

February 7, 2023
HB 2227
Oral In-Person
PROPONENT



From: Jessica Lucas, Clean Energy Business Council

Chairman Delperdang and Members of the Committee:

Thank you for allowing me to present proponent testimony on behalf of the Clean Energy Business Council a project of the Climate + Energy Project. We are pleased to come before you today to talk about HB 2227, a bill that would enable third-party power purchase agreements.

I've enclosed in my testimony information from Legislative Research that shows what other states are doing in regard to third-party power purchase agreements. A majority of US states allow them!

Kansas is one of only seven states in the country that prohibits third-party PPAs. The past few years we've heard a lot of testimony about our rates not being regionally competitive, specifically with Oklahoma.

The committee should note that Oklahoma permits 3rd Party PPAs, as does Missouri and Colorado. Additionally, Nebraska is not a state that has outlawed them.

Yet Kansas sits in the middle of these neighbors without a 3rd Party PPA tool, further restricting options to businesses seeking to lower their energy costs and invest in more renewables.

We urge the committee to consider a 3rd Party PPA bill. I do want to note, since the introduction of this bill, we've had many conversations with interested parties who support larger size limits to fully utilize the power of a 3rd Party PPA to meet industry needs, specifically in agricultural sector.

It's our hope we can work together to find a common sense policy that addresses these needs and ensures access to all renewable tools that provide cost-savings and long-term energy agreements.



December 16, 2022

From: Kate Smeltzer, Research Analyst

Re: Third-party Power Purchase Agreements in the United States

THIRD-PARTY POWER PURCHASE AGREEMENTS (PPA) IN THE UNITED STATES

According to the U.S. Department of Energy, third-party power purchase agreements (PPAs) are an arrangement in which a third-party developer installs, owns, and operates an energy system on a customer's property. The customer would then purchase the output of that system for a given period of time. The purpose of these agreements is to allow the customer to buy stable and frequently low-cost power without paying upfront development costs, and to enable the system owner to utilize tax credits and income from the sale of the system's energy generation. Third-party financing primarily occurs in two of the following forms:

- **PPA:** The energy system would offset the customer's electric utility bill, and the developer would then sell the power generated to the customer at a fixed rate, usually lower than local utilities.
- **Leases:** A customer would sign a contract with an installer/developer and would pay for the use of a system over a specified period of time.

States with PPAs

Currently, 27 states allow power purchase agreements in some form. A list of these states is contained within attachment 1, State PPA Regulations. The document also provides a short summary of the authorization, and a hyperlink to said authorization when available. Please note that this list may not be exhaustive, as what constitutes a PPA can differ among states. Furthermore, there are other financial tools available that are similar in structure to PPAs, but they may not necessarily be under the jurisdiction of a state regulatory authority.

Other Financial Arrangements

As of 2022, Kansas does not allow PPA's. However, according to Kansas Corporation Commission (KCC) staff, wholesale generators can enter into other kinds of arrangements with

