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May 16, 2017

VIA ELECTRONIC MAIL

PUC Filing Center
Public Utility Commission of Oregon
PO Box 1088
Salem, OR 97308-1088

Re: AR 603 - In the Matter of Rulemaking to Implement Community Solar Provisions of SB 1547

Attention Filing Center:

INTRODUCTION

Idaho Power Company (Idaho Power or the Company) appreciates this opportunity to provide comments regarding Staff's Proposed Rules issued pursuant to the Secretary of State's Notice of Proposed Rulemaking, dated April 14, 2017, implementing a Community Solar Program for the customers of Oregon's investor-owned electric utilities, as mandated by SB 1547.

The Proposed Rules were drafted by Staff of the Public Utility Commission of Oregon (Commission) after several stakeholder workshops and numerous opportunities for written feedback, including comments, redlining of draft rule language, and legal briefing. Idaho Power appreciates Staff's careful consideration of the parties' input, as well as Staff's significant research into community solar programs implemented across the country in Staff's development of the Proposed Rules. The Proposed Rules are comprehensive, addressing all aspects of program implementation, and they represent a considerable effort on Staff's part.

Overall, Idaho Power believes that the Proposed Rules appropriately balance the interests of Community Solar Program participants, solar developers, and non-participating utility customers, and they have the potential to result in a successful program—with minimal impact on utility rates. For this reason, Idaho Power supports most aspects of the Proposed Rules. These comments are offered to identify only those discrete aspects of the rules with which the Company disagrees and to offer alternative approaches. In addition, the Company identifies a few portions of the rules that would benefit from clarification or correction.

COMMENTS BY SECTION

Definitions of “Owner” and “Subscriber”

Under Section 860-088-0010(14), “Owner” is defined as “a retail customer of an electric company who has an ownership interest in a community solar project, such as direct ownership of one or more solar panels or shared ownership of the infrastructure of the community solar project.” Under Section 860-088-0010(18), “Subscriber” is defined as “a retail customer of an electric company who enters into a lease for part of a community solar project. ***For the purposes of this program, a subscriber will be defined at the site address level.***”

It is unclear as to why the Subscribers but not Owners are defined at the site address level as indicated in the bolded language. Idaho Power requests clarification on this issue, and, if appropriate, that the bolded language be added to the definition of Owner as well.

The term length for a Subscriber “a minimum of 10 years” was deleted in the final rules but is clearly identified in the SB 1547 Rules Section 22(1)(f) and Idaho Power believes the language should be included.

Definition of “Project Manager”

860-088-0010(20) contains a typographical error. “form” should be changed to “from”.

Definition of “Qualifying Low Income Customer”

Under Section 860-088-0010(20), a qualifying low income customer means “a retail customer of an electric company whose annual income in the most recent year with available data prior to the customer’s participation in a community solar project ***is 200 percent of the federal poverty level***, as designated by the federal Department of Health and Human Services.

Idaho Power assumes that Staff intended the words “equal to or less than” to appear between the “is” and “200” of the language bolded above, and requests that this change be made.

Commission Adoption of Implementation Manual

Under Section 860-088-0020(3)(i), one of the roles of the Community Solar Program Administrator is to “[c]reate and maintain a program implementation manual.” In addition, under 860-088-0020(3)(i)(A), the “commission shall allow opportunities for comment during the development of the program implementation manual.” And under 860-088-0020(3)(i)(B), “the Commission may revise the program implemental manual through order.”

Thus, the Proposed Rules provide that the Commission may revise the Program Implementation Manual by order, but does not explicitly provide that the Commission will initially adopt the Program Implementation Manual. Idaho Power believes that after the Program

Administrator produces a draft program implementation manual, the Commission should review the document in a Commission proceeding, take comments, make any revisions it sees fit, and then formally approve the manual. Therefore, Idaho Power proposes that the rules explicitly provide that the Commission will review, revise and adopt the Program Implementation Manual by order. Additional revisions can be made by order in subsequent proceedings.

Collection of Subscription and Ownership Fees

Proposed Rule 860-088-0020(q) states that the Community Solar Program Administrator will “[r]eceive from electric companies’ administrative fees deducted from participants’ bill credits that are owed to project manager by participants and distribute collected fees to project managers.”

Proposed Rule 860-088-0100 describes the obligations of the electric companies in implementing the Community Solar Program. Subsection (2) requires electric companies to provide project participants with bill credits. Subsection (3) states that in doing so, the electric companies will deduct from the total monthly credit any subscription or ownership fees owed by the participant to the project manager as well as any administrative fees imposed on participant to fund the program administrator and Low Income community manager.”

