction and regulation of the commission and this title.

(ii) If a gas corporation, independent energy producer not described in Subsection ~~[(19)]~~ (21)(d), or electrical corporation sells or furnishes gas or electricity to any member or consumers within the state, for domestic, commercial, or industrial use, for which any compensation or payment is received, it is considered to be a public utility, subject to the jurisdiction and regulation of the commission and this title.

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

(d) An independent energy producer is exempt from the jurisdiction and regulations of the commission with respect to an independent power production facility if it meets the requirements of Subsection ~~[(19)]~~ (21)(d)(i), (ii), (iii), or (iv), or any combination of these:

(i) the commodity or service is produced or delivered, or both, by an independent energy producer solely for a use described in Subsections ~~[(7)]~~ (8)(b)(ii) through (iv) or for the use of state-owned facilities;

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

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

(B) the real property on which the service or commodity is used is contiguous to real property that is owned or controlled by the independent energy producer or is separated only by a public road or an easement for a public road; or

(iv) the independent energy producer:

(A) supplies energy for direct consumption by a customer that is:

(I) a United States governmental entity, including an entity of the United States military, or a county, municipality, city, town, other political subdivision, local district, special service district, state institution of higher education, school district, charter school, or any entity within the state system of public education; or

(II) an entity qualifying as a charitable organization under 26 U.S.C. Sec. 501(c)(3) operated for religious, charitable, or educational purposes that is exempt from federal income tax and able to demonstrate its tax-exempt status;

(B) supplies energy to the customer through use of a customer generation system, as defined in Section 54-15-102, for use on the real property where the customer generation system is located;

(C) supplies energy using a customer generation system designed to supply the lesser of:

(I) no more than 90% of the average annual consumption of electricity by the customer at that site, based on an annualized billing period; or

(II) the maximum size allowable under net metering provisions, defined in Section 54-15-102;

(D) notifies the customer before installing the customer generation system of:

(I) all costs the customer is required to pay for the customer generation system, including any interconnection costs; and

(II) the potential for future changes in amounts paid by the customer for energy received from the public utility and the possibility of changes to the customer fees or charges to the customer associated with net metering and generation;

(E) enters into and performs in accordance with an interconnection agreement with a public utility providing retail electric service where the real property on which the customer generation system is located, with the rates, terms, and conditions of the retail service and interconnection agreement subject to approval by the governing authority of the public utility, as defined in Subsection 54-15-102(8); and

(F) installs the relevant customer generation system by December 31, 2021.

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

(f) (i) "Public utility" does not include any person that is otherwise considered a public utility under this Subsection ~~[(19)]~~ (21) solely because of that person's ownership of an interest in an electric plant, cogeneration facility, or small power production facility in this state if all of the following conditions are met:

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

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

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

(III) a combination of Subsections ~~[(19)]~~ (21)(f)(i)(A)(I) and (II);

(B) the lessor of the ownership interest identified in Subsection ~~[(19)]~~ (21)(f)(i)(A) is:

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

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

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

(ii) Any person that is exempt from classification as a public utility under Subsection ~~[(19)]~~ (21)(f)(i) shall continue to be ~~[so]~~ exempt from classification following termination of the lessee's right to possession or use of the electric plant for so long as the former lessor does not operate the electric plant or sell electricity from the electric plant. If the former lessor operates the electric plant or sells electricity, the former lessor shall continue to be so exempt for a period of 90 days following termination, or for a longer period that is ordered by the commission. This period may not exceed one year. A change in rates that would otherwise require commission approval may not be effective during the 90-day or extended period without commission approval.

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

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

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

(i) "Public utility" does not include:

(i) an eligible customer who provides electricity for the eligible customer's own use or the use of the eligible customer's tenant or affiliate; or

(ii) a nonutility energy supplier that sells or provides electricity to:

(A) an eligible customer who has transferred the eligible customer's service to the nonutility energy supplier in accordance with Section 54-3-32; or

(B) the eligible customer's tenant or affiliate.