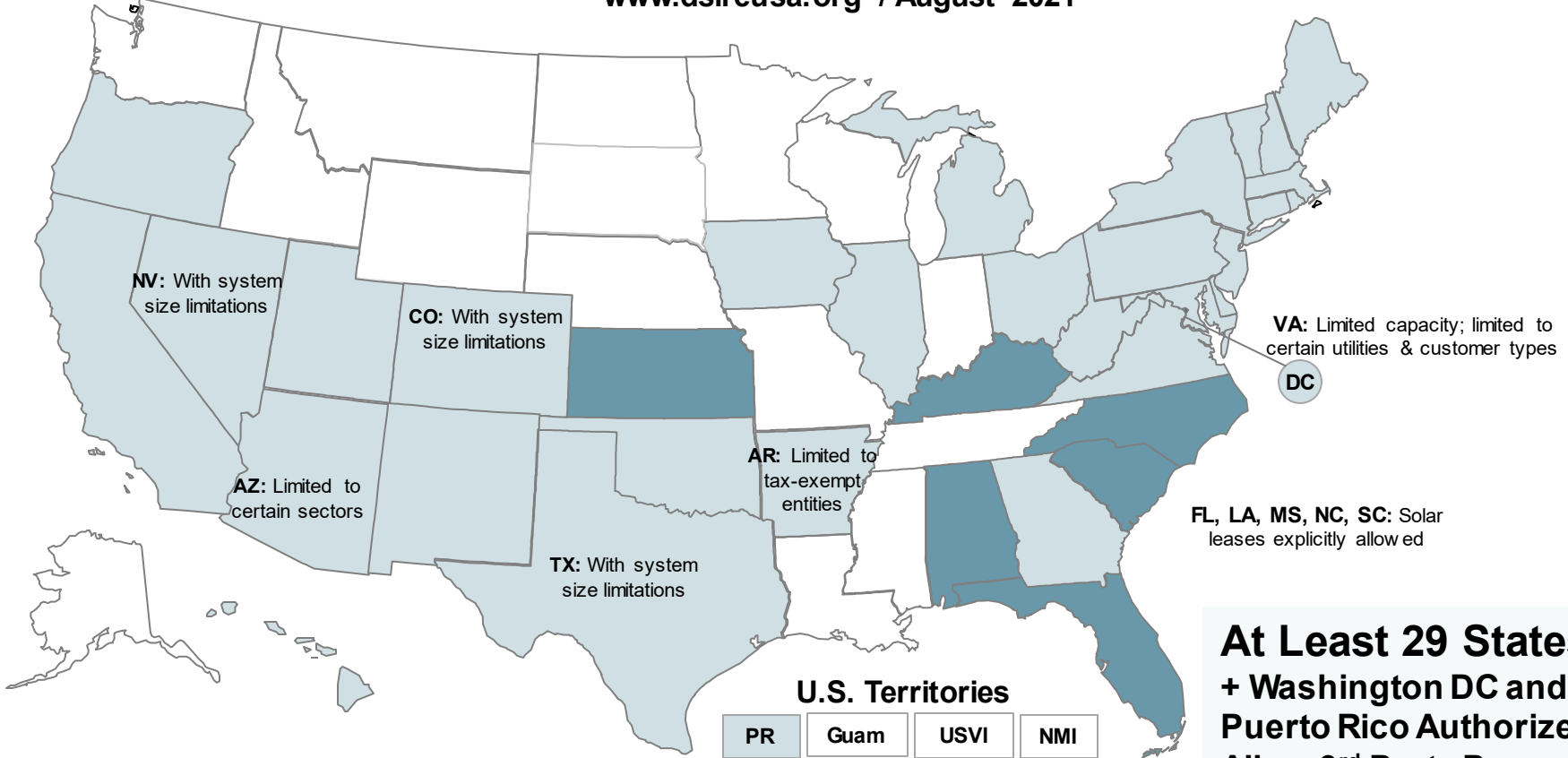
larger corporations, such as for the purchase of energy output from a wind or solar farm. With these types of arrangements, the power generated is actually added to the Southwest Power Pool's integrated market, and there is a financial settlement between the generator and customer based on the difference between the wholesale market price and the price agreed upon by the parties.

KCC staff also indicated these types of arrangement are allowed in Kansas, because the power is being sold at wholesale cost and not retail cost. Further, KCC staff stated, regulated utilities use wholesale PPAs to procure renewable energy frequently because it sidesteps the risks associated with the development of a project, and is generally preferred because in many cases it is more economical than utility ownership of the generation, noting that utility ownership can have its own intangible benefits that are considered in formal docket proceedings.

