

BEFORE THE PUBLIC UTILITIES COMMISSION
OF OREGON

AR 603

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

**Comments of the Interstate Renewable
Energy Council, Inc.**

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I. INTRODUCTION

On May 1, 2017, Commission Staff filed its Proposed Rules for the Community Solar Program (Proposed Rules) established by Senate Bill (SB) 1547, Section 22, and the Commission solicited initial comments by May 9, 2017, in advance of the forthcoming hearing on May 22, 2017. Accordingly, the Interstate Renewable Energy Council, Inc. (IREC) submits these initial comments.

IREC is a 501(c)(3) non-partisan, non-profit organization working nationally to increase consumer access to sustainable energy and energy efficiency through independent fact-based policy leadership, quality workforce development, and consumer empowerment. In service of our mission, IREC works to increase the adoption of policies and regulatory reforms that expand access to and streamline grid integration of distributed energy resources to optimize their widespread benefits. The scope of our work includes generating and promoting national model rules, standards, and best practices, and implementing shared renewable energy programs to expand options for consumers that cannot host a renewable energy system. As part of this work, IREC has developed *Model Rules for Shared Renewable Energy Programs* and *Shared Renewable Energy for Low- to Moderate-Income Consumers: Policy Guidelines and Model Provisions (LMI Guidelines)*, as well as a State Shared Renewable Energy Program Catalog, which provides details of existing and proposed state shared renewables statutes and rules.¹ In

¹ These and all of IREC’s shared renewable energy resources are available on IREC’s web site at www.irecusa.org/regulatory-reform/shared-renewables.

addition, IREC has or is currently engaged in shared renewables program implementation proceedings across the United States, including in Colorado, Minnesota, New York, California, Maryland, Delaware, and Washington, DC. IREC also participated in the informal working group process within this proceeding, which informed Staff's Proposed Rules, as well as the Commission's prior community solar proceeding (UM 1746).

IREC appreciates and commends Staff's hard work over the past several months to develop the Proposed Rules, as well as Staff's dedication to hearing and incorporating stakeholder input. The Proposed Rules reflect many national best practices for shared renewable energy programs. IREC focuses our comments below on potential areas for improvement to the rules to bring them further in alignment with best practices and help to ensure a successful program. Throughout our comments, IREC includes the relevant Program Rule provisions in parentheses for ease of reference.

II. COMMENTS

A. **If Not Carefully Considered and Implemented, the Inclusion of the Independent Program Administrator and Low-Income Community Manager May Result in High Transactional Costs That May Impede the Program's Success.**

While Oregon's program shares many attributes with other states' programs, it is somewhat unique in fully opening the door to both utility and third-party provider project managers. Most other statewide programs currently only allow third-party providers to serve as project managers, or, if a state allows utilities to participate in this role, they may only do so in a restricted manner.² Within this framework, utilities typically take on most of the program

² For example, a recent comprehensive settlement in Colorado will allow Xcel Energy to satisfy that state's statutory requirement for low-income participation in community solar by building and managing installations exclusively for low-income customers. *See, e.g.*, "Xcel Plans for Large, Low-Income Solar Energy Program in Colorado," *Energize Weekly* (EUCI) (Nov. 2, 2016) ("Solar gardens being built in Xcel territory currently must allocate 5 percent of the

administration functions, including evaluating and approving project applications, managing participant bill crediting, and other core administrative responsibilities. In a program like Oregon's, however, where utilities and third-party providers may both participate as project managers and effectively compete with each other, IREC agrees that providing for an independent program administrator to take on many of these administrative tasks (860-088-0020) makes sense to help ensure fair competition. An administrator separate from the utility may also help the Commission to identify and track program-specific costs more easily.