(j) "Public utility" does not include an entity that sells electric vehicle battery charging services, unless the entity conducts another activity in the state that subjects the entity to the jurisdiction and regulation of the commission as a public utility.

~~[(20)]~~ (22) "Purchasing utility" means any electrical corporation that is required to purchase electricity from small power production or cogeneration facilities pursuant to the Public Utility Regulatory Policies Act, 16 U.S.C. Section 824a-3.

~~[(21)]~~ (23) "Qualifying power producer" means a corporation, cooperative association, or person, or the lessee, trustee, and receiver of the corporation, cooperative association, or person, who owns, controls, operates, or manages any qualifying power production facility or cogeneration facility.

~~[(22)]~~ (24) "Qualifying power production facility" means a facility that:

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

310 sources;

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

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

314 [~~(23)~~] (25) "Railroad" includes every commercial, interurban, and other railway, other
315 than a street railway, and each branch or extension of a railway, by any power operated,
316 together with all tracks, bridges, trestles, rights-of-way, subways, tunnels, stations, depots,
317 union depots, yards, grounds, terminals, terminal facilities, structures, and equipment, and all
318 other real estate, fixtures, and personal property of every kind used in connection with a
319 railway owned, controlled, operated, or managed for public service in the transportation of
320 persons or property.

321 [~~(24)~~] (26) "Railroad corporation" includes every corporation and person, their lessees,
322 trustees, and receivers, owning, controlling, operating, or managing any railroad for public
323 service within this state.

324 [~~(25)~~] (27) (a) "Sewerage corporation" includes every corporation and person, their
325 lessees, trustees, and receivers, owning, controlling, operating, or managing any sewerage
326 system for public service within this state.

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

331 [~~(26)~~] (28) "Telegraph corporation" includes every corporation and person, their
332 lessees, trustees, and receivers, owning, controlling, operating, or managing any telegraph line
333 for public service within this state.

334 [~~(27)~~] (29) "Telegraph line" includes all conduits, ducts, poles, wires, cables,
335 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
336 controlled, operated, or managed in connection with or to facilitate communication by
337 telegraph, whether that communication be had with or without the use of transmission wires.

338 ~~[(28)]~~ (30) (a) "Telephone corporation" means any corporation or person, and their
339 lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates,
340 manages, or resells a public telecommunications service as defined in Section ~~54-8b-2~~.

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

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

347 (ii) Internet service; or

348 (iii) resold intrastate toll service.

349 ~~[(29)]~~ (31) "Telephone line" includes all conduits, ducts, poles, wires, cables,
350 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
351 controlled, operated, or managed in connection with or to facilitate communication by
352 telephone whether that communication is had with or without the use of transmission wires.

353 ~~[(30)]~~ (32) "Transportation of persons" includes every service in connection with or
354 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
355 carriage, and delivery of that person and that person's baggage.

356 ~~[(31)]~~ (33) "Transportation of property" includes every service in connection with or
357 incidental to the transportation of property, including in particular its receipt, delivery,
358 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and
359 hauling, and the transmission of credit by express companies.

360 ~~[(32)]~~ (34) "Water corporation" includes every corporation and person, their lessees,
361 trustees, and receivers, owning, controlling, operating, or managing any water system for
362 public service within this state. It does not include private irrigation companies engaged in
363 distributing water only to their stockholders, or towns, cities, counties, water conservancy
364 districts, improvement districts, or other governmental units created or organized under any
365 general or special law of this state.

366 ~~[(33)]~~ (35) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
367 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,
368 and personal property owned, controlled, operated, or managed in connection with or to
369 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,
370 appointment, apportionment, or measurement of water for power, fire protection, irrigation,
371 reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

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

374 ~~[(34)]~~ (36) "Wholesale electrical cooperative" includes every electrical corporation that
375 is:

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

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

380 Section 2. Section **54-3-33** is enacted to read:

381 **54-3-33. Eligible customer energy supply contract.**

382 (1) The commission may approve a contract between a large-scale electric utility and a
383 customer of a large-scale electric utility that is eligible to transfer electric service to a
384 non-utility energy supplier under Section [54-3-32](#).

