



**Portland General Electric Company**

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Via email: Michael.Breish@state.or.us

Public Utility Commission of Oregon

Attn: Michael Breish

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RE: AR 603 – Comments on Staff's Proposed Community Solar Rules

These comments are in response to the Oregon Public Utility Commission Staff's (Staff) request for comment on the proposed Division 088 Community Solar rules, and are supplemental to the public hearing held on May 22, 2017 and previous written comments submitted by Portland General Electric (PGE or Company). PGE appreciates the collaborative informal and formal processes that have led to the currently proposed rules

PGE reiterates that we greatly appreciate the work of Staff in crafting rules that offer appropriate flexibility for a variety of program proposal types while clearly outlining expectations. We have supported community solar in the legislature and continue to support community solar as a way for customers to participate in the benefits, costs and risks of solar energy without having it on their roofs. PGE supplements our comments made in the May 22 hearing, and offers the following considerations for the draft rules:

**Section 0100 – Obligations of Electric Companies**

PGE continues to strongly advocate against Subsection (3), which states that an electric company "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 the participant to fund the program administrator and low-income community manager. The electric company must remit all amounts deducted from the bill credits to the program administrator on a monthly basis."

Obligating the utility to collect the subscription and/or ownership fees puts the utility in the middle of a contractual agreement between the owner/subscriber and the project manager. This construct eliminates the relationship between the owner/subscriber and the project manager and instead may create the misconception that the customer is providing payment to PGE directly. We are concerned that in the event of a dispute, question, or other issue, the customer may believe that PGE is the party that they

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should contact for resolution, or worse, that PGE is the party with which they have a dispute. There is lack of clarity on PGE's role if there is a dispute regarding payment between the owner/subscriber and the project manager. Further, we are concerned that there could be a myriad of financial arrangements between the project manager and the subscriber, making customization the norm, and likely resulting in substantial administrative costs and challenges for the utility.

PGE asks that the subscription/ownership payments not be collected by the utility, and that they are instead a direct financial transaction between the owner/subscriber and the project manager.

If Staff is not amenable to this change, we ask for clarification on what boundaries utilities have to ensure that we are not acting as collection agents on behalf solar developers during a dispute or nonpayment situation. We ask that this clarification come in the form of a Subsection (7) to Section 0100 that holds utilities harmless during any dispute between a customer and a project manager.

### **Sections 0060 and 0090 – Program Level and Credit Rate**

As noted during the May 22 hearing, PGE continues to have reservations regarding the initial capacity tier of 2.5% of 2016 utility peak load. As acknowledged by parties in this rulemaking, the program capacity tier does not act as a cap, but rather an initial check-in point to evaluate the program holistically. Our concern stems from the fact that with the initial check-in set at 2.5%, community solar would represent the largest solar program in Oregon before parties have an opportunity to examine its impacts.

Our concern regarding program level is exacerbated by the calls from some parties (both during the May 22 hearing and in formal comments) for an “interim credit rate” rather than waiting for the outcome of the ongoing resource value of solar docket (UM 1716). We strongly advise that the resource value of solar (RVOS) determined in UM 1716 be the only compensation rate used in community solar. As detailed in the UM 1758 Staff report to the Legislature, “Resource value of solar rate compensates the participant for the value to the utility system and the non-participating customer only pays for the value the resource provides to the utility system.” Thus, RVOS represents a fair and accurate compensation for the benefits of solar generation. PGE cautions that using an interim compensation rate and waiting until there is approximately 160MW of development to examine the impacts runs counter to the legislative direction to minimize cost-shift.

We believe that the planned process that Staff has articulated for community solar going forward – establishment of these rules, and then a “staged” process to implement guidelines and program structure – will push the first projects ready to pre-certify into 2018, which would greatly minimize or eliminate the need for an interim rate. In addition, PGE has advocated<sup>1</sup> and will continue to advocate for an accelerated Phase 2 in UM 1716 – Investigation into the Resource Value of Solar. We believe that a timely resolution of the RVOS docket will lead to the best outcome for all parties in community solar.

### **Federal Securities Laws**

As raised in our comments filed May 18, and reiterated during the hearing on May 22, PGE has continued concerns with the interaction of federal securities laws with this program. These concerns are informed by a legal memoranda drafted by specialists in federal securities law, and have been raised by PGE and other

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<sup>1</sup> UM 1716, PGE/300

parties during this proceeding. If these concerns are valid, they could threaten the viability of the community solar program.

### **Miscellaneous Other Considerations**

PGE reiterates the following additional considerations on the draft rule:

- We request the removal of Section 0210, which instructs utilities to include community solar in their IRP forecast. Any planned inclusion of the community solar projects in the IRP process should be undertaken in an IRP-focused docket. This would give IRP stakeholders who are not community solar participants an opportunity to vet this proposal.
- During the hearing on May 22, the topic of requiring a utility to participate in community solar through an unregulated subsidiary was raised. In our view, requiring an electric utility to form an unregulated entity to participate directly violates Section 22(1)(A) of Senate Bill 1547, which says that “a project manager... may be an electric company.” “Electric company” is defined per ORS 757.600, which is the regulated entity that is “engaged in the business of distributing electricity to retail electricity consumers in this state,” not an unregulated affiliate. For this reason, PGE strongly objects to the argument that regulated utilities should be prohibited from developing community solar projects. Further, a quantitatively-driven credit rate through the RVOS, coupled with an independent third-party administrator, will help ensure a level playing field for all participants.
- PGE asks that Section 0050 – Community Solar Advisory Group, be modified to state:
  - The Commission may designate organizations to participate in this group
  - a) At least one member must be from the low-income community or a non-profit agency whose mission is to provide services directly to low-income populations.
  - b) At least one member must be from a community of color.
  - c) At least one member must be from a rural community.
- In Section 0180 – Consumer Protection, Subsection (7) states that “Project managers are the primary recipient of participant complaints.” PGE recommends loosening this subsection to allow the low-income manager to address issues on behalf of low-income participants.
- In Section 0030 – Low Income Manager, we request that references to “low income communities” be changed to “low income residential customers,” which matches the language of the statute.

PGE thanks the OPUC Staff and stakeholders for their participation in this rulemaking process. We look forward to continued collaboration throughout the community solar program.

Sincerely,



Jay Tinker  
Director, Regulatory Policy and Affairs