



JOHN W. SUTHERS
Attorney General

CYNTHIA H. COFFMAN
Chief Deputy Attorney General

DANIEL D. DOMENICO
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 7th Floor
Denver, Colorado 80203
Phone (303) 866-4500

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Attorney General)	

This opinion, requested by the Director of the Colorado Governor’s Energy Office, concerns application of Colorado law to interconnection agreements between cooperative electric associations and their customers who install renewable energy systems.

QUESTION PRESENTED AND CONCLUSION

Question: Is it legal for a cooperative electric association to require, as a condition for connecting a customer’s renewable energy system to the association’s electric distribution system, that the customer transfer the customer’s renewable energy credits to the association without compensation?

Answer: There is no legal authority for cooperative electric associations to require customers to transfer their renewable energy credits free of charge to the association as a condition to connect the customer’s renewable energy generating equipment to the association’s distribution system. Such conditions are unauthorized and an unreasonable burden on interconnections and thus are contrary to law.

BACKGROUND

State law requires that investor-owned and cooperative electric utilities in the State of Colorado obtain a certain percent of their electric generating capacity from renewable energy sources by the year 2020. §40-2-124(1)(c), C.R.S. (2010). Utilities can meet this renewable energy standard by earning and buying renewable energy credits. Renewable energy credits are

a measure of electricity generating capacity produced by renewable energy systems. A utility may, for example, earn such credits by installing photovoltaic (solar-generated electricity) systems as a part of its electricity generating capacity. It may also purchase credits from homeowners and businesses who install solar-generated electricity systems. When a utility customer installs a renewable energy system, the customer earns - and thus owns - a corresponding number of renewable energy credits. The number of credits is determined by the amount of renewable energy produced by the customer's system.

Renewable energy credits have monetary value associated with the energy and environmental attributes of renewable energy systems. They can be sold and traded like a commodity, and a customer who installs a renewable energy system has a contractual right to the credits created by installing the system. 4 CCR 723-3, §3652(n); 4 CCR 723-3, §§ §3652(o), 3659(a). In the case of the regulated qualifying retail utilities such as Xcel Energy and Black Hills Energy, the utilities handle renewable energy credits in three different ways, each of which assigns a value to the credits associated with the energy produced from the renewable energy systems. The qualifying utilities either: (1) build and finance the renewable energy system and therefore own the credits; (2) pay for credits through direct rebates for the systems; or (3) pay for credits from out-of-state renewable energy systems through purchase transactions.

To encourage the development and use of renewable energy, many utilities and some government entities, including the Governor's Energy Office (GEO), subsidize the installation and use of renewable energy systems by offering rebates on such systems. For example, a utility may pay for a portion of a renewable energy system that a customer installs in the form of a rebate. In exchange for the rebate, the customer agrees to transfer the renewable energy credits to the utility and to feed excess electricity back into the electric grid, thus helping the utility meet the renewable energy standard.

As an additional incentive to install renewable energy systems, state statutes and regulations allow a customer's renewable energy generation to be "net-metered." This means that excess electricity generated by the customer is fed back into the utility's electricity grid, and the utility must pay the customer for that electricity. §40-2-124(1)(e), C.R.S. (2010); 4 CCR 723-3, §3664. Net-metering not only helps the utility meet the renewable energy standard, it also benefits the entire electric grid by diversifying electricity generation and thus helping to strengthen and stabilize the electric grid and its reliability.

In order to accomplish net-metering, a customer's generating system must be connected to the utility's electricity distribution system. Since such connections, called "interconnections," must be done consistent with the technical specifications of the utility's electrical system, the Colorado Public Utilities Commission (PUC) has adopted rules governing such interconnections. These rules provide, *inter alia*, that if a customer/generator meets certain specified conditions called "screens," the interconnection must be granted by the utility. 4 CCR 723-3, §3665(c).

As a part of its rebate program, the GEO requires customers who receive a rebate for a renewable energy system from the GEO to transfer the resulting renewable energy credits to the GEO. While implementing its rebate program, the GEO discovered that certain cooperative electric associations are requiring customers to transfer their renewable energy credits to the association as a condition for interconnecting even though the association did not provide a rebate or other incentive for the renewable energy system, and did not provide any compensation to the customer for the credits.

DISCUSSION

Cooperative electric associations are required to allow customer net-metering. §40-9.5-118(2), C.R.S. (2010). They are also required to comply with the PUC's interconnection standards for net-metering. The PUC has promulgated interconnection standards. 4 CCR 723-3, §§3000, 3650 - 3665. Those standards prohibit cooperative electric associations from unreasonably burdening interconnections. §40-9.5-118(2)(d), C.R.S. (2010). They provide, *inter alia*, that if certain "screens" are met, the utility must grant the customer's interconnection application:

If the proposed interconnection passes the screens, the interconnection request *shall* be approved and the utility will provide the [interconnection customer] an executable interconnection agreement within five business days...

4 CCR 723-3, §3665(c)(II)(B) (*italics added*). Transferring the customer's renewable energy credits to the utility without compensation is not one of those criteria, and such a condition is, therefore, an unreasonable burden on interconnections and contrary to law. Cooperative electric associations are, therefore, without authority to require the transfer of a customer's credits without compensation as a condition to interconnect to the association's electric system.

In the case of renewable energy systems for which the GEO has provided a rebate or other subsidy, a customer cannot legally transfer the credits to a cooperative electric association because of the customer's rebate agreement with the GEO. Under such agreements, the customer must transfer the credits to the GEO. The cooperative electric association, therefore, cannot require the customer to transfer the renewable energy credits to it as a prerequisite to interconnection because the credits legally belong to the GEO and the customer is legally prohibited from making the transfer.

CONCLUSION

Cooperative electric associations are without authority to require the transfer of a customer's renewable energy credits without compensation as a condition for an

interconnection. Such conditions are an unreasonable burden on interconnections and, therefore, contrary to law.

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JOHN W. SUTHERS
Colorado Attorney General