However, introducing another entity into the community solar process—in addition to the utility, third-party providers, customers, and the Commission—also introduces the potential for increased transaction costs and other friction within the program. The Proposed Rules envision many information exchanges between the various parties, especially with the two-step certification process (860-088-0150 and 860-088-0160), which open multiple opportunities for costly miscommunications and other delays. Moreover, supporting a separate Program Administrator that is tasked with a wide range of different responsibilities could be costly in itself. Ultimately, if the program becomes too unwieldy and cost-intensive, most customers will not be interested in participating, since they ultimately bear the ongoing costs.³

IREC recognizes that, as currently envisioned by the Proposed Rules, many program implementation details will be determined as part of the development of the program implementation manual (860-088-0020(i)) and other further rulemaking. At this time, we encourage the Commission to remain cognizant of these overarching administrative cost

facility to low-income households, but developers say it has been difficult to find those customers. Under the agreement, Xcel will aggregate the low-income requirement from commercial solar gardens and build one or two installations expressly for low-income customers.”), *available at* www.euci.com/xcel-plans-for-large-low-income-solar-energy-program-in-colorado.

³ See SB 1547, Sec. 22(7)(d).

concerns in evaluating the Proposed Rules. In addition, IREC offers two more specific suggestions below regarding changes to the Proposed Rules.

1. While Promoting Low-Income Participation Is Paramount, Establishing a Low-Income Community Manager Separate From the Program Administrator May Be Overly Costly and the Program Administrator Could Perform These Functions Instead.

As discussed further below, IREC strongly supports the inclusion of specific provisions addressing low-income customer participation in the program (860-088-0170). As described in detail in our *LMI Guidelines*, low-income customers face numerous barriers to participation in shared renewables and other clean energy programs, and it takes thoughtful program design to overcome these obstacles. However, IREC is concerned about the practical implications of the proposed Low-Income Community Manager (860-088-0030). While IREC appreciates the apparent intent to have this entity assist project managers in locating and integrating low-income customers into their projects, we are wary of the additional associated costs, which will end up being borne in large part by projects and their participants. In tandem with the program administrator costs, they could present significant financial challenges for projects.

To help minimize these costs, while still taking advantage of the benefits of an entity specifically tasked with promoting low-income participation, IREC suggests that the third-party administrator should be responsible for the activities identified for the low-income community manager. We believe this would improve program efficiency, minimize administrative costs, and still facilitate the low-income component of the program. In other words, the program administrator would be a “one-stop shop,” but it would be explicitly required that the administrator pay attention to and facilitate low-income customer participation. Combining these two entities into one would also obviate the need for a separate competitive solicitation and the transactional costs associated with coordination between the two entities.

In order to make this change within the Proposed Rules, the low-income community manager section (860-088-0030) should be removed, and “program administrator” should replace all references to the “low-income community manager.” In addition, the program administrator section (860-088-0020) should include a provision that states: “The program administrator shall have a dedicated staff or engage a consultant to oversee and facilitate the low-income component of the community solar program described in Section 860-088-0170.” If necessary, this provision could further specify the duties currently listed in the Proposed Rules (860-088-0030(3)), although IREC suggests those items may be best left to the implementation manual, such that the program administrator’s duties can be holistically balanced against the associated costs.

2. The Program Rules Should Ensure Clarity About Remaining Program Capacity and the Treatment of Projects That Apply After the Initial Program Capacity Tier Has Been Met.

In nearly every state with a shared renewable energy program, participation in the program has been strong and any capacity limits have rapidly been met. While IREC appreciates the rationale for including an initial capacity limit (860-088-0060(2)(a)), we encourage the Commission to specify treatment for projects after that capacity limit has been reached. Based on our experience in other states, we anticipate that there may be a large volume of applications, which, under the Proposed Rules, the program administrator and Commission would treat on a first-come, first-served basis within the pre-certification process (860-008-0150). When the capacity limit is met, it seems likely that there will still be a number of applications in the queue. It also seems likely that some pre-certified projects will drop out before final certification and operation, and/or the Commission may choose to increase or eliminate the capacity limit for the program. Therefore, it is critical to determine some type of wait-list protocol for these projects.

IREC recognizes that this issue may be discussed in more detail in further implementation rulemaking proceedings, however in the meantime we encourage the Commission to incorporate specific language in these Proposed Rules that identifies the need for a transparent wait-list process. IREC suggests incorporating the following provision into either the Program Level (860-088-0060) or the Project Pre-Certification (860-088-0150) section: “The Commission shall determine a process for how the Program Administrator should treat applications submitted after an electric company’s Program Capacity Tier has been met, which may include the establishment of a program wait list.”

