BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

UM 1746

In the Matter of OREGON PUBLIC UTILITY COMMISSION Examining a range of community solar programs and attributes to allow individual customers to share in the costs and benefits of solar facilities.	Comments of the Interstate Renewable Energy Council, Inc.

The Interstate Renewable Energy Council, Inc. (IREC), jointly with Vote Solar, previously submitted comments in this docket on September 1, 2015, in response to Staff's Guidance on Public Comment, issued on August 14, 2015. IREC also reviewed Staff's Draft Recommendations on Program Attributes and Characteristics (Draft Recommendations), sent to parties on September 18, 2015, and attended the workshop held on September 22, 2015, via teleconference.

As indicated in our September 1 comments, IREC is a 501(c)(3) non-partisan, non-profit organization working nationally to expand and simplify consumer access to reliable and affordable distributed clean energy. IREC is a national leader in the community and shared renewables policy space. As part of this work, IREC is actively participating or has participated in the development of shared renewable energy programs in Colorado, California, Minnesota, Delaware, Maryland, and Washington, DC. We have also published *Model Rules for Shared Renewable Energy Programs* (*Model Rules*) and provide an up-to-date catalog of shared renewables programs around the United States.[1]

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[1] Available at www.irecusa.org/regulatory-reform/shared-renewables.

Based on our review of the Draft Recommendations and participation in the September 22 workshop, IREC focuses these comments on the following issues:

- IREC supports Staff's recommendation that community solar system ownership be limited to third parties, but that utilities could participate via their affiliates;
- IREC opposes Staff's Central "Project Pool" Approach for several reasons, namely because the concept is unprecedented and untested, and would likely introduce considerable administrative and transactional complexity, and we provide some suggestions for alternative, proven approaches to sufficiently and efficiently address consumer protection without the creation of a "Project Pool";
- IREC supports the Commission's interest in ensuring community solar facilities are located optimally on the grid, and we provide suggestions on how that goal might be accomplished;
- IREC suggests that the Commission expand the eligibility criteria to include all customer classes;
- IREC urges the Commission to offer more detailed recommendations and guidance to the Legislature regarding the importance of including components within a community solar program to facilitate access by low- and moderate-income customers; and
- IREC suggests that the Commission provide greater clarity on the "System Size Attribute" section by separating it into two distinct sections: Program Size and Project Size.

We refer the Commission to our September 1 comments for further detail and information on IREC's positions. IREC welcomes questions from Commission, Staff, and other parties, and would be happy to discuss community and shared solar program design issues at any time.

I. Competitive Market for Facility Ownership

IREC supports Staff's recommendation that community solar systems ownership be limited to third parties, but that utilities could participate via their affiliates.[2] We agree that this approach avoids the accounting complexity and oversight associated with utility oversight, as well as the risks associated with a utility-owned stranded asset. Importantly, IREC agrees with the importance of encouraging market competition. A competitive community solar market can provide customers with multiple options to meet their diverse interests. For example, while some customers may want to participate in smaller, very local community solar facilities, others may be more price sensitive and wish to take advantage of the economies of scale of larger, more remote facilities. In order to facilitate fair and healthy market competition, IREC agrees with Staff that utilities should be able to participate via an affiliate. Otherwise utilities would have an unfair market advantage for the reasons Staff describes in its Draft Recommendations, including their captive customer base, their access to customer information, and their access to capital.

II. Central "Project Pool" Approach

Several statewide community solar programs—including in particular the popular and successful programs in Massachusetts and Colorado—have relied on the competitive community solar market to meet customer demand. None of these programs has relied on the "project pool" approach proposed by Staff.[3] Indeed, Staff's proposed "project pool" is unprecedented and

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[2] Draft Recommendations at 2.