Maine	Yes	Third-party	Solar	All consumers of electricity have the right to purchase generation services directly from competitive electricity providers. The commission may authorize a consumer-owned transmission and distribution utility to aggregate its load for the purpose of purchasing generation services on behalf of its customers.	Title 35-A Section 3202	N/A	2007
Maryland	Yes	Third-party	Biomass; micro-combined heat and power; solar; or wind electric generation	"Eligible customer-generator" means a customer that owns and operates, leases and operates, or contracts with a third-party that owns and operates a biomass, micro-combined heat and power, solar, or wind electric generating facility that is located on the customer's premises, is interconnected and operated in parallel with an electric company's transmission and distribution facilities, and is intended primarily to offset all or part of the customer's own electric requirements.	N/A	HB 1057 (2009)	2009
Massachusetts	Yes	N/A	Solar; hydroelectric; biogas/biodegradation; agricultural generation	Purpose: to govern how distribution companies are to provide net metering services to customers consistent with the net metering provisions of M.G.L. c. 164 §§ 138 through 140	220 CMR 18.00	N/A	N/A
Michigan	Yes	Third-party; public	Wind; biomass; biogas; biofuels; solar; geothermal; municipal solid waste; landfill gas; hydroelectricity; tidal	An electric utility that proposes to construct an electric generation facility, make a significant investment in an existing electric generation facility, purchase an existing electric generation facility, or enter into a PPA for the purchase of electric capacity for a period of 6 years or longer may apply. The commission shall include in an electric utility's retail rates all reasonable and prudent costs for an electric generation facility or PPA.	Public Act 286	N/A	2008
Michigan	Yes	Third-party	Solar	A PPA entered into by a public utility for the purchase of capacity and energy from a resource recovery facility shall be filed with the commission and a contested case proceeding shall commence immediately.	Michigan Comp. Laws Ann. 460.60	N/A	2008
Michigan	Yes	Public; third-party	Solar	Defines the application criteria and approval standards.	Michigan Comp. Laws Ann. 460.65	N/A	2008
Minnesota	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Mississippi	Yes	Third-party	Solar	Allows leasing solar equipment. No rate made, deposit, or service charge demanded or received by any public utility shall exceed that which is just and reasonable. Such utility shall furnish adequate, efficient, and reasonable service, and may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service. Such utility may employ in the conduct of its business suitable and reasonable classifications of its service, patrons, rates, deposits, and service charges.	MS Code 77-3-3 (2013)	N/A	2013
Missouri	Yes	Third-party	Hydropower; biomass; wind, biodiesel	This act allows a contract customer to enter into a renewable energy contract with an owner or developer of a renewable energy facility for the sale of electricity to meet the customer's energy needs. Such customer shall have a minimum annual peak demand of 1 MW, and such contract shall provide for the pricing and duration of the contract. This act also allows an owner or developer of a renewable energy facility to enter into a contract for the sale of electricity to a customer of an electrical corporation if the electricity is supplied by a renewable energy facility located entirely on the customer's premises and the output of which is intended entirely for use at the customer's premises.	N/A	SB 972	2018
Montana	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Nebraska	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Nevada	Yes	Utility; third-party	N/A	Allows companies to enter into a PPA without being considered as a utility. This allows third-party providers to install, own, and operate a renewable energy system such as solar on a home or facility and lease the system to the property owner without being subject to the same regulations as a utility.	AB 186	N/A	2009
Nevada	Yes	N/A	N/A	Provides what public utility or utility does not include.	NV Rev Stat 704.021 (2013)	N/A	2013
Nevada	Yes	N/A	Wind; waterpower; biomass; geothermal; solar	Provides what renewable energy means.	NV Rev Stat 704.7811 (2011)	N/A	2011
New Hampshire	Yes	Third-party	N/A	Mandates the commission to independently and expeditiously consider all PPA regardless of the status of any other such pending renegotiations.	NH Rev Stat 362-A:4-c	N/A	1998
New Hampshire	Yes	N/A	Solar	"Alternative net metering tariff" means the alternative net energy metering tariff provisions adopted by the commission pursuant to RSA 362-A:9, XVI in Order No. 26,029 issued in Docket DE 16-576 on June 23, 2017, which tariff provisions are applicable to customer-generators receiving a utility net metering capacity allocation on or after September 1, 2017, once the utility is capable of implementing such new tariff provisions.	PUC 902.03	N/A	2012
New Hampshire	Yes	Third-party	Solar	This order approves modifications to the existing incentive program for solar energy projects undertaken by commercial and industrial electric customers, and reopens the program.	PUC Docket DE 10-212 (letter 01/31/12)	N/A	2020
New Hampshire	Yes	Third-party	N/A	I. The term "public utility" shall not include any entity determined by the FERC to be an exempt wholesale generator, nor shall it include any corporation, company, association, limited liability company, joint stock association, partnership, or person, their lessees, trustees, or receivers appointed by any court, solely by virtue of owning, operating, or managing any plant or equipment or any part of the same which has received a certificate of site and facility as an energy facility or as a bulk power supply facility pursuant to RSA 162-H after July 1, 1998, or are sold after July 1, 1998, for the generation or sale of electricity or for transmission of electricity from such a plant to an interconnection with the transmission grid. II. Any entity exempted by this section may seek public utility status from the commission if it so chooses.	NH Rev Stat § 362:4-c	N/A	2014
New Jersey	Yes	N/A	Solar	Provides definitions relative to competition in the electric power, gas, solar energy, and offshore wind industries.	NJ Rev Stat 48:3-51	N/A	2020
New Jersey	Yes	N/A	N/A	Discusses market transition charges for stranded costs. The board shall, pursuant to findings made in connection with the stranded costs filing, permit each electric public utility the opportunity to recover certain categories of costs through a market transition charge that shall be collected as a limited duration non-bypassable charge payable by all of the electric public utility's customers.	NJ Rev Stat 48:3-61	N/A	2020
New Jersey	Yes	Third-party	N/A	Sets net metering requirements that apply to electric power suppliers, basic generation service providers, and electric distribution companies which have customers who generate class 1 renewable energy on the customer's side of the meter.	NJ Admin. Code 14:8-41	N/A	2010
New Mexico	Yes	Third-party	Solar	Limited to systems generating no more than 150% of the average annual electricity consumption	New Mexico 07-06027 (according to DSIRE)	N/A	N/A
New Mexico	Yes	Third-party	N/A	Declares that owners of certain renewable energy distributed generation facilities are not public utilities	N/A	HB 181 (2010)	2010

