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May 18, 2017

Via email
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Public Utility Commission of Oregon
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RE: AR 603 – Comments on Staff's Proposed Community Solar Rules

These comments are in response to Public Utility Commission (Commission) Staff's request for comment on the proposed Division 088 Community Solar rules. The rules are intended to flesh out the Oregon community solar program authorized in Section 22 of Senate Bill 1547 (2016 Legislative Assembly). The legislation directs the Commission to establish a program for the procurement of electricity from community solar projects. The legislation also directs the Commission to both incentivize customers or subscribers of community solar project owners while also minimizing cost shift from participating customers to non-participating customers of the utility and protecting the public interest. This is a tall order and Portland General Electric (PGE or Company) appreciates the collaborative informal process that led to the proposed rule development.

PGE appreciates the work of Staff and is encouraged by the structure and form of the proposed rules; the rules 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. The Company recommends the following additional considerations regarding the current proposed rules issued May 1, 2017:

Section 0090 - Bill Credit Rate

Subsection 4(a) identifies that the bill credit is obtained at the time of precertification and is in effect for the duration of the project's bill credit term. The bill credit term is not defined. Is the intent of Staff to lock in the bill credit for a period of time like the ten year subscription term, or will the bill credit that applies to a project at precertification, be updatable every other year upon

review by the Commission? Said another way, will existing community subscribers be grandfathered into a given rate for a period of time or will that initial rate be subject to update?

Section 0100- Obligations of Electric Companies

In subsection (3), the rules direct that the electric companies will deduct from the total monthly credit any fees for the Project Manager as well as administrative fees for the Program Administrator and Low-income Community Manager. In part (4) of this section (and also in OAR 860-088-0110(2)), it states that the Program Administrator must distribute subscription and ownership fee payments to the project managers. In 860-088-0020(3)(q) the program administrator's activities include receiving administrative fees from the electric companies (that are deducted from participants' bill credits) and distributing them. The agreement to pay subscription, ownership and project specific administrative fees is between the participant and the project manager. It would be our preference that the utility's obligations, if not serving as a project manager, end at providing a bill credit for the energy component and for collecting in rates the start-up costs of the program. The Commission should not require electric companies to collect the service fees for the Project Manager or the Administrator's fees for the following reasons:

- The situation may arise in which the total deductions from the bill credit amount (administrative fees for the Project Manager, Program Administrator, Community Solar Low-Income Community, and subscription/ownership fees) exceed the credit, causing confusion regarding exactly what was collected and why the customer did not receive a bill credit. That then would add more administration to the utility making the deductions from the credit.
- The participant could have a dispute with the project manager. Since the utility is collecting the project manager's fee, the customer could choose not pay all of their electric bill which results in a default with the project manager. If the customer is in default of the contract with the project manager would the default invalidate the participant receiving a credit? What happens to the unclaimed bill credit benefit if this is the case?
- What happens if the electric utility disconnects the customer for nonpayment of the electric bill? Does the customer still get bill credit benefit?
- The financial arrangement for the purchase or lease of the panel is between the Project Manager and the owner/ subscriber. The utility is not privy to the terms of the transactions and is not in a position to act as the collection agent for the Project Manager. There could be as many financial arrangements for subscribers and owners as there are projects. Managing the terms and conditions of each with regard to what its subscribers/owners must pay, places too great an administrative burden on the electric company and shifts costs from participating customers to nonparticipating customers.
- What is the function of the third-party administrator if not to administer the transactions between the owner/subscriber and the project manager? Placing this requirement on the third-party administrator ensures that costs associated with the program will not be borne by non-participating customers.

At a minimum, we respectfully request that a new Section 0100 Part (7) be added. Part (7) should state something to the effect that; “The electric company is held harmless and indemnified by the Project Manager and the Project Administrator regarding any billing or crediting activities and for any disputes between the participant and the Project Manager or Project Administrator.”