B. The Definition of Low-Income Customer Should Be Expanded, and Further Facilitating Low-Income Participation May Require Additional Consideration and Tools.

SB 1547 specifies a 10 percent low-income carve-out for low-income customers⁴ and IREC appreciates that the Proposed Rules implement this carve-out in a way that allows for some flexibility (860-088-0170). For example, the Proposed Rules permit participation by affordable housing providers to count toward satisfaction of the carve-out. In addition, the Proposed Rules appear to envision both a 5-percent per-project carve-out and a 5-percent program-wide carve-out, which could further help to promote diversity in approaches to achieving the statute’s low-income goals.

However, IREC suggests that additional efforts in this arena could allow for more robust and meaningful low-income customer participation in the program. To begin with, IREC recommends modifying the definition of “qualifying low-income customer” to allow for broader low-income customer participation (860-088-0010(20)). Currently, eligibility is limited to 200% of the federal poverty level, which is restrictive. In 2017, for an individual, this translates to an

⁴ SB 1547, Sec. 22(9)(a).

annual income of about \$24,000; for a family of four, it translates to about \$49,000.⁵ Instead, as in our *LMI Guidelines*, IREC recommends using 80 percent of area median income (AMI), which comports with the U.S. Department of Housing and Urban Development (HUD) definition of “low-income.”⁶ In Oregon, on average, this translates to about \$36,000 for an individual and about \$52,000 for a family of four.⁷ Although not dramatic, the change would allow more low-income customers to benefit from the carve-out, while still remaining consistent with existing definitions and programs.

In addition, IREC emphasizes that financial barriers, including credit-related barriers, tend to be the biggest barriers to low-income customer participation in shared renewables and other clean energy programs. Currently, the program does not address these barriers in a meaningful way. While the mandatory carve-out will ensure some degree of low-income participation, IREC anticipates that without additional support it will function effectively as a donation by projects to these customers, as it has historically in Colorado, rather than promoting low-income customer choice and engagement.⁸ There are a number of tools and mechanisms that

⁵ U.S. Dept. of Health & Human Servs., Poverty Guidelines, <https://aspe.hhs.gov/poverty-guidelines>.

⁶ HUD, FY 2017 Income Limits Briefing Material, <https://www.huduser.gov/portal/datasets/il/il17/IncomeLimitsBriefingMaterial-FY17.pdf>.

⁷ HUD, FY 2017 State Income Limits, <https://www.huduser.gov/portal/datasets/il/il17/Medians2017.pdf>.

⁸ See CO Energy Office, *Analysis Of The Fulfillment Of The Low-Income Carve-Out For Community Solar Subscriber Organizations* (prepared by Lotus Engineering & Sustainability), at 8 (Nov. 2015) (“Many of the interviewees believe that many (if not all) of the low-income subscribers do not qualify for financing and/or cannot receive financing; therefore, the developers are forced to give panels away for free to maintain compliance with the low-income carve-out. The developers may give these panels or the electricity generated by the panels directly to the low-income subscribers or directly to a non-profit or public housing authority, who then allocates the generated electricity to low-income households.”), available at www.colorado.gov/pacific/energyoffice/community-solar.

could meet this need, including direct incentives (including differentiated bill credit rates for low-income participants), loan programs, credit enhancements, alternative and hybrid underwriting criteria, and low-cost public financing. Some of these could be under the Commission's direct control whereas others would require coordination with other state and local entities. IREC refers the Commission to our *LMI Guidelines* for additional detail and would welcome the opportunity to explore these ideas further in the future.

C. The Program Administrator Should Be Required to Provide Public Queues of Projects in Each Utility's Service Territory.

The Proposed Rules specify in a few places that the program administrator should maintain a "confidential project queue" for each utility (including 860-088-0020(3)(f), 860-088-0150(6), and 860-088-160(4)). While IREC recognizes that certain information may need to be kept confidential, we strongly urge the Commission to require the publication of public queues for each utility, as well. A public queue allows prospective projects and customers, as well as the Commission and other interested stakeholders such as non-profits and research institutions, to understand the status of the program and the types of projects that are participating. Such public queues are required in other states, including, for example, Minnesota and Maryland.⁹ IREC suggests revising the Proposed Rules to require provision of a public queue on the utilities' web

This report also contains discussion of potential policy changes and improvement that could inform the Commission's deliberations on this issue.

