

**ENERGY REVISIONS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

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

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**LONG TITLE**

**General Description:**

This bill enacts provisions relating to qualifying zero carbon emissions generation.

**Highlighted Provisions:**

This bill:

- ▶ enacts provisions relating to qualifying zero carbon emissions generation;
- ▶ provides a process to identify potential bidders and for solicitation of bidders for qualifying zero carbon emissions generation;
- ▶ requires an affected electrical utility to provide notice to the Public Service Commission if the utility reasonably anticipates a future need for qualifying zero carbon emissions generation;
- ▶ requires the commission to retain a consultant under certain circumstances; and
- ▶ provides a process for an electrical corporation to recover or defer costs associated with proposed qualifying zero carbon emissions generation.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**54-17-503**, Utah Code Annotated 1953



28 54-17-608, Utah Code Annotated 1953



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

31 Section 1. Section 54-17-503 is enacted to read:

32 **54-17-503. New qualifying zero carbon emissions generation -- Public solicitation**  
33 **process -- Notice of future need -- Consultant.**

34 (1) As used in this section, "qualifying source" means an energy source that is  
35 qualifying zero carbon emissions generation, as defined in Section 54-17-601.

36 (2) Sections 54-17-102 through 54-17-404 do not apply to a significant energy resource  
37 that is a qualifying source if:

38 (a) the nameplate capacity of the qualifying source does not exceed 3000 megawatts; or

39 (b) if applicable, the quantity of capacity that is the subject of a contract for the  
40 purchase of electricity from a qualifying source does not exceed 3000 megawatts.

41 (3) Beginning August 31, 2013, and each August 1 thereafter, an affected electrical  
42 utility shall file a notice with the commission indicating whether the affected electrical utility  
43 reasonably anticipates that it will need to acquire or commence construction of a qualifying  
44 source within the following 15 years.

45 (4) (a) If the commission receives a notice under Subsection (3) indicating that the  
46 affected electrical utility reasonably anticipates that it will need to acquire or commence  
47 construction of a qualifying source within the following 15 years, the commission shall  
48 promptly retain a consultant to:

49 (i) validate that the affected electrical utility is following:

50 (A) the process for identifying potential bidders developed under Subsection (5); and

51 (B) if applicable, the public solicitation process developed under Subsection (6);

52 (ii) make any recommendations the consultant considers appropriate for changes to the  
53 process for future solicitations;

54 (iii) monitor and document all material aspects of the responses to solicitations, bids,  
55 bid evaluations, and bid negotiations between the affected electrical utility and any bidders or  
56 potential bidders in the solicitation process;

57 (iv) maintain adequate documentation of each bid, including the solicitation,  
58 evaluation, and negotiation processes and the reason for the conclusion of negotiations, and

59 submit that documentation to the commission at the conclusion of all negotiations in the  
60 solicitation; and

61 (v) be available to testify under oath before the commission in any relevant proceeding  
62 concerning any aspect of the public solicitation process.

63 (b) The consultant shall execute a contract with the commission with terms and  
64 conditions that the commission approves.

65 (c) (i) Unless otherwise provided by contract, the consultant shall send an invoice for  
66 the consultant's services to the Division of Public Utilities for its review and approval.

67 (ii) After the Division of Public Utilities approves the invoice, the consultant shall  
68 cause the invoice to be forwarded to the affected electrical utility for payment.

69 (iii) The affected electrical utility may, in a general rate case or another appropriate  
70 commission proceeding, include a request for recovery of any amount the affected electrical  
71 utility pays for a consultant under this section.

72 (iv) The commission shall grant a request under Subsection (4)(c)(iii).

73 (d) The commission and the consultant shall use all reasonable efforts to avoid  
74 delaying the solicitation process.

75 (e) The commission shall make the documentation submitted by the consultant  
76 available:

77 (i) to the affected electrical utility, any bidder, or any other interested person; and

78 (ii) under terms and conditions and at times that the commission determines  
79 appropriate.

80 (5) (a) By January 31 of the year following an affected electrical utility's notice under  
81 Subsection (3) indicating that the affected electrical utility reasonably anticipates that it will  
82 need to acquire or commence construction of a qualifying source within the following 15 years,  
83 the affected electrical utility shall, pursuant to rules adopted by the commission, issue a public  
84 solicitation to identify potential bidders that qualify, under criteria established by the  
85 commission by rule, to provide or construct a qualifying source up to 3,000 megawatts in size.

86 (b) The affected electrical utility shall develop a reasonable process for identifying  
87 potential bidders that includes:

88 (i) a requirement that a potential bidder have acquired the necessary state approval for  
89 water anticipated to be used in the proposed qualifying source;

90 (ii) a requirement that a potential bidder propose to use a qualifying source technology  
91 that is a standard design, approved by federal regulators, for commercial construction; and

92 (iii) a requirement that the potential bidder establish that there is reason to believe the  
93 proposed site of the qualifying source in the state is suitable for the construction and operation  
94 of the qualifying source.

