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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of an Investigation Regarding )	Docket No. 09-999-12
Third-Party Arrangements for Renewable )	Comments
Energy Generation )	
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The Utah Governor’s Office of Economic Development (“GOED”) hereby submits these Comments in response to the October 12, 2009 Notice of Investigation and Procedural Order issued by the Public Service Commission (the “Commission”) requesting comments in regards to third-party arrangements for renewable energy generation.

**I. INTRODUCTION**

GOED supports the Commission’s decision to open an investigative docket to consider the issues relating to third-party arrangements for renewable energy generation. The Commission’s list of possible issues is an excellent starting point for this dialogue, and GOED appreciates the opportunity to participate in this discussion. Before addressing the Commission’s possible issues, GOED believes that it may be useful to discuss its mission and interest in this proceeding.

**A. GOED’s Mission is to Foster Growth in Utah Businesses and to Recruit Companies to Utah**

GOED's mission is to nurture an environment where Utah companies can be successful and the business community can create jobs that raise Utah's citizens' standard of living. The mandate for our office is to provide rich business resources for the creation, growth, and recruitment of companies to Utah. To that end, GOED supports sensible economic rules and regulations that will assist GOED in achieving its goals. Along with our partners in recruiting, GOED interfaces daily with existing Utah companies seeking to grow, and out-of-state companies interested in expanding to or relocating to Utah.

**B. The Results of this Proceeding will Impact Economic Development in the State and Utah's Ability to Recruit and Attract Companies**

Recognizing that proceedings before the Commission significantly affect the State's business community and GOED's ability to attract companies from out-of-state, the Legislature endowed GOED with the authority to "appear in any proceeding before the Public Service Commission" and to "present argument regarding the economic development impact of any matter that is the subject of the proceeding." UCA § 63M-1-205. GOED takes particular interest in this proceeding because an outcome exempting certain third-party arrangements from the Commission's jurisdiction will significantly and positively affect economic development in the State by growing existing Utah businesses and enabling Utah to attract companies from out-of-state.

In ruling that third-parties providing solar or other renewable energy services are not utilities subject to the Commission's jurisdiction, the Commission will promote development in the distributed generation industry. Because Utah stands to mature in this market and because Utah risks falling behind our neighboring states, GOED supports the Commission's resolve to address this important issue.

## **II. GOED SUPPORTS EXEMPTING THIRD-PARTIES FROM THE COMMISSION'S JURISDICTION SO LONG AS THERE IS A SINGLE RELATIONSHIP BETWEEN THE THIRD-PARTY OWNER AND THE CUSTOMER**

GOED urges this Commission to adopt a rule specifically exempting third-party providers from its jurisdiction because there is an unmet demand for such systems and arrangements in our state due to a perceived inability to use third-party arrangements as a financing tool. As a result of the current legal and regulatory ambiguity, Utah loses out on prospective adoption and investment in these systems. Clarifying such ambiguity to exempt third-party providers from the Commission's jurisdiction will promote job growth in the installation, operation, and maintenance of these systems. Furthermore, such a framework will assist Utah in attracting manufacturers of renewable energy components and various other companies and industries. GOED does not, however, support a ruling that would allow for multiple entities to draw power from the same system; such ruling would allow third-party providers to unfairly compete with our existing utilities, who provide excellent services to the ratepayers of this state.

### **A. Third-Party Arrangements are a Financing Tool**

Third-party arrangements for renewable energy generation have become the preferred financing method for distributed generation systems. Because such a large portion of the value of a distributed renewable energy system is in the tax-credits available to the owners of these systems, third-party arrangements are one of the only methods through which tax-exempt entities can finance such a system. Furthermore, various for-profit entities are interested in financing distributed systems in a similar fashion for a host of reasons, including a desire to hedge against rising power rates without fronting the entire cost of a distributed system. Where there is a single

relationship between the third-party owner of the generation system and an entity, such third-party owners should not be considered to be a public utility. The arrangement should be viewed by this Commission for what it truly is: an innovative approach to financing distributed energy systems.

