



State of Utah
Department of Commerce
Division of Public Utilities

FRANCINE GIANI
Executive Director

THAD LEVAR
Deputy Director

PHILIP J. POWLICK
Director, Division of Public Utilities

GARY HERBERT.
Governor
GREGORY S. BELL
Lieutenant Governor

Memorandum

TO: Public Service Commission

FROM: Division of Public Utilities
Philip Powlick, Director,
Artie Powell, Energy Manager
Jamie Dalton, Utility Analyst

DATE: November 16, 2009

RE: Third Party Arrangements for Renewable Energy Generation, Docket No. 09-999-12.

Issue

In its October 12, 2009 order under this docket, the Commission requested comments from parties concerning third party arrangement for renewable energy generation. Presumably, these are arrangements wherein third parties own and operate renewable energy facilities but sell the power to another entity. The Commission's order specifically raises the issue of whether the third party to such arrangements would be considered a public utility under Utah statute. This memo serves as preliminary comments from the Division of Public Utilities ("Division") in this matter.

Discussion

On October 12, 2009 the Commission issued an Order instituting this investigation into third party arrangements for renewable energy resources. The Commission set November 16, 2009 as

the filing date for initial comments and will hold a technical conference on November 23, 2009 to discuss the issues surrounding third party arrangements of renewable energy resources. The Division will actively participate in the technical conference and provides these initial comments on the Commission's jurisdiction over these arrangements. However, the Division provides these initial comments without a full understanding of the types of arrangements envisioned by the Commission's investigation. The Division's understanding is that either a governmental agency or a private corporation would contract with a third party to provide renewable energy either to it alone or to a variety of customers through a facility that the third party would own.

The area of greatest concern raised by the Commission's Order involves the extent to which this third party would be subject to Commission regulation. It is presumed that the third party would be an "independent energy producer" under UCA § 54-2-1(13) and (14). This would mean that the entity would own, operate, control or manage an independent energy production facility. An "independent energy production facility" is one that produces energy solely by means of items listed in (13)(a) or is a "qualifying power production facility" under UCA § 54-2-1(19). With the uncertainty surrounding the third party arrangements it is difficult to clearly state if this facility would be exempt from Commission jurisdiction. It appears that exemption from Commission jurisdiction is controlled by UCA § 54-2-1(16)(d)(i), (ii) and (iii). If an independent energy production facility falls within the exemptions of the above section, it may be exempt from Commission jurisdiction.

As to the other questions posed by the Commission in its Order, it seems like the first question, that of whether the third party is a public utility, must be answered first.

Rulemaking would be a possible way to more fully and precisely address the nature of the third party facility and its exemption from Commission jurisdiction. Other possible ways to address Commission jurisdiction would be for the third party facility, and each transaction, to file for a declaratory ruling from the Commission. The facts of each individual transaction may allow for exemption or cause the exemption to fail. Legislation would be a third alternative to address these types of arrangements and whether there is any Commission jurisdiction.

Recommendation

Currently, the Division anticipates actively participating in the November 23 technical conference to obtain a better understanding of this issue. While rulemaking, declaratory rulings, and Legislation are potential options for addressing this issue, the Division will evaluate additional potential recommendations following a more robust discussion at the technical conference.

cc: Michele Beck, Committee of Consumer Services
Jeff Larsen, Rocky Mountain Power