



June 24, 2022

Via Email

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

RE: Use of Agent Subscription Model
Docket No. UM 1930

Common Energy Comments on Draft Staff Recommendation Prohibiting Agency Agreements

Dear Staff:

Common Energy, LLC (“Common Energy” or the “Company”)¹ respectfully submits these Comments to Staff at the Oregon Public Utility Commission (“OPUC” or the “Commission”) on Staff’s draft recommendation prohibiting use of what Staff terms the “agent subscription model” in the Community Solar Program (the “CSP”).² Common Energy prefers to use the common term of agency agreements. An agency agreement is a contract wherein one party (here, a subscriber) authorizes another person to perform certain tasks and services on the subscriber’s behalf and for the subscriber’s benefit. Agency agreements meet subscribers’ needs and benefit CSPs across the nation. They are an essential aspect of a successful, well-functioning CSP.

¹ Common Energy is one of the largest community solar providers in the country, operating in nine states and serving approximately 15,000 subscribers. Common Energy has won numerous state awards for its work in community solar, and its personnel are recognized experts in community solar programs. Common Energy’s Board of Directors and advisors include some of the country’s leading experts in energy and energy law.

² Staff Draft Recommendation on Use of the Agent Subscription Model in the CSP (June 14, 2022) (“Draft Recommendation”).

By prohibiting agency agreements, Staff proposes to prevent CSP subscribers, including sophisticated industrial and commercial consumers, from exercising their rights under agency law and enjoying the benefits therein. Staff also proposes to eliminate solutions to existing CSP problems, without acknowledging these problems, offering alternative solutions, or providing any meaningful justification. The Draft Recommendation, as currently written, would significantly harm the CSP.

Further, the Draft Recommendation lacks support and adequate justification, making it difficult to understand and substantively engage with Staff on the stated concerns. For instance, the Draft Recommendation overlooks components of the existing CSP design, like off-bill charges to subscribers. It also overlooks evidence offered by Common Energy on how its agency agreements work in practice, such as how subscribers never lose access to their accounts. Finally, and perhaps most confusingly, the Draft Recommendation cites potential barriers to participation by certain subsets of low- and moderate-income (“LMI”) Subscribers, but these barriers are unrelated to the use of agency agreements. Therefore, even assuming these concerns are valid, prohibiting agency agreements would not solve them. On the contrary, prohibiting agency agreements would burden subscriber participation and make it more difficult for subscribers, including LMI subscribers, to enjoy the benefits under the CSP.

Common Energy hopes that these Comments assist Staff in drafting a new recommendation for the Commission to either: 1) take no action (as none is needed); or 2) take action by explicitly authorizing the use of agency agreements by subscribers. These comments are organized as follows: Section I explains agency agreements in greater detail and how they align with and improve the existing CSP design. Considering that no Commission action is necessary for Subscribers to exercise these rights, Section II provides context for understanding

the current procedural posture. Next, Section III flags three overarching concerns with the Draft Recommendation. Finally, Section IV acknowledges and resolves Staff's stated concerns.

I. AGENCY AGREEMENTS BENEFIT THE COMMUNITY SOLAR PROGRAM

In implementing the CSP, the Commission, Staff, and all stakeholders should recognize the overarching framework and need to further the public interest. Common Energy views the ultimate question presented by Staff's Draft Recommendation as follows:

How do we satisfy customer interest in community solar, while minimizing ordinary risks of project development and minimizing the burden on subscribers themselves?

The best solution includes the use of agency agreements, including but not limited to those that allow for consolidated billing. Below, Common Energy defines the agent subscription model and provides two specific examples of programmatic problems and how agency agreements are not currently prohibited under the CSP and thus provide viable opportunities to solve these programmatic problems.