Section 0200- RPS and RECs

As currently included in Section 0200, Part (2), the proposed rules discuss the presence (and potential sale) of RECs. PGE respectfully requests to better understand the intent of Staff with regards to bundled or unbundled REC sales from a Community Solar project. Specifically, is the intent of this mechanism to allow project managers, to sell RECs associated with unsubscribed energy? Should these rules prevent customers from re-selling the RECs? How would the OPUC enforce these rules?

Issuance of RECs also may create issues with valuing the RVOS of a given community solar project as it would add a secondary monetary benefit in addition to lowering the RPS compliance requirement for the utility. If the REC is allowed to be sold by the owner/subscriber or project manager (with regard to unsubscribed energy generated) and purchased by the utility, and then the owner/subscriber receives a value in the RVOS for the value of the reduced RPS compliance obligation, the owner/subscriber, in essence, is receiving a “double benefit” from the same renewable attributes.

Section 0210- Integrated Resource Plan

PGE is concerned about the provision that requires an advisory group to have forecast input into the utilities IRP process. PGE acknowledges that, in theory, this would be a noble goal but contends that the logistics and timing of obtaining forecast information from multiple advisory groups as well as the possibility of non-standard and divergent forecast preparation methods would be overly burdensome on the utilities involved. We respectfully request that Staff remove this provision in its entirety. We also recommend that imposing IRP requirements should not be undertaken in this docket but rather in the dockets that are focused exclusively on the IRP process. That way appropriate stakeholders, who are not participants in the Community Solar proceedings, can evaluate the proposal in the context of all the other requirements and components of an IRP.

MISC:

Section 0010- Definitions

Part (12) references the definition of the “Low-income community manager” while the heading of Section 0030 references a “Community Solar Low-Income Manager” which is not defined in the Section 0010 definitions. It is our recommendation that to avoid confusion the heading for Section 0030 should be changed to “Low-income community manager” or the term “Community Solar Low-income Manager” should be added to the definitions in Section 0010.

Section 0020- Community Solar Program Administrator

PGE recommends that the CS Program Administrator should not have a life-time appointment. We recommend that OPUC develop a competitive bidding process to obtain the administrator role and that this role should be reopened for competitive bidding every 5 years. This should help keep administrative expenses down.

We also respectfully request that Part (3) should be expanded to include the following:

- An ethics program and conflict of interest standard. This would ensure that no person associated with the Administrator should have a role with any other CS participant including the utility, the Participant or Subscriber, or Project Manager.
- Add compliance with the Oregon Public records law.
- Delete confidentiality of project queue; this is a public program and should require openness as to projects in the queue. See 860-088-0020(3)(f) and 0150(6).
- Delete the provision that has the electric utility collecting administrative fees from participants for the project managers. Project managers should be collecting subscription and administrative fees directly from participants and the electric company should not be in the middle of that arrangement.

Section 0030 Low Income Manager

Add the requirement to 3(d) for compliance with Oregon public records law.
Change references to “low income communities” to “low income residential customers” which is the language of the statute.

Also, as currently included in Section 0030, Part (3), the role of the low-income community manager will include the following activities: (B) Replacing low-income customers that terminate a contract with a project. PGE would like to add a monitoring requirement to the role of the Low-income community manager which would be to track the equity distribution of credits based on identified categories that would demonstrate diversity among low income participants in the program.

Section 0050 - Community Solar Advisory Group

PGE recommends that Part (2) of this section is amended to include the following:
The Commission may designate organizations to participate in this group.

(a) At least one member must be from the low-income community or a low-income agency, direct services provider.

(b) At least one member must be from a community of color.

(c) At least one member must be from a rural community.