385 (2) The commission shall exempt a customer that enters into a contract described in
386 Subsection (1) from paying the costs recovered under Subsection [54-7-12.8\(3\)](#), except the costs
387 of the Utah solar incentive program included in Subsection [54-7-12.8\(3\)\(b\)](#).

388 (3) If an eligible customer that enters into a contract described in Subsection (1) has
389 provided notice to the commission under Subsection [54-3-32\(3\)](#), the notice is not considered
390 withdrawn under Subsection [54-3-32\(4\)\(c\)](#) by the customer entering into the contract.

391 (4) Notwithstanding Subsection [54-3-32\(4\)\(c\)](#), if the commission approves a contract
392 under this section for an eligible customer that states a contract termination date that is after
393 December 31, 2020, the notice described in Subsection [54-3-32\(3\)\(a\)](#) is not considered to be

withdrawn unless a transfer of service under Section [54-3-32](#) does not occur before the later of:

(a) the day three years after the termination date stated in the contract; or

(b) 18 months after the intended date of transfer of service described in Subsection [54-3-32](#)(3)(a)(ii).

Section 3. Section **54-7-12.8** is amended to read:

54-7-12.8. Electric energy efficiency, sustainable transportation and energy, and conservation tariff.

(1) As used in this section[, "demand"]:

(a) "Demand side management" means ~~[activities or programs that promote]~~ an activity or program that promotes electric energy efficiency or conservation or more efficient management of electric energy loads.

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

(c) "Sustainable transportation and energy plan" means the same as that term is defined in Section [54-20-102](#).

(d) "Utah solar incentive program" means the eligible utility rooftop solar pilot program established by commission order in 2012.

(2) (a) As provided in this section, the commission may approve a tariff under which an electrical corporation includes a line item charge on ~~[its]~~ the electrical corporation's customers' bills to recover costs incurred by the electrical corporation for demand side management.

(b) The commission shall authorize a large-scale electric utility that is allowed to charge a customer for demand side management under Subsection (2)(a) to:

(i) if requested by the large-scale electric utility, capitalize the annual costs incurred for demand side management provided in Subsection (2)(a);

(ii) amortize the annual cost for demand side management over a period of 10 years;

(iii) apply a carrying charge to the unamortized balance that is equal to the large-scale electric utility's pretax weighted average cost of capital approved by the commission in the

422 large-scale electric utility's most recent general rate proceeding; and

423 (iv) recover the amortization cost described in Subsection (2)(b)(ii) and the carrying
424 charge described in Subsection (2)(b)(iii) in customer rates.

425 (3) The commission shall, before January 1, 2017, authorize a large-scale electric
426 utility to implement a combined line item charge on the large-scale electric utility's customers'
427 bills to recover the cost to the large-scale electric utility of:

428 (a) demand side management, including the cost of amortizing a deferred balance;

429 (b) the sustainable transportation and energy plan; and

430 (c) the additional expense described in Subsection (5)(a)(i).

431 (4) On December 31, 2016, the commission shall end the Utah solar incentive program
432 and surcharge tariff and the large-scale electric utility shall stop accepting new applications for
433 solar incentive program incentives.

434 (5) (a) The commission may authorize a large-scale electric utility that capitalizes
435 demand side management costs under Subsection (2)(b) to:

436 (i) recognize the difference between the annual revenues the large-scale electric utility
437 collects for demand side management and the annual amount of the large-scale electric utility's
438 demand side management cost amortization expense as an additional expense;

439 (ii) establish and fund, via the additional expense described in Subsection (5)(a)(i), a
440 regulatory liability; and

441 (iii) use the regulatory liability described in Subsection (5)(a)(ii) to depreciate thermal
442 generation plant.

443 (b) (i) The commission may authorize the large-scale electric utility to use the
444 regulatory liability described in Subsection (5)(a)(ii) to depreciate thermal generation plant for
445 which the commission determines depreciation is in the public interest for compliance with an
446 environmental regulation or another purpose.

447 (ii) The commission may not consider the existence of the regulatory liability described
448 in Subsection (5)(a)(ii) in a determination to accelerate depreciation under Subsection (5)(b)(i).

