AR 603 – Rulemaking Hearing
Oral Comments of Staff Analyst Michael Breish
5/22/2017

Good morning Judge Harper and Commissioner Bloom,

For the record, my name is Michael Breish and I represent PUC Staff as the lead analyst in docket number AR 603, community solar rulemaking. With me is PUC analyst Nolan Moser as well as Stephanie Andrus, Staff's assistant attorney general. Before continuing with the substance of our oral comments, I want to express some gratitude. First and foremost, I want to thank the stakeholders who have stuck with Staff through AR 603; the process has been long, demanding and complex, but Staff deeply appreciates all the effort stakeholders have committed. Next, I would like to thank the PUC staff who, though not officially assigned to this docket, have graciously lent their time and expertise. Finally, and most importantly, I want to extend my appreciation to Nolan and Stephanie, who have been integral in arriving to where we presently are.

Staff sought an inclusive process in order to incorporate as much stakeholder collaboration as possible. Since August of 2016, Staff has held topic-specific workshops nearly every month through February, totaling five. During this time, Staff held a number of one-on-one meetings with key stakeholders, such as the utilities and industry, enabling additional opportunity to explore certain program elements further. In January of 2017, Staff coordinated a public meeting where stakeholders had their first opportunity to provide comments in front of the commissioners. Staff also released a version of the draft rules prior to the May 1st deadline, allowing stakeholder review and written comments. Subsequently, Staff held a Q&A workshop in April where stakeholders were able to ask questions and provide comment. Finally, I joined ETO along with other organizations on a solar "roadshow" that took us to Roseburg, Redmond, Hood River, and Portland to receive comments and concerns from community members as well as answer any questions.

Staff is finalizing their written comments and will have them posted as soon as possible; I thank stakeholders for their patience as Staff makes its way to the finish line. However, I would like to spend the remaining time of my comments addressing outstanding concerns and providing clarity.

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First, getting this entirely new and complex program up and running could not ever happen in a year. The state of Oregon has not faced something of this size and impact, and little reference exists outside of the state for what the law requires and what Staff currently envisions. Additional design, deliberation and execution are needed to assemble the various components that will make this program whole and successful. Staff had only one year to create these rules from scratch; the remaining components of this program will likely take even more time, an amount that I cannot even estimate because we are heading into uncharted territory. What is known now is that, if the Commission accepts rules that have the major components as they currently exist, Staff will need to ultimately procure a program administrator; low-income community manager; begin drafting both an internal implementation manual and an external implementation manual, both of which will likely be a collaborative process to some degree; and also begin working with the utilities on approval of tariffs and any other mechanisms.

These steps do not even begin to capture the relationship that will have to be forged between the program administrator and the utilities, which includes protocols for data sharing, billing access, and customer verification. In addition, the program administrator will have to likely begin preparing its own internal infrastructure to manage a program of this scale, a process that will no doubt face hurdles and fine tuning. All of this is necessary to accomplish Staff's ultimate goal: to carefully design and execute a program that this agency can comfortably know will operate successfully with little intervention. To rush the process risks jeopardizing both the spirit of the law and the mission of the PUC.

Second, I would like to address a point that many stakeholders have raised in regard to decisions made by Staff. This agency has wide latitude in implementing statutory directives. Just because the law does not directly prohibit an element does not mean Staff cannot include such elements in its design of the program. Numerous policy considerations have to be made that are not encapsulated in the text of the law – after all, this agency is tasked as the implementer using policy as the framework and lens.

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The law's silence cannot be interpreted to prevent Staff from incorporating policies that reflect decades of careful utility system planning and ratemaking decisions, which derive in part from our statutory authority. Furthermore, Staff's decision to include certain design elements that restrict this program in some capacity are derived from the legislation's clause that states the Commission shall adopt rules that "protect the public interest."