A. Primer on Agency Agreements

As noted earlier, an agency agreement is a contract wherein one party (here, a subscriber) authorizes another person to perform certain tasks and services on the subscriber's behalf and for the subscriber's benefit. Staff defines the "agent subscription model" as

one where limited power of attorney is granted to an agent, typically a Subscription Manager or Project Manager, which allows the agent to:

administer the participant's electric utility account;
subscribe the participant to a Community Solar project; and
provide the participant with a consolidated bill, paid to the agent instead of the utility.³

Staff's listed actions are all accurate examples of things that a Subscriber might authorize an

³ Draft Recommendation at 1.

agent to do. There are also other potential tasks, such as automatically adjusting a Subscriber's subscription to more accurately match consumption.

B. Agency Agreements Ensure that Project Failures Do Not Become Programmatic Failures

It is well known that one issue for community solar programs is what to do when a subscriber is enrolled to a project that subsequently fails, is delayed, or is completed with reduced capacity. The CSP has not yet sufficiently grappled with this issue. The Program Implementation Manual ("PIM") essentially recognizes this as a problem to be solved in the future. It states:

Projects may be cancelled or fail to achieve commercial operation for many reasons. ... In the case of voluntary or involuntary Project cancellation, the Program Administrator will work with the Project Manager, Oregon Public Utility Commission and other parties to support the cancellation of the Project and find outcomes that minimize harm to impacted Participants and the Program.⁴

Further, the standard-form contracts currently employed in Oregon anticipate that subscribers enroll to a single specific project, and the Project Manager must draft language as directed by the following language:

If the Project is terminated for any reason, before or after achieving commercial operation, the Project Manager must notify the Participant by mail within two weeks of the decision to terminate. The notice must describe the Participant's options, rights and remedies under this contract, including the refundability of any up-front payments.⁵

Common Energy has noted that requiring subscribers to enroll to a specified project is an

⁴ PIM at 75-76.

⁵ General Market Standard Contract at 10, available at <https://www.oregoncsp.org/pm-resources/>. This text is "instructional" for Project Managers. *Id.* at 1.

unnecessary component of the template contracts and appears inconsistent with the CSP rules.⁶ In any event, the CSP assumes that *Subscribers* must ultimately decide what to do if the project they signed up for is not successful.

This is sub-optimal, and many interested subscribers will fall out of the program if it is not resolved because subscribers lose interest and trust in the program when their project fails and they do not receive benefits. Asking them to re-sign up for a different project is a significant ask that is simply too burdensome for most subscribers and provides no commensurate value to subscribers. At a minimum, subscribers that do not drop out will view Oregon’s CSP as being difficult and user unfriendly.

This problem is best solved by proactive decision-making, including language in the subscribers’ contracts when they first sign up and making use of an agency agreement.⁷ With an agency agreement in or with the subscriber agreement, the subscriber may authorize the Project Manager, Subscription Manager, or other agent to immediately transfer their subscription to a different project in the event that the original project is cancelled or delayed. In essence, this reflects the agent providing a higher level of service without downside to the subscriber and a subscriber authorizing a solution before the problem occurs.

This solution is viable because it aligns with the current CSP design. There is no prohibition of agency agreements for subscribers in the statute, Rules, or the PIM,⁸ and there are agency principles actively embedded in the regulations. For example, the Commission delegated programmatic activities to various third-parties, effectively authorizing them to act as the

⁶ See Common Energy’s Comments (Dec. 8, 2021) (“Common Energy Comments”).

⁷ Common Energy Comments.

⁸ See generally ORS 757.386; OAR 860-088; PIM.

Commission’s agents in the program.⁹ Similarly, the PIM recognizes that Project Managers may authorize agents to perform some activities in the program.¹⁰ Having Project Managers, Subscription Managers, or others act as agents for subscribers is thus consistent with the CSP design and can be readily implemented.

The Draft Recommendation flags a concern with the “[t]ransfer of participant to another project or agent without consent.”¹¹ It is not clear what Staff could mean, as an agency agreement that lacks consent is invalid by definition. Common Energy agrees that it is important for Subscribers to be kept informed about their project, including any transfer that occurs. Notice should be expected as a best practice, but once an agency agreement is obtained, further consent is, by definition, unnecessary. Further, it is not clear that there is a benefit to requiring subscriber agreements to identify a particular project; Common Energy understands subscribers want to be informed and believes notice is a good practice, but there is no public interest value to the subscriber in identifying the project in the subscriber agreement.

