

Vote Solar Webinar
Rooftop Solar Financing: Wins, Trends & What Comes Next
August 20, 2014

Brad Klein – Iowa Supreme Court Ruling on PPA Legality

Presentation Notes:

- Intro to Third-Party Financing
 - o Define PPA financing
 - Developer builds and owns PV system on a customer’s site
 - Sells power from the system to the customer under a fixed long-term power purchase agreement (PPA)
 - Revenue from the PPA covers development and maintenance costs, plus the developer’s profit.
 - Some also use lease (fixed monthly price) vs. PPA (fixed price per kWh).
 - o Growing importance for residential and commercial development
 - Avoid up-front costs
 - Hedge against rising electricity prices
 - Non-profits/municipalities can take advantage of federal tax credits
 - o Still legal gray area in many states → does it create a “public utility”? (question of state law)
 - Important because public utilities are granted monopolies with exclusive service territories. Project developers would effectively be barred from offering PPAs if they trigger public utility status.
- **Iowa Supreme Court’s Eagle Point Solar Order**
 - o What did the Court say?
 - **July 11th. 4-2 decision.**
 - Companies offering PPA financing are not public utilities.
 - Great for solar market in Iowa and good precedent for other states
- **Facts of the case.**
 - o Dubuque’s municipal solar project
 - o Alliant Energy’s opposition
 - o Iowa Utility Board ruling
 - o Solar coalition appeal
- **Legal argument:**
 - o What’s a “public utility”?
 - Arose out of common law tradition to protect public access to essential public goods and services.
 - Creates a “regulatory compact” in which a business entity is granted a monopoly in exchange for public duties and regulation.
 - Memorialized in state public utility statutes.

- Each state law includes a definition of “public utility” to which these rights and duties attach.
 - Most states have very similar definitions. Iowa case law adopts a “practical analysis” and that applies a number of “public interest factors” to determine whether a transaction is sufficiently “clothed with a public interest” to require public utility regulation.
- **Practical analysis.** Not meant to be a rigid test. Look at what the transaction is *really* about.
 - In this case, court found that the sale of electricity was *incidental* to Eagle Point’s primary business of installing and servicing solar panels.
- **Look to original purposes of public utility regulation?**
 - Risk of unequal bargaining power?
 - Does it involve a commodity that is essential to commerce or everyday life?
 - No. Eagle Point is not “600 pound gorilla” and is “not producing a fungible commodity that everyone needs.”
- Look to **public interest.**
 - Is the transaction “clothed with the public interest”?
 - Public Utility regulation meant to protect the *public interest* and goes only so far as necessary to serve the public interest. It is not meant to be a shield to protect utility revenue from innovation or disruptive technologies.
- **Respect for private property and private contract.**
 - Is there a compelling need for the state to reach across a customer’s meter to regulate the terms of private contracts governing private activities on private property?
- **Skepticism of “death-spiral argument”**
 - Court found “nothing in the record” to support utility argument that the integrity of the grid or economic health of regulated providers has been adversely affected in states that allow PPAs.
- Look at **state policy goals.** PPAs can help further state goals to encourage efficiency and renewables.
- Look to **other states.**
 - Iowa case law relies on test from Arizona.
 - The decision cites commission orders from several other states – Arizona, Nevada, New Mexico, Oregon, etc.

Implications of the Eagle Point ruling:

- First state supreme court ruling since Florida case in the 1980s.
- Very thorough and well-reasoned opinion. Goes into the original reasons for public utility regulation. Very persuasive.
- Relies on precedent from other states. Should be influential for other state commissions and courts.