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VIA ELECTRONIC FILING

Public Utility Commission of Oregon
201 High Street SE, Suite 100
Salem, OR 97301-3398

Attn: Filing Center

RE: AR 603—PacifiCorp Comments on Draft Rules

PacifiCorp d/b/a Pacific Power (PacifiCorp or Company) appreciates the opportunity to provide comments regarding the AR 603 Draft Community Solar Rules (the Draft Rules) issued by Staff of the Public Utility Commission of Oregon (Commission) on May 1, 2017. The Draft Rules, to a large extent, reflect Staff's careful consideration of stakeholder input and diligence in researching other community solar programs across the country. PacifiCorp recognizes the tremendous effort of Staff in creating the Draft Rules, appreciates Staff's responsiveness to most of the issues previously raised by PacifiCorp, and supports most aspects of the Draft Rules.

PacifiCorp's comments identify a limited set of unresolved issues that, if resolved, will clarify the Draft Rules, maximize the success of the community solar program and remove unnecessary complexity from the program's implementation. PacifiCorp notes that several aspects of the Draft Rules differ significantly from draft rules provided to stakeholders during the informal stakeholder process preceding the formal rulemaking process. In addition, PacifiCorp is concerned that several key issues identified in previous comments have not been addressed.

I. Utilities should not collect subscription and ownership fees on behalf of third-party project managers.

The Company continues to recommend the Draft Rules be amended to require the project manager to collect the ownership or subscription fee directly from the participating customer. PacifiCorp is concerned that the current requirement contained in the Draft Rules that electric companies collect ownership or subscription fees on behalf of third-party project managers inappropriately disrupts the important relationship between the project manager and the participating customer. In PacifiCorp's experience, the billing relationship is a key aspect of the customer relationship and PacifiCorp values the relationship it maintains with its customers through monthly billing. For example, the Company has used monthly bills to provide information on new programs, progress towards environmental goals, or to highlight opportunities for energy efficiency. Customers are also most likely to call the electric company with questions about bill elements (e.g., franchise fee charges) regardless of whether the bill element is attributable to the electric company or not. Removing the project manager from the billing relationship makes it less likely that customers will maintain regular contact with the project manager, which appears at odds with the Draft Rules that require the project manager to

be the primary point of contact for questions and disputes.[1] Finally, at a time when electric companies are facing increasing competitive threats and making every effort to keep rates stable and low, PacifiCorp is sensitive to the perception of higher bills, even if the higher bill amount is attributable to the project manager. Under the Draft Rules, the customer will receive a price signal from only the electric company and may associate the increased billing with the electric company rather than the project manager.

PacifiCorp recognizes the need for convenience with regard to customer participation in the community solar program; direct billing from the project manager to the participating customer is a minimal inconvenience compared to the importance of maintaining the important relationship between the project manager and the participating customer. The Company recommends modifying the Draft Rules to require the project manager to directly bill the participating customer.

II. The rules must consider potential securities law violations.

PacifiCorp is concerned that the community solar program contemplated by the Draft Rules carries risk of creating securities laws violations, specifically the risk of the sale of unregistered securities. Violation of securities law can result in significant financial penalties and would dampen development of a robust community solar program in Oregon. Although it is beyond the scope of these comments to provide a complete and detailed securities law analysis of the proposed community solar program, PacifiCorp notes the Investment Contract Test adopted by the Supreme Court of the United States in *S.E.C. v. Howey Co.*[2] states that an investment contract is a security if the following four elements are met: (1) A person invests money (2) in a common enterprise (3) with an expectation of profit (4) from the work or efforts of others. The community solar program is structured in such a way that a reasonable participant could be motivated by an expectation of profit. In addition, the Company is concerned that any profit that could inure to a participant would be based primarily on the work of a third party (i.e., the third-party operator of the solar facility).