C. A Material Public Interest Benefit of the Agent Subscription Model is Consolidated Billing, which Provides Competitors such as Common Energy the Ability to Innovate by Making Subscriber Bills More Valuable, Simple, and Easy to Understand

A second benefit of an agency agreement, specifically one that includes authorization for consolidated billing, is that it aids subscribers by presenting only one bill rather than multiple bills. Further, consolidated billing enables providers like Common Energy to provide bills that are more informative and easier for subscribers to understand. Consolidated bills can identify

⁹ *E.g.*, OAR 860-088-0010(8) (“Program Administrator” means a third-party directed by the Commission to administer the Community Solar Program.”).

¹⁰ *E.g.*, PIM at 8 (“A Subscription Manager, if it is not the Project Manager itself, is the Agent designated by the Project Manager as being primarily responsible for conducting customer acquisition for a Project.”).

¹¹ Draft Recommendation at 4.

not only the charges and bill credits but also the details about how the CSP project is delivering environmental benefits. Common Energy offers consolidated billing in other states and shared a sample bill with Staff, which is also attached to these comments as Attachment A.

Under the current CSP design, it is reasonable to assume that some, if not all, subscribers face the possibility of multiple and separate bills. This is sub-optimal. The CSP would benefit from offering *fully* consolidated bills through the use of an agent subscription model. This enables Subscribers to see one single bill with all the normal on-bill charges as well as any applicable off-bill charges. Subscribers then make one lump-sum payment for all charges rather than two separate payments. The agent then does the work of passing the on-bill charges on to the utility, so that all on-bill charges are processed in the ordinary fashion.

The Draft Recommendation appears to misunderstand this issue and claims that the CSP already offers consolidated billing.¹² This does not accurately characterize the current program design. The Commission’s rules require utilities to develop on-bill payment methods that enable the collection and remittance of fees owed to Project Managers, the Program Administrator and Low-Income Facilitator, and any other Commission ordered fees.¹³ The rules also require Project Managers to use the “Commission-approved on-bill payment method” for collecting “ownership or subscription fees owed to the Project Manager,” unless they obtain agreement or approval of an alternative method.¹⁴ “Ownership or subscription fees” are not specifically

¹² Draft Recommendation at 3.

¹³ OAR 860-088-0120(3).

¹⁴ OAR 860-088-0130(4).

defined. The PIM (at 42) outlined the approved options for subscription fees as a capacity-based or production-based model.

The PIM also recognizes that Project Managers may collect other fees off-bill. For instance, the PIM states (at 87) that “Projects Managers may charge a fee to transfer or cancel a subscription (except to low-income Participants) that would be collected separately from a Participant’s utility bill.” Similarly, the Program Administrator’s *Billing & Payments Guide for Project Managers* requires that certain charges not be consolidated on a utility bill:

Off Bill Charges

Any additional charges levied by a Project Manager must be collected off-bill by the Project Manager. This includes any permissible early termination fees, transfer fees, resizing fees, or late fees. All off-bill methods of collecting fees must be described in the Participant Agreement. In the event of any non-payment, Project Managers must provide instructions for procedures for off-bill collection.¹⁵

It is Common Energy’s understanding that a Project Manager’s decision to seek any “additional charges” that would be collected off-bill is project-specific and should be reflected in the project’s pre-certification or certification materials, such as a proposed contract form.¹⁶ Subscription Managers like Common Energy¹⁷ do not have direct control over a Project Manager’s decision to seek or obtain approval for any additional charges. It is the Project

¹⁵ *Billing & Payments Guide for Project Managers* at 4, available at <https://www.oregoncsp.org/pm-resources/>.

