

1 **UNCLAIMED CAPITAL CREDITS AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Michael E. Noel**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions related to a distribution electrical cooperative's or telephone
10 cooperative's unclaimed capital credits.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms; and
- 14 ▶ provides that a distribution electrical cooperative or a telephone cooperative may
15 use the proceeds of unclaimed capital credits to provide financial assistance to a
16 school, non-profit organization, or community organization in the area where the
17 cooperative provides service.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **54-2-1**, as last amended by Laws of Utah 2014, Chapters 20, 381, and 388

25 **54-3-26**, as enacted by Laws of Utah 1995, Chapter 198

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



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

29 **54-2-1. Definitions.**

30 As used in this title:

31 (1) "Avoided costs" means the incremental costs to an electrical corporation of electric
32 energy or capacity or both that, due to the purchase of electric energy or capacity or both from
33 small power production or cogeneration facilities, the electrical corporation would not have to
34 generate itself or purchase from another electrical corporation.

35 (2) "Cogeneration facility":

36 (a) means a facility that produces:

37 (i) electric energy; and

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

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

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

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

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

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

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

49 (a) is a cooperative;

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

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

54 (i) members; or

55 (ii) patrons.

56 (7) (a) "Electrical corporation" includes every corporation, cooperative association, and
57 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any
58 electric plant, or in any way furnishing electric power for public service or to its consumers or

59 members for domestic, commercial, or industrial use, within this state.

60 (b) "Electrical corporation" does not include:

61 (i) an independent energy producer;

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

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

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

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

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

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

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

80 (9) "Eligible customer" means a person who:

81 (a) on December 31, 2013:

82 (i) was a customer of a public utility that, on December 31, 2013, had more than
83 200,000 retail customers in this state; and

84 (ii) owned an electric plant that is an electric generation plant that, on December 31,
85 2013, had a generation name plate capacity of greater than 150 megawatts; and

86 (b) produces electricity:

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

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

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

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

91 (a) of an eligible customer; and

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

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

94 (ii) performed on real property that is:

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

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

97 (11) "Gas corporation" includes every corporation and person, their lessees, trustees,

98 and receivers, owning, controlling, operating, or managing any gas plant for public service

99 within this state or for the selling or furnishing of natural gas to any consumer or consumers

100 within the state for domestic, commercial, or industrial use, except in the situation that:

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

102 private property:

103 (i) solely for the maker's or producer's own use or the use of the maker's or producer's

104 tenants; and

105 (ii) not for sale to others;

106 (b) gas is compressed on private property solely for the owner's own use or the use of

107 the owner's employees as a motor vehicle fuel; or

108 (c) gas is compressed by a retailer of motor vehicle fuel on the retailer's property solely

109 for sale as a motor vehicle fuel.

110 (12) "Gas plant" includes all real estate, fixtures, and personal property owned,

111 controlled, operated, or managed in connection with or to facilitate the production, generation,

112 transmission, delivery, or furnishing of gas, natural or manufactured, for light, heat, or power.

113 (13) "Heat corporation" includes every corporation and person, their lessees, trustees,

114 and receivers, owning, controlling, operating, or managing any heating plant for public service

115 within this state.

116 (14) (a) "Heating plant" includes all real estate, fixtures, machinery, appliances, and

117 personal property controlled, operated, or managed in connection with or to facilitate the

118 production, generation, transmission, delivery, or furnishing of artificial heat.

119 (b) "Heating plant" does not include either small power production facilities or

120 cogeneration facilities.

121 (15) "Independent energy producer" means every electrical corporation, person,
122 corporation, or government entity, their lessees, trustees, or receivers, that own, operate,
123 control, or manage an independent power production or cogeneration facility.

124 (16) "Independent power production facility" means a facility that:

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

128 (b) is a qualifying power production facility.

129 (17) "Nonutility energy supplier" means a person that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

181 (iv) the independent energy producer:

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

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

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

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

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

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

197 (II) the maximum size allowable under net metering provisions, defined in Section
198 54-15-102;

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

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

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

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

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

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

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

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

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

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

223 (III) a combination of Subsections (19)(f)(i)(A)(I) and (II);

224 (B) the lessor of the ownership interest identified in Subsection (19)(f)(i)(A) is:

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

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

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

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

239 (g) "Public utility" does not include any person that provides financing for, but has no
240 ownership interest in an electric plant, small power production facility, or cogeneration facility.
241 In the event of a foreclosure in which an ownership interest in an electric plant, small power
242 production facility, or cogeneration facility is transferred to a third-party financier of an electric
243 plant, small power production facility, or cogeneration facility, then that third-party financier is
244 exempt from classification as a public utility for 90 days following the foreclosure, or for a

245 longer period that is ordered by the commission. This period may not exceed one year.

