BEFORE THE PUBLIC UTILITIES COMMISSION

OF OREGON

AR 603

In the Matter of Rulemaking to Implement Community Solar Provisions of SB 1547.	**Responsive Comments of the Interstate Renewable Energy Council, Inc.**

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I. INTRODUCTION

On May 9, 2017, the Interstate Renewable Energy Council, Inc. (IREC) filed initial comments on Staff's Proposed Rules for Oregon's Community Solar Program (Proposed Rules), pursuant to the Commission's request. IREC provided additional oral comments at the May 22, 2017 hearing, which we are filing in writing concurrently with these responsive comments. IREC submits these responsive comments to address issues raised by other parties in their initial written and oral comments, as well as Staff's written comments filed on May 30, 2017. We attempt not to reiterate points we have already made in our prior comments, although we maintain in particular our concerns related to program uncertainty and complexity, implementation timeline, and unnecessary restrictions on participation. While IREC appreciates that Staff addressed some of these topics in their May 30 comments, IREC maintains that these issues remain concerning since they are not fully resolved in the rules themselves.

II. RESPONSIVE COMMENTS

A. Establishing a Fair Playing Field Between Utilities and Third-Party Developers Is a Critical Component to the Program.

IREC defines and evaluates shared renewable energy programs, like Oregon's community solar program, using five Guiding Principles, developed based on our experience working on these programs nationwide. These Guiding Principles highlight five of the most important core components of a shared renewables program. IREC's fourth Guiding Principle is most relevant here: "Shared renewable energy programs should encourage fair market competition."[1] As this Guiding Principle explains: "A competitive market is well suited to ensure the diversity of offerings necessary to accommodate various consumer values and priorities. A

[1] *Five Guiding Principles for Shared Renewable Energy Programs*, www.irecusa.org/publications/guiding-principles-for-shared-renewable-energy-programs.

competitive program can allow a range of ownership structures and management models to flourish, from utility-owned and -managed projects, to third-party-owned and utility-managed projects, to third-party-owned and -managed projects. It can also allow for a diversity of business models and product offerings, promoting innovation and providing consumers with more choice. Competition can also serve to increase downward pressure on prices, further benefiting consumers."[2]

In a program like Oregon's, where both utilities and third-party providers may participate, this fourth Guiding Principle is especially important due to the utilities' competitive advantages, including with respect to their existing customer relationships and ratepayer-funded internal infrastructure. Two key ways, highlighted in IREC's Guiding Principle, to address these incumbent advantages and help ensure fair competition are: (1) engaging a neutral third party to administer the program, which the Proposed Rules already envision (860-088-020); and (2) limiting utilities to participation through an unregulated affiliate, which the Solar Parties and Renewable Northwest suggested in written comments and at the May 22 hearing.[3] IREC supports these parties' suggestion to limit utility participation in this manner to further level the playing field and ensure fair market competition. Generally IREC believes that utilities and third-party project managers should be subject to the same rules and otherwise treated equally to the fullest extent possible.

Additionally, IREC notes that the requirement in the Proposed Rules that utilities not only credit participants' bills appropriately, but also deduct all fees, including those owed to the

[2] *Id.*

[3] Initial Comments of Renewable Northwest, at 7-8 (May 19, 2017) ("RNW Comments"); Joint Initial Comments on Behalf of the Coalition for Community Solar Access and the Oregon Solar Energy Industries Association in AR 603, at 14-15 (May 19, 2017) ("Solar Parties Comments").

project manager and administrative fees, is another mechanism that could serve to help level the playing field between utilities and third parties (860-088-0100(3)). In cases where a utility serves as a project manager, it is likely that the utility would both charge and credit participants on their utility bills, which may present a more streamlined and appealing experience for participants, rather than receiving two separate bills. By requiring that utilities do the same for participants in third-party project manager scenarios, the Proposed Rules would make the experience equivalently streamlined for participants across the board, regardless of project manager. IREC appreciates the utilities' concerns with this approach, as expressed in their written and oral comments,[4] however we note that its elimination from the program rules would also eliminate its neutralizing effect as far as the utilities' competitive advantage in this respect. For this reason, IREC suggests that if the Commission were to remove this component of the proposed rules, the need for utilities to participate via an unregulated affiliate becomes even more compelling, in order to promote fair competition. If the Commission retains this billing-related requirement, IREC notes that we would not object to appropriate disclaimer language as suggested by Portland General Electric Company (PGE),[5] and would support the ability of project managers to opt out of this service, as suggested by the Solar Parties.[6]