¹⁶ *E.g.*, OAR 860-088-0040(2) (“An application for pre-certification must include ... Proposed marketing materials [and] Proposed forms and standard contracts for ownership interests and subscriptions”). It is imperative for subscribers to be able to understand marketing materials and subscription contracts, including any fees involved.

¹⁷ Common Energy is also a registered Project Manager but has so far chosen to participate in the CSP through collaboration with other developers, which allows it to focus its efforts on ensuring the best possible subscriber experience. See <https://portal.oregoncsp.org/#/RegisteredProgramManagers/>.

Manager who is responsible for making these decisions and communicating them clearly to any partners, including but not limited to Subscription Managers.

In any event, it is appropriate and necessary for overall program design to assume that, while all subscribers will certainly face on-bill charges and credits, at least some subscribers will face additional off-bill charges. Thus, at least some subscribers face multiple bills, contrary to the Draft Recommendation's statements otherwise. Authorizing consolidated billing through the use of agency agreements would benefit subscribers and thus would be in the public interest.

The above two issues are only examples of benefits available through the use of an agent subscription model. An agent subscription model is an excellent solution to these bigger problems. Further, as agency law already authorizes and requires agents to act in their principal's best interest, an agent subscription model does not specifically require any action from the Commission to authorize or implement.

II. NO COMMISSION ACTION IS NEEDED

The use of an agent subscription model is not an issue the Commission needs to take action to approve or disapprove at this time. Common Energy is willing and eager to engage with Staff and the Commission to provide information and guidance as needed, but ultimately this need not even be considered an "issue" and does not merit the use of limited Commission resources. Subscribers would be better served for focusing attention on actual problems.

The likely origins of this procedure of using Commission resources is a letter that Portland General Electric Company ("PGE") filed in January 2022. That letter asked the Commission to take action to "ban the use of" what PGE called a "consolidated billing model."¹⁸

¹⁸ PGE's Letter Regarding Requested Action Concerning Unregulated, Consolidated Billing within the Community Solar Program (Jan. 5, 2022). The letter also contained numerous unsubstantiated attacks on Common Energy specifically, none of which are relevant here. When PGE raised concerns with Common

The letter made numerous unsubstantiated attacks on Common Energy, none of which are relevant here. Common Energy is active in the CSP and has signed subscription agreements with subscribers that include the option of consolidated billing, which Subscribers may opt in to by signing a separate agency agreement. Sometime after Common Energy's contracts were approved for use, the Program Administrator ex-post indicated that Common Energy may need to seek Commission approval on this issue. Such an application is not before the Commission, and this discussion is offered only as context for Common Energy's engagement in this issue and understanding of the various parties' views.

Perhaps coincidentally, an agenda item on the next Public Meeting following PGE's letter concerned the CSP. Staff had solicited stakeholder input on several changes to the Program Implementation Manual and was recommending certain changes to the Commission for adoption.¹⁹ Staff recognized that it was not able to address all proposed changes to the CSP PIM and hoped to engage with stakeholders on other proposed changes at a later date.²⁰ These included suggested changes from Common Energy.²¹

At the January 2022 public meeting, a few stakeholders offered brief comments on PGE's letter. For instance, Common Energy noted that consolidated billing is used in other states, and Common Energy did not believe it needed to be considered. However, Common Energy also indicated it would respond and engage in any stakeholder process that occurs, to ensure that consolidated billing is available with strong consumer protections, as it is in other states. Chair

Energy, Common Energy responded via letter. As of the date of this filing, PGE has never provided any response to that letter.

¹⁹ Staff Report at 4-11 (Jan. 3, 2022).

²⁰ Regular Public Meeting at 3:04-3:12 (Jan. 11, 2022) (statement of Staff J. Abraham).

²¹ Common Energy Comments.

