

LEGISLATIVE RESEARCH REPORT

MARCH 5, 2010



REPORT NUMBER 10.189

REGULATION OF WHOLESALE TRANSACTIONS BY INDEPENDENT POWER PRODUCERS

PREPARED FOR SENATOR LESIL MCGUIRE

BY TIM SPENGLER, LEGISLATIVE ANALYST

You asked if other states regulate wholesale electric power transactions by independent power producers (IPPs) in the same way as does Alaska.¹ Specifically, you wanted to know if other states regulate power producers who sell to one or more customers and generate more than \$50,000 in income from the sale of electricity, as provided in Alaska law.² **Briefly, we could identify no states that regulate independent power producers in this way.**

For our review, we queried all state utility commissions, conducted a search of the Westlaw database of state statutes, and contacted national experts on the topic. None of the 24 states that responded to our query report having any regulatory language similar to that in Alaska.³ A frequent response that we received from states was that IPPs are subject to Federal Energy Regulatory Commission (FERC) regulations but not to state regulation.⁴ A number of experts we contacted point out that utilities that purchase electricity from IPPs are subject to their respective state's public utilities commission regulations. We also communicated with lead staff from the National Association of Regulatory Utility Commissioners (NARUC), the Independent Power Producers Coalition of the West (IPPC), the National Conference of State Legislatures (NCSL),

¹ Independent power producers are entities that generate electric power for sale to utilities and end users. The producers are unaffiliated with the franchised utility in the area in which the IPP is selling power

² The Regulatory Commission of Alaska has statutory authority (under AS 42.05.141) to regulate every "public utility." Public utility is defined under AS 42.05.990(4) as an entity (including an individual) that furnishes electrical service to the "public" for compensation. AS 42.05.990(2)(b) defines "public" or "general public"— as "one or more customers that purchase electrical service for use within an area that is certificated to and presently or formerly served by an electric utility if the total annual compensation that the electrical utility receives for sales of electricity exceeds \$50,000."

³ Officials in the following 24 states responded to our query: Alabama, Arizona, Arkansas, Colorado, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, Oregon, South Dakota, Texas, Virginia, and Washington.

⁴ We spoke with FERC energy industry analyst, Saeed Farrokhpay, (916) 294-0322, who confirmed that IPPs' power transactions fall under FERC jurisdiction pertaining to rate regulation. The FERC is a federal agency, under the Department of Energy, with jurisdiction over interstate natural gas transportation and sale for resale rates, wholesale electric rates, hydroelectric licensing, oil pipeline rates, and gas pipeline certification (<http://www.ferc.gov>).

and the Colorado Independent Energy Association.⁵ None of the experts from these entities with whom we spoke were aware of regulations in other states similar to those in Alaska. A common thread of the feedback we received was that regulating wholesale transactions of independent power producers would be a duplicative procedure as the utilities to which IPPs sell their electricity are already regulated by states. Such regulations would likely act as a disincentive for IPPs—including alternative or smaller energy producers—effectively discouraging such entities from engaging in business.

Below we highlight feedback we received from eight states that you may find to be of interest.

- ◆ **Arkansas:** According to Dave Stanton (501-682-1792), chief administrative law judge and chief of commissioners' staff, Arkansas Public Service Commission (APSC), the APSC only regulates "public utilities" and, therefore, has no regulatory authority over independent power producers. IPPs located in Arkansas are not subject to rate regulation but are subject to state and federal environmental regulations administered by the federal EPA and the Arkansas Department of Environmental Quality.
- ◆ **Colorado:** Colorado Public Utilities Commission does not regulate Independent Power Producers, according to Doug Dean (303-894-2007), director of the commission. IPPs are not allowed to provide retail electric services; they only provide electricity at the wholesale level. Only the investor-owned electric utilities, cooperative electric associations, and municipal utilities are permitted to provide retail electric service in Colorado. These entities are regulated by the state.
- ◆ **Idaho:** The state does not regulate independent power producers, regardless of size, according to Gene Fadness (208-334-0339), executive director, Idaho Public Utilities Commission (IPUC). The IPPs come under IPUC purview only when they contract with regulated utilities.
- ◆ **Maine:** Evelyn deFrees (207-287-6141), public information officer with Maine's Public Utilities Commission, relates that the state does not regulate power suppliers or producers, only transmission and distribution companies. The commission does license and oversee companies that sell at the retail level; at the wholesale level, however, the sale of electricity is not state regulated but is subject to FERC jurisdiction.
- ◆ **Minnesota:** The Minnesota Public Utilities Commission only has ratemaking authority over entities defined as public utilities, according to Janet Gonzales (651-201-2231), energy unit manager. Public utilities are (in part) defined in

⁵ We contacted the following individuals for this report: Christopher Mele, legislative director—energy, National Association of Regulatory Utility Commissioners, (202) 898-2206. NARUC is an association representing state public service commissioners who regulate utility services, such as electricity, gas, telecommunications, water, and transportation, throughout the country (<http://www.naruc.org>); Robert Kahn, executive director, Northwest and Intermountain Power Producers Coalition (NIPPC), (206) 624-1235. NIPPC's website asserts that the organization will pursue informal and formal (i.e., laws, policies, rules, and regulations) avenues and forums to encourage a competitive electric power supply marketplace in the Pacific Northwest and Intermountain West (<http://www.nippc.org>); Keith Hay, energy program director, National Conference of State Legislatures, (303) 364-7700 (<http://www.ncsl.org>); Nicholas Muller executive director, Colorado Independent Energy Association, (303) 297-1970. The CIEA attempts to save Colorado ratepayers money by promoting lower cost electricity (<http://www.ciea-colorado.org>).

Minnesota statute (§216B.02, subd. 4) in the following way: “No person shall be deemed to be a public utility if it produces or furnishes service to less than 25 persons.” Minnesota does not regulate electric power providers based on revenues from electricity sales.

- ◆ **New Jersey:** Doyal Siddell (973-468-8515), public information officer, New Jersey Board of Public Utilities relates that power from New Jersey's independent power producers is dispatched to the state's regional transmission organization, PJM, whose rates are subject to FERC jurisdiction; the state has no jurisdiction.
- ◆ **Oregon:** Oregon does not regulate wholesale power transactions between independent power producers, according to Maury Galbraith (503-378-8718), electric rates and planning, Public Utilities Commission. Mr. Galbraith informs us that FERC has regulatory jurisdiction over this type of transaction across the country.
- ◆ **South Dakota:** John Smith (605-773-3201), general counsel, South Dakota Public Utilities Commission, informs us that their commission does not engage in utility regulation of independent power producers unless the IPPs sell to “ultimate consumers”—or, in other words, retail consumers.

We hope you find this information to be useful. Please let us know if you have questions or need additional information.