449 (c) The commission shall allow the large-scale electric utility to apply a carrying

charge to the regulatory liability described in Subsection (5)(a)(ii) in an amount equal to the large-scale electric utility's pretax average weighted cost of capital approved by the commission in the large-scale electric utility's most recent general rate proceeding.

(d) The commission may allow a large-scale electric utility to use the regulatory liability carrying charge described in Subsection (5)(c) to offset the carrying charge described in Subsection (2)(b)(iii).

(e) The large-scale electric utility shall apply the carrying charge described in Subsection (5)(c) to funds that a large-scale electric utility is authorized to use to depreciate thermal generation plant under Subsection (5)(a) until the reduction in the large-scale electric utility's rate base associated with the thermal generation plant depreciation for which the funds are used is reflected in the large-scale electric utility's customers' rates.

(f) If the commission determines that funds established in the regulatory liability under Subsection (5)(a) are no longer needed for the purpose of depreciating thermal generation plant, the large-scale electric utility shall use the balance of the funds in the regulatory liability to offset the capitalized demand side management costs described in Subsection (2)(b)(i).

(6) (a) During the pilot program period, of the funds a large-scale electric utility collects via the line item charge described in Subsection (3), the commission shall authorize the large-scale electric utility to allocate on an annual basis:

(i) \$10,000,000 to the sustainable transportation and energy plan; and

(ii) the funds not allocated to the sustainable transportation and energy plan to demand side management.

(b) The commission shall authorize a large-scale electric utility to spend up to:

(i) \$2,000,000 annually for the electric vehicle incentive program described in Section 54-20-103; and

(ii) an annual average of:

(A) \$1,000,000 for the clean coal technology program described in Section 54-20-104; and

(B) \$3,400,000 for the innovative utility programs described in Section 54-20-105.

478 (c) The commission shall authorize a large-scale electric utility to recoup the
479 large-scale electric utility's unrecovered costs paid through the Utah solar incentive program
480 from the funds allocated under Subsection (6)(a)(i).

481 (d) The commission may authorize a large-scale electric utility to allocate funds the
482 large-scale electric utility collects via the line item charge described in Subsection (3) not spent
483 under Subsection (6) to a conservation, efficiency, or new technology program if the
484 conservation, efficiency, or new technology program is cost-effective and in the public interest.

485 (7) A large-scale electric utility shall establish a balancing account that includes:

486 (a) funds allocated under Subsection (6)(a)(i);

487 (b) the program expenditures described in Subsection (6)(b);

488 (c) the unrecovered Utah solar incentive program costs described in Subsection (6)(c);
489 and

490 (d) a carrying charge in an amount determined by the commission.

491 (8) A customer that is paying a contract rate under an agreement with a large-scale
492 electric utility as of January 1, 2016, is exempt from the costs recovered under Subsection (3),
493 except for costs created by or arising from the Utah solar incentive program included in
494 Subsection [54-7-12.8\(3\)\(b\)](#).

495 (9) (a) In any proceeding commenced under Section [54-3-32](#), the commission may not
496 consider or assess to an eligible customer an expenditure, cost, amortization, charge, or liability
497 of any kind that is created by or arises in whole or in part from:

498 (i) any program created under Title 54, Chapter 20, Sustainable Transportation and
499 Energy Plan Act; or

500 (ii) this section, except for costs created by or arising from the Utah solar incentive
501 program included in Subsection [54-7-12.8\(3\)\(b\)](#).

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

504 (i) amend or repeal any provision of Section [54-3-32](#); or

505 (ii) affect any right, defense, or credit available to an eligible customer under Section

54-3-32.

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

(a) the Division of Public Utilities;

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

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

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

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

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

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

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

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

(b) qualify for the credit under criteria established by the ~~[Utah Public Service Commission]~~ commission.

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

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

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

54-7-13.5. Energy balancing accounts.

(1) As used in this section:

(a) "Base rates" ~~[is as]~~ means the same as that term is defined in Subsection

54-7-12(1).

