

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **PUBLIC UTILITIES - IOWA**

### **SZ Enterprises, LLC v. Iowa Utilities Bd.**

**Supreme Court of Iowa - July 11, 2014 - N.W.2d - 2014 WL 3377074**

Solar energy company appealed decision by the Utilities Board determining that it was a public utility prohibited from serving customers within the exclusive service territory of another electric utility. The District Court reversed. Board and intervenors appealed, and company cross-appealed.

The Supreme Court of Iowa held that company was not a public utility subject to the regulation of the Board.

Supreme Court would not defer to decision by Utilities Board regarding whether solar energy company that proposed to enter into third-party purchase agreement with city to provide it with renewable energy was a public utility subject to regulation by the Board. The legislature provided a definition for both “public utility” and “electric utility,” a significant factor weighing against requiring deference, in interpreting chapter of statutes governing public utility regulation, Court gave no deference to the agency’s interpretation of public utility, and the terms “public utility” and “electric utility” were not very complex and were not uniquely within the subject matter expertise of the Board.

Solar energy company that proposed to enter into third-party purchase agreement with city to provide it with renewable energy was not a “public utility” under statute stating that public policy was to encourage the development of alternate energy production facilities and small hydro facilities in order to conserve finite and expensive energy resources and to provide for their most efficient use, where transaction was one of arms-length between a willing buyer and a willing seller, solar panels on city’s rooftops were not dedicated to public use, provision of on-site solar energy was not an indispensable service that ordinarily cried out for public regulation, company was not a 600 pound economic gorilla that had cornered defenseless city leaders, and company was not producing a fungible commodity that everyone needed, rather it was providing a customized service to individual customers.

Solar energy company that proposed to enter into third-party purchase agreement with city to provide it with renewable energy was not a public utility under statute that stated that, unless the context otherwise required, “electric utility” included a public utility furnishing electricity, and thus was not prohibited, on that basis, from serving customers within the exclusive service territory of another electric utility. The phrase “unless the context otherwise require[d]” was designed to ensure that city utilities that did not furnish electricity were not inadvertently drawn into the statute, and Utility Board did not offer a clear explanation as to why company should be considered an electric utility even if it was not one.