

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1930

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON,

Community Solar Program Implementation.

COMMENTS OF  
RENEWABLE NORTHWEST

**I. Introduction**

Renewable Northwest thanks the Oregon Public Utility Commission (“Commission”) for this opportunity to comment on the process for the adoption of a bill credit rate for the Community Solar Program that the Commission is created pursuant to Section 22 of Senate Bill 1547 of 2016 (“SB 1547”). We also thank Commission Staff (“Staff”) and other stakeholders for their thoughtful efforts to provide the Commission with the necessary information to adopt a bill credit rate and determine other important details required to accomplish our common goal: launching a successful program that results in equitable opportunities for Oregon utility customers to access community solar projects (“CSPs”).

Renewable Northwest is a nonprofit advocacy organization that brings together its business and nonprofit members to facilitate the expansion of environmentally responsible renewable energy resources in the Northwest. Renewable Northwest’s membership includes organizations ranging from consumer and environmental advocates to renewable manufacturers and developers, including solar and community solar developers.

These comments are informed by our experience in discussions with various stakeholders and in proceedings on issues related to solar, community solar, and other programs aimed at increasing consumer access to renewable resources, both in Oregon and throughout the Pacific Northwest. Of particular importance to this rulemaking, Renewable Northwest is or has been active in Dockets UM 1020, UM 1690, UM 1716, UM 1910, UM 1911, and UM 1912. We are also a member of the portfolio options committee. Finally, we played an active role in the development of Senate Bill 1547 and have been actively engaged in AR 603 and all other subsequent efforts to launch this community solar program.

**II. The Commission Has the Legal Authority To Establish A Bill Credit Rate**

**1. *The Commission has discretionary authority to establish an alternate bill credit rate for “good cause.”***

Renewable Northwest agrees with Staff that the Commission has broad authority to establish an alternate bill credit rate. In 2016, the Oregon legislature passed SB 1547, enacting a suite of reforms to the state’s energy policy. Section 22 of that act directly mandates that the Commission establish a community solar program through which investor-owned utilities (“IOUs”) are required to enter into 20-year power purchase agreements with certified community solar projects.<sup>1</sup> Section 22 goes on to provide that “an electric company shall credit an owner’s or subscriber’s electric bill for the amount of electricity generated by a community solar project for the owner or subscriber.”<sup>2</sup> Any such bill credit should “reflect[] the resource value of solar,” or “RVOS,” a value that the Commission is directed to determine.<sup>3</sup>

Determining the RVOS, however, is neither the beginning nor the end of the Commission’s role in defining community solar bill credit rates. Recognizing that an appropriate bill credit rate is essential for an effective community solar program, Section 22 provides that the Commission “may adopt a rate for an electric company to use in crediting an owner’s or subscriber’s electric bill other than the rate described in paragraph (a) of this subsection if the commission has good cause to adopt the different rate.”<sup>4</sup> After all, if the bill credit rate is set too low, then communities and developers will likely not have sufficient incentives to establish community solar projects.

All told, the language of Section 22 is unambiguous and the Commission’s authority to set a bill credit rate is a matter of giving effect to the plain language of that section: the Commission “may adopt a rate for an electric company to use in crediting an owner’s or subscriber’s electric bill” as long as “the commission has good cause.”<sup>5</sup> Finally, the Commission has already acknowledged its authority to establish a bill credit rate both in Order No. 17-232 (“The statute allows us to adopt a different rate for good cause,” p. 8) and in the resulting community solar program rules (“*Unless otherwise determined by Commission order*, the bill credit rate for a project will be based on the resource value of solar applicable to that project at the time of pre-certification,” 860-088-0170(1)(a) (emphasis added)).

**2. *State law and past Commission orders demonstrate that ensuring a successful community solar program constitutes “good cause.”***

Both Section 22 and past Commission orders demonstrate that ensuring the success of the community solar program constitutes “good cause” for the Commission to issue a bill credit rate.

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<sup>1</sup> S.B. 1547 § 22(2)(a).

<sup>2</sup> *Id.* § 22(6)(a).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* § 22(6)(b).

<sup>5</sup> *Id.*

*A. Legislative policy reflected in Section 22 informs the meaning of “good cause.”*

Renewable Northwest agrees with Staff’s basic framing of the term “good cause.” Staff writes that “the phrase ‘good cause’ is a delegative term that calls for the agency to complete a value judgment that the legislature itself has only indicated.”<sup>6</sup> In other words, according to the Oregon Supreme Court, the Commission “must consider and advance ... legislative policy in determining what constitutes ‘good cause.’”<sup>7</sup> Therefore, Renewable Northwest agrees with Staff that “[t]o determine what may be good cause to adopt a different bill credit rate, the Commission should examine the text of SB 1547 to discern the legislature’s view of what is good cause.”<sup>8</sup> The text of SB 1547 and the legislative policy reflected in that text counsel in favor of a Commission-established bill credit rate to support the launch of the community solar program.