Decker recognized this issue was not before the Commissioners and there was additional Staff and stakeholder work to do.²²

In March 2022, Staff then organized a workshop on the agent subscription model.²³ Common Energy and Arcadia, who each use an agent subscription model and would like to use one in Oregon, both presented, as did PGE.²⁴ Following the workshop, Staff served several discovery requests upon Common Energy and Arcadia, to which they responded by May 2, 2022.²⁵ Staff then issued its Draft Recommendation for comments.

Common Energy appreciates Staff's desire to understand the program and supports stakeholder engagement that facilitates this goal. However, there is no need for Commission action on the use of agency agreements. Commission resources would be better spent focusing on actual problems rather than creating new ones.

III. THE DRAFT RECOMMENDATION RAISES SEVERAL FUNDAMENTAL CONCERNS

Staff's Draft Recommendation raises at least three fundamental concerns: 1) it diverges from established and proven practices in other states; 2) it appears to exceed Commission authority; and 3) the scope is unclear and different from how Staff previously described this matter.

²² Regular Public Meeting (Jan. 11, 2022) (statement of Chair Decker).

²³ Notice of March 17 Workshop on use of the agency subscription model in CSP (Mar. 2, 2022). The workshop recording is available online at https://oregonpuc.granicus.com/MediaPlayer.php?view_id=2&clip_id=926.

²⁴ Presentation for the March 17, 2022 public workshop on use of the Agent Subscription Model in the CSP (Mar. 17, 2022).

²⁵ Notice of Docket Schedule Update and Staff Information Request at 1 (May 18, 2022).

A. To Maximize the Public Interest Oregon Should Leverage Proven Solutions in Other Community Solar Programs

One fundamental issue with Staff’s Draft Recommendation is that it directs Oregon to diverge from established best practices in other states with community solar programs. Agent subscription models are the norm, not the exception. Prohibiting them would discourage experienced community solar providers from operating in the state, cause participants to lose investments already made in the Program, and deprive Oregonians from benefiting from the experience of other, more established community solar programs. If Staff recommends that the Commission takes any action here, it should be to embrace established practice, not to prohibit proven and effective market-developed solutions to real problems faced by Project Managers and subscribers.

B. The Commission Likely Lacks Authority to Implement the Draft Recommendation

Another fundamental concern is that it asks the Commission to limit subscribers’ rights under agency law. It is not clear or established that Oregon law, which authorizes agency arrangements, permits the Commission to impair subscribers’ rights in this way.

Practically speaking, any prohibition would likely have the simple outcome of preventing some subscribers from being able to participate in the CSP. For instance, the Oregon Solar + Storage Industries Association (“OSSIA”) flagged at the January 2022 public meeting that third-party billing is currently part of landlord-tenant law in Oregon.²⁶ Common Energy understands that Oregon landlords can bill their tenants for electricity use and other utilities.²⁷ The Draft

²⁶ Public Meeting (Jan. 11, 2022).

²⁷ ORS 90.315(4)(a) (“[I]f a written rental agreement so provides, a landlord may require a tenant to pay to the landlord a utility or service charge or a public service charge that has been billed by a utility or service provider to the landlord for utility or service provided ... to the tenant’s dwelling unit”); *see also* Citizens

Recommendation would likely prevent tenants under these arrangements from being able to participate. The CSP needs to accommodate these lawful billing practices and avoid inadvertently prohibiting many potential CSP subscribers from being able to access the CSP's benefits.

Similarly, even if the Commission does prohibit agency agreements, it lacks the necessary power to implement such a prohibition. Subscribers—and indeed any utility customer—can authorize an agent to act on their behalf. A landlord, for example, could theoretically serve as a ratepayer's agent in the CSP. The landlord might be violating Staff's Draft Recommendation, but it would appear impossible for the Commission to take action on the arrangement as the landlord is not a regulated entity. In any event, the Commission should welcome the landlord's facilitation of CSP participation, not prohibit it.