PacifiCorp urges the Commission to request an Attorney General's opinion on the federal securities law risks associated with the Draft Rules. This would allow all parties to have the benefit of complete and objective analysis of the securities law risk to best inform the appropriate revisions to the Draft Rules, if any. In addition, PacifiCorp recommends the Draft Rules be immediately modified to require marketing materials to contain a Commission-approved disclaimer alerting potential participants that participation in the community solar program is for renewable energy purposes only and participation should not be premised on an

[1] If PacifiCorp is the billing agent for the project manager, PacifiCorp is concerned with the likelihood of being the first point of contact in the event of any billing disputes or collections issues between the participating customer and the project manager. PacifiCorp also notes that any use of the Company's existing collections systems, paid for by all customers, may create unnecessary cost shifts from project managers to PacifiCorp's customers.
[2] 328 US 293, 66 S Ct 1100, 90 L Ed 1244 (1946).

expectation of profit.[3] This helps alleviate concerns that a reasonable participant could be motivated by an expectation of profit.

III. The Draft Rules must define "contiguous service territory"

The Company requests the Draft Rules be amended to either clearly define the term "same contiguous service territory" included within the definition of "Eligible Customer."(860-088-010(8)) or remove the word "contiguous". Clearly defining who is considered an eligible customer for participation in a specific community solar project is a fundamental underpinning of the program. The "same contiguous service territory" concept was first included in the Draft Rules. It was not the subject of discussion in any of the informal workshops, and thus it is hard to provide feedback without any understanding of the intent of the language. With a definition this integral to the overall structure of the program there can be no ambiguity. PacifiCorp suggests that the Commission add a definition to the rules of "contiguous service territory" that explicitly addresses the intent, with an eye towards how the definition can be practically and cost effectively implemented by program administrators or consider removing the word contiguous.

IV. The initial program capacity should be lowered.

The Company suggests that the Commission revert the initial program capacity for each electric company back to the one percent (approximately 26 MW for Pacific Power) that had been previously included in earlier versions of the rules, from the 2.5 percent (approximately 65 MW) included in the current Draft Rules. During the initial stages of this program a lower cap will better serve the public interest by creating a check-in point where the program can be evaluated and potentially modified to reflect early lessons learned. In addition, the rules contemplate adjustments as necessary to the program capacity tiers. The concept of the initial program capacity as a "check-in" was discussed and widely supported as part of the stakeholder conversations. Reverting to the program capacity contained in earlier versions of the rule would not preclude a future increase in the program capacity and will prevent this nascent program from growing too quickly.

An increased program capacity also has the potential to exacerbate any potential cost shifts to non-participating customers, particularly if the bill credit rate diverges from the resource value of solar. This additional risk contradicts the authorizing legislation for community solar that requires the Commission to "minimize the shifting of costs from the program to rate payers who do not own or subscribe to a community solar project."

A larger initial program capacity will have impacts on the generation interconnection queue. A lesson that has been frequently expressed from participants in community solar programs in

[3] In earlier conversations with Staff, PacifiCorp and Idaho Power Company also proposed modifications to the Draft Rules that would require electric companies to credit participants through fixed kilowatt-hour blocks rather than through a portion of actual monthly output. This addresses the concern that participants receive profit through the work of a third party and is consistent with the Company's Utah Subscriber Solar program. PacifiCorp continues to support this approach, but recognizes that such a significant change at this stage in the formal rulemaking process may present procedural challenges.

other states is dissatisfaction with the time required for the utility to complete interconnection studies. Under the Small Generator Interconnection Rules (OAR 860-082-0005 et al.) the Company is required to meet relatively strict timelines for interconnection review. The Company anticipates that an increased initial program capacity will result in a larger number of interconnection requests and is concerned about the capacity to process the requests timely as required by the Small Generator Interconnection Rules. Conducting an interconnection review is a time-consuming process where in-depth knowledge of power engineering is required. This potential for study delays will not only be influenced by volume but will be exacerbated should requests be withdrawn that impact downstream projects resulting in the need for restudies.