At its most basic level, Section 22 directs the Commission to “establish by rule a program for the procurement of electricity from community solar projects.”<sup>9</sup> The Commission has already acknowledged that the establishment of a community solar program is the purpose of Section 22.<sup>10</sup>

Subsection 22(2)(b) sets forth legislative policy regarding the community solar program; we encourage the Commission to examine this legislative policy as it decides whether to establish an alternate bill credit rate. That subsection directs the Commission to achieve four key policy goals: (A) create incentives for community solar project owners and subscribers; (B) minimize cost-shifting; (C) protect owners and subscribers from financial hardship; and (D) protect the public interest.<sup>11</sup> A key tool for effectuating these policy considerations is the bill credit rate.

Commission Order No. 17-232 acknowledges the central importance of the bill credit rate. That order, issued over eight months ago in June 2017, directed staff to “monitor the progress of docket UM 1716 and to recommend appropriate action if it becomes apparent that delay in establishing a bill credit rate is delaying program launch.”<sup>12</sup> Thus, the Commission has already recognized that if its RVOS determination is delayed to the point of jeopardizing the success of the community solar program—or, for that matter, if the final RVOS leads to a rate unlikely to lead to a functional program—those issues provide the Commission with good cause to set its own rate. Or, to recast the same statement in positive terms, if a bill credit rate separate and distinct from the proceedings in Docket UM 1716 regarding RVOS is necessary to ensure a

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<sup>6</sup> Staff Report at 5 (Feb. 26, 2018) (Hereinafter “Staff’s February Report”) (quoting *Lombardo v. Warner*, 340 Or. 264, 132 P.3d 22, 25 (2006)).

<sup>7</sup> *Lombardo*, 132 P.3d at 26.

<sup>8</sup> *Id.*, p. 5.

<sup>9</sup> S.B. 1547 § 22(2)(a).

<sup>10</sup> See AR 603, Order No. 17-232 at 1 (Jun. 29, 2017).

<sup>11</sup> S.B. 1547 § 22(2)(b).

<sup>12</sup> Order No. 17-232 at 8.

successful community solar program, then that fact constitutes good cause for the Commission to establish an alternate bill credit rate. Indeed, the Staff Report acknowledges that this is the case.<sup>13</sup>

*B. Past Commission orders confirm that the term “good cause” grants discretion to the Commission.*

The reading of “good cause” discussed above is consistent with past Commission orders providing that the term “good cause” affords the Commission broad discretion to fulfill its legal directives.

As recently as last year, for example, the Commission ordered a series of orders adopting staff recommendations to extend installation deadlines under PGE’s Solar Photovoltaic Pilot Program for “good cause” related to development delays outside of the developers’ control.<sup>14</sup> The Commission agreed that allowing such delays to result in the termination of the developers’ capacity reservations would serve no discernible purpose, and so found good cause to extend the respective deadlines. *Id.* More importantly, the Commission acknowledged that it “has discretion to determine what constitutes ‘good cause.’”<sup>15</sup>

An order from 2002 provides more insight into how the Commission has traditionally interpreted the phrase “good cause.” In Order No. 02-853, the Commission cited several past orders in considering whether there was “good cause” to reopen the proceeding at issue, noting that “[t]he Commission has previously defined ‘good cause’ to include such things as changed circumstances, ratepayer interest, Commission failure to express its intent clearly in a previous order, and correction of a prior erroneous conclusion.”<sup>16</sup> While these considerations may not be directly relevant to the matter at issue here, what Order No. 02-853 highlights is the conclusion that “good cause” is a broad term employed to give the Commission maximal discretion to carry out its statutory functions. Here, “good cause” should be employed to carry out the functions of Section 22 and ensure the success of Oregon’s community solar program.

***3. Staff’s analysis of the Commission’s authority to recover community solar costs through retail rates is incomplete.***

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<sup>13</sup> See *id.* at 6 (“Staff finds that establishing good cause could rest on the Commissioners’ determination that an alternate rate is required to accomplish the above objectives [of subsection 22(2)(b)].”).

