



State of Utah  
Department of Commerce  
Division of Public Utilities

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## ACTION REQUEST RESPONSE

**To:** Public Service Commission

**From:** Thad LeVar, Acting Director  
Artie Powell, Energy Section Manager

**Date:** December 23, 2010

**Re:** Docket No. 10-035-T12, Advice Filing 10-11 – Compliance Filing, H. B. 145, Schedule 135, Net Metering Service

### RECOMMENDATION

With a modest modification discussed herein, the Division recommends approval of the Company's request to change the language in Electric Service Schedule 135, Net Metering Service.

### ISSUE

On or about November 30, 2010, the Company filed with the Commission Advice Letter 10-11 – Compliance Filing H. B. 145, Schedule 135, Net Metering Service (“Application”). The Company’s Application requests approval of language additions to Schedule 135 to be compliant with H. B. 145 (Renewable Energy Financing Provisions), which was signed into law on March 29, 2010. According to the Company’s Application, the proposed “changes allow for alternative ownership of the generation facilities for certain eligible entities.”

## **DISCUSSION**

In its Application, the Company requests that the Commission approve the insertion of language into Electric Service Schedule 135, the Net Metering tariff. The Company claims that this language change is necessary to bring the tariff into compliance with the recently enacted H. B. 145. The Application paragraph of tariff in relevant part currently reads:

On a first-come, first-served basis to any customer that owns or leases a customer-operated renewable generating facility with a capacity of not more than twenty-five (25) kilowatts for a residential facility and two (2) megawatts for a non-residential facility. . .

The Company proposes inserting language to have the tariff read:

On a first-come, first-served basis to any customer that owns or leases a customer-operated renewable generating facility **or, as defined in Utah Code 54-2-1(16)(d), an eligible customer that purchases electricity from an independent energy producer**, with a capacity of not more than twenty-five (25) kilowatts for a residential facility and two (2) megawatts for a non-residential facility. . . [Emphasis Added]

The referenced Code provides exemptions from Commission jurisdiction for eligible independent power producers. In particular, Utah Code Ann. §54-2-1(16)(d) reads in part:

An independent energy producer is exempt from the jurisdiction and regulations of the commission with respect to an independent power production facility if it meets the requirements of

Subsection (16)(d)(i), (ii), (iii), or (iv), or any combination of these:

. . . [[http://le.utah.gov/~code/TITLE54/htm/54\\_02\\_000100.htm](http://le.utah.gov/~code/TITLE54/htm/54_02_000100.htm)]

Paragraphs (i) through (iv) of the Code describe the eligibility requirements. For example, paragraph (ii) states that the energy (or service) must be sold solely to an electrical corporation or wholesale purchaser. The Code also references in (16)(d)(iv)(B) and (16)(d)(iv)(C)(II) the Net Metering statute, Utah Code Ann. §54-15-102, which defines, among other factors, the types and maximum size of eligible facilities under Schedule 135.

To make it clear that these same restrictions apply whether the eligible facilities under Schedule 135 are “customer-operated” or whether the energy is purchased “from an independent power producer,” the Division recommends modifying the Company’s proposed language to insert the phrase “operating a renewable generating facility” after the (Company’s) phrase “independent energy producer.” The Division’s language would thus read:

On a first-come, first-served basis to any customer that owns or leases a customer-operated renewable generating facility **or, as defined in Utah Code 54-2-1(16)(d), an eligible customer that purchases electricity from an independent energy producer operating a renewable generating facility**, with a capacity of not more than twenty-five (25) kilowatts for a residential facility and two (2) megawatts for a non-residential facility. . . [Emphasis Added]

With this modification, the Division recommends approval of the Company’s Application.

CC    Dave Taylor, Rocky Mountain Power  
          Michelle Beck, Office of Consumer Services