C. The Scope and Focus is Unclear and Needs Clarification

Common Energy's third concern is that the Draft Recommendation combines the treatment of two related but separate issues. At the March 2022 workshop on the use of an agent subscription model, Staff counsel introduced the subject as being comprised of two sub-issues: 1) agency agreements; and 2) consolidated billing.²⁸ These two issues are related, but they are also separate and distinct issues. In brief, although consolidated billing is dependent upon the use of agency agreements, agency agreements can be used to provide benefits without providing consolidated billing. However, the Draft Recommendation (at 1) defines the agent subscription model as one where, among other things, an agent "provide[s] the participant with a consolidated

Utility Board, What's the RUB? Utility Billing and Tenant Rights, <https://oregoncub.org/news/blog/whats-the-rub-utility-billing-and-renters-rights/2336/>.

²⁸ Workshop on Use of Agent Subscription Model at 2:19-2:58, recording available at https://oregonpuc.granicus.com/MediaPlayer.php?view_id=2&clip_id=926.

bill, paid to the agent instead of the utility.” This leaves it unclear what recommendation, if any, Staff is making about agent subscription models that do not include the use of “consolidated bill[s].” Staff should clarify this aspect of the Draft Recommendation.

IV. STAFF’S CONCERNS DO NOT SUPPORT THE DRAFT RECOMMENDATION

Common Energy appreciates Staff’s diligence in exploring this matter and hopes to find a productive solution that best serves the CSP, subscribers, and the public interest. Unfortunately, the Draft Recommendation will not achieve this goal. Common Energy responds to each of Staff’s concerns and items of potential misunderstanding below.

A. An Agent Subscription Model Provides Significant Additional Benefits

The Draft Recommendation claims that consolidated billing is the primary benefit of an agent subscription model, and that it is a benefit already in the program. Common Energy respectfully disagrees with both assertions.

Agency agreements offer many benefits. Two examples other than consolidated billing include transferring subscribers to other projects if an initial project fails, and updating a subscriber’s subscription level from time to time to more accurately match the subscription to a subscriber’s actual electricity consumption.

Further, the CSP does not currently offer consolidated billing. As noted earlier in these comments, the CSP as designed has some but not all CSP-related charges on subscriber electricity bills. Some charges may be, and likely are being, collected off-bill. Thus, subscribers face multiple bills which is harmful because it creates unnecessary complexity and confusion for subscribers. Consolidated billing, made possible by agency agreements, remedies this problem.

B. An Agent Subscription Model Does Not Create New Risks for Subscribers

The Draft Recommendation expresses concern with four perceived risks to subscribers using agency agreements. Common Energy responds to each below.

1. Account Access Is Maintained at All Times

First, the Draft Recommendation claims that subscribers may experience “[r]educed access to utility bill and utility communications” because an agent would receive notifications and then pass them on to the subscriber.²⁹ This is not correct for at least two reasons. First, subscribers may have agents and also have access to their utility accounts. These are not mutually exclusive. For instance, Common Energy noted in discovery that “Subscribers always maintain control over their utility online account. A subscriber can always log into their account... if they wish, at any time.”³⁰

Similarly, subscribers do not suffer “reduced access” by having a third-party send them communications rather than having a utility do so. Staff appears concerned with third-parties needing to “choose to pass” communications on, but this is a misunderstanding.³¹ Common Energy, for example, uses an automated forwarding system for email that minimizes even the risk of human error. Further, Common Energy makes zero changes to other communication methods. As noted in discovery, “Common Energy does not make changes to a subscriber’s phone number or postal mailing address on file with the utility. Common Energy would only consider doing so if requested by a subscriber.”³² Thus, there is no change to phone or mailing notifications.

If Staff is worried about third-parties sending communications rather than utilities, it should state so and explain why this is the case. Assuming for the sake of argument that there is

²⁹ Draft Recommendation at 3.

³⁰ See Attachment B, Common Energy’s Response to OPUC Staff Request 03; see also Attachment B, Common Energy’s Response to OPUC Staff Request 02.

³¹ Draft Recommendation at 3.