3rd Party Solar PV Power Purchase Agreement (PPA)

www.dsireusa.org / August 2021



- Apparently disallowed by state or otherwise restricted by legal barriers
- Authorized by state or otherwise currently in use, at least in certain jurisdictions
- Status unclear or unknown

At Least 29 States + Washington DC and Puerto Rico Authorize or Allow 3rd Party Power Purchase Agreements for Solar PV

Important Information Regarding 3rd-Party Solar PPAs

State authorization of 3rd-party solar PV PPAs allows residential customers to purchase electricity generated by solar panels on their roof (usually at a price lower than the retail rate of electricity) from a third party that owns the PV system. Some states that limit or prohibit 3rd-party solar PV PPAs explicitly allow for residential solar leasing arrangements.

Legal authorization for residential 3rd-party solar PV PPA arrangements usually lies in the definition of a “utility” in state statutes, regulations or case law; in state regulatory commission decisions or orders; and/or in rules and guidelines for state incentive programs.

States that have authorized the use of 3rd-party PPAs may not have done so in every jurisdiction. For example, municipal utilities may not allow 3rd-party PPAs in their territories even though they are allowed or in use in the state’s investor-owned utility (IOU) territories.

Though a 3rd-party PPA provider may not be subject to the same regulations as utilities, additional licensing requirements may still apply.

This map does not represent interstate 3rd-party solar PV PPA authorizations relevant to large generators. In states that limit or prohibit intrastate PPAs, interstate PPAs for wholesale electricity market sales may be allowed by federal laws in areas under the jurisdiction of regional, multi-state transmission organization authorities.

