BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of an Investigation Regarding Third-Party Arrangements for Renewable Energy Generation	Docket No. 09-999-12

Comments of Utah Clean Energy
Submitted November 16, 2009

A. Background

On October 12, 2009, the Public Service Commission of Utah ("the Commission") issued a Notice of Investigation and Procedural Order on the matter of an Investigation Regarding Third-Party Arrangements for Renewable Energy Generation ("Notice"), Docket No. 09-999-12. The Commission requested comments or legal briefs to determine whether, and the extent to which, certain third-party arrangements for renewable energy generation are subject to the jurisdiction of the Commission. Utah Clean Energy submits these comments for the Commission's consideration of this matter.

Utah Clean Energy ("UCE") is a 501(c) (3) non-profit public interest organization working to advance energy efficiency and renewable energy in Utah. The issue of third-party arrangements for renewable energy generation has come up in numerous technical conferences and workshops on net metering and interconnection, in which we have been engaged, and we appreciate the Commission's motion to establish this investigative docket. We are working with the Interstate Renewable Energy Council (IREC) on this matter, and they have provided a legal analysis of this issue. UCE provides additional comments on relevant issues raised by such third-party arrangements, but we leave the legal interpretation of statute and case law pertaining to the four issues raised by the Commission (a through d, as outlined in the Notice) to IREC. We appreciate the opportunity to provide input.

B. Utah Clean Energy Recommendations

Utah Clean Energy recommends that the Commission rule in favor of non-regulation of third-party financial arrangements for renewable energy generation to the extent the Commission is able to do so. These arrangements represent a unique and pioneering mechanism to finance renewable energy projects and expand the opportunities for Utah businesses, local governments, and non-profit entities to install distributed renewable energy generation. The following reasons support non-regulation of said arrangements:

1) **Distributed renewable energy generation is valuable**

Utah Clean Energy filed public comments for Docket 08-035-78 In the Matter of the Consideration of Changes to Rocky Mountain Power's Schedule No. 135 - Net Metering Service wherein we provided information on the various benefits and values that distributed renewable energy provides.[1] To that end, the Commission Order on Net Metering (Docket 08-035-78) states: "Distributed or on-site generation is an important resource." Rather than reiterate these points herein, we reference our prior comments and encourage the Commission to consider these values as part of their determination of this matter.

2) **Third-party financing for renewable energy is a novel mechanism that provides broad benefits and new opportunities to Utah consumers, businesses, non-profits, and local governments.**

Third-party financing for renewable energy generation is a resourceful financing arrangement that helps lower the cost of distributed renewable energy generation for all parties involved, while also enabling more entities to invest in these resources, especially non-profit entities (schools, churches, local governments, etc.) that are typically unable to take advantage of available federal and state incentives. Third-party arrangements help remove one of the more significant barriers to renewable energy generation: high up-front costs. By allowing customers to pay for an investment in renewable energy over time as the system generates energy (and energy savings), these arrangements defray the up-front capital costs. Additionally, third-party service providers are responsible for the installation and permitting, along with ongoing maintenance and operation of the system, such that their customers do not have to concern themselves with these matters, thereby simplifying the arrangement. Service providers are able to take advantage of economies of scale and increased operational efficiencies, and are typically able to finance, design, install, and maintain renewable energy systems at a reduced price. These providers assume all the performance risk of the system, while also offering the customer a hedge against rising electricity costs and future risks through their unique financial arrangement. Third-party financing for renewable energy systems offers benefits to Utah consumers, and businesses, non-profits, and local governments on the whole because it serves to expand the renewable energy market, decrease costs, and make distributed generation more cost-effective for more entities. Lastly, adding distributed renewable energy generation to the system provides tangible benefits to the grid and the utility (such as reducing load requirements, mitigating the need for new or upgraded transmission and distribution, and providing peak energy resources). [2]

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[1] Docket 08-035-78 In the Matter of: of the Consideration of Changes to Rocky Mountain Power's Schedule No. 135 - Net Metering Service, Utah Clean Energy Comments, February 18, 2009, URL: www.psc.utah.gov/utilities/electric/08docs/0803578/UCE%20021809.pdf

[2] Ibid.

