

Energy Department

Ken Baker Sr. Mgr. Sustainable Regulation

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Public Service Commission of Utah
Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84114

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

This letter comprises the comments of Wal-Mart Stores, Inc. and Sam's West, Inc. (collectively, "Wal-Mart") in the above referenced docket.

In the State of Utah, Wal-Mart currently operates 34 Supercenters, 2 discount store, 5 Neighborhood Markets, 8 Sam's Clubs, and 3 Distribution Centers while employing over 17,000 associates. In calendar year 2008, Wal-Mart consumed over 220 million kwh of electricity in Utah.

Wal-Mart has also implemented an aspirational goal of being supplied by 100% renewable energy. We have successfully completed 20 solar installations at facilities in California and Hawaii. In 2008, these systems produced more than 7 million kilowatt-hours of clean, renewable energy. Wal-Mart has also entered into a development agreement to install solar panels on an additional 10 - 20 Wal-Mart stores by 2011. In addition to solar power, in April of 2009, Wal-Mart began receiving clean electricity produced by wind power as part of a four year Power Purchase Agreement (PPA) with Duke Energy. The electricity

purchased is expected to supply up to 15 percent of Wal-Mart's total energy load of 350 facilities located in Texas.

COMMENTS OF WAL-MART STORES, INC.

On October 12, 2009, the Public Service Commission of Utah ("Commission") established this docket to investigate whether and to what extent certain third party arrangements for renewable energy are subject to the Commission's jurisdiction.

In its notice, the Commission specifically asked for comments on issues addressed below:

(a) Whether the third-party is a public utility under Utah.

The seemingly clear answer to this inquiry can be found U.C.A. § 54-2-1 (16) (a) where the Code states:

"Public utility" includes every railroad corporation, gas corporation, electrical corporation, distribution electric cooperative, wholesale electrical cooperative telephone cooperative, telegraph corporation, water corporation, sewerage corporation, heat corporation, and independent energy producer not described in Subsection (16) (d), 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.

As stated earlier, Wal-Mart has installed renewable power using both solar and wind. Through October 2009, Wal-Mart renewable usage has exceeded 220 million kwh with all

of that electricity being procured through PPA's with various vendors. This accomplishment would likely have not been successful but for the use of PPA's. In today's economy, using a PPA may be the only way many businesses can afford clean renewable energy. There is no up front capital cost and the PPA rate can be tied to the existing power rate so as to remain affordable. The PPA also allows consumers to employ renewable energy technologies without the need to become an expert in the field of operation, installation, and maintenance of the equipment.

The statute cited above makes it clear that the provider has to serve the "*the public generally*" in order to be considered a public utility. The PPA providers do not serve the general public and thus should not be considered public utilities. PPA's are nothing more than private contracts between private entities.

For the legislature or the Commission to require that third party providers be treated as a public utility would remove what may be the most powerful tool for large scale renewable installations. If renewable energy is to have any chance to be successful, statutory and regulatory barriers such as this must be removed.

(b) Whether the third party is a public utility under Utah law when arrangements are entered into primarily as a financing mechanism for distributed renewable energy generation systems whereby a third party owns the renewable generation equipment, which is installed on a utility customers premises, there is a long-term contract with the customer to supply a portion of that customer's electricity use, and payments are based on kilowatt-hours.

For reasons stated in the response to (a) above, there should be no distinction made between issues (a), (b) & (c)(i). Additionally, U.C.A. § 54-1-10 concerning Utah's conservation plan states:

"The Public Service Commission shall engage in long-range planning regarding public utility regulatory policy in order to facilitate the well-planned development and conservation of utility resources..."

As stressed above, third party providers who engage in the use of PPA's should not be treated as a public utility and, therefore, not subject to the jurisdiction of the Commission. However, the statute cited above offers some guidance and insight into legislative intent as to renewable power in Utah when it states: "*in order to facilitate the well planned development and conservation of utility resources*". Any decision by the Commission in this matter will have a profound impact on implementation of renewable resources in Utah and, therefore, create a similar effect on what is traditionally termed a public utility whether the Commission has jurisdiction over independent third party providers or not.

(d) Whether the third party is a public utility under Utah law when arrangements involve the leasing of distributed generation equipment from a non-utility lessors to lessees that are also retail customers of utilities.

Previously, Wal-Mart submitted comments in Docket No. 09-R312-01 dealing with interconnection agreements. In that docket, Wal-Mart commented on the need for Utah to adopt rules that have the chance to greatly enhance diversity in the energy market. The more impediments that are removed from renewable energy development and deployment, the more successful these programs will be. Inclusion of burdensome controls such as treating

third party providers as public utilities, and allowing impediments to the PPA process will add prohibitive cost and stifle competition for renewable resources.

CONCLUSION

Wal-Mart would like to thank the Commission for its efforts in implementing workable renewable resource projects and for allowing us to provide these comments.

Sincerely,

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