This map and information is provided as a public service and does not constitute legal advice. Seek qualified legal expertise before making binding financial decisions related to a 3rd-party PPA.

Authorities/References

- **Alabama:** AL code § 37-14-32
- **Arizona:** ACC Decision 71795, Docket E-20690A-09-0346 (*limited to schools, governments or other non-profit entities*)
- **Arkansas:** S.B. 145 (2019) (*limited to Solar Services Agreements qualifying for safe harbor protection under 26 U.S.C. 7701(e)(3)(A) for tax-exempt entities*) and explicitly allows solar leasing.
- **California:** Cal. Pub. Util. Code § 218, § 2868
- **Colorado:** S.B. 09-051; PUC Decision C09-0990, Docket No. 08R-424E (2009) (*limited to systems generating no more than 120% of the average annual electricity consumption*)
- **Connecticut:** Clean Energy Finance and Investment Authority
- **D.C.:** REIP Program; PSC Order 15837 (2010)
- **Delaware:** S.B. 266 and S.B. 267 (2010)
- **Florida:** PSC Decision: Docket 860725-EU; Order 17009 (1987); PSC declaratory rulings have permitted residential solar leasing
- **Georgia:** H.B. 57 (2015)
- **Hawaii:** S.B. 704 (2011)
- **Illinois:** 220 ILCS 5/3-105, 16-102; 83 Ill. Adm. Code, Part 465
- **Iowa:** Iowa Supreme Court, No. 13-0642 (2014) (*the Iowa Supreme Court's decision overruled an earlier IUB determination that a local solar company who proposed a 3rd-party PPA would be a "public utility" under Iowa law*)
- **Kansas:** KS Department of Revenue Opinion O-2016-001
- **Kentucky:** KRS 278.010 (3)
- **Louisiana:** La. R.S. 45:121
- **Maryland:** H.B. 1057 (2009)
- **Maine:** Title 35-A section 3202
- **Massachusetts:** 220 CMR 18.00
- **Michigan:** 2008 Public Act 286; PSC Order Docket U-15787
- **Mississippi:** Any entity selling electricity is subject to public utility regulations stipulated in MS code § 77-3-3, but MS net metering rules explicitly allow leasing of solar equipment.
- **Nevada:** NRS 704.021 (A.B. 186, 2009); PUC Orders 07-06024
- **New Hampshire:** PUC 902.03; PUC Docket DE 10-212 (letter 1/31/12)
- **New Jersey:** N.J. Stat. 48:3-51; N.J.A.C. §14:8-4.1 et seq.
- **New Mexico:** H.B. 181 and S.B. 190 (2010)
- and 07-06027 (*limited to systems generating no more than 150% of the average annual electricity consumption*)
- **New York:** NY CLS Public Service § 2.13
- **North Carolina:** General Statutes § 62-3(23) prohibits 3rd Party Sales, but H.B. 589 (2017) explicitly allows leasing of solar equipment
- **Ohio:** PUC Order 06-653-EL-ORD (11/05/2008)
- **Oklahoma:** Attorney General Opinion 2018-5
- **Oregon:** PUC Order, Docket 08-388; O.R.S §757.005
- **Pennsylvania:** PUC Order, Docket M-2011-2249441
- **Puerto Rico:** No policy reference available; based on news reports and articles
- **Rhode Island:** R.I. Gen. Laws § 39-26.4
- **South Carolina:** SC Code Section 58-27-2610(E) and Section 58-27-2630(A)(9) arising from S.B. 1189 (2014) prohibit 3rd Party Sales, but S.B. 1189 explicitly allows leasing of solar equipment
- **Texas:** S.B. 981 (2011) (*limited to systems generating electricity no more than the average annual electricity consumption*)
- **Utah:** H.B. 244 (2016); Title 54 Chapter 2)(1)(19)
- **Vermont:** No policy reference available, based upon news reports and communications
- **Virginia:** H.B. 2390 (2017); S.B. 1769 (2019)
- **West Virginia:** H.B. 3310 (2021)