<sup>14</sup> See, e.g., UM 1538, Order No. 17-040 (Feb. 7, 2017); UM 1538, Order No. 17-041 (Feb. 7, 2017).

<sup>15</sup> Order No. 17-040, Appx. A, p. 2.

<sup>16</sup> *Id.*, pp. 2-3.

A holistic look at Section 22 demonstrates that Staff’s conclusion that “the Commission does not appear to have general authority to require ratepayers to bear costs of solar generation from the Community Solar programs” is based on incomplete analysis.<sup>17</sup>

First, subsection 22(7)(b) provides directly that “[c]osts incurred by an electric company under the terms of a power purchase agreement entered into pursuant to subsection (2)(a)(D) of this section are recoverable in the rates of the electric company.” For its part, subsection 22(2)(a)(D) requires that electric companies must “enter into a 20-year power purchase agreement with a certified community solar project.” While discussions of this requirement have generally centered on the electric companies’ purchase of *unsubscribed* power,<sup>18</sup> in practice some of the terms related to (and costs associated with) *both subscribed and unsubscribed* generation may be reflected in power purchase agreements. Further consideration of the dynamics of the contractual relationships between community solar projects and electric companies may factor into the Commission’s conclusion regarding its power to include community solar costs in general retail rates.

Second, Section 22 implicitly contemplates retail-rate recovery of community solar costs associated with the difference between the RVOS and a bill credit rate. Subsection (2)(b)(B), for example, provides that the Commission shall “[m]inimize the shifting of costs from the program to ratepayers who do not own or subscribe to a community solar project” (emphasis added). It does not provide that cost-shifting must be eliminated altogether. Subsection 2(b)(A) similarly appears to implicitly contemplate that authority by charging the Commission with incentivizing participation in the program while not expressly excluding financial incentives. Finally, subsection (7)(a) provides that “*except as otherwise provided in this section, owners and subscribers shall bear the costs and benefits of constructing and operating a community solar project*” (emphasis added). Subsection (7) goes on to identify certain costs that may be recovered in retail rates, including costs incurred under power purchase agreements as discussed above.

Together, these provisions demonstrate that Section 22 authorizes the Commission “to require ratepayers to bear costs of solar generation from the Community Solar programs,” but further analysis is necessary to determine the bounds of that authority.<sup>19</sup>

### **III. Waiting for an RVOS-based Rate Could Hinder the Success of the Program**

Renewable Northwest encourages the Commission to adopt an alternate bill credit rate for this community solar program because waiting for an RVOS-based rate could significantly

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<sup>17</sup> Staff’s February Report at 6.

<sup>18</sup> The Community Solar rules established by the Commission via Order 17-232, for example, explicitly contemplate the sale of “unsold and unsubscribed generation” via power purchase agreement. *See* 860-088-0140(1)(a). The rules are silent on the treatment of subscribed generation in power purchase agreements.

<sup>19</sup> *Cf.* Staff’s February Report at 6.

undermine the financial proposition for potential developers and participants. At the earliest, the RVOS will be ready in September 2018.<sup>20</sup> However, deadlines associated with currently available incentives as well as the estimated time frames generally associated with the development of solar projects indicate that waiting for an RVOS-based rate will likely negatively impact the access of developers to incentive funds. Access to those incentive funds will impact the financial proposition for potential developers and participants considering this community solar program. Importantly, projects would have access to lower levels of incentives while potentially facing upward cost pressure due to the recently adopted federal tariffs on solar resources.

Waiting for an RVOS-based rate would leave many developers unable to leverage the federal investment tax credit (ITC) at 30%. Solar projects must begin construction by the end of 2019 to leverage the ITC at 30%. Under OSEIA's development timeline, 16 to 21 months can pass from the beginning of the development process until it can begin construction.<sup>21</sup> This timeline appears consistent with the 18+ months from incentive reservation to completion that the Energy Trust of Oregon (ETO) identified.<sup>22</sup> Another important consideration is that many developers will likely need additional time to assess whether the financial proposition from developing under this program justifies beginning the development work. All of this information indicates that developers will need to know the bill credit rate soon in order to begin development work in time to secure the ITC at 30%. In fact, the majority of the feedback that Renewable Northwest collected in our capacity as lead of the subgroup on RVOS and Bill Credit rate indicated a need to know the rate between December 2017 and April 2018.<sup>23</sup>

Developers losing the ability to leverage the ITC at 30% would negatively impact this program. Indeed, a developer unable to begin construction by 2019 would lose the ability to capture 13% of the currently available incentive.<sup>24</sup> A high level estimate of the financial impacts associated with the ITC step down from 30% to 26% indicate that the impacts would be material.<sup>25</sup> For example, customer costs could increase by approximately 5.5%.<sup>26</sup>

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<sup>20</sup> UM 1716, UM 1910, UM 1911, and UM 1912, Ruling (Feb. 14, 2018) (setting target order date for September 1, 2018).