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

(i) (A) fuel;

(B) purchased power; and

(C) wheeling expenses; and

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

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

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

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

(i) in the public interest;

(ii) for prudently-incurred costs; and

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

(c) An electrical corporation:

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

(A) base rates;

(B) contract rates;

(C) surcredits; or

(D) surcharges; and

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

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

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

563 (i) the standard for cost recovery; or

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

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

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

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

568 ~~[(f)]~~ (g) The collection of costs related to an energy balancing account from customers

569 paying contract rates shall be governed by the terms of the contract.

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

571 (i) be refunded as a bill surcredit to an electrical corporation's customers over a period

572 specified by the commission; and

573 (ii) include a carrying charge.

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

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

576 and

577 (ii) include a carrying charge.

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

579 be:

580 (i) determined by the commission; and

581 (ii) symmetrical for over or under collections.

582 (3) (a) The commission may:

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

584 (ii) set forth procedures for a gas corporation's gas balancing account in the gas

585 corporation's commission-approved tariff.

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

587 (i) the standard of cost recovery; or

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

589 (4) (a) All allowed costs and revenues associated with an energy balancing account or

gas balancing account shall remain in the respective balancing account until charged or refunded to customers.

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

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

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

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

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

(6) The commission shall report to the Public Utilities and Technology Interim Committee before December 1 in 2017 and 2018 regarding whether allowing an electrical corporation to continue to recover costs under Subsection (2)(d) is reasonable and in the public interest.

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

54-17-801. Definitions.

As used in this part:

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

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

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

(4) "Renewable energy facility":

(a) except as provided in Subsection (4)(b), means a renewable energy source defined

in Section [54-17-601](#) that is located in the state; and

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

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

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

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

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

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

(a) the customer's normal tariff rate;

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

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

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

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

CHAPTER 20. SUSTAINABLE TRANSPORTATION AND ENERGY PLAN ACT

54-20-101. Title.

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

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

54-20-102. Definitions.

As used in this chapter:

(1) "Demand side management" means the same as that term is defined in Section

54-7-12.8.

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

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

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

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

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

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

54-20-103. Electric vehicle incentive program.

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

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

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

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

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

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

- (a) the Division of Public Utilities;
- (b) the Office of Consumer Services;
- (c) the Division of Air Quality; and
- (d) any person that files a request for notice with the commission.

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

54-20-104. Clean coal technology program.

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

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

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

54-20-105. Innovative utility programs.

(1) The commission may authorize, subject to funding available under Subsection [54-7-12.8\(6\)\(b\)\(ii\)\(B\)](#), a large-scale electric utility to implement programs that the commission determines are in the interest of large-scale electric utility customers to provide for the investigation, analysis, and implementation of:

- (a) an economic development incentive rate;
- (b) a solar generation incentive;
- (c) a battery storage or electric grid related project;
- (d) a commercial line extension pilot program;
- (e) a program to curtail emissions from thermal generation plant in the Salt Lake non-attainment area during a non-attainment event as defined by the Division of Air Quality;
- (f) an additional electric vehicle incentive program incremental to the program described in Section [54-20-103](#);
- (g) an additional clean coal program incremental to the program described in Section [54-20-104](#); and

(h) any other technology program.

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

(3) The commission may authorize and establish funding for a conservation, efficiency, or new technology program in addition to the programs described in this chapter if the conservation, efficiency, or new technology program is cost-effective and in the public interest.

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

54-20-106. Extension of pilot program.

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

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

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

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

Section 13. Section **54-20-107** is enacted to read:

54-20-107. Other programs.

The commission may authorize a large-scale electric utility to establish a program in addition to the programs described in this chapter if the commission determines that the program is cost-effective and in the public interest.

Section 14. Section **63I-1-254** is amended to read:

63I-1-254. Repeal dates -- Title 54.

(1) The language of Subsection 54-4-13.4(1)(a)(ii) after "do not exceed \$5,000,000 in any calendar year" is repealed July 1, 2018.

(2) Subsection 54-7-13.5(2)(d) is repealed on December 31, 2019.