3) **As of 2008, third-party financing arrangements represent ninety percent of the new, non-residential renewable energy development projects in the United States.**
According to a recent Lawrence Berkeley National Laboratory report, third party financing arrangements for renewable energy have grown from roughly 10% of the non-residential solar market in 2006 to an estimated 90% of the U.S. non-residential solar market in 2008.[3] The rapid and sustained growth of this model clearly demonstrates its popularity and functionality in expanding the renewable energy market, especially solar. State regulations and policies that allow for these arrangements open the door for more consumers to take advantage of on-site distributed renewable energy generation. It is also worth noting that the Commission's recent Order on Net Metering (Docket No. 08-035-78) established the aggregate system capacity for net metered systems in Rocky Mountain Power service territory at 20% of RMP's 2007 peak demand. According to that order, the rated capacity of all net metered systems in RMP's service territory at the end of 2008 was just 656 kilowatts, which is only 0.014% of RMP's peak demand of 4,615,000 kilowatts. There is clearly a significant amount of distributed generation that can be accommodated on RMPs system under the current cap. Third-party financing has the potential to play an important role in helping more customers explore this option.

4) **Numerous states and utility Commissions have ruled in favor of non-regulation of third-party arrangements and many are in the process of considering this issue.**

The following states and/or regulatory commissions have ruled in favor of non-regulation of third-party financing for renewable energy: Nevada, Michigan, Colorado, Oregon, California, New Jersey, Maryland, Connecticut, Hawaii, and Massachusetts. Two neighboring states (Arizona and New Mexico) among others are in the process of considering whether or not third-party entities that enter into a financing mechanism for distributed renewable energy generation systems via long-term contracts with the site host should be considered a public utility. It is our understanding that these third-parties (i.e. businesses) will not consider doing business in a state where any uncertainty exists as to whether or not they are subject to regulation.[4] In the interest of staying competitive with surrounding states and affording new opportunities to Utah customers interested in renewable energy, it is imperative that Utah rules in favor of non-regulation of third-parties.

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[3] Bollinger, Mark, "Financing Non-Residential Photovoltaic Projects: Options and Implications." Lawrence Berkeley National Laboratory. January 2009. LBNL-1410E, at p. 18. URL: http://eetd.lbl.gov/EA/emp/re-pubs.html

[4] Filed Testimony of Lyndon Rive, founder and CEO of SolarCity, Arizona Corporation Commission, Docket number E-20690A-09-0346, answers to questions 24-25. Page 11. URL: http://images.edocket.azcc.gov/docketpdf/0000101904.pdf

5) **Third-party owners of distributed renewable energy generation do not appear to be Public Utilities under U.C.A. § 54-1-2 (16)(a).**
UCE agrees with IREC that a third-party owner of distributed renewable energy generation would fall within the definition of an Independent Energy Provider and not within the definition of a Public Utility.

6) **Creating and administering an entirely new regulatory regime will cost time and money.**
Choosing to regulate third-party entities would seemingly necessitate a new regulatory regime and process that will likely cost Utah regulators time and money to develop and administer. Third-party arrangements are already subject to sufficient regulations, including interconnection procedures, local permitting and ordinance requirements, state licensing and business requirements, and codes. All of these regulations serve the purpose of assuring the safety, reliability, and accountability of these installations. Subjecting these projects to regulation by the Commission will merely increase transaction costs, increase the complexity of operation, and obfuscate the regulations for all involved. With state budgets currently limited, it does not seem prudent to allocate regulatory resources to a seemingly unnecessary regulatory regime.

C. Conclusion

Utah Clean Energy submits these comments and appreciates the Commission's consideration of these matters.

Sincerely,

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