Idaho Power believes that the Proposed Rules should be revised to require Project Managers to collect subscription or ownership fees directly from the participating customer—for two reasons. First, Idaho Power attempts to keep its bills as low as possible. Whenever amounts are added to bills to collect funds for third parties—such as in the case of franchise fees—the Company finds that its customers perceive that the additional rate is attributable to the utility rates, despite communications to the contrary. For this reason, the Company would like to see the Community Solar Program be implemented in such a way as to minimize extra costs being passed through to customers on their electricity bills. Second, Idaho Power believes that Project Managers should use the billing process to maintain regular contact with project participants, which will make it less likely that customers will perceive the utility as “being in charge of” the program.

For these reasons, Idaho Power urges the Commission to adopt rules that specify that subscription and ownership fees be collected directly by the Program Manager.

Ongoing Costs of Utility

Section 860-088-0040 provides for the treatment of the start-up and ongoing costs incurred by the Program Administrator, Program Manager, and the utilities. The utilities’ start-up costs are dealt with separately from the start-up costs of the other entities, in subsection (4). However, there is no analogous provision addressing the on-going costs of the utility. As a result, the Proposed Rules are unclear as to the correct treatment of the utilities’ ongoing costs. To clarify the treatment, Idaho Power suggests that a subsection (5) be added as follows:

- (5) The on-going costs incurred by the electric utilities to implement the Community Solar Program will be collected from program participants.

Alternatively, subsection (3) could be revised to insert the word “utility,” in front of “program manager”.

Appointments to the Community Solar Advisory Group

Section 860-088-0050(2) suggests that the Commission may want to appoint representatives from specific listed groups of persons to the advisory group. Idaho Power suggests that representatives of the utilities be added to the list.

Incentives and Soft Costs

860-088-0060(8) states: “The Commission can create and eliminate non-financial incentivization opportunities including mechanisms to reduce soft costs of community solar project development.” Idaho Power does not understand what types of incentives, or soft costs this subsection is referring to and suggests that the Proposed Rules be revised to clarify.

Bill Credit Rate—Prospective Application

Section 860-088-0090(4) states: “The bill credit rate in effect at the time a project receives pre-certification will be used to determine the bill credit for owners and subscribers for the duration of the project’s bill credit term.” Idaho Power suggests that the rules clarify that the bill credit term is equal to the term of the subscription contract.

Section 860-088-0090(5) states that the Commission will review each electric company’s bill credit rate every other year and may change the rate after review. Idaho Power suggests that language be added to this sentence to ensure that participants understand that the change will apply prospectively to future projects only and will not impact the bill credit rate to be received by already-certified projects.

Possibility of a Negative Bill Credit

Section 860-088-0100 governs electric companies’ obligations to credit project participants with bill credits. If a project is not generating for a significant portion of the billing period, it is possible that once administrative costs are included that the amount applied to the bill could actually be an “adder” or a bill charge as opposed to a bill credit. However, the language of this section seems to contemplate that in all cases the amount “credited” will reduce the customer’s bill, potentially creating uncertainty for the utility.

Idaho Power suggests that the language of the rule be revised, or, in the alternative, that the Commission’s order adopting the rules acknowledge that “bill credits” could be either a charge on a customer’s bill or a credit on a customer’s bill.

RPS and RECs

860-088-0200 addresses ownership and treatment of RECs associated with the community solar projects. However, this section does not clarify the ownership of the RECs associated with the unsubscribed generation sold to the utility under a PPA.

Idaho Power suggests that the rules clarify that the purchasing utility owns any RECs associated with the solar generation sold under the PPA.

Securities Issues

Finally, Idaho Power believes that the Proposed Rules should be revised to minimize the risk that the sale of ownership interests or subscriptions to Community Solar Projects might be viewed as the sale of unregistered securities. Under federal law, an investment contract is a security if (1) A person invests money (2) in a common enterprise (3) with the expectation of a profit (4) from the work of others.¹ Based on this framework, it is possible that a court could find that participants are investing in community solar projects in the hopes that their projects will be managed such that they produce credits that exceed the value of subscription payments, and therefore that the interest is a security. Idaho Power acknowledges that there is no precedent that establishes the degree of risk of such an interpretation. However, the following changes would be simple to implement and would avoid the risk that the Community Solar Program could be found to violate federal law—and therefore should be adopted.

First, the Proposed Rules could include a requirement that marketing materials contain a Commission-approved disclaimer informing participants that the project is for the purposes of contributing to the generation of renewable resources, and should not be expected to result in a profit. Such a statement could mitigate concerns that customers are participating in hope of achieving a profit.

Second, the Proposed Rules should be revised to require electric companies to credit participants through fixed kilowatt-hour blocks that correspond to the participant's portion of the nameplate value of the project. In this way, customers would achieve a fixed payment that would not vary based on the performance of the project

¹ *S.E.C. v. Howey Co*, 328 US 293, 66 S Ct 1100, 90 L Ed 1244 (1946).

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CONCLUSION

Idaho Power thanks the Commission for this opportunity to comment on the AR 603 Proposed Rules and reserves the right to file additional comments in response to points made by other parties.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Lisa Rackner', with a long horizontal flourish extending to the right.

Lisa Rackner