⁹ MN PUC Order Rejecting Xcel's Solar-Garden Tariff Filing and Requiring the Company to File a Revised Solar-Garden Plan, Docket No. 13-867, Order § (3)(c) at p. 26 (Apr. 7, 2014) ("Xcel shall make information on the total number of pending and approved applications and their size available on its website.") (Minnesota); COMAR 20.62.03.04(D) ("An electric company shall provide daily updated information on its website about the current status of its pilot program queue including the following information: (1) Name of the applicant; (2) Service address of the project; (3) Inverter nameplate capacity of the project; (4) Application date; (5) Interconnection application status; (6) Expected date of first operation; (7) Project identification number; (8) CSEGS [Community Solar Energy Generating System] identification number; and (9) Remaining available capacity by year in each program category.").

sites, and indicating that the specific data and frequency of updates will be determined as part of the forthcoming implementation process. IREC suggests that publicly provided data should include at least approved and pending projects and their capacities.

D. The Bill Credit Rate and Bill Crediting Process Are Especially Critical to the Success of the Community Solar Program and Should Be Made as Clear as Possible, as Soon as Possible.

The Proposed Rules effectively defer consideration of the appropriate bill credit rate or rates for the program (860-088-0090), and IREC recognizes this may be necessary since the Resource Value of Solar proceeding is ongoing. Nonetheless, IREC emphasizes that establishing a bill credit rate that fairly captures the value of community solar generation and transfers it to participating customers is an essential component of a successful program. The ultimate financial viability of projects will hinge on the bill credit rate in combination with other factors, including project size and other project restrictions. Without details on the bill credit rate, it is difficult to assess the program as a whole, since it is such a core program component.

Regardless of the ultimate rate or rates chosen, IREC supports the Proposed Rules specification that the bill credit rate is established at pre-certification and that it should be fixed for the duration of the project's "bill credit term." However, we recommend that the Commission revise the rules to be more clear as to the term in this case in order to provide financial certainty to the project, its financiers, and its participants. IREC suggests that the bill credit rate should apply to the project for its lifetime (e.g., 25 years, or the appropriate life time as determined by the Commission), unless the project voluntarily opts to adopt a different rate in the future.

E. The Consumer Protection Requirements Associated With the Program Should Remain Focused on Mandatory Disclosure Requirements.

IREC supports the inclusion of appropriate consumer protection requirements in the Proposed Rules, which can complement existing general consumer protection provisions in

Oregon, such as protections from fraud, unlawful telephonic solicitation practices, and other unlawful business practices. We suggest the Minnesota can serve as a useful model for appropriate disclosure contents and forms.¹⁰ Indeed, the disclosure requirements in the Proposed Rules already largely comport with Minnesota's in this respect (860-088-0180(2) and (3)). However, IREC would suggest adding an explanation of the concept of renewable energy credits and, if applicable, the transfer of any green attributes associated with a participant's ownership share or subscription to the list. In our experience, this concept can be especially confusing for customers.

IREC is concerned that further requiring project managers to submit forms and standard contracts (860-088-0180(4)) would be administratively burdensome for the program administrator, which already has a wide range of other obligations. Moreover, such a requirement may be substantially duplicative if appropriate disclosures are already going to be developed and required. These disclosures should ensure that customers are informed of and understand the key provisions of their contracts with project managers. IREC recommends that the Commission strike this requirement from the rules. We support the requirement that the program administrator track and report customer complaints, and suggest that if it becomes evident from these complaints that additional consumer education or protections are necessary, the issue could be revisited at that time. However, IREC is hopeful and expects that a robust disclosure requirement should serve to appropriately protect consumers.

