

Representative V. Lowry Snow proposes the following substitute bill:

ELECTRIC VEHICLE CHARGING INFRASTRUCTURE

AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Lincoln Fillmore

LONG TITLE

General Description:

This bill modifies public utilities provisions relating to electric vehicle battery charging infrastructure and service.

Highlighted Provisions:

This bill:

- modifies the definitions of "electrical corporation" and "public utility" for purposes of public utility code provisions and expands the description of entities excluded from those definitions because they are entities that sell electric vehicle battery charging service;

- enacts definitions relating to electric vehicle battery charging station infrastructure and services;

- requires the Public Service Commission to authorize a large-scale electric utility's vehicle charging infrastructure program that allows for a \$50,000,000 investment, and provides for amendments to that program; and

- provides for a large-scale electric utility to recover the utility's investment in vehicle charging infrastructure.

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 2019, Chapter 460

ENACTS:

54-4-41, 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.

(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.

(4) "Commission" means the Public Service Commission.

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

(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.

(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.

(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[;]:

(i) if the entity obtains the electricity for the electric vehicle battery charging service, including any electricity from an electricity storage device:

(A) from an electrical corporation in whose service area the electric vehicle battery

88 charging service is located; and

89 (B) under an established tariff for rates, charges, and conditions of service; and

90 (ii) unless the entity conducts another activity in the state that subjects the entity to the
91 jurisdiction and regulation of the commission as an electrical corporation.

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

97 (10) "Eligible customer" means a person who:

98 (a) on December 31, 2013:

99 (i) was a customer of a public utility that, on December 31, 2013, had more than
100 200,000 retail customers in this state; and

101 (ii) owned an electric plant that is an electric generation plant that, on December 31,
102 2013, had a generation name plate capacity of greater than 150 megawatts; and

103 (b) produces electricity:

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

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

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

107 (11) "Eligible customer's tenant or affiliate" means one or more tenants or affiliates:

108 (a) of an eligible customer; and

109 (b) who are primarily engaged in an activity:

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

111 (ii) performed on real property that is:

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

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

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

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

119 private property:

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

122 (ii) not for sale to others;

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

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

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

130 (14) "Heat corporation" includes every corporation and person, their lessees, trustees,
131 and receivers, owning, controlling, operating, or managing any heating plant for public service
132 within this state.

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

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

138 (16) "Independent energy producer" means every electrical corporation, person,
139 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,
140 control, or manage an independent power production or cogeneration facility.

141 (17) "Independent power production facility" means a facility that:

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

145 (b) is a qualifying power production facility.

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

148 (19) "Large-scale natural gas utility" means a public utility that provides retail natural
149 gas service to more than 200,000 retail customers in the state.

(20) "Nonutility energy supplier" means a person that:

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

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

(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.

(21) "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.

(22) (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 Section 54-2-201 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 Section 54-2-201, 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 Section 54-2-201, 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

181 compensation or payment is received, it is considered to be a public utility, subject to the
182 jurisdiction and regulation of the commission and this title.

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

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

190 (e) (i) "Public utility" does not include any person that is otherwise considered a public
191 utility under this Subsection (22) solely because of that person's ownership of an interest in an
192 electric plant, cogeneration facility, or small power production facility in this state if all of the
193 following conditions are met:

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

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

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

199 (III) a combination of Subsections (22)(e)(i)(A)(I) and (II);

200 (B) the lessor of the ownership interest identified in Subsection (22)(e)(i)(A) is:

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

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

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

206 (ii) Any person that is exempt from classification as a public utility under Subsection
207 (22)(e)(i) shall continue to be so exempt from classification following termination of the
208 lessee's right to possession or use of the electric plant for so long as the former lessor does not
209 operate the electric plant or sell electricity from the electric plant. If the former lessor operates
210 the electric plant or sells electricity, the former lessor shall continue to be so exempt for a
211 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.

(f) "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.

(g) (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.

(h) "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.

(i) "Public utility" does not include an entity that sells electric vehicle battery charging services[;];

(i) if the entity obtains the electricity for the electric vehicle battery charging service, including any electricity from an electricity storage device:

(A) from a large-scale electric utility or an electrical corporation in whose service area the electric vehicle battery charging service is located; and

(B) under an established tariff for rates, charges, and conditions of service; and

(ii) 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.

(j) "Public utility" does not include an independent energy producer that is not subject to regulation by the commission as a public utility under Section 54-2-201.

(23) "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. Sec. 824a-3.

(24) "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.

(25) "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 sources;

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

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

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

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

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

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

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

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

(31) "Telephone cooperative" means a telephone corporation that:

(a) is a cooperative; and

(b) is organized for the purpose of providing telecommunications service to the telephone corporation's members and the public at cost plus a reasonable rate of return.

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

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

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

(ii) Internet service; or

(iii) resold intrastate toll service.

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

(34) "Transportation of persons" includes every service in connection with or

305 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
306 carriage, and delivery of that person and that person's baggage.

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

311 (36) "Utility-owned vehicle charging infrastructure" means all facilities, equipment,
312 and electrical systems owned and installed by a large-scale electric utility:

313 (a) on the customer's side or the large-scale electric utility's side of the electricity
314 metering equipment; and

315 (b) to facilitate utility vehicle charging service.

316 (37) "Utility vehicle charging service" means the furnishing of electricity:

317 (a) to an electric vehicle battery charging station:

318 (b) by a public utility in whose service area the charging station is located; and

319 (c) pursuant to a duly established tariff for rates, charges, and conditions of service for
320 the electricity.