³² See Attachment B, Common Energy’s Response to OPUC Staff Request 01.

a valid concern, a simple solution would be to enable both subscribers *and* third-parties to receive utility notifications. In other states, Common Energy makes no change to a customer’s email access because there is an option to list multiple email addresses. This appears to not be an option currently in Oregon, but the records are not complete in that respect.³³

2. There is No Loss of Account Access

Next, the Draft Recommendation flags concern with subscribers losing access to their utility accounts.³⁴ As noted above, for Common Energy, “Subscribers always maintain control over their utility online account. A subscriber can always log into their account... if they wish, at any time.”³⁵ Common Energy makes no changes to user credentials. Staff could recommend that the Commission specifically require this approach if it wished.

3. The “Unintended Consequences” Are Either Intended or Not Necessary in an Agent Subscription Model

Third, the Draft Recommendation flags a list of “unintended consequences.”³⁶ An overarching issue with these is that Staff appears to assume customers have not consented, which is a crucial and fundamental underpinning of any action under an agency agreement. For instance, Staff expresses concern with agents transferring subscribers to different projects (a public interest benefit, in certain circumstances, as discussed earlier) “without consent.”³⁷

³³ *But see* OAR 860-021-0017 (requiring utilities to let customers designate a third-party to receive utility notices and bills). It is unclear how this rule is being implemented.

³⁴ Draft Recommendation at 3.

³⁵ *See* [Attachment B](#), Common Energy’s Response to OPUC Staff Request 03; *see also* [Attachment B](#), Common Energy’s Response to OPUC Staff Request 02.

³⁶ Draft Recommendation at 4.

³⁷ Draft Recommendation at 4.

Similarly, Staff expresses concern with “use of participant data to solicit participation in unrelated programs.”³⁸ Common Energy assumes that Staff is concerned about this occurring without consent, as the CSP Code of Conduct requires Project Managers to “not intentionally provid[e] customer information to any third party without *express customer consent*.”³⁹ Thus, consent is required. Any concern otherwise is a concern with an unlawful agreement or an action already prohibited by the CSP. Further, to the extent Staff has continuing concerns with bad actors taking action without consent, those concerns are readily addressed by the program’s disciplinary procedures.⁴⁰ These concerns present no justification for prohibiting the lawful use of agency agreements.

4. Program Complexity

Finally, the Draft Recommendation expresses (at 4) concern with increased complexity for the program without identifying or fully explaining the complexity. However, agency agreements materially *reduces* complexity for subscribers. As noted earlier, both agency agreements and consolidated billing solve existing problems in the CSP. Staff’s recommendation enshrines the existing complexity and difficulty with the existing program and foregoes nationally recognized best practices that are simple and improve the CSP. Common Energy disagrees that potential subscribers will have more understanding and trust in the program if these problems go unresolved than if there is a solution ready and established to explain and implement. Similarly, the program administration should not need to make any changes to its data exchange processes. As discussed earlier in these comments, whether a

³⁸ Draft Recommendation at 4.

³⁹ PIM at 29 (emphasis added).

⁴⁰ *E.g.*, OAR 860-088-0200(3) (prohibiting “dishonesty, fraud, or deceit...”).

subscriber or their agent makes a payment has no impact on the process. Thus, the Draft Recommendation is incorrect when it claims (at 4) this “alters every step of the information and payment exchange.”

C. Agency Agreements Are Unrelated to the Stated Barriers to Low-Income Participation

The Draft Recommendation expresses concern with a number of potential barriers to participation for certain subsets of LMI subscribers, none of which are related to the use of agency agreements. These include concerns with Project Managers requiring subscribers to: 1) register online and have an email address; 2) have a credit card and agree to auto-pay systems; 3) unenroll from equal pay programs; and 4) pay their bills in full.⁴¹ These concerns appear to be based on a letter filed by the Low-Income Facilitator.⁴² Notably, neither the letter nor Draft Recommendation cite any requirement in the CSP that Project Managers not impose these requirements. Assuming these concerns are valid, they are concerns with services for particular subset of needs within the LMI community that Project Managers and Subscription Managers are not currently required to provide. Perhaps more relevantly, they are largely unrelated to the use of agency agreements. Prohibiting agency agreements would have zero effect on whether Project Managers require subscribers to sign up electronically or not, for example.