¹⁰ MN PUC Order Rejecting Xcel's Solar-Garden Tariff Filing and Requiring the Company to File a Revised Solar-Garden Plan, Docket No. 13-867, at p. 18-22; *see also* Minnesota Clean Energy Resources Teams (CERTs), Subscriber Resources, <http://www.cleanenergyresourceteams.org/solargardens#subscribers> (includes disclosure checklist and other resources).

F. Customers Should Not Be Restricted to Participating in Only One Community Solar Project.

The Proposed Rules would restrict customers to participating in only one community solar project (860-088-0080(1)(b)). IREC questions the need for such a restriction and suggests its removal. The Proposed Rules already restrict individual participants to no more than 40 percent of a project's capacity and require projects to have at least 50 percent residential and small commercial participants (860-088-0060(6) and (7)). In this way, they avoid projects dominated only by large customers, and ensure ample opportunity for residential and other small customers to participate. By removing the one-project restriction, the program would allow larger customers to serve as anchor participants in more than one facility (up to their average annual usage, as required by 860-088-0080(2)), thereby helping to support the participation of the remaining percentage of smaller customers.

G. Additional Modifications Could Further Improve the Proposed Rules.

1. Definitions for Community Solar Program (860-088-0010)

(2) "Bill credit rate": IREC suggests incorporating a cross-reference to the bill credit rate section (860-088-0090) to make clear that there are additional details regarding the definition of the bill credit rate within the rules.

(8) "Eligible customer": IREC suggests incorporating a cross-reference to the to the eligible customers section (860-088-0080) to make clear that there are additional eligibility requirements beyond what is contained in the definition, which only refers to the location of the customer with respect to the project. In addition, IREC is unsure of whether the phrase "same contiguous service territory" is meant to be "same or contiguous service territory" or to mean something else. IREC recommends modifying it for clarity. (The same issue occurs in 860-088-0080(1)(a).)

(9) “Eligible energy” or “eligible generation”: Although both terms are listed, “eligible energy” is not used elsewhere in the rules. IREC recommends using only the term “eligible generation” throughout for simplicity.

(10) “Excess energy” or “excess generation”: As above, only “excess energy” is not used elsewhere in the rules and IREC recommends using only the term “excess generation” throughout.

(18) “Project”: Throughout the rules there are references to “community solar project,” but the defined term is currently “project.” For the sake of clarity, IREC suggests revising the definition to define both terms: ““Project” or “community solar project” means one or more solar photovoltaic energy systems that provide owners and subscribers the opportunity to share the costs and benefits associated with generation of electricity by the solar photovoltaic energy systems.”

(24) “Subscriber”: IREC suggests that the definition of a subscriber at the site address level should be extended to the definition of participant to capture owners, as well. Therefore IREC suggests re-locating the second sentence of this definition to the definition of participant (15).

2. Other Grammatical, Typographical, and Similar Suggestions

“Electric company” vs. “utility”: Throughout the Proposed Rules the terms “utility” or “utilities” are used in place of “electric company” or “electric companies.” IREC suggests correcting this throughout.

Community Solar Low-Income Manager (860-088-0030): If the Commission elects to retain this entity, IREC suggests changing the title of this section to “Community Solar Low-Income Community Manager” to comport with the term used elsewhere in the rules (“low-income community manager”).

Community Solar Advisory Group (860-088-0050): In subsection (2), for clarity, IREC suggests modifying the first line text to read “...in this group, which must include:”.

Obligations of Electric Companies (860-088-0100): In subsection (1), IREC suggests modifying the first sentence to read “Electric companies must interconnection with a final certified projects within their service territory that satisfy...”

Third-Party Administration of Bill Credits (860-088-0100): For clarity and accuracy, IREC suggests modifying the title of this section to “Program Administrator Administration of Bill Credits.”

Low Income (860-088-0170): For clarity, IREC suggests modifying the title of this section to “Low-Income Customer Participation.”

RPS and RECs (860-088-0200): For clarity, and specifically to avoid the use of undefined acronyms, IREC suggests modifying the title of this section to “Renewable Portfolio Standard and Renewable Energy Credits.”

III. CONCLUSION

IREC appreciates the opportunity to file these initial comments and looks forward to participating in the May 22, 2017 hearing.

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Respectfully submitted,

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