<sup>21</sup> Staff's February Report at 8.

<sup>22</sup> ETO estimated this timeline from its data on completed projects larger than 1 MW that have received ETO incentives. At the time an ETO incentive is reserved, the project already has a system design.

<sup>23</sup> Attachment E, Staff Report (Jan. 25, 2018) (hereinafter "Staff's January Report").

<sup>24</sup> The ITC would step down from 30% to 26%, a 4% decrease. At 26%, the ITC available to projects that commence construction in 2020 is 13% lower than the ITC available for projects that commence construction in 2019.

<sup>25</sup> This high level analysis estimates the impact of an ITC step down to a theoretical undifferentiated non-Oregon solar project. It should be noted that this project is not a community solar project, which is contractually riskier and as a result generally requires more generous margins. It should also be noted that this solar project is constructed in North Carolina, which, compared to Oregon, has a larger solar workforce and fewer building/zoning regulations, among other differences.

<sup>26</sup> This figure was estimated using the Stanford Business School's Levelized Cost of Electricity tool, an interactive page that lets users calculate the LCOE of different types of electricity with different sensitivities such as ITC

Waiting for an RVOS-based rate would likely also negatively affect the program's ability to make community solar available to low-income communities. In addition to losing the ability to leverage 13% of the currently available ITC, entities looking to develop projects for low-income participants may also lose the window of opportunity to attempt to leverage other funds.<sup>27</sup> For example, one of the respondents to the RVOS/Bill Credit subgroup's call for feedback on considerations regarding the "drop-dead date" expressed a need to have the financials for a project lined up by July 1, 2018 in order to attempt to leverage federal weatherization (WAP) funds for certain low-income projects.<sup>28</sup>

#### **IV. Development of Alternate Bill Credit Rate**

Renewable Northwest encourages the Commission to adopt an alternate rate as soon as practicable. Staff asserts: "It is not clear that establishing an alternate rate will be faster than finalizing the RVOS and applying it to the [community solar program], particularly if Stakeholders continue efforts to resolve issues related to application of RVOS to [the program]."<sup>29</sup> However, as we show above, to ensure both a timely launch of the program and access to a higher level of incentives, it is critical to kickstart the process of resolving this question. The target date for the orders determining each utility's RVOS is September 1, 2018. We argue that an alternate rate could be adopted before then and encourage the Commission to do so.

Importantly, the finalization of the RVOS is not the finalization of an RVOS-based bill credit rate. How an RVOS-based bill credit rate will "reflect" the RVOS is still an open question. Some of the work required to determine applicability of the RVOS methodology to community solar, and to the bill credit rate, could be completed in parallel to each utility specific RVOS process. However, we expect that some process will have to follow the finalization of the RVOS in order to lead to a community solar bill credit rate that "reflects the resource value of solar."<sup>30</sup> Under an ambitious schedule, this could lead to one or two more months before an RVOS-based rate would be finalized.

Given the timing concerns outlined above, Renewable Northwest encourages the Commission to begin developing an alternate bill credit rate. Staff is concerned that "efforts to establish an alternate rate might slow or replace the effort to determine the exact process to apply RVOS to

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percentage. Taking North Carolina as a model (as Oregon is unavailable), the following LCOE rates are reached: 1) 30% ITC: 4.84 cents/kWh; and 2) 26% ITC: 5.11 cents/kWh.

<sup>27</sup> Attachment E to Staff's January Report at 3.

<sup>28</sup> *Id.* at 8.

<sup>29</sup> Staff's February Report at 9.

<sup>30</sup> S.B. 1547 § 22(6)(a).

the [community solar program] bill credit rate.”<sup>31</sup> However, Oregon does not need to start this conversation from scratch. In fact, Staff and other stakeholders have begun much of the groundwork necessary for a conversation on what an alternate bill credit rate could be. Renewable Northwest appreciates Staff’s investigation into community solar bill credits rates across the country. As Staff pointed out, these different methodologies likely influenced outcomes regarding number of projects developed and project ownership type.<sup>32</sup>