321 ~~[(36)]~~ (38) "Water corporation" includes every corporation and person, their lessees,
322 trustees, and receivers, owning, controlling, operating, or managing any water system for
323 public service within this state. It does not include private irrigation companies engaged in
324 distributing water only to their stockholders, or towns, cities, counties, water conservancy
325 districts, improvement districts, or other governmental units created or organized under any
326 general or special law of this state.

327 ~~[(37)]~~ (39) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
328 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,
329 and personal property owned, controlled, operated, or managed in connection with or to
330 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,
331 appointment, apportionment, or measurement of water for power, fire protection, irrigation,
332 reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

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

335 ~~[(38)]~~ (40) "Wholesale electrical cooperative" includes every electrical corporation that

is:

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

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

Section 2. Section **54-4-41** is enacted to read:

54-4-41. Recovery of investment in utility-owned vehicle charging infrastructure.

(1) As used in this section, "charging infrastructure program" means the program described in Subsection (2).

(2) The commission shall authorize a large-scale electric utility program that:

(a) allows for funding from large-scale electric utility customers for a maximum of \$50,000,000 for all costs and expenses associated with:

(i) the deployment of utility-owned vehicle charging infrastructure; and

(ii) utility vehicle charging service provided by the large-scale electric utility;

(b) creates a new customer class, with a utility vehicle charging service rate structure that:

(i) is determined by the commission to be in the public interest;

(ii) is a transitional rate structure expected to allow the large-scale electric utility to recover, through charges to utility vehicle charging service customers, the large-scale electric utility's full cost of service for utility-owned vehicle charging infrastructure and utility vehicle charging service over a reasonable time frame determined by the commission; and

(iii) may allow different rates for large-scale electric utility customers to reflect contributions to investment; and

(c) includes a transportation plan that promotes:

(i) the deployment of utility-owned vehicle charging infrastructure in the public interest; and

(ii) the availability of utility vehicle charging service.

(3) Before submitting a proposed charging infrastructure program to the commission for commission approval under Subsection (2), a large-scale electric utility shall seek and consider input from:

(a) the Division of Public Utilities, established in Section [54-4a-1](#);

(b) the Office of Consumer Services, created in Section 54-10a-201;
(c) the Division of Air Quality, created in Section 19-1-105;
(d) the Department of Transportation, created in Section 72-1-201;
(e) the Governor's Office of Economic Development, created in Section 63N-1-201;
(f) the Office of Energy Development, created in Section 63M-4-401;
(g) the board of the Utah Inland Port Authority, created in Section 11-58-201;
(h) representatives of the Point of the Mountain State Land Development Authority,
created in Section 11-59-201;
(i) third-party electric vehicle battery charging service operators; and
(j) any other person who files a request for notice with the commission.
(4) The commission shall find a charging infrastructure program to be in the public
interest if the commission finds that the charging infrastructure program:
(a) increases the availability of electric vehicle battery charging service in the state;
(b) enables the significant deployment of infrastructure that supports electric vehicle
battery charging service and utility-owned vehicle charging infrastructure in a manner
reasonably expected to increase electric vehicle adoption;
(c) includes an evaluation of investments in the areas of the authority jurisdictional
land, as defined in Section 11-58-102, and the point of the mountain state land, as defined in
Section 11-59-102;
(d) enables competition, innovation, and customer choice in electric vehicle battery
charging services, while promoting low-cost services for electric vehicle battery charging
customers; and
(e) provides for ongoing coordination with the Department of Transportation, created
in Section 72-1-201.
(5) The commission may, consistent with Subsection (2), approve an amendment to the
charging infrastructure program if the large-scale electric utility demonstrates that the
amendment:
(i) is prudent;
(ii) will provide net benefits to customers; and
(iii) is otherwise consistent with the requirements of Subsection (2).
(6) The commission shall authorize recovery of a large-scale electric utility's

investment in utility-owned vehicle charging infrastructure through a balancing account or other ratemaking treatment that reflects:

(a) charging infrastructure program costs associated with prudent investment, including the large-scale electric utility's pre-tax average weighted cost of capital approved by the commission in the large-scale electric utility's most recent general rate proceeding, and associated revenue and prudently incurred expenses; and

(b) a carrying charge.

(7) A large-scale electric utility's investment in utility-owned vehicle charging infrastructure is prudently made if the large-scale electric utility demonstrates in a formal adjudicative proceeding before the commission that the investment can reasonably be anticipated to:

(a) result in one or more projects that are in the public interest of the large-scale electric utility's customers to reduce transportation sector emissions over a reasonable time period as determined by the commission;

(b) provide the large-scale electric utility's customers significant benefits that may include revenue from utility vehicle charging service that offsets the large-scale electric utility's costs and expenses; and

(c) facilitate any other measure that the commission determines:

(i) promotes deployment of utility-owned vehicle charging infrastructure and utility vehicle charging service; or

(ii) creates significant benefits in the long term for customers of the large-scale electric utility.

(8) A large-scale electric utility that establishes and implements a charging infrastructure program shall annually, on or before June 1, submit a written report to the Public Utilities, Energy, and Technology Interim Committee of the Legislature about the charging infrastructure program's activities during the previous calendar year, including information on:

(a) the charging infrastructure program's status, operation, funding, and benefits;

(b) the disposition of charging infrastructure program funds; and

(c) the charging infrastructure program's impact on rates.