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Iowa Ruling Shows the Way to Third-Party Solar Without Legislation

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Third party financing of solar energy has become a hot commodity around the country. Historically, individuals or businesses that wanted solar power had to pay for the system up front and then realize the savings over time. Essentially, the first kWh cost $16,000 or more, but then the electricity is free as long as the panels last. Solar owners who bought systems this way always got the question, “how long does it take that system to payoff?” (Funny, I’m not aware of any electric utility saying the bill they send you is going down because they’ve “paid off”

their power plants, but I digress.)

Third party financing fixed that. By monetizing federal tax credits and any state incentives up front, systems installed and owned by companies like AEE members SolarCity and Sungevity could be leased back to the home or business owner. Providing systems this way dramatically lowered, and in some cases eliminated, the upfront cost of solar energy, allowing property owners to buy the power over time. With declining costs for solar equipment, many companies around the country are now able to offer solar power at a cost lower than the utility rate for electricity from the grid – providing an immediate payoff for the solar customer.

It turns out that people like saving money as much as they like solar power, if not more. In states that have authorized third party solar, most distributed systems are being purchased with this method – in Colorado, for example, 80% of the residential systems are third party systems.

In many states, this solar arrangement is not possible without legislation that clarifies that third-party owners are not "utilities," which would make them subject to a whole set of regulations at the state level as well as put them afoul of utilities' exclusive franchise rights for selling electricity to customers in their service territories.

However, a ruling by the Iowa Supreme Court in July showed how third party solar might get the go-ahead even without legislation.

In 2011, the city of Dubuque contacted Eagle Point Solar to install a PV system on a city building. Since public entities can't benefit from tax credits, third-party ownership translates into lower costs. In the absence of authorizing legislation, Eagle Point asked the Iowa Utilities Board to issue a declarative ruling that, as third-party owner, they wouldn't be treated as an electric utility under state law.

The local utility, Interstate Power and Light Co., protested that since Eagle Point Solar would be selling electricity to the city, it was essentially operating as a utility and should be regulated as one. (Interstate would also be losing about $600,000 per year in electricity sales to Eagle Point.)

The Iowa Utilities Board ruled in favor of the utility but the state District Court reversed that ruling, saying that because the service was behind the meter, it wouldn't fall under the definition of a "public utility." This was based, in part, on a previous board decision that found "no difference between the use of renewable technologies and classic energy efficiency measures when those activities take place on the customers' side of the meter."

The court also applied what they called "Serv-Yu" factors, stemming from a 1950 Arizona case, "Natural Gas Service Company v Serv-Yu Cooperative Inc.", which focused on whether the entity in question

was providing a public service, and thus could be considered a public utility.

Based on these factors, the state court determined Eagle Point could not be considered a public utility because it was primarily in the business of installing and maintaining solar systems, and not primarily in the business of selling electricity – reversing the decision of the Iowa Utility Board.

Interstate Power and Light then appealed the case to the Iowa Supreme Court, which determined that the Serv-Yu factors were a good measure of whether Eagle Point could be considered a public utility.

The court then evaluated each of the factors below to determine whether or not the business is "clothed with the public interest":

1. **WHAT THE CORPORATION ACTUALLY DOES**

   Is Eagle Point in the business of selling electricity or are they in the solar business and using the sale of electricity as a financing mechanism for their actual business? The court decided there was a little of both. But they also found that there was clearly a willing seller and a willing buyer: "From a consumer protection standpoint, there is no reason to impose regulation on this type of individualized and negotiated transaction."

2. **A DEDICATION TO PUBLIC USE**

   Was there a "dedication to public use"? The court said, "The installation is no more dedicated to public use than the thermal windows or extra layers of insulation in the building itself."

3. **ARTICLES OF INCORPORATION, AUTHORIZATION AND PURPOSE**

   The court decided the articles of incorporation were irrelevant.

4. **DEALING WITH A SERVICE OF A COMMODITY IN WHICH THE PUBLIC HAS BEEN GENERALLY HELD TO HAVE AN INTEREST**

   In evaluating this issue, the court chose to look at whether or not the provision of solar power was an indispensable service – focusing on choice to the consumer and the need for regulation as a utility. They found: "Although some may wish it so, behind-the-meter solar equipment is not an essential commodity required by all members of the public."

5. **MONOPOLIZING OR INTENDING TO MONOPOLIZE THE TERRITORY WITH A PUBLIC SERVICE COMMODITY**

   The court found: "There is simply nothing in the record to suggest that Eagle Point is a six hundred pound economic gorilla that has cornered defenseless city leaders in Dubuque" and

rejected this point.