If the Commission determines that utilities should be allowed to leverage their incumbent advantage, and not participate via an affiliate and/or serve as a neutral "banking" entity, then, in the alternative, the Commission could require the utilities to use this advantage to the benefit of

[4] Portland General Electric Company, AR 603 – Comments on Staff's Proposed Community Solar Rules, at 2-3 (May 18, 2017) ("PGE Comments"); Pacific Power, AR 603—PacifiCorp Comments on Draft Rules, at 1-2 (May 12, 2017) ("PacifiCorp Comments"); Idaho Power Company, AR 603 - ln the Matter of Rulemaking to Implement Community Solar Provisions of SB 1547, at 3 (May 16, 2017).

[5] PGE Comments at 3.

[6] Solar Parties Comments at 21.

low-income and potentially other underserved consumers. For example, the Commission could require utilities, if they participate, to devote a substantial portion of their facilities—perhaps 50 percent or even 100 percent—to low-income subscribers. The statute already emphasizes the importance of serving these consumers within the community solar program, and such a requirement could serve to incentivize participation by an underserved subset of customers and generally to protect and promote the public interest (i.e., in equity and fair competition).[7] IREC notes that Colorado recently adopted a similar model in allowing its utility, Xcel Energy, to provide community solar offerings. Although the Colorado statute explicitly provides for utility ownership, the Commission has thus far limited Xcel's participation to meeting the state's 5-percent carve-out by offering facilities with 100-percent low-income participants.[8] Minnesota's Commission has recently articulated a similar vision for Xcel Energy within that state's community solar program.[9]

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[7] *See* SB 1547, Sec. 22(2)(b)(A), (2)(b)(D), (9)(a).

[8] CRS 40-2-127(2)(b)(I)(A) ("The owner of the community solar garden may be the qualifying retail utility or any other for-profit or nonprofit entity or organization,…"); 4 CCR 723-3, Rule 3665(d)(V)("In each plan to acquire renewable energy and RECs from CSGs, the investor owned QRU shall reserve, to the extent there is demand for such ownership, at least five percent of its renewable energy purchases from new CSGs for eligible low-income CSG subscribers."); Decision Granting Motion to Approve Settlement, Granting Motion for Waivers, Denying Motion to Dismiss Application, Ordering Tariff Filings, Addressing New Proceeding on Trial and Pilot Rate Programs, Addressing Recovery of Renewable Compliance Plan Costs, and Addressing Future Resource Acquisitions, Docket No. 16A-0139E et al., Att. A: Non-Unanimous Comprehensive Settlement Agreement, at 69 ("The Company will assume the five (5) percent low-income subscription obligation through ownership of dedicated low-income CSGs.").

[9] Minn. Stat 216B.1641(a) ("The owner of the community solar garden may be a public utility or any other entity or organization that contracts to sell the output from the community solar garden to the utility under section 216B.164."); Order Approving Value-of-Solar Rate for Xcel's Solar-Garden Program, Clarifying Program Parameters, and Requiring Further Filings, Docket No. 13-867, at 19-20 ("The Commission concludes that Energy CENTS' proposal for an Xcel-owned garden stands the best chance of extending the benefits of community solar to low-income customers and will therefore direct the Company to file a specific proposal for consideration by the Commission and stakeholders.")

Finally, regarding the independent program administrator, IREC opposes PGE's suggestion that the role be reopened for bidding every five years.[10] IREC disagrees that this would help keep administrative expenses down; rather, we believe undertaking additional, unnecessary solicitation processes would increase administrative expenses. Instead, to address any concerns related to program administrator underperformance, IREC suggests that the Commission and/or Staff monitor and regularly evaluate the program administrator to ensure its costs are reasonable and it is otherwise performing as expected. If problems are uncovered, then the Commission could consider undertaking a new solicitation.

