BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

AR 603

In the Matter of Rules Regarding Community Solar Projects	Closing Comments of Renewable Northwest

I. Introduction

Renewable Northwest thanks the Oregon Public Utility Commission ("Commission") for this opportunity to provide closing comments on the AR 603 Proposed Community Solar Program Rules, OAR 860-088 ("Proposed Rules"). We commend Commission Staff ("Staff") for its efforts to bring stakeholders together for an open process and for its hard work in compiling and adjusting the framework for the rules.

These comments primarily address elements in the initial comments of Portland General Electric ("PGE"), Idaho Power Company ("Idaho Power"), PacifiCorp, and Staff. In Section II, we address the Proposed Rules' language on utility collection of participation fees. In Section III, we discuss the treatment of Renewable Energy Credits ("RECs") associated with the unsubscribed or unsold output of a Community Solar Project ("CSP"), as well as the interaction between RECs and Oregon's Renewable Portfolio Standard ("RPS"). In Section IV, we address the Proposed Rules' framework for compensating CSPs for their unsubscribed or unsold generation. Section V outlines our support for Staff's recommendation regarding the size of the initial capacity tier. In Section VI, we address utility concerns about federal securities laws. Section VII addresses Staff's interpretation of the legislature's intent in Senate Bill 1547 ("S.B. 1547"), the legislation that gave rise to the Community Solar Program. Finally, in Sections VIII and XI we highlight our concerns with Staff's restrictive interpretation of both the goal of the program and what community entails.

II. Utility Collection of Participation Fees

Renewable Northwest encourages the Commission to consider the importance of creating a competitive community solar market when contemplating any changes to the proposed OAR 860-088-0100(3). Under the proposed OAR 860-088-0100(3), utilities would deduct participation fees directly on a participant's bill. All three utilities disagreed with the idea of collecting participation fees in place of the project manager directly.[1] If the Commission decides not to include OAR 860-088-0100(3) in the Final Rules, as the utilities have suggested, we encourage the Commission to also address one potential for utility market advantages by not allowing utilities to use on-bill debiting for participation fees in utility-managed projects. Renewable Northwest encourages the Commission to apply the same requirements to all project managers, whether they are utilities or third parties.

III. REC Treatment

A. RECs Associated with Unsubscribed/Unsold Generation

We recommend that the Commission not adopt Idaho Power's suggestion that utilities purchasing unsubscribed/unsold generation through a power purchase agreement ("PPA") automatically own any RECs associated with that generation.[2] Idaho Power does not specify how the utility would compensate project managers for those RECs. Under the proposed OAR 860-088-0120(2), utilities would compensate project managers for unsubscribed/unsold generation at the rates available to generation sold on an "as available basis." Generation sold on an as available basis receives "day-ahead non-firm market index rate for on-peak and off-peak energy based on the appropriate market index and market hub(s)."[3] Market index rates would not compensate project managers for those RECs.[4] As a result, if the Commission were inclined to adopt Idaho Power's suggestion, the Commission would likely need to also include in the Final Rules a framework to determine the appropriate compensation for the RECs. Allowing the REC compensation to be determined as part of the negotiation between project managers and potential REC buyers seems more appropriate in this context. Hence, we discourage the Commission from adopting language specifying that utilities would automatically own RECs associated with unsubscribed/unsold generation.

[1] Comments of Idaho Power at 3 (May 16, 2017); Comments of PGE at 2 (May 18, 2017); Comments of PacifiCorp at 1-2 (May 12, 207).
[2] Comments of Idaho Power at 5.
[3] UM 1129, Order No. 07-360 at 14 (Aug. 20, 2017).
[4] *See* UM 1396, Order 11-505 at 4, 9 (Dec. 13, 2011) (Adopting the renewable avoided cost stream for qualifying facilities ("QFs") whereby QFs retain RECs and receive market-based prices during the utility's renewable resource sufficiency period).

B. REC Retirement

Throughout this process, Renewable Northwest has commented on the importance of ensuring that CSPs provide additional clean energy beyond what is required by Oregon's RPS. To this end, we have supported the requirement in the Proposed Rules that renewable electricity delivered to participants in a CSP not be counted as electricity sold by the utility for purposes of complying with Oregon's RPS. In addition, we have supported the requirement in the Proposed Rules that all of the environmental, social, and economic benefits associated with the renewable energy generated by a CSP reside with the owner or subscriber. In our view, these components are critical to maintaining the integrity of the community solar program and ensuring that CSP participants can make a valid claim regarding consumption of solar power from the CSP.

