
Strawberry Water Users Association’s Petition for Declaratory Ruling	<u>DOCKET NO. 19-034-01</u> <u>DECLARATORY ORDER</u>
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ISSUED: December 5, 2019

1. Background

On October 16, 2019, Strawberry Water Users Association (“Petitioner”) filed with the Public Service Commission (PSC) a Petition for Declaratory Ruling that Petitioner is Not Subject to PSC Jurisdiction/Regulation (“Petition”).¹ The Petition asks the PSC issue an order declaring Petitioner is not subject to the PSC’s jurisdiction. Broadly, the Petition makes two independent arguments: (1) Petitioner is not subject to the PSC’s jurisdiction because it is an “independent energy producer” (IEP) that qualifies under the exemption enumerated in Utah Code Ann. § 54-2-201(2); and (2) Petitioner is not a “public utility” as defined in Utah Code Ann. § 54-2-1(22).

Petitioner represents it operates three hydroelectric power plants in Utah and does not own, operate, manage, lease, or sell power from any other plants. (Petition at 3.) Petitioner further represents that, since 1986, it has sold all electricity generated by its power plants to South Utah Valley Electric Service District (the “District”) and has sold electricity to no other person or entity. (*Id.* at 4.)

On November 7, 2019, the Division of Public Utilities (DPU) submitted an Action Request Response (“DPU’s Response”), recommending the PSC “find that the [Petitioner] is an [IEP] ... and is not subject to [PSC] jurisdiction or regulation for the sale of [its] power to [the

¹ On November 4, 2019, Petitioner filed an amended Petition, deleting one sentence from the original that concerned a tangential issue.

District], as long as [the District] remains the sole purchaser of that power.” (DPU’s Response at 6.) The DPU maintains that because Petitioner is exempt from PSC jurisdiction as an IEP that sells only to the District, the PSC need not reach Petitioner’s independent argument that Petitioner is not a public utility.

2. Analysis, Conclusions, and Declaratory Order

Utah Code Ann. § 54-2-201(2) exempts IEPs from PSC jurisdiction provided one of certain conditions is met, including where the IEP produces or delivers electricity from “independent power production facilities” solely for sale “to an electrical corporation or other wholesale purchaser.” Petitioner represents it produces electricity solely for wholesale to the District. Therefore, Petitioner is exempt so long as it qualifies as an IEP and its hydroelectric power plants are “independent power production facilities.”

To qualify as an IEP, a person or entity must “own, operate, control, or manage an independent power production or cogeneration facility.” Utah Code Ann. § 54-2-1(16). In turn, an “independent power production facility” is a facility that “produces electric energy solely by the use, as a primary energy source, of biomass, waste, a renewable resource, a geothermal resource, or any combination of the preceding sources.” *Id.* at § 54-2-1(17).

We conclude hydroelectric power plants use a “renewable resource” as a primary source of energy and, therefore, may qualify as “independent power production facilities” under § 54-2-1(17). Although Chapter 2 of Title 54 does not expressly define “renewable resource,” our conclusion is consistent with the general public and regulatory understanding, which commonly assumes hydroelectric plants are “renewable resources,” and also with the Utah Code’s definition in other chapters. *See* Utah Code Ann. § 54-17-601(10)(b)(iii) (including “hydroelectric energy

... located within the state” as a “renewable energy resource”); *id.* at § 54-17-902(14)(a)(iv) (similarly including “a hydroelectric plant” within the definition of a “renewable energy resource”).

Accordingly, it follows that so long as Petitioner solely operates hydroelectric plants that exclusively sell power to the District, as Petitioner represents, that Petitioner is not subject to PSC regulation pursuant to Utah Code Ann. § 54-2-201(2). Because we find this ground is sufficient to grant Petitioner’s request for a declaratory order, we do not reach the issue of whether Petitioner is a “public utility” as defined in the Utah Code.

For the foregoing reasons, **the Petition is granted**. The PSC concludes and declares Petitioner is not subject to PSC jurisdiction, conditioned on Petitioner’s representations that it produces power solely from its hydroelectric plants and sells that power only to the District.

DATED at Salt Lake City, Utah, December 5, 2019.

/s/ Michael J. Hammer
Presiding Officer

Approved and confirmed December 5, 2019, as the Order of the PSC.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
PSC Secretary
DW#311373

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this written order by filing a request for review or rehearing with the PSC within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the PSC fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the PSC's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on December 5, 2019, a true and correct copy of the foregoing was delivered upon the following as indicated below:

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