[3] *See* Draft Recommendations at 8.

untested, and IREC has concerns regarding its practical feasibility, administrative complexity and overall cost impact on the program. IREC's understanding is that the "project pool" approach would involve utility and/or agency vetting and oversight of projects that could enter and be available for customer subscription. IREC believes that the review associated with the project pool is both duplicative and unnecessary, and will negatively impact the attractiveness of the program to developers. IREC recognizes that the underlying intent of this approach is to ensure robust consumer protection and agrees that this is important. IREC suggests, however, that other mechanisms can be put in place to achieve the same goals without raising the concerns associated with the "project pool." Rather than reinventing the wheel, IREC urges the Commission to rely on existing consumer protection tools already in place in Oregon as well as those in use in community solar programs in other states.

First, reviewing project design for "technical standards" is already accomplished through the interconnection process. There is no need for additional technical review outside of that existing, thorough process.

In addition, mandating requirements around and review of project design components, specifically the subscription price and the product offering (capacity (kW) versus energy (kWh)), would undermine the benefits of a competitive market. In a true competitive scenario, community solar facilities can offer potential subscribers various attributes, price points, and product offerings to choose from to meet their needs. The market will necessarily drive prices down to meet the demands of more price-sensitive customers, however allowing for variations in subscription pricing and product offerings (kW versus kWh) will allow customers a wider away of price points and choices. In contrast, by mandating a specific subscription pricing and product structure, the Commission would shut off a host of options that would be unfinanceable under

that structure. Moreover, the reservation process required by the "project pool"—where customers may indicate their interest in a facility but cannot fully subscribe until it is approved—has the potential to make the community solar facilities difficult to finance, since it restricts a community solar developer's ability to solicit and confirm true subscriptions to the facility. It introduces a degree of uncertainty that will likely make the program unattractive to developers and their financiers.

Finally, requiring third-party review of all of the marketing materials for every community solar facility has the potential to become administratively burdensome and to raise the costs for participating in the program for developers, which will in turn raise the costs for customers. Other unaddressed components of the "project pool" likely to add considerable costs are the development, maintenance, and ongoing administration of the related central website or information repository, as well as the functional oversight of the "project pool." Any associated administrative costs will likely have a negative impact on the economics and cost-effectiveness of the projects developed through the community solar program.

All of that being said, IREC appreciates and supports the interest in ensuring that consumers are protected from fraud or other undesirable marketing and business tactics. As indicated in our September 1 comments, IREC believes that subscribers already receive significant protection from existing consumer protection laws and remedies. In addition, IREC notes that other statewide community solar programs have relied on disclosure requirements to ensure that subscribers receive adequate protection. For example, the Minnesota Public Utility's Commission's discussion of appropriate disclosure requirements may be useful to the Oregon Commission and its Staff in considering this issue:

> A solar-garden plan approved by the Commission must "identify the information that must be provided to potential subscribers to ensure fair disclosure of future

costs and benefits of subscriptions"; "identify all proposed rules, fees, and charges"; and "be consistent with the public interest." [citing Minn. Stat. § 216B.1641(e)(4), (5), (7).] At the same time, the plan must reasonably allow for the creation, financing, and accessibility of community solar gardens.

The Commission agrees with the solar developers that garden operators should not be required to provide a warranty of production or compensation for performance below the warranted level. While such a requirement might be desirable from a consumer-protection standpoint, it would increase the burden on solar-garden developers and likely impede the creation and financing of solar gardens at this early stage in the industry's development.

The Commission concludes that subscribers' interests will be adequately protected by a requirement that garden operators provide them with a copy of the solar-panel warranty, the operator's production projections, and a description of the methodology the operator used to develop those projections. The Commission will also require Xcel to disclose to subscribers that the Company recognizes that not all production risk factors, such as grid-failure events or atypically cloudy weather, are within the solar-garden operator's control.

The Commission declines to adopt the OAG's [Office of Attorney General] recommendations to (1) require garden operators to submit contracts, marketing materials, and financial-projection methodologies for review and (2) develop uniform standards for solar-garden production estimates. The Commission concludes that subscribers' interests will be adequately protected by the disclosures just described. The OAG's proposals would provide a marginal increase in consumer protections but would greatly increase the burden on developers and risk significantly delaying the solar-garden program's start.

For the same reason, the Commission declines to adopt the Department's recommendation that a solar-garden operator be required to obtain a site-specific solar production study as part of its application.