On this same note, the Commission is limited in its statutory authority to incorporate considerations that stakeholders have requested. Concerns about climate change, societal benefits, and economic opportunities lie outside the agency's purview when contemplating policy, which does not reflect however on the validity of these claims. Furthermore, the structure of SB 1547 and the laws pertaining to utilities clearly demonstrate that the primary role of integrating large amounts of renewable energy falls to the utilities through the RPS; stakeholders should not conflate the purpose of community solar with other renewable mandates.

Third, Staff has deliberately designed the program to be a natural evolution of the state's existing net metering policy, i.e., providing opportunity for customers who otherwise cannot install solar PV systems on their property. Key principles of net-metering are incorporated in Staff's vision of the community solar program, such as production netting consumption and the locational consideration that underscores "netting." These principles, in addition to other considerations, inform the reasons why Staff has chosen to limit the geographic location of projects, which include the following:

1. Projects that can be located anywhere in the state but must be located in the state risks infringing on the dormant commerce clause. In order to prevent breaching this legal principle, Staff, with the advice of its counsel, restricts the location in order to provide intent behind location and subsequently reduce this risk.
2. The resource value of solar elements currently being contemplated in UM 1716 include those that have locational aspects; those values are utility system

specific. To have projects outside of the service territory may deprive the utilization of these elements, therefore failing to comport with the legislation's intent that the bill credit reflect the resource value of solar.

3. A project that lies outside a participant's service territory and requires any wheeling of power over transmission operated by entities other than the participant's utility does not have the optics of a retail transaction, which is paramount to the principle of net metering.
4. The further a project is located from the participant, and therefore the generation is not proximal to the consumption, the less one can consider a program to be really "netting."
5. Though Staff has avoided defining the term "community," the notion that a customer in northwest Oregon can participate in a project on the opposite side of the state stretches even the loosest interpretation of community.
6. The likely concentration of projects in a specific part of the state raises concerns about land-use issues and colonization of east-of-the-cascades land by utility customers located on the west-side. Furthermore, such a concentration of projects so far away from the intended load would betray both Staff's interpretation of community and the locational aspect of net-metering.

These points and others will be further elaborated in Staff's written comments.

Fourth, an additional aspect of net metering is that it is primarily the only way in which residential customers can incorporate solar PV systems. Non-residential customers have participated in net metering and the rules provide opportunity for those same customers in the community solar program. However, non-residential customers have the opportunity to pursue solar in the form of direct access. Direct access has certain restrictions necessary to prevent harm to customers that remain on the system. If participation of non-residential customers, specifically commercial and large industrial customers, in the community solar program is not limited in meaningful ways, these customers will likely bypass direct access and its accompanying customer protection measures all together. The implications of an unfettered program are substantial given

the desire of many larger, non-residential customers to have 100 percent of their power come from renewable energy. Staff has modified the rules to be more accommodating to residential and small commercial customers who wish to access community solar; doing so is in line with our vision that this program is an evolution of net metering prefaced on granting opportunity to those whose access to solar was previously deprived or impaired. Staff remains firm in its decision to limit larger customer access in order to align with existing statute, alternative choice programs and to ultimately protect customers.

Finally, Staff recognizes that the components of the rules that pertain to low-income customers are imperfect. Equity for low-income customers is imperative to Staff; hence why currently every project must have an allocation for the low-income community. If integration of low-income customers is not contemporaneous with market-rate participants, a temporal and project-level disconnect will likely occur, leaving low-income customers as an afterthought. Staff intends to continue working with stakeholders to further refine the pertinent rules and encourages additional comments that provide recommendations pertaining to low-income customer access.

In the respect of time for other stakeholders to speak, I will stop there. However, my oral comments should not be received as an exhaustive assessment of all the matters Staff wishes to comment on. Rather, these and others will be fully explored in our written comments. Judge Harper, Staff and DOJ will remain at the table to respond to any questions you or Commissioner Bloom may have as well respond directly to stakeholders' comments that warrant scrutiny.

Thank you