BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 603

In the Matter of	)
	)
RULEMAKING	)
	)
To Implement Community Solar Provisions of SB 1547.	)
	)
	)

ADDITIONAL COMMENTS OF THE

OREGON CITIZENS' UTILITY BOARD

June 2, 2017

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I. INTRODUCTION

The Oregon Citizens' Utility Board ("CUB") appreciates the opportunity to provide these additional comments on the Community Solar Program Draft Rules ("Draft Rules"). CUB also appreciates the extension that allowed stakeholders additional time to provide these comments. CUB continues to broadly support Staff's Draft Rules. CUB believes the program is well designed to obtain the balance between encouraging further access to solar energy for utility customers while minimizing any cost-shifting the program may pose to non-participating ratepayers.

CUB filed Initial Comments on May 9, 2017 and presented oral comments at the Commission's public hearing on May 22, 2017. While CUB expressed general support, we also raised some concerns with specific aspects of the Draft Rules. On May 30, 2017, Staff filed comments outlining the rationale behind a number of program design choices and recommended several changes to the Draft Rules in response to stakeholders' feedback.

In these comments, CUB will address Staff's May 30, 2017 comments and issues raised by stakeholders that CUB has not previously addressed.

II. COMMENTS

A. Program Restrictions.

In prior comments, CUB questioned the additional requirement that a community solar participant be limited to participating in projects within their "contiguous" service territory. CUB felt that the "contiguous" limitation was overly restrictive and would thwart participation by urban residential customers. CUB fully supports Staff's proposal to eliminate "contiguous" from the proposed Draft Rules.[1]

CUB also supports Staff's proposal to increase the program capacity from one to 2.5 percent of a utility's 2016 peak load.[2] CUB agrees that the program capacity increase will allow the administrative costs to be spread across a greater pool of participants and thus increase the viability of the overall program.

B. Participant Restrictions.

CUB expressed concern in its Initial Comments with the restriction that limited a utility customer to participating in one community solar project. CUB believes there is a strong argument that an 'anchor tenant' offers a project greater financial certainty. Increased certainty will benefit the residential customers that will make up 50% of the participants in each project. Therefore, CUB supports Staff's recommendation to alter the Draft Rules to allow single customers to participate in multiple projects so long as the total capacity subscribed to does not exceed two MW.[3] CUB believes Staff's recommendation will increase a project manager's

[1] Staff's Comments, p. 6.
[2] *Id.* at p. 12.
[3] *Id.* at p. 11.

ability to obtain anchor tenants while avoiding the possibility that a single customer shifts a substantial amount of their load off the utility's system.

C. Future Process

One of CUB's primary concerns has been the lack of specificity on how and when additional aspects of the program will be developed. CUB appreciates Staff's Comments which clarify the staged process Staff envisions for further development of the program.[4] Although the timeline remains unclear, CUB has a better understanding of how further rulemaking in this matter will proceed.

D. Unsubscribed Energy.

CUB previously argued that it was overly burdensome to require each project to be 90% subscribed before receiving final certification. CUB supports Staff's modification to the Draft Rules which reduced the requirement to 50 percent subscription before a project can receive final certification.

E. Securities Law

Stakeholders have previously discussed and briefed the issue of whether state and federal securities law is implicated in the community solar program. As the program is currently structured, participants would not be able to profit from their participation in a community solar project. However, as was previously noted, the real issue is whether a community solar participant would have "an expectation of profits" in their share of energy produced by a community solar project.[5]

[4] Staff's Comments, pp. 2-4.

[5] *See SEC v. W.J. Howey Co.,* 328 U.S. 293, 298-299 (1946) (finding that "an investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party…").

CUB supports requiring project managers to include a Commission approved disclaimer in their advertising literature and contracts which addresses the security concerns raised by stakeholders. CUB believes any potential securities law implications are mitigated so long as participants are clearly notified that their interests in a joint solar installation are for personal use and will not result in a profit.[6]

F. Inclusion of Community Solar in the IRP process.

CUB supports the provision in the Draft Rules that requires utilities to include information regarding the community solar program in their Integrated Resource Plan (IRP). IRPs are intended to provide detailed information of a utility's energy needs and long-range forecasting. Although some utility stakeholders have objected to this requirement, they have not stated any policy reasons that would make community solar historical forecasts and actual development inappropriate information for inclusion in an IRP.

III. CONCLUSION

CUB appreciates the opportunity to submit these additional comments, and we look forward to continuing to participate in this matter.

Respectfully Submitted,

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[6] *See In re CommunitySun, LLC*, U.S. Securities and Exchange Commission (August 29, 2011) publicly available at: https://www.sec.gov/divisions/corpfin/cf-noaction/2011/communitysun082911-2a1.htm (in which the SEC issued a "no-action letter" in response to a solar developer's request to determine whether its shared solar installation offering constituted a violation of federal securities law).

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