Another safeguard for program participants is the creation of RECs for the generation associated with every CSP, coupled with the requirement to retire any and all RECs on behalf of the owner or subscriber. In an effort to provide flexibility, the Proposed Rules do not require the creation of RECs for each CSP. While this flexibility may be laudable, it has the potential to mislead customers, who may assume that RECs have been created and retired on their behalf. Moreover, without the RECs, subscribers cannot make a valid claim to the renewable energy attributes associated with a CSP. We encourage the Commission in its Final Rules to require the creation of RECs for all CSPs in Oregon and the retirement of those RECs on behalf of CSP subscribers.

IV. Compensation for Unsubscribed/Unsold Generation

Renewable Northwest remains concerned that the proposed OAR 860-088-0120(3) includes duplicative incentives for project managers to seek full participation. We understand Staff's concern with ensuring that project managers seek to maximize participation in their projects.[5] However, we reiterate our concern with the duplicative nature of the current means to achieve that goal:

1) compensating unsold/unsubscribed generation at market rates;
2) requiring 50% project participation; and,
3) imposing a 10% limit on the unsubscribed/unsold generation for which a project manager can receive compensation.

As we expressed in prior comments, our experience in proceedings related to the Public Utility Regulatory Policies Act ("PURPA") indicates that variable market-based rates are a disincentive to the development of qualifying facilities ("QFs"). As a result, we expect that the prospect of market rates for unsubscribed/unsold generation will sufficiently incentivize project managers to seek to maximize participation in their CSP.

[5] Staff Comments at 2 (May 30, 2017).

We encourage the Commission to eliminate the 10% limit in the proposed OAR 860-088-0120(3) because it is duplicative. Given the rate of compensation for unsold/unsubscribed generation and the 50% participation requirement in the proposed OAR 860-088-0120(3), the 10% limit is a duplicative incentive that financially penalizes projects working to reach full participation. If the Commission decides to retain the 10% limit, we encourage the Commission to consider approaches to minimizing the potential financial impact of this incentive. For example, the Commission could adopt a phased approach whereby a CSP could receive compensation for 100% of its unsubscribed or unsold power during a set period. That portion would decrease until the project would ultimately receive compensation for the unsubscribed/unsold generation at the 10% limit currently contemplated in the proposed OAR 860-088-0120(3). Another alternative is to increase the 10% limit. We encourage the Commission to consider these and other alternative approaches to eliminate unnecessary financial challenges in getting CSPs off the ground.

V. Program Tier

Renewable Northwest supports Staff's proposed capacity tier of 2.5% of a utility's 2016 peak load. This capacity tier is a reasonable initial program size for ensuring adequate opportunity for utility customers to participate in CSPs. As Staff points out in its comments, a 2.5% tier will allow spreading over more projects the costs of the complex, and likely costly, administrative structure envisioned in the Proposed Rules.[6] Additionally, we understand that the administrative costs of this program will likely be higher in the early stages. Therefore, a 2.5% tier will likely also result in a reduced burden on early participants in CSPs.

Adopting a 2.5% tier is within the Commission's discretion under S.B. 1547. PacifiCorp and PGE filed comments encouraging the Commission to decrease the tier in the Proposed Rules partially due to their concern with an unquantified likelihood of costs shifting from participants to nonparticipants.[7] For example, PacifiCorp argues that a 2.5% tier could exacerbate any potential cost shifts and therefore would run counter to language in S.B. 1547 requiring the Commission to "minimize the shifting of costs from the program to ratepayers who do not own or subscribe to a community solar project."[8] However, PacifiCorp offers no information to support the implication that this program leads to cost shifts that could increase with an increased initial tier capacity. Besides, adopting a tier size that results in lower administrative costs per participant is consistent with S.B. 1547's requirement that the Commission adopt rules that incentivize participation.[9]

[6] *Id*. at 12.
[7] Comments of PGE at 4-5; Comments of PacifiCorp at 3-4.
[8] Comments of Pacificorp at 3 (quoting S.B. 1547, Section 22(2)(b)(B)).
[9] S.B. 1547, Section 22(2)(b)(A).