Finally, the Commission finds that the remainder of Xcel's proposed disclosure requirements will help to protect subscribers while imposing a minimal burden on garden operators. The Commission will therefore order that the tariff and the proposed contract between Xcel and garden operators also require the following disclosures:

- Future costs and benefits of the subscription, as more fully detailed below in the ordering paragraphs;
- A copy of the contract between the solar-garden operator and Xcel;
- Proof of insurance;
- Proof of a long-term maintenance plan;

- A statement that Xcel makes no representations concerning the taxable consequences to the subscriber of bill credits or other tax issues related to participating in the solar garden.[4]

In addition, the Minnesota Commission required community solar garden developers to demonstrate that they have dedicated funds for operations and maintenance expenses, and provide for subscription transfer and re-sale.[5] It also specified that it may have a role in resolving disputes between subscribers and solar garden operators, as well as its more established role in resolving disputes between solar garden operators and the utility.[6] As the Minnesota Commission's discussion demonstrates, it is critical to balance consumer protection interests with program administration and facility financing concerns. IREC believes that an approach focused on clear customer disclosure requirements, along with consumer rights and protections under existing laws, most effectively achieves this balance. IREC recommends that Minnesota's approach serve as a model for Oregon. Furthermore IREC suggests that a central agency, potentially the Commission, could serve as a central point for addressing and resolving community solar customer complaints. Likewise, this agency or another entity could be responsible for periodic spot checks of community solar marketing materials, disclosure practices, and other key required components.

III. Identifying Optimal Grid Locations for Facilities

IREC has the impression that Staff and other parties are interested in the concept of identifying optimal grid locations for community solar facilities, but there is some uncertainty

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[4] 13-867 Order Rejecting Xcel's Solar-Garden Tariff Filing and Requiring the Company to File a Revised Solar-Garden Plan at 18-19 (April 7, 2014)

[5] *Id.* at 20.

[6] *Id.* at 21.

regarding how best to accomplish this goal. IREC offers two suggestions for Commission consideration.

First, the Commission could recommend that the Legislature require utilities to develop distribution system maps, similar to the California utilities' system maps.[7] While the California maps have recently been improved as part of that State's Distribution Resources Planning (DRP) proceeding, they have been available in a more basic form for several years. The goal of these maps is to identify optimal grid locations for all types of distributed generation facilities. By sharing this information with developers, utilities can facilitate the siting process and improve the interconnection experience. Even without a value component to help incentivize facilities to locate in these optimal grid areas, the interconnection cost-savings alone should drive projects to these areas.

Second, IREC suggests that the Commission could attribute a bill credit adder or other financial incentive to drive developers and their customers to locate projects in optimal areas of the grid. California and New York are both exploring how to value and implement such an adder or incentive mechanism, through their DRP and Reforming the Energy Vision (REV) proceedings, respectively. The Commission could suggest to the Legislature that it take note of these proceedings and consider a similar effort in Oregon, even if its results would have to be integrated into a later phase of the community solar gardens program.

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[7] PG&E Solar Photovoltaic (PV) and Renewable Auction Mechanism (RAM) Program Map, http://www.pge.com/en/b2b/energysupply/wholesaleelectricsuppliersolicitation/PVRFO/pvmap/index.page; SCE Distributed Energy Resource Interconnection Map (DERiM), http://www.arcgis.com/home/webmap/viewer.html?webmap=e62dfa24128b4329bfc8b27c4526f6b7; SDG&E Interconnection Information and Map, http://www.sdge.com/generation-interconnections/interconnection-information-and-map.

IV. Customer Eligibility

As mentioned in our September 1 comments, IREC does not find a compelling reason to limit eligibility for community solar to certain customer classes. Since one of the primary goals of community solar is to expand access to solar, it logically follows that all eligible customer classes be allowed to participate in this option. In addition, expanding access to community solar for larger non-residential customers may offer cost- and risk-reduction benefits for all project participants, insofar as larger commercial customers can serve as 'anchor tenants' that are attractive to project developers and investors. We reiterate the point that a program can ensure diverse participation and maximize the opportunity to broaden access by capping participation by certain classes of customers in a given community solar project (e.g., large customers cannot subscribe to more than 50 percent of a project), as has been done in many successful community solar programs across the country. While we understand the justification of placing parameters on the composition of participation, we are not compelled by the rationale to exclude an entire sector from participation in community solar programs. As such, IREC suggests that the Commission in its final recommendation to the Legislature expand the eligibility criteria to include all customer classes.