95 (c) The affected electrical utility shall evaluate in good faith each response it receives  
96 to the public solicitation to identify potential bidders.

97 (d) If the affected electrical utility determines that there is no more than a single  
98 potential bidder that meets the criteria established by the commission:

99 (i) Subsection (6) does not apply;

100 (ii) that potential bidder is considered to be the winning bidder; and

101 (iii) the affected electrical utility may enter into a contract with that potential bidder, in  
102 accordance with rules adopted by the commission.

103 (6) (a) Within 120 days after completing the process under Subsection (5) of  
104 identifying potential bidders, an affected electrical utility shall, pursuant to rules adopted by the  
105 commission, issue a solicitation of bids for a qualifying source up to 3,000 megawatts in size.

106 (b) The affected electrical utility shall evaluate in good faith each bid that it receives  
107 and negotiate in good faith with each bidder whose bid appears to be cost effective.

108 (7) Nothing in this section requires an affected electrical utility to enter into a contract  
109 or transaction that it reasonably believes is not cost effective or otherwise in the public interest.

110 Section 2. Section **54-17-608** is enacted to read:

111 **54-17-608. Recoverable costs of proposed qualifying zero carbon emissions**  
112 **generation -- Adjustment or other reasonable mechanism allowed -- Deferral of costs.**

113 (1) As used in this section, "qualifying source" means an energy source that is  
114 qualifying zero carbon emissions generation, as defined in Section 54-17-601.

115 (2) The commission shall include in the retail electric rates of an electrical corporation,  
116 whose rates the commission regulates, the costs listed in Subsection (3):

117 (a) that are relevant to the proceeding in which the commission considers the electrical  
118 corporation's rates;

119 (b) that represent the share of total costs attributable to the electrical corporation's  
120 activities in the state;

121 (c) if the electrical corporation prudently incurred the costs in connection with the  
122 acquisition, construction, or use of a qualifying source; and

123 (d) to the extent that any qualifying electricity or qualifying source satisfies the  
124 cost-effectiveness criteria of Subsection 54-17-201(2)(c)(i).

125 (3) Costs that an electrical corporation may recover under Subsection (2) are costs:

126 (a) of siting, property rights acquisition, equipment, design, licensing, permitting,  
127 construction, owning, operating, or other costs associated with acquiring a qualifying source  
128 and any associated asset, including transmission assets;

129 (b) to acquire qualifying electricity through trade, power purchase, or other transfer;

130 (c) to interconnect a qualifying source to the electrical corporation's transmission or  
131 distribution system;

132 (d) associated with using a physical or financial asset to integrate, firm, or shape a  
133 qualifying source on a firm annual basis to meet a retail electricity need; and

134 (e) associated with transmission or delivery of qualifying electricity to a retail  
135 electricity customer.

136 (4) (a) The commission may allow an electrical corporation to use an adjustment or  
137 other reasonable mechanism other than a rate case under Sections 54-4-4 and 54-7-12 to allow  
138 recovery of costs under Subsection (3).

139 (b) The commission shall ensure that any mechanism used under Subsection (4)(a)  
140 reflects, to the extent practicable, both the costs and any associated benefit.

141 (c) Subsection (4)(a) does not create a presumption for or against the use of an  
142 adjustment or other reasonable mechanism.

143 (5) (a) The commission may allow an electrical corporation to include in its retail  
144 electric rates costs listed in Subsection (3), whether or not the qualifying source ultimately  
145 becomes operational.

146 (b) Subsection (5)(a) does not create a presumption concerning the prudence or  
147 recoverability of the costs listed in Subsection (3).

148 (6) (a) To the extent consistent with other applicable law, the commission may allow  
149 an electrical corporation to defer costs listed in Subsection (3) until the recovery of those costs  
150 can be considered in:

151 (i) a rate proceeding; or

152           (ii) an adjustment or other reasonable mechanism under Subsection (4).  
153           (b) To request a deferral under Subsection (6)(a), an electrical corporation shall file an  
154 application with the commission within 60 days after the electrical corporation determines that  
155 the qualifying source project is impaired under generally accepted accounting principles and  
156 will not become operational.  
157           (c) Notwithstanding any deferral under Subsection (6)(a), and for the purpose of  
158 evaluating the cost effectiveness of a project to construct a qualifying source an electrical  
159 corporation proposes to construct, the electrical corporation shall include in its project costs  
160 any costs the electrical corporation incurs for siting, property acquisition, equipment, design,  
161 licensing, and permitting related to the qualifying source.  
162           (d) For the purpose of evaluating the cost of a project proposed by a person other than  
163 the electrical corporation, a deferred cost under Subsection (6)(a) may not be added to or  
164 otherwise considered in the evaluation.

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**Legislative Review Note**  
**as of 2-13-13 5:00 PM**

**Office of Legislative Research and General Counsel**