We believe that other states’ methodologies could be considered and modified to accommodate Oregon’s unique situation and the Commission’s policy goals. For example, as Staff indicated, “California utility programs enrolled customers in 22 MW as of June 2017, but no third-party project development occurred as of that date.”<sup>33</sup> That low-level of participation indicates that California’s methodology and bill credit rate levels may not be well suited for Oregon’s community solar program. Indeed, this Commission recognized that Oregon’s program has an administrative structure that make much higher levels of participation desirable.<sup>34</sup> In contrast, Staff’s report indicates that states with higher bill credit rates have higher customer participation.<sup>35</sup>

Ultimately, we encourage the Commission to select a methodology that reflects the goals of Oregon’s community solar program: (A) create incentives for community solar project owners and subscribers; (B) minimize cost-shifting; (C) protect owners and subscribers from financial hardship; and (D) protect the public interest.<sup>36</sup> This conversation should begin immediately, moving us in a direction of timely program launch.

## **V. This Community Solar Program is not Like Voluntary Green Power Programs Currently Available in Oregon**

While Staff correctly points out that investor-owned utility customers in Oregon have embraced the state’s existing voluntary green power programs,<sup>37</sup> those programs differ from community solar in important ways. An important distinction is the different legislative vision for community solar and existing voluntary programs. Existing voluntary programs were created as a result of SB 1149 of 1999, which requires the Commission to regulate rates for those programs and to “reasonably ensure that the costs and risks of serving each option are reflected in the rates

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<sup>31</sup> Staff’s February Report at 8.

<sup>32</sup> *Id.* at 18.

<sup>33</sup> *Id.* at 18.

<sup>34</sup> *See* Order 17-232 at 7-8 (“Our intention in setting this initial limit is to launch the program at a size large enough to sustain the initial administrative costs while also ensuring that we have the opportunity to adjust all aspects of the program before proceeding to any further expansion.”)

<sup>35</sup> Staff’s February Report at 18.

<sup>36</sup> S.B. 1547 § 22(2)(b).

<sup>37</sup> Staff’s February Report at 14.



for each option.”<sup>38</sup> In contrast, community solar projects “provide owners and subscribers the opportunity to share the costs and benefits associated with the generation of electricity by the solar photovoltaic energy systems.”<sup>39</sup> This cost and benefit exchange envisioned by the legislature for community solar is different from its focus on cost and risks when considering the pricing of existing voluntary programs.

Parallels to existing voluntary programs are of limited use to conversations about the bill credit rate for community solar because community solar and existing voluntary programs are different in fundamental programmatic ways. For example, existing voluntary programs generally rely on unbundled renewable energy credits while community solar will be a bundled product. Additionally, entry and exit appear likely easier for voluntary programs than it may be for community solar.<sup>40</sup> This community solar program also contemplates making 10% of the program capacity available to low-income customers. In contrast, we understand that low-income participation is not a requirement for existing voluntary programs.

Importantly, community solar involves a complex and potentially expensive administrative structure that the Commission determined warrants an initial program capacity tier of approximately 160 MW to sustain it.<sup>41</sup> In contrast, we understand that the administrative structure for existing voluntary programs is less complex and therefore unlikely to require an equivalent level of participation.

## **VI. Additional Reactions to Staff’s Report**

Renewable Northwest respectfully disagrees with Staff’s characterization of net energy metering (“NEM”) as an incentive<sup>42</sup> and as an identified source of cost-shifting.<sup>43</sup> Both statements rely on the premise that net-metered system contribute a lower value to the utility’s system compared to the retail rate at which the system’s production is compensated. However, phase 1 of Docket UM 1716 aims to determine the net value of a solar system, including a net-metered system. Additionally, phase 2 of Docket UM 1716 will look into whether there is a cost shift, and, if so, in what direction costs are being shifted.

## **VII. Conclusion**

Renewable Northwest is grateful to the Commission for this opportunity to comment on the process for the adoption of a bill credit rate for this Community Solar Program. We appreciate

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<sup>38</sup> S.B. 1149 § 4(3)(a) (1999).

<sup>39</sup> S.B. 1547 § 22(1)(a).

<sup>40</sup> *Id.* § 22(1)(f).

<sup>41</sup> *See* Order 17-232 at 7.

<sup>42</sup> Staff’s February Report at 11.

<sup>43</sup> *Id.* at 12.

the complexity of the subject and how it is further complicated by the interaction between UM 1930, and the utility-specific RVOS proceedings. Renewable Northwest is also grateful to Staff for its work parsing through this interaction as well as for its survey of community solar across the country. We look forward to advancing this vital conversation about the future of community solar in Oregon, and appreciate the Commission's consideration of our recommendations.

Respectfully submitted this 2nd day of March, 2018.

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