6. **ACCEPTANCE OF SUBSTANTIALLY ALL REQUESTS FOR SERVICE**
7. **SERVICE UNDER CONTRACTS AND THE RIGHT TO DISCRIMINATE IS NOT ALWAYS CONTROLLING**

The court addressed questions 6 and 7 together and looked at the necessity of solar to provide an indispensible service to the public that every one needs. The court found that the transaction more resembled the provision of a customized service to an individual customer. Eagle Point could choose not to work with a potential customer for various reasons (shading, roof structure, etc.) and a customer who was denied service would not be "left high and dry" – there were other avenues to get electrical service, or even solar, from another vendor.

8. **ACTUAL OR POTENTIAL COMPETITION WITH OTHER CORPORATIONS WHOSE BUSINESS IS CLOTHED WITH THE PUBLIC INTEREST**

On the eighth point, the utility argued that if companies like Eagle Point were to skim off the most profitable customers, it would have a devastating impact on the ability for the utility to operate – in this way, they provide potential competition to the utility. To this, the court looked to states like Nevada, California, Colorado, Arizona – where third party providers are not considered utilities – and noted that there was not any evidence that the economic health of regulated electricity providers had been adversely impacted.

Through the application of this eight-factor test, the Iowa Supreme court determined that Eagle Point was not a utility. It also noted that the Iowa statutes directed utilities to encourage the use of renewable energy and energy efficiency – and that, ironically, Eagle Point was helping Interstate achieve one of its statutory requirements.

This ruling shows the way toward a more open market for third party solar developers, and the benefits of solar for customers, even in states that don't have legislation specifically exempting them from utility regulation.

Original article

Authored by:

Tom Plant

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"Jesse, as I am sure you are aware, those who require or desire 100% reliable power supply such as hospitals, military and other critical emergency services already have backup generators that operate on either stored diesel, LPG or connected into natural gas supply systems. Battery backup systems are somewhat limited due to high cost (compared to backup generation capacity) and gaps in ..."

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Tom served in the Colorado House of Representatives from 1999-2007. In 2007, he was tapped to lead the state's energy office by Governor Bill Ritter. After four years ushering in Ritter's signature "New Energy Economy", Plant joined Ritter at the Center for the New Energy Economy within Colorado State University.

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"Third party financing fixed that" Third part financing didn't fix anything.
The only thing that tird party financing did was to make solar more expensive for consumers. More than twice the cost of a purchase in today's lower priced PV market.

1. Add up your lease payments and when compared to an outright purchase you'll find that you're easily paying up to 3 times more on a $0 down solar lease versus a purchase.

2. You'll probably pay so much more for a lease than a purchase that's it's actually you who will be over-paying for your own maintenance, monitoring and insurance not the leasing company.

3. You'll probably have trouble selling your home because what home buyer in his right mind will want to assume your lease payments on a used, outdated system when they can buy a brand new system with the latest technology and keep the 30% federal tax credit for thousands less.

Remember, the solar leasing companies will not be installing the latest, 1/4 inch thin, frameless, higher efficiency, bifacial solar technology on your roof. They'll be installing first generation, boxey looking, aluminum framed solar panels that offer far lower efficiency at a much higher price. Those boxey looking panels may look good on your roof today, but what will they look like at year 10 of your locked in 20 year solar lease contract? And what will that outdated lokk do to your home's resale value ?

4. After making 20 years worth of leasing payments, you won't even own the system. It will still belong to the leasing company.

5. Check that quote from the solar leasing company and you'll find that most of the time they won't even tell you what brand of equipment they're installing on your home. I wonder why?

6. Most if not all $0 down solar leases include an annual payment escalator that will increase your monthly payment by up to 2.9% per year for 20 years.

7. You'll be stuck with the same aging solar system without the ability to upgrade for the full 20 year term of the contract. If you bought your system instead, you can sell it

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at any time and take the proceeds from the sale and upgrade to the latest and greatest equipment. You can't do that with a lease because it's not your system to sell.

8. You'll have to forfeit the 30% federal tax credit and any applicable cash rebate to the leasing company and you won't get tax deductible interest on your lease payments. Only a $0 down solar loan or $0 down PACE financing will give you tax deductible interest and let you keep all of your incentives for a much better return on your investment.

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September 2, 2014

Tom Plant says:

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Sorry - a bit of a typo in the article - the $600k number is over 20 years - the annual estimate of sales loss is $30k.

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