B. IREC Supports the Initial Program Capacity Allocation of 2.5 Percent of Each Utility's 2016 System Peak. (860-088-0060(2))

As Staff explained during the hearing and in written comments, the establishment of the initial program capacity tier must balance a gradual implementation of the new community solar program with a robust enough offering to cover the anticipated administrative costs associated with the program.[11] IREC supports Staff's efforts to balance these goals, and also to balance the utilities' position that 1 percent is an appropriate level, as expressed on written and oral comments,[12] with the solar industry and others' position that 5 percent would be more appropriate, as articulated at the hearing. Moreover, IREC notes that the Commission, Staff, and the independent program administrator may monitor the roll-out of the program and make adjustments, if needed, before the 2.5-percent tier is reached. Indeed the process envisioned in the Proposed Rules involves regular checkpoints and data collection, which should provide the tools to ensure the program does not cause unintended negative consequences.

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[10] *See* PGE Comments at 4.

[11] Staff Comments at 12.

[12] PGE Comments at 4-5; PacifiCorp Comments at 3-4.

Related to this issue, IREC also supports parties' request for additional clarity regarding which costs would qualify as "start-up costs," borne by ratepayers, and which would qualify as "ongoing costs," borne by participants.[13] In addition, we support parties' suggestion that participants' administrative cost burden be established clearly early in the process, to alleviate potential uncertainty associated with these costs.[14]

C. IREC Agrees With Parties That the Commission Should Keep Open the Options of Both Financial and Non-Financial Incentives. (860-088-0060(8))

IREC agrees with parties' suggestion that the Commission not prematurely limit itself with respect to incentivization.[15] IREC appreciates the need to balance incentivizing participation with minimizing cost shifting, as required by the statute.[16] At this time, however, without knowing the program's bill credit rate(s) and other programmatic details, it is impossible to determine whether or not additional financial incentives may be needed to achieve the appropriate balance, especially for low-income customers. IREC encourages the Commission to keep all options on the table, such that it can make the appropriate determination on this issue once additional program details have been established.

[13] Initial Comments of the Oregon Citizens' Utility Board, at 4 (May 9, 2017) ("CUB Comments"); RNW Comments at 3; Solar Parties Comments at 15-16; *see* SB 1547, Sec. 22(7)(c), (d) (specifying treatment of start-up versus ongoing costs).

[14] RNW Comments at 3; Solar Parties Comments at 15-16.

[15] City of Portland Responsive Comments to AR 603 Proposed Rules, at 3 (May 9, 2017) ("Portland Comments"); Solar Parties Comments at 12-14.

[16] SB 1547, Sec. 22(2)(b)(A), (B).

D. IREC Supports a Robust Low-Income Component Within the Program Although We Agree With Other Parties' Suggestions That the Proposed Provisions Should Be Clarified. (860-088-0170)

IREC reiterates our strong support for a meaningful low-income component to Oregon's community solar program, as indicated in our initial written comments.[17] IREC is supportive of Staff's attempt to balance project-specific and program-wide compliance with the 10-percent mandate by splitting the obligation evenly between the two, as described further in Staff's comments.[18] We believe this more flexible approach may allow for various models for serving low-income customers to emerge. IREC further supports Staff's intent that these two 5-percent obligations be cumulative and that double counting will not be permitted.[19] IREC encourages the Commission to ensure that the text of the rules clearly reflects Staff's intentions on these fronts.

IREC also appreciates Staff's recognition of the financial challenges faced by low-income participants.[20] IREC urges Staff and the Commission to continue to refine this element of the program. In addition to the suggestions offered by Staff in their written comments, IREC believes that financial incentives, as discussed above, and other mechanisms, as outlined in more detail in our May 9 comments, could play a role in encouraging low-income participation.[21] IREC would welcome the opportunity to explore these ideas further.