Section 0060- Program Level

Part (2a) of this section in the proposed program states that; “The initial program capacity tier for each electric company is equal to 2.5% of the electric company’s 2016 system peak”. This is

a large increase from the original 1% proposed capacity tier. PGE respectfully inquires as to how staff arrived at the 2.50% threshold as the capacity cap for community solar? PGE would also request for staff to maintain the original 1% capacity threshold initially but provide for an option to revisit the capacity level annually and expand it in 1.00% increments should the subscription levels warrant the increase. We should take measured steps as we try this new and untried approach to increase solar in Oregon. There could be issues that we are not aware of that could create significant administrative problems or disadvantage rate payers. We recommend incremental increases in capacity initially as these contracts are long-term (20 year contracts) deals and not reversible.

Section 0140- Project Manager

There are a number of places where the rule says, "The commission will specify." Ex 0140(3). How will this happen? By Rule or by Order? These are the only choices an Oregon agency has.

Section 0160- Project Final Certification

Section 0160 Part (1) states; "Once a Project Manager can demonstrate compliance with the low-income participation requirement and show that at least 50 percent of the nameplate capacity of a project is either owned or subscribed by participants, the Commission will conduct a final certification review and certify projects that satisfy all certification requirements." PGE requests further delineation from Staff with respect to quantifying the required percentage of the low income portion of the subscriptions needed for the project to qualify as a pre-certificated under the rules of the community solar program.

To illustrate: Let's assume that a project has a maximum number of subscribers of 1000. If 50% of the project is subscribed to (500 subscribers) does that mean that 5% of the total potential subscribers needs to be low income (5% of 1000) or 50 people are low income qualified? Or, does it mean that 5% of the people who are subscribed. (5% of 500) or 25 people are low income qualified?

Section 0170- Low Income

Part (3) of this section states that "Public or private entities that provide housing services to qualifying-low income residential customers may count towards the capacity requirements described in subsections (1) and (2)." However, the statute says that "low income residential customers" should receive these credits. We respectfully request that the language be enhanced in this section to insure that the landlords pass these bill reductions on to the low income customers. The exception would be that the monthly rental or lease payment includes the electricity that would otherwise be charged to the low income residents.

PGE also recommends that in Part (3) of this section the term "private" entities is removed and replaced with "not for profit" entities:

Part(3) Public or ~~private~~ not for profit entities that provide housing services to qualifying-low income residential customers may count towards the capacity requirements described in subsections (1) and (2).

This change would comport with SB 1547 which clearly states that under section (9) “As part of the program established under this section, the commission shall: (a) Determine a methodology by which 10 percent of the total generating capacity of the community solar projects operated under the program will be made available for use by low-income residential customers of electricity”

As a final comment, PGE would like to request that the Commission reconsider the use of the term “low-income communities” that is used throughout the Proposed Rules document. We are hopeful that a person or family that is in the low-income community is there only temporarily. The use of low-income communities seems to surrender to the idea that all of the people in those communities are there permanently. The statute never says “low-income community”- it only says “low-income residential customers.” We respectfully request that the terminology in the Proposed Rules be changed to align with the statute.

Section 0180 – Consumer Protection

The current proposed language in Section 0180 Subsection (7) states that “Project managers are the primary recipient of participant complaints.” PGE recommends adding language to this section that allows additional consumer protection to the low-income subscribers by allowing the low-income manager to address issues with the Project Managers and/or Program Administrator on behalf of the low-income participants. This would allow the low income participants to discuss any issues that they have with the program or its administration without fear of retaliation.

Federal Securities Laws

PGE highlights that we have concerns with the interaction of federal securities laws with the program and that these significant concerns are shared by and have previously been raised by parties in this proceeding. Our opinion is informed by legal memoranda drafted by specialists in federal securities law. If sales of ownership or subscriptions are securities under federal law, utilities and our customers are at risk for securities claims associated with the project, unless project managers are exempt or properly registered with the Securities and Exchange Commission. If our concern regarding securities is valid, the problem is not only one for the utilities involved in the program, but for the long-term viability and success of the program itself. The goal of this rulemaking should be to adopt durable regulations that can survive challenges and result in a robust program that meets the goals of the legislation.