

Effective 5/10/2016

54-2-201 Independent energy producer --- Exemption from commission jurisdiction.

- (1) As used in this section:
 - (a) "Customer generation system" means the same as that term is defined in Section 54-15-102.
 - (b) "Net metering program" means the same as that term is defined in Section 54-15-102.
- (2) An independent energy producer is exempt from regulation by the commission as a public utility for an independent power production facility if the independent energy producer produces a commodity or delivers a service:
 - (a) solely for the use of a state-owned facility;
 - (b) not for sale to the public, without charge, solely for the use of:
 - (i) the independent energy producer;
 - (ii) an independent energy producer's tenant; or
 - (iii) an association of unit owners formed under Title 57, Chapter 8, Condominium Ownership Act;
 - (c) for sale solely to an electrical corporation or other wholesale purchaser; or
 - (d)
 - (i) for use by:
 - (A) an entity the independent energy producer controls, is controlled by, or is an affiliate of; or
 - (B) a user located on real property that the independent energy producer manages or controls; and
 - (ii) for use on real property that is contiguous to, or is separated only by a public road or easement from, real property that the independent energy producer owns or controls.
- (3) In addition to the exemptions described in Subsection (2), an independent energy producer that supplies energy, for direct consumption by a customer, via a customer generation system, is exempt from regulation by the commission as a public utility for an independent power production facility if:
 - (a) the customer is:
 - (i) a United States governmental entity, including an entity of the United States military;
 - (ii) a state entity, including a political subdivision of the state;
 - (iii) a state institution of higher education;
 - (iv) a school district, charter school, or an entity within the state system of public education;
 - (v) a federal income tax exempt charitable organization under 26 U.S.C. Sec. 501(c)(3) that can provide proof of the entity's tax-exempt status; or
 - (vi) a residential customer participating in a net metering program in an area served by an electrical corporation with more than 200,000 retail customers in the state;
 - (b) the customer generation system is:
 - (i) for use on the real property where the customer generation system is located; and
 - (ii) designed to supply a maximum amount of electricity equal to the lesser of:
 - (A) 90% of the customer's average annual electricity consumption, based on an annualized billing period; or
 - (B) the maximum amount allowed under a net metering program, as defined in Section 54-15-102;
 - (c) the independent energy producer notifies the customer, before installing the customer generation system, of:
 - (i) the total cost a customer is required to pay for the customer generation system, including an interconnection cost; and
 - (ii) the potential for a change in:
 - (A) the amount the customer pays for energy from a public utility; and

- (B) customer fees associated with net metering and generation;
- (d) the independent energy producer enters into an interconnection agreement:
 - (i) with a public utility that provides retail electric service to the real property on which the customer generation system is located; and
 - (ii) that is subject to approval by a public utility's governing authority; and
- (e) except for a customer described in Subsection (3)(a)(vi), the independent energy producer installs the customer generation system by December 31, 2021.
- (4) An independent energy producer that supplies electric service to a customer described in Subsection (3)(a)(vi) via a customer generation system shall provide the electric service under an agreement that includes:
 - (a) the notification described in Subsection (3)(c);
 - (b) a description of the incentives, including any renewable energy certificate, generated by the agreement, or by the installation or use of the customer generation system;
 - (c) a description of an incentive described in Subsection (4)(b) that the customer forfeits or assigns to the independent energy producer under the agreement;
 - (d) the property, equipment, or liability that the independent energy producer will insure under the agreement, and what property, equipment, or liability that the customer is responsible for insuring; and
 - (e) the Internet address of a Division of Public Utilities website, if any, that describes considerations for a net metering customer.
- (5) An independent energy producer may not provide electric service to a customer described in Subsection (3)(a)(vi) until the commission makes the first determination about a net metering program under which the independent energy producer will provide service required by Subsection 54-15-105.1(2), and the determination becomes final agency action.
- (6) A public utility shall serve a customer in the public utility's service area that is partially served by an independent energy producer.

Enacted by Chapter 267, 2016 General Session