

4.4.1 Texas—No Solution

Texas presents an interesting case regarding the regulation of third-party owned systems within the jurisdiction of municipal utilities and co-ops that, per usual, were not required to deregulate. Thus, in most of Texas, the third-party PPA model can be used as a financing mechanism. However, this financing mechanism only makes sense when the third-party PPA owner is not producing more electricity than it consumes, as net metering is not allowed anywhere in the state. In addition, in jurisdictions such as Austin and San Antonio where municipal utilities supply the electricity, third-party PPAs may not be an option (Cory, Coggeshall, and Kollins 2008).

The Texas Utilities Code Section 40.053(a) says:

If a municipally owned utility chooses to participate in consumer choice, after that choice all retail customers served by the municipally owned utility within the certificated retail service area of the municipally owned utility shall have the right of customer choice . . . , and the municipally owned utility shall provide open access for retail service.

Though the Texas PUC has made no formal statement on the matter, municipal utilities are concerned they might open themselves to competition if they allow generators to sell electricity to their customers. Even though these utilities may want to allow the third-party PPA model to facilitate the adoption of solar power, they will not risk inadvertently exposing themselves to deregulation and competition in their service territory.

However, the third-party PPA developer could create a contract with the utility that would effectively allow the utility to buy the electricity and resell it to the site host. This solution, which is described in detail in section 5.2.1, requires that utilities work with customers and developers on a project basis. It also requires that utilities act as silent intermediaries and do not create administrative or cost barriers that might reduce the appeal of using the third-party model.

4.4.2 Applicability Elsewhere

Although no solution has been found, this challenge could arise in other states that have fully or partially deregulated electricity markets and where munis and co-ops worry that by allowing for third-party owned systems, they will open themselves up to competitive suppliers. However, the municipal utility regulators (usually the city council, which is often also the utility's board of directors), state regulators, or state legislators could make a regulatory or legal exception for using the third-party PPA model. And as discussed previously, alternative solutions such as using the utility as a contractual intermediary might be an option for developers wanting to use the third-party PPA model in Texas or other states in similar situations.

4.5 Challenge 5: Net Metering

Allowing third-party owned systems to net meter could facilitate the deployment of solar PV systems because the on-site generation reduces electricity purchased from the utility and any excess is credited to the customer bill. However, in some states, third-party owned systems may not meet the definition of facilities or customers that are allowed to net meter. Net metering has been problematic for third-party owned systems in at least two states, New Jersey and Texas, and only New Jersey offers a (somewhat vague) solution.

Neither New Jersey nor Texas has explicitly addressed whether third-party owned systems are allowed to net meter; however, both states demonstrate how the interpretation of regulations or legislation can alter whether third-party owned systems are allowed to net meter.

4.5.1 New Jersey—Legislative Solution

New Jersey does not have legislative or regulatory language that determines whether third-party owned systems are allowed to net meter. However, New Jersey Administrative Code 14:8-4.2 and 4.3, which outline changes to net metering and interconnection rules, (Docket #: EX08070548) define a “customer-generator facility” as:

...the equipment *used* [italics added] by a customer-generator to generate, manage, and/or monitor electricity. A customer-generator facility typically includes an electric generator and/or an equipment package.

New Jersey’s definition stipulates that the equipment need only be used by the customer; i.e., a customer-generator allowed to net meter is not required to own the generation equipment, and third-party owners are allowed to net meter (Keyes 2008).

4.5.2 Texas—No Solution

In Texas, where the retail electricity generation market is deregulated, the PUC claimed that *requiring* net metering is incompatible with deregulation, thus making the third-party PPA model financially less attractive as carrying excess generation forward would not be possible.

4.5.3 Applicability Elsewhere

New Jersey’s regulatory solution in which the PUC determined eligible customers only need to use the power generated by the facilities (regardless of ownership) could be applied in any state determining which kind of facilities are eligible to net meter. However, as noted previously, New Jersey was able to look to state legislation that clearly supports renewable energy deployment and make decisions in a consistent manner with the legislation. Thus, having state legislation that can serve as a guideline for PUC officials may help to create state regulations that support net metering for third-party owned/PPA financed systems.

Overall, implementing third-party PPA model financing is difficult in states where unclear legislation or regulations could result in the regulation of third-party PPA owners. Munis and co-ops might be concerned that allowing third-party owned systems to sell power to their customers will open their service territories to deregulation. The third-party PPA model is also problematic in states that do not explicitly allow net metering of third-party owned systems. Finding a one-size-fits-all policy solution is not possible when states not only define differently utilities and other competitive supplier, but also put in place different rules about what they can legally supply or how many customers they can serve. However, more parties are seeking resolution to these issues as evidenced by recent rulings in Colorado and Nevada, and a docket filing in Arizona.

See Appendix C for a summary of all the language variations explored in this section.