V. Reaching Low- and Moderate-Income Customers

IREC urges the Commission to offer more detailed recommendations and guidance to the Legislature regarding the importance of including components within a community solar program to facilitate access by low- and moderate-income (LMI) customers. In its August 7 comments, Vote Solar offered fairly detailed recommendations related to LMI participation in community solar gardens, which IREC and Vote Solar echoed in our September 1 comments.[8] At the least, IREC suggests that the Commission recommend that the Legislature require an LMI

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[8] Vote Solar-IREC Joint Comments at 13 (Sept. 1, 2015); Vote Solar Comments (Aug. 7, 2015).

component to any community solar program and moreover that such a component should explicitly and thoughtfully address the financial barriers faced by LMI customers. While a program or project carve-out can incentivize some degree of LMI access to shared solar, as Colorado's program has demonstrated, IREC's research and outreach related to LMI program access has made clear to us that the financial barriers for these customers must be addressed to ensure meaningful access. On this front, IREC recommends that the Commission consider—or recommend that the Legislature consider—the following potential programmatic components or complementary programs:

- Enhanced bill credits for community solar facilities with a certain percentage of LMI subscribers and/or located in disadvantaged communities;
- Low-cost public financing opportunities for LMI community solar facilities;
- Loan-loss reserve programs targeted toward community solar facilities;
- Allowing back-up guarantees from larger commercial subscriber, in the event of LMI participant default;
- Credit enhancement structures and alternative underwriting criteria for LMI customers;
- Allowing LMI community solar facilities and their subscribers to use federal, state, local or utility low-income energy assistance funding to contribute to or fund subscriptions in an LMI facility[9];
- Access to on-bill financing or repayment of subscriptions to an LMI facility; and

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[9] As indicated in our prior comments, IREC's CleanCARE proposal offers a concrete example of a program that leverages ratepayer assistance funding to facilitate low-income customer participation in a shared solar facility. More information can be found in our proposal, available at http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M154/K225/154225576.PDF.

- Modified terms of participation to address LMI-specific barriers, including but not limited to shorter and/or more flexible contract terms, elimination of fees associated with participation and/or termination, and assurance of a full-value retail bill credit.
- Development incentives for LMI community solar facilities.

In addition, IREC emphasizes the need for any LMI community solar program component to incorporate marketing, education and outreach strategies that are targeted to the LMI and disadvantaged communities that the program intends to reach. This may mean not only alternative languages, media, and formats, but also alternative language and messaging intended to reach these communities, which historically have been denied access to renewable energy and may be unfamiliar with it.

VI. Clarification on System Size

As raised by several parties at the September 22 workshop, the System Size Attribute section is somewhat ambiguous and would benefit from clarification. IREC suggests that the Commission's separate the "System Size Attribute" section into two separate sections: Program Size and Project Size. While Staff explained the connection between Program Size and Project Size in the September 22 meeting, we would suggest this be explicit in the final recommendation to the Legislature. We agree with Staff that the project size cap will likely be determined by the program size, and the project size cap should be set at an appropriate level to ensure a diversity of project sizes, while also maximizing economies of scale. We also assert that any proposed limits or caps on Program Size, as recommended by the Commission and/or as adopted by the Legislature, should allow for sufficient and sustainable growth in the market, while also avoiding backlogs and bottlenecks as caps are reached. Therefore, we recommend that the Commission

include a clear recommendation on how caps will be reviewed and revised as needed over time to ensure a predictable market for the benefit of consumers.

VII. Conclusion

IREC commends Commission Staff on its efforts to identify and define community solar program attributes. As indicated in our September 1 comments, we continue to encourage the Commission to provide recommendations to the legislature with as much specificity as possible.

Respectfully submitted,

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