**B. Unmet Demand Exists for Distributed Systems Because of Developer and Investor Uncertainty in Utah’s Legal and Regulatory Framework**

GOED understands that there is a strong demand for these systems within our State, but that there is an inability to meet that demand because of the legal ambiguity at issue in this proceeding. Developers of distributed systems are unable to find investors for Utah projects due to uncertainty; investors are loath to participate in a project if there is any chance that the owner and operator of the system will be considered a utility.

GOED is aware of various proposed projects that have been stalled due to a lack of investor confidence. As a result, Utah is losing those investor dollars to our neighboring states that have specifically exempted these types of arrangements from the jurisdiction of their state’s equivalent of the Commission. A definitive ruling from this body, or a legislative change, will alter the investment landscape in the State such that stalled projects can move forward and new projects can get in the pipeline.

**1. Neighboring States Do Not Consider Third-Party Owners to be Utilities and those States are Attracting Investment and Creating Jobs**

Investors in distributed systems, like all investors, seek to minimize risk. Because such investors are motivated by their return and are not necessarily interested in promoting growth in any particular state, investors and developers build projects in states with a friendly legal and regulatory environment. Ambiguity in Utah law makes other states more attractive to investment, and Utah loses potential projects to them. Oregon,

Nevada, and Colorado have all recently addressed this issue either through their legislatures or Utility Commissions. Additionally, Arizona and New Mexico are currently engaged in addressing this issue at the Utility Commission level. As a result, investors have been and will be more likely to invest in systems in these states and they will benefit from the resulting job creation. A ruling exempting third-party arrangements from the Commission's jurisdiction will make Utah more competitive for investor dollars and keep our state from falling behind other western states.

**C. Job Creation will Occur in Installation, Operation, and Maintenance if Third-Party Arrangements are Exempted from the Commission's Jurisdiction**

There are good quality, high-paying jobs in the installation, operation, and maintenance of distributed energy systems. It stands to reason that the more systems are on roofs, the more jobs there will be in installation, operation, and maintenance. Furthermore, this increased demand may create jobs and a more robust workforce all along the supply chain.

**D. Exempting Third-Party Arrangements will Promote Job Creation and Capital Investment in Manufacturing**

GOED and our partners in recruiting businesses to the State have had several conversations with manufacturers of renewable energy components. In courting them, GOED has heard time and again that they would like to do business in our state, but that they want to locate or expand to a state where they will have a market in which they can sell their product. These technology driven companies have candidly indicated that they do not believe such a market exists in Utah, in part due to the legal ambiguity surrounding third-party ownership. By specifically ruling that third-party service providers are not utilities, the Commission will help the market grow and assist GOED in

recruiting renewable energy component manufacturers to the state because they will have a ready market in which they can sell their product.

**E. GOED will be more Successful in Recruiting Other Industries and Businesses to the State if Third-Party Arrangements are Exempted from the Commission’s Jurisdiction**

Additionally, GOED and our recruiting partners are frequently in negotiations with companies—in non renewable energy industries—about locating their operations in Utah. Many companies have demonstrated an interest in installing a distributed system on their potential facilities. Although these companies want to benefit from distributed systems, they are oftentimes not interested in installing and maintaining such a system. They therefore want a third-party financing and service arrangement but feel that current Utah law is not conducive to their interests. A multitude of companies have expressed to GOED that one factor they will consider in relocating to Utah is their ability to power their operations with electricity from a distributed system that they do not own or maintain. A ruling from this Commission specifically allowing this type of arrangement will encourage these companies to bring their business to the State, and enable GOED and our partners in recruiting to promote Utah as a state that welcomes distributed systems for our businesses.

**III. CONCLUSION**

In sum, GOED urges this Commission to adopt a ruling specifically exempting single relationship third-party arrangements from the Commission’s jurisdiction. By exempting such arrangements, the Commission will help to develop an emerging market, which will lead to new jobs in installation, operation, and maintenance, and possibly to the creation of jobs further along the supply chain and in other industries.

RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of November, 2009.

UTAH GOVERNOR'S OFFICE  
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