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

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

254 (i) "Public utility" does not include:

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

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

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

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

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

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

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

271 (22) "Qualifying power production facility" means a facility that:

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

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

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

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

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

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

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

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

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

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

301 (28) "Telephone cooperative" means a telephone corporation that:

302 (a) is a cooperative; and

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

305 [~~28~~] (29) (a) "Telephone corporation" means any corporation or person, and their
306 lessees, trustee, receivers, or trustees appointed by any court, who owns, controls, operates,

307 manages, or resells a public telecommunications service as defined in Section 54-8b-2.

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

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

314 (ii) Internet service; or

315 (iii) resold intrastate toll service.

316 ~~[(29)]~~ (30) "Telephone line" includes all conduits, ducts, poles, wires, cables,
317 instruments, and appliances, and all other real estate, fixtures, and personal property owned,
318 controlled, operated, or managed in connection with or to facilitate communication by
319 telephone whether that communication is had with or without the use of transmission wires.

320 ~~[(30)]~~ (31) "Transportation of persons" includes every service in connection with or
321 incidental to the safety, comfort, or convenience of the person transported, and the receipt,
322 carriage, and delivery of that person and that person's baggage.

323 ~~[(31)]~~ (32) "Transportation of property" includes every service in connection with or
324 incidental to the transportation of property, including in particular its receipt, delivery,
325 elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage, and
326 hauling, and the transmission of credit by express companies.

327 ~~[(32)]~~ (33) "Water corporation" includes every corporation and person, their lessees,
328 trustees, and receivers, owning, controlling, operating, or managing any water system for
329 public service within this state. It does not include private irrigation companies engaged in
330 distributing water only to their stockholders, or towns, cities, counties, water conservancy
331 districts, improvement districts, or other governmental units created or organized under any
332 general or special law of this state.

333 ~~[(33)]~~ (34) (a) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
334 headgates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures,
335 and personal property owned, controlled, operated, or managed in connection with or to
336 facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage,
337 appointment, apportionment, or measurement of water for power, fire protection, irrigation,

338 reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

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

341 ~~[(34)]~~ (35) "Wholesale electrical cooperative" includes every electrical corporation that
342 is:

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

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

347 Section 2. Section 54-3-26 is amended to read:

348 **54-3-26. Retention of unclaimed capital credits by electric and telephone**
349 **cooperatives -- Use of retained money -- Reporting requirements.**

350 ~~[Each electric and telephone cooperative shall: (1) retain capital credits given to~~
351 ~~customers of electric and telephone cooperatives in this state that remain unclaimed for a~~
352 ~~period of three years after the end the year in which the credit is given; (2) use the money~~
353 ~~retained solely to:]~~

354 (1) As used in this section:

355 (a) "Cooperative" means a:

356 (i) distribution electrical cooperative incorporated in the state; or

357 (ii) telephone cooperative incorporated in the state.

358 (b) "Unclaimed capital credit" means a capital credit issued by a cooperative to the
359 cooperative's customer that is unclaimed on the last day of the year three years after the year in
360 which the credit was issued.

361 (2) A cooperative shall retain an unclaimed capital credit.

362 (3) A cooperative shall use the proceeds of a retained unclaimed capital credit to:

363 (a) [assist low-income persons to] pay [their] all or a portion of a low-income
364 individual's utility bills; [and]

365 (b) provide [scholarships] a scholarship to [local] a graduating high school [seniors]
366 senior in the area where the cooperative provides service; or

367 (c) provide financial assistance to, in the area where the cooperative provides service:

368 (i) a school;

369 (ii) a non-profit organization; or

370 (iii) a community organization.

371 ~~[(3)]~~ (4) A cooperative shall establish [guidelines based on factors such as income or
372 ~~special needs to determine persons who qualify; and] criteria for recipients of the financial
373 assistance described in this section that are based on:~~

374 (a) a recipient's financial or other needs; and

375 (b) the recipient community's interests.

376 ~~[(4)]~~ (5) A cooperative shall submit [copies annually] a report, before November 1 of
377 each year, to the Public Service Commission [of: (a) the cooperative's guidelines; and (b)
378 amounts and disposition of retained capital credits by individual recipients.] that describes:

379 (a) the amount of unclaimed capital credits retained by the cooperative;

380 (b) the amount and recipients of financial assistance disbursed under this section; and

381 (c) the criteria used by the cooperative to determine the recipients and amount of
382 financial assistance disbursed under this section.

Legislative Review Note
Office of Legislative Research and General Counsel