E. IREC Supports the Removal of the "Contiguous" Requirement From Customer Eligibility. (860-088-0010(8), 860-088-0080(1)(a))

IREC notes that many parties made the suggestion to remove the word "contiguous" from the eligibility requirements for participants and projects, which Staff has subsequently

[17] Comments of the Interstate Renewable Energy Council, Inc., at 5-6, 7-9 (May 9, 2017) ("IREC Comments").

[18] Staff Comments at 12-13.

[19] *Id.* at 12.

[20] Staff Comments at 12-13.

[21] Staff Comments at 12-13; IREC comments at 8-9.

supported.[22] IREC finds parties' arguments on these points persuasive, and therefore also supports the removal of this term and requirement. In addition, IREC supports parties' suggestions to continue to explore further the possibility of full, statewide eligibility, in order to better understand the underlying concerns and whether there is a way to mitigate them while still allowing for eligibility across service territories.[23]

F. IREC Continues to Support the Removal of the Restriction Limiting Customers to Participation in One Community Solar Project. (860-088-0080(1)(b))

IREC and several other parties have already urged the Commission to remove the restriction limiting customers to participation in one community solar project, and we do not reiterate the rationales for doing so here.[24] IREC appreciates Staff's recognition of stakeholder input and recommendation that the Commission approve rules that allow for a customer to have the opportunity to participate in "a limited number of projects that result in a total capacity amount of no more than two megawatts," to comport with the net metering capacity limit for non-residential customers.[25] IREC believes this modification would be a step in the right direction, although we continue to support removal of the limitation entirely in order to more fully enable larger customers, including in particular municipal and other governmental customers, to serve as anchor subscribers in multiple projects.

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[22] Staff Comments at 6; PacifiCorp Comments at 3; Solar Parties Comments at 19; Initial Comments of Northwest Sustainable Energy for Economic Development, Environment Oregon, and The Environmental Center, at 3 (May 9, 2017) ("Northwest SEED et al. Comments").

[23] Northwest SEED et al. Comments at 3; Solar Parties Comments at 19; *see also* Staff Comments at 4-10 (discussing rationales for applying service territory restriction).

[24] IREC Comments at 12; CUB Comments at 5; Northwest SEED et al. Comments at 2-3; RNW Comments at 10; Portland Comments at 2; Solar Parties Comments at 10.

[25] Staff Comments at 11.

G. IREC Agrees That the Proposed Rules Should Be Less Restrictive With Respect to Payment for Unsubscribed Energy. (860-088-0120)

IREC appreciates and supports the intent of the program rules to ensure that participating projects retain high levels of participation, in order to serve customers' interests and disallow gaming within the program.[26] However, as parties have pointed out, compensating project managers for unsubscribed energy at the as-available avoided cost rate should provide sufficient incentive to drive project managers to maximize participation in their facilities.[27] In IREC's experience nationally, this lower rate of compensation for unsubscribed energy has served the same purpose in nearly all other states' programs. By also limiting projects to selling only up to 10 percent of their energy at the unsubscribed rate, and thus requiring projects to retain 90-percent participation rates starting the day of operation in order to receive consistent compensation for energy produced, the Proposed Rules introduce financing risk and cost.[28] As the Solar Parties correctly state, no other program incorporates a similar requirement.[29] IREC agrees that this requirement should be removed.[30]Alternatively, IREC would support the type of "grace period" for compliance with the requirement described in parties' comments.[31]

[26] *See* Staff Comments at 1-2 (discussing related requirements, including the 50-percent participation requirement at the time of final certification, and the limitation on projects' to sell only 10-percent of unsubscribed energy, while donating the rest).

[27] RNW Comments at 6-7; Solar Parties Comments at 11-12.

[28] *See* Solar Parties Comments at 11.

[29] *Id.*

[30] *See* RNW Comments at 6-7; Solar Parties Comments at 11-12.

[31] RNW Comments at 6-7; Solar Parties Comments at 11-12.

H. IREC Agrees That Robust Interconnection Procedures Are Critical to the Success of Any Community Solar Program, and That the Interconnection Process Will Need to Be Well Integrated With the Project Application and Certification Processes.

