BEFORE THE PUBLIC UTILITIES COMMISSION

OF OREGON

AR 603

In the Matter of Rulemaking to Implement Community Solar Provisions of SB 1547.

Hearing Comments of the Interstate Renewable Energy Council, Inc.

A slightly shortened version of these comments was delivered at the May 22, 2017 hearing.

My name is Erica McConnell, and I appreciate the opportunity to speak to you today on behalf of the Interstate Renewable Energy Council, or IREC. We have been participating in the informal working group process that led up to the Proposed Rules under discussion today, and commend Staff on their hard work getting us to this point. To offer some context on my comments today and our written comments already filed in this proceeding—IREC is an independent, national, 501(c)(3) non-profit organization, whose goal is to increase consumer access to sustainable energy and energy efficiency. The scope of our work includes promoting best practices in the implementation of community and shared renewable energy programs. To further this mission, IREC has participated in rulemakings in Colorado, Minnesota, New York, California, and several other states, and has issued *Model Rules for Shared Renewable Energy Programs* and *Policy Guidelines and Model Provisions* for low- to moderate-income shared renewables programs.

While the Proposed Rules reflect certain national best practices in program design, I will focus today, as in IREC's written comments, on areas where the Rules could be

improved to ensure the success of Oregon's community solar program. From our perspective, Oregon has the opportunity to be a leading state on community solar. Like several other parties speaking today, however, our concern is that, as they stand now, the Rules have some key flaws that we fear will undermine the program's ability to succeed. The two I would like to highlight now have to do with the administrability of the program, and the timing of program implementation and launch.

On the first point regarding administrability—as indicated in our written comments, IREC supports the inclusion of an independent program administrator. However, we are concerned that the administrative process described in the rules has the potential to be burdensome and costly for all involved. It requires a number of information exchanges between the various parties—the administrator, community solar providers, utilities, and the Commission—and introduces some onerous requirements on providers through the pre-certification and certification processes, at least relative to other community solar programs we have worked on nationally. Participating customers are going to have to foot the bill for the ongoing costs of this administrative system. Our concern is that, based on the description in the Proposed Rules, those costs may end up being high enough to make the program unattractive to participants, not to mention providers, which would have a significant, negative impact on its ultimate success. As indicated in IREC's written comments, and those of several other parties, we encourage the Commission to implement one that is considerably more streamlined, and also clear and transparent. IREC supports the more specific written recommendations related to streamlining and clarifying program administration made by CUB, the Solar Parties, Renewable Northwest, and Northwest SEED, Environment Oregon, and the Environmental Center.

The second point I would like to highlight relates to the timing of program implementation. The Program Rules currently lack detail in some critical areas, notably the bill credit rate, which can significantly affect the success of the program. We recognize that there remains more work to be done to flesh out all the details and get the program off the ground, and are worried that without very clear timelines, we may be years away from actually seeing community solar offerings for customers. IREC urges the Commission to take a few steps to make sure the program is implemented in as timely a fashion as possible, ideally within a year from now. First, we agree with parties that suggested that an RFP for a program administrator be issued as soon as possible after the rules are finalized, on as aggressive a timeline as possible. While IREC continues to suggest, as indicated in our written comments, that the program administrator should assume the functions of the proposed low-income community manager—which we agree are very important—in the interest of streamlining, if the Commission approves two separate entities, both RFPs should be issued simultaneously. And second, IREC encourages the Commission to move expeditiously to finalize the remaining programmatic details. To do this efficiently, the Commission could rely on the proposed Advisory Committee to develop recommendations, which the Commission could finalize, so long as the Advisory Committee reflects an appropriately representative membership. In particular, IREC emphasizes the critical importance of the bill credit rate and its interrelationship with all other program components; it is difficult to evaluate the program as a whole with this piece missing. We agree with other parties' suggestion that an interim rate may be appropriate in light of the ongoing resource value of solar process, at least for the initial program capacity tier. We would not want to see

the RVOS process rushed or otherwise compromised, but at the same time are worried that waiting on it to conclude may negatively impact the community solar program.

Finally, I wanted to voice IREC's support for the development of appropriate marketing and messaging guidelines for community solar project managers, contained in the consumer protection section of the Proposed Rules. IREC believes that these requirements, if well designed, can effectively mitigate securities-related concerns raised by the utilities in their written comments. As the utilities pointed out, the test to determine whether or not something is a security hinges on four elements: (1) the investment of money (2) in a common enterprise (3) with an expectation of profit (4) from the work of others. The program already contemplates that customers' eligible generation would be limited to their actual usage, or in other words, that their participation in a project can do no more than offset their load. Moreover the Securities and Exchange Commission has issued a no-action letter which, although not binding or precedential, indicates that it does not view a community solar arrangement as an investment contract, subject to securities regulation, when the primary motivation for participation is reducing a customer's electricity bill. So the main concern here appears to be that, despite the limitations in the program rules, participants may still expect a profit. The marketing guidance developed for the program could contain appropriate, agreed-upon disclosure or disclaimer language to address this issue, helping participants to understand that their engagement in the program offsets their energy usage, and that they should not expect to earn a profit. IREC suggests that such guidance, already contemplated in the Rules, could sufficiently mitigate the securities issues that have been raised.

Thank you again for the opportunity to speak today, and I welcome any questions.

DATED: June 2, 2017

Respectfully submitted,

SHUTE, MIHALY & WEINBERGER LLP

By: /s/ Erica McConnell

ERICA S. McCONNELL
396 Hayes Street
San Francisco, Califomia 94102
Telephone: (415) 552-7272
Facsimile: (415) 552-5816
mcconnell@smwlaw. com

Attorney for INTERSTATE RENEWABLE ENERGY COUNCIL

896235.1