V. Community solar rules should address the maximum term that a participant will receive a bill credit. 860-088-0090(4).

The Company suggests that the Draft Rules more clearly define a project's "bill credit term" as that phrase is used in proposed OAR 860-088-0090(4). The Draft Rule section states:

> (4) The bill credit rate in effect at the time a project receives pre-certification will be used to determine the bill credit for owners and subscribers for the duration of the project's bill credit term.[4]

It is unclear from this language the duration of the bill credit term. It is also unclear what bill credit rate will be used at the end of the bill credit term. To illustrate the potential ambiguity, as drafted, the Draft Rules could mean that the precertification bill credit remains available for 20 years, consistent with the utility's obligation to purchase power from the community solar facility. Alternatively, it could mean that each project individually establishes a bill credit term.

To prevent this level of ambiguity, PacifiCorp suggests that the Draft Rules define "bill credit term," including the maximum duration, when the precertification rate starts, and the rate paid to participants after the initial precertification rate expires. As an example the Commission could look to the Volumetric Incentive Rate Program Rules 860-084-0240(1)(a) where the contract term is discussed. PacifiCorp would suggest that adding language into Section 860-088-0100 Obligations of Electric Companies could address this issue and specify the term. For example:

> (3) An electric company must credit project participants at the precertification rate for energy generated by the solar photovoltaic systems installed in the service territory of the electric company and certified to participate in the community solar program for a <u>xx</u> year period, beginning at the time the system completes interconnection and is energized. After the initial year period, the electric company may pay its prevailing avoided cost for energy generated by the solar photovoltaic system.

[4] 860-088-0090(4).

VI. Community Solar Program rules should specifically address the charges that can be offset by the bill credit. 860-088-0095.

The Draft Rules state that "the monthly bill credit provided a participant cannot exceed the participant's total *volumetric charges* for the billing period." The Company suggests that the Draft Rules include a definition that clearly lays out that volumetric charges are all kilowatt-hour based charges.

VII. Community Solar Program rules should reflect the complexity and timing challenges of computing the bill credit and crediting the customer account. 860-088-0100 and 860-088-0110.

As currently drafted, the Draft Rules include significant complexity around the crediting mechanism for customer participants. Draft Rule section 860-088-0110 implies that the program administrator will calculate the monthly bill credit including accruing and applying carry-over generation and differential credits. This process will require the Company to provide full line item billing information for each participant to the program administrator. Transferring information between the entities, accurately calculating bill credits, tracking carry-over credits and entering information into the billing system will be a complex and time consuming process. To reflect this complexity and properly set participant expectations, the Company suggests the following edits (in italics) to Draft Rule section 860-088-0100(2) Obligations of the Electric Companies:

> (2) An electric company interconnected with a final certified project and receiving energy from the project must credit project participants with bill credits calculated *by the program administrator* on a monthly billing period. *The application of the credit may appear on the participants' accounts in a subsequent billing period due to the time required to calculate the credit and transfer information between entities. The electric company will apply the credit to the project participant's account within 30 days of receiving the bill credit information from the program administrator.*

VIII. Community Solar Program rules should more completely explain the 5 percent reserve for projects that exclusively serve qualifying low-income customers 860-088-0170(2) and (3).

Consistent with Senate Bill 1547 (SB 1547), previous drafts and discussions indicated 10 percent of capacity will be available to qualified residential low income households. PacifiCorp supported the rule language contained in previous drafts implementing the 10 percent low-income carve out. Unfortunately, the low-income carve out contained in the Draft Rules was included without discussion or a detailed explanation of the rationale. The Draft Rules lack explanation of this new aspect to the low income portion of the community solar program mandating designated projects or portions of projects for low income contained in Section 860-088-0170(2), especially regarding the interaction of this section with the value of unsubscribed and unsold generation referenced in Section 860-088-0120(4). Additional guidance on the role of the utility in managing this funding source to ensure compliance with 10 percent low income directives should be included in the Draft Rules. In the absence of an explanation of what the

Draft Rules are trying to achieve, PacifiCorp finds it difficult to comment on the overarching goals of this section.