PacifiCorp's comments also list a concern the potential interconnection study delays as a result of the 2.5% program capacity tier.[10] Renewable Northwest understands that solar developers are generally pleased with PacifiCorp's approach to interconnection, and we commend PacifiCorp for its desire to maintain an effective interconnection process. However, we disagree with PacifiCorp's argument that the unquantified potential for impacts on the interconnection queue justifies foregoing the benefits of a 2.5% capacity tier. Staff has indicated its intention to convene a workshop on how to address the interaction between this program and utilities' interconnection queues and to consider options to mitigate any likelihood of this program impacting utility interconnection queues. That workshop will be an appropriate forum to discuss the interactions between this program and utility interconnection queues.

VI. Staff's Approach to Addressing Securities Law Concerns

Renewable Northwest supports the Proposed Rules' approach to addressing the seemingly low likelihood of this program raising federal securities law concerns. Our understanding is that the Oregon Department of Justice considered federal securities law and the interaction of a program design like the design in the Proposed Rules when drafting its Interoffice Memo dated January 26, 2017. According to the Memo, the Department of Justice's understanding is that this community solar program, if "implemented as a net metering program," would likely not result in securities-related "investment contracts."[11] While it is important that participation in CSPs avoid implicating federal securities law issues, the three utilities appear overly concerned with the likelihood of a such an issue arising under Staff's proposed framework.[12] The Interoffice Memo and statements by the Department of Justice at the April 13, 2017 Q & A session indicate that Staff and the Department of Justice collaborated in drafting the Proposed Rules while aware of the seemingly low likelihood of this community solar program raising federal securities law concerns. In fact, the proposed ORS 860-088-0180(2) follows the guidance provided by the National Renewable Energy Laboratory (NREL) on this issue because of the Commission review of terms, conditions, and standard contracts.[13] NREL states:

> How a program is marketed can make a difference in the determination of whether the product is a security. If a shared solar product is marketed primarily as a profit generating program, it is more likely to come under SEC scrutiny. If a developer does not want its product classified as a security, the primary benefit of

[10] Comments of PacifiCorp at 3-4.
[11] Oregon Department of Justice Interoffice Memo at 11 (January 26, 2017).
[12] Comments of PacifiCorp at 2-3; Comments of Idaho Power at 5; Comments of PGE at 6.
[13] Proposed OAR 860-088-0180.

program participation should be marketed for reducing a customer's retail electricity bill.[14]

Additionally, Renewable Northwest agrees with the written comments on this topic that were previously submitted by the Coalition of Community Solar Access and the Oregon Solar Energy Industries Association, as well as the verbal comments on this topic delivered by the Interstate Renewable Energy Council at the May 22nd, 2017 Commission Hearing.

VII. Project Location Restrictions and Legislative Intent

Renewable Northwest respectfully disagrees with Staff's interpretation of the legislative intent of S.B. 1547 and its reliance on that interpretation as a justification for its proposed project location restrictions. Specifically, Staff's Proposed Rules would limit customers to CSPs located in their utility service territory. Although S.B. 1547 would allow projects to be located anywhere in the state,[15] Staff's proposed limitation effectively restricts projects' ability to locate outside of the utilities' service territories.

Staff concludes that this restriction is necessary in part because in its absence the community solar program would "result in projects like those already being built in Oregon."[16] This seems rooted in the concern that CSPs need to be different in character, in some way, to existing projects in Oregon. Staff's interpretation is that without this difference in character, the CSP would be "inconsistent with the intent of S.B. 1547."[17] Renewable Northwest respectfully disagrees with both the reasoning behind the necessity of the restriction and the interpretation of the intent of S.B. 1547.

Renewable Northwest disagrees with the proposition that the legislature intended this program to result in different projects than those that developed under PURPA. Staff appears concerned that "[if] allowed, Community Solar project developers would no doubt try to develop projects with similar project characteristics [to Qualifying Facilities]."[18] According to Staff, QFs are often developed to "minimize costs" by locating them in "areas with maximum insolation, siting projects on affordable land and sizing projects as large as possible."[19]

Renewable Northwest struggles to understand why Staff takes issue with the possibility that CSP developers would try to pursue avenues to develop projects in a manner that minimizes costs.

[14] David Feldmand et al., Nat'l Renewable Energy Lab. Shared Solar: Current Landscape, Market Potential, and the Impact of Federal Securities Regulation 18 (2015).
[15] S.B. 1547, Section 22(3)(c).
[16] Staff Comments at 9.
[17] *Id*. at 8.
[18] *Id*.
[19] *Id*.