Even the best-designed community solar program can run into major problems if a state's interconnection procedures are not designed to process project applications efficiently.[32] States with otherwise relatively robust community solar programs, such as Minnesota and New York, have encountered significant interconnection-related difficulties after their programs launched.[33] In contrast, as the Joint Solar Parties correctly point out, Illinois proactively revised its interconnection procedures and is now well situated as it begins the implementation process for its community solar program.[34]

IREC encourages the Commission to evaluate Oregon's interconnection process (860-082-005) and consider whether improvements could be made in advance of program launch. Upon initial review, while Oregon's current procedures incorporate many national best practices, they do not reflect key model elements, including: a clear, transparent pre-application process; a table-based size-eligibility requirement for Tier 2 review, consistent with the Federal Energy Regulatory Commission (FERC) procedures and other model states; elimination of the "no-construction" screen in Tier 1 and Tier 2; a clear, transparent supplemental review process; a two-tier (versus three-tier) study process; and clear, enforceable timelines for each step in the

[32] *See* Solar Parties Comments at 16-17.

[33] *See, e.g.*, Katherine Tweed, *New York Has Nearly 2 Gigawatts of Proposed Community Solar*, Greentech Media (Aug. 24, 2016), https://www.greentechmedia.com/articles/read/new-york-has-nearly-2-gigawatts-of-proposed-community-solar; Allen Gleckner, *Lessons From the First Year of Xcel Energy's Community Solar Program*, Greentech Media (Dec. 25, 2015), https://www.greentechmedia.com/articles/read/xcels-community-solar-turns-1-year-old.

[34] Solar Parties Comments at 16. IREC jointly petitioned for and was deeply engaged in the revision of Illinois' interconnection procedures. IREC is now involved in a similar interconnection reform process in Minnesota.

process, for both utilities and applicants. In addition to best-practice procedures adopted by other states, like Illinois, and FERC, which could serve as models in Oregon, IREC provides *Model Interconnection Procedures* and other interconnection-related resources.[35] We would welcome the opportunity to discuss Oregon's interconnection procedures and their interaction with the community solar program with the Commission, Staff, and other stakeholders.

At the same time, IREC encourages the Commission not to let any consideration of interconnection and its implications for community solar slow down the implementation of the community solar program, in light of our and other parties' concerns about the implementation timeline. Coordination of the community solar program with the utilities' existing interconnection processes can and should be part of an efficient broader programmatic implementation effort. Should the Commission determine that any interconnection reforms are necessary, IREC is hopeful that relying on existing, well-vetted models would allow the Commission to make any changes to Oregon's interconnection procedures in a timely and efficient manner.

I. The Commission Could Rely on the Proposed Advisory Group to Help Develop and Refine Community Solar Program Guidance, in Order to Expedite Program Implementation. (860-088-0050)

IREC appreciates that there remains additional work to be done to launch the program, as described by Staff at the May 22 hearing and in their May 30 written comments. As indicated at the hearing, IREC supports the use of the proposed Advisory Group to alleviate some of the burden on Staff. IREC continues to believe that a representative Advisory Group could serve an important implementation role by bringing together key stakeholders and working towards consensus to the extent possible. While IREC appreciates the concerns expressed by Staff related

[35] IREC's interconnection resources are available on our web site: www.irecusa.org/regulatory-reform/interconnection.

to delegating responsibilities to a voluntary entity, we suggest that the Advisory Group could be structured to leverage stakeholder involvement, while still leaving all ultimately decision-making authority to the Commission. A range of stakeholders have already demonstrated their commitment to a successful community solar program in Oregon and have put in considerable time to date in order to achieve such a goal, and Staff and the Commission have an opportunity to take advantage of this stakeholder engagement to help expedite program implementation.

III. CONCLUSION

IREC appreciates the opportunity to file these responsive comments. We reiterate our appreciation for Staff's dedicated work in this proceeding and emphasize that the Proposed Rules offer a strong starting point. IREC hopes that our and other parties' comments can help the Commission further improve the Proposed Rules. We continue to believe that Oregon has an opportunity to take a leadership role in community solar, which offers a promising pathway to expanding consumer access to solar, and bringing economic and environmental benefits to the State. We hope the final rules issued in this proceeding embrace that opportunity.

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Respectfully submitted,

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