PacifiCorp is also concerned that the Draft Rules do not guarantee the program will meet the 10 percent capacity availability required by SB 1547. Draft Rule section 860-088-0170(1) reserves 5 percent of each project's capacity for low income customers. Section 860-088-0170(2) reserves 5 percent for projects or portions of projects that exclusively serve low income. It is not clear that this results in a total of 10 percent of project capacity being made available for low income participants as nothing prohibits the individual project capacity from being used to satisfy the program capacity. PacifiCorp suggests that Draft Rules revert to the language in previous versions requiring that 10 percent requirement be met by each project. Alternatively, PacifiCorp would request that language be added to clarify that the 5 percent project capacity referred to in Section 860-088-0170(1), cannot be used to satisfy the 5 percent for projects or portions of projects included in Section 860-088-0170(2). For example, modifying 860-088-0170(2):

> (2) Five percent of the total program capacity tier must be designated for projects or portions of projects that exclusively serve qualifying low-income customers or entities qualifying under subsection (3). *Project Capacity reserved for residential low-income under subsection (1) may not be used to satisfy the additional capacity for projects or portions of projects used to satisfy this subsection.*

IX. Community solar program rules are not the appropriate mechanism to incorporate community solar projects into integrated resource planning. 860-088-0210.

It is not necessary or appropriate to incorporate integrated resource planning (IRP) requirements into the community solar program rules. PacifiCorp recommends striking this language in its entirety. First, IRP rulemaking should be reserved for the state's integrated resource planning guidelines. Second, similar voluntary programs, such as the net metering and volumetric incentive rate program, do not contemplate IRP treatment in program rules. In addition, the IRP requirements proposed in the community solar draft rules will be satisfied by the Company's existing IRP process.

a. Section 0200 (1) of the draft community solar rules requires electric companies to, "include energized projects in their supply mix when calculating generation assets." In response, under the Company's existing IRP process, all energized projects[5] with which the Company has executed a PPA will be captured as generation assets.

b. Section 0200(2)(1)-(2) requires electric companies to include, "forecasts of market potential for community solar projects when assessing load-resource balances," including data provided by the community solar advisory group, historical forecasts,

[5] For example, PacifiCorp's IRP process includes PPAs with a firm commercial operation date established.

and actual development. In response, PacifiCorp's IRP process accounts for resources that are known and measurable. Beyond that, the Company runs sensitivities that account for potential market conditions, which can be proposed in the stakeholder process.

Finally, the Company believes it is premature to commit to incorporate market potential data from the advisory committee without a clear understanding of its membership or when and how it will perform market potential analysis. Further, the Company questions the value of market potential analysis when the program rules specify the program's capacity.

X. PacifiCorp Supports the treatment of Renewable Energy Certificates (RECs) in the Draft Rules.

The Draft Rules do not require the retirement of RECs generated on behalf of participating customers. This is appropriate given that some community solar projects may be of such a small size that registration in Western Renewable Energy Generation System (WREGIS) would be unduly administratively burdensome. Without the mandated retirement of RECs, the Draft Rules should be modified to ensure there is no double counting or double claiming of the environmental attributes associated with subscribed generation. PacifiCorp supports reporting requirements or attestation requirements for project developers to ensure that no double counting of environmental attributes occurs.

PacifiCorp appreciates Staff's diligence in the development of the Draft Rules and the opportunity to provide these comments. The Company believes the proposed changes provided above will add needed clarity and aid in building a sound foundation for a successful community solar program for Oregon, and looks forward to continued participation in this rulemaking.

Respectfully submitted,

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