Staff states that "[t]his program should be focused on the needs and desires of retail customers."[20] Some customers' needs and desires may be served by projects that offer them a better financial proposition due to the ability of developers to minimize costs. It seems unlikely that the legislature intended to disfavor such projects solely because they could also be developed under PURPA, and there is no legislative language that backs such an assertion.

Renewable Northwest and Staff both agree that a functional and flourishing community solar program should focus on the needs and desires of retail customers, and Renewable Northwest believes that Oregonians will likely have the best opportunity of selecting a project that meets their needs and desires if that project has locational flexibility. For some potential participants, the driving factor may be a desire to participate in a project located close to them, while for others, it may be the cost. This community solar program should be flexible enough to allow for customers to select projects based on *their* needs and desires.

VIII. Staff's Limited Interpretation of the Goals of the Community Solar Program Leads to Potentially Damaging Program Design Restrictions

Staff seems to suggest that the goal of the community solar program is to fulfill customers' desires "to solely offset their own consumption":

> A community solar program that steps outside its carefully crafted boundaries and begins to cannibalize other utility resource avenues is one that no longer can reasonably be attributed to solely fulfilling a customer's desire to contribute to a resource whose purpose is to solely offset their own consumption.[21]

Renewable Northwest agrees that some customers may desire to participate in community solar solely to offset their own consumption, but we disagree with the notion that this is the sole reason a participant may "desire to contribute to [this] resource." If this is indeed Staff's interpretation, this is an incredibly limited interpretation of the program goals. The legislation defines a community solar project as "one or more solar photovoltaic energy systems that provide owners and subscribers the opportunity to share the costs and benefits associated with the generation of electricity by the solar photovoltaic energy systems."[22] This open and flexible definition allows for a wide interpretation of the words "costs" and, especially, "benefits." For some customers, the benefit may simply be offsetting their own consumption. For other customers, the benefit may be the opportunity to help low-income families be part of the solution to climate change. For many customers, the benefit could be participating in a cross-state, cross-

[20] *Id.* at 9.
[21] *Id*. at 7-8.
[22] S.B. 1547, Section 22(1)(a).

culture community of clean power. The interpretation of the goals of the community solar program should be broadened to reflect the broad range of benefits that customers pursue.

IX. The Definition of "Community" Is Inherently Subjective and Should Not Be Restricted in Such a Manner

Staff admits that the definition of "community" involves subjective interpretations and that as a result, Staff has avoided trying to define it in AR 603. However, Staff then goes on to attempt to define what "community" is not, which is equally subjective. Staff's interpretations of "community" should not be imposed on customers in Oregon who may have a completely different, and potentially broader, understanding of community.

Staff states that:

> Recognizing the difficulty in any effort to define "community" Staff has refrained from doing so throughout the AR 603 process. However, Staff does feel comfortable in recognizing what clearly is not community, which manifests for Staff in parameters of a community solar program that lie far outside any reasonable interpretation of what "community" is. The primary parameter is distance. Clearly, some modicum of distance of generation from consumption is acceptable in a community solar program because the program is aimed at addressing the lack of physical access for customers in the current net metering model. To what extent that distance is permissible though is entirely subjective largely because "community" is such a flexible term. A customer of PGE who lives in northwest Portland likely has limited if any communal connections to a project located nearly 400 miles away in southeastern Oregon.[23]

Renewable Northwest disagrees with Staff's bold assertion that the "primary parameter" of "community" is "distance." The claim that the definition of "community" be limited based on location and proximity to a CSP is both subjective and far too restrictive. The Commission should not arbitrarily base its interpretation of "community" on service territories drawn in pockets on a map rather than the varying, flexible, and highly personal definitions of community Oregonians choose to identify with and that may drive their participation in a community solar program.

[23] Staff Comments at 9.

X. Conclusion

Renewable Northwest is grateful to the Commission for this opportunity to file closing comments on the Staff's Proposed Rules. We appreciate the complexity of the subject and recognize the work that Staff undertook to design a program though the Proposed Rules. We also commend Staff for its responsiveness to questions and feedback throughout this process. Renewable Northwest is optimistic about the future of community solar in Oregon, and appreciates the Commission's consideration of our recommendations as it determines what program design features will lead to a fair program that increases Oregon customers' ability to access solar generation.

Respectfully submitted this 2nd day of June, 2017.

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