Further, Common Energy emphasizes again that agency agreements and consolidated billing are *options* for Subscribers, not requirements. Staff should not recommend prohibiting a majority of subscribers from being able to access benefits out of concerns that a subset of subscribers will not chose to partake of those benefits.

⁴¹ Draft Recommendation at 4-5. Staff also claims that unenrolling subscribers from equal pay programs is a “standard practice” for Common Energy, but this is not correct.

⁴² Draft Recommendation, Attachment at 6-8.

D. An Agent Subscription Model Should Not Require Any Additional Ratepayer Funds to Implement

Finally, the Draft Recommendation flags a substantial investment needed to accommodate use of an agent subscription model.⁴³ Yet no specific costs are identified or explained. Generalized, unspecified claims such as this cannot support public policy. Common Energy is unaware of any change to the billing system that would be caused by an agent subscription model. As noted above, agents act exactly as their principals would. There is zero change to the current billing structure, at least under Common Energy’s agent subscription model. When Staff asked Common Energy “Does the payment submission process follow the existing programmatic billing processes, whereby the utility transfers Program fees to the Program Administrator who in turn pays the PM?,” the answer was a simple, unequivocal “Yes.”⁴⁴

V. CONCLUSION

For the foregoing reasons, Staff should revise the Draft Recommendation. Staff should advise the Commission to either take no action or issue an order explicitly authorizing the use of agent subscription models, including but not limited to those that allow for true consolidated billing.

Dated: June 24, 2022.

Attachment A – Sample Common Energy Bill

Attachment B – Common Energy’s Response to OPUC Staff Requests

⁴³ Draft Recommendation at 5.

⁴⁴ See Attachment B, Common Energy’s Response to OPUC Staff Request 04.

Attachment A

Common Energy Sample Bill



Account Number: **002896**
 Invoice Number: 00014379
 Date: 2/16/2021

Total Amount
\$199.74

Account Name:
 Service Address:

Payment Scheduled for
2/26/2021

Bill Summary

PGE Electricity	\$162.08
PGE Gas	\$45.27
PGE Other Charges	\$-0.41
Subtotal	\$206.94
Clean Energy Credit Received	\$144.06
Cost of Clean Energy (5% Discount)	\$136.86
Your Savings with Common Energy	\$7.20
Credit Card Processing Fee*	\$0
Total	\$199.74

Credit Bank

Starting Bank Balance	2778 kWh
Clean Energy Allocated	2315 kWh
Clean Energy Used	1429 kWh
Credit Bank	3664 kWh
Credit Rate	\$0.1008235

Your Impact

This month you enabled **2315 kWh** of clean energy and prevented **880 pounds** of carbon dioxide from entering your community. This is the equivalent of planting 11 trees!

Since joining Common Energy you enabled **15486 kWh** of clean energy and prevented **5885 pounds** of carbon dioxide from entering your community. This is the equivalent of planting 71 trees!



*2.9% Credit Card Processing Fee. Avoid this fee by switching to automatic payments from your bank account.

QUESTIONS?

Feel free to ring us anytime at 844-440-9682 or email savings@commonenergy.us

Attachment B

Common Energy's Responses to OPUC Staff Requests

Oregon Public Utility Commission
OPUC Docket UM 1930
May 2, 2022
Common Energy's Response to OPUC Staff Request 01

OPUC Staff Information Request 01

Please describe whether a phone number or mailing address for customer might be changed in customer's utility account?

- a. If so, please describe if and how utility notifications are forwarded to the utility customer

Response to OPUC Staff Information Request 01

Common Energy interprets this question to be about Common Energy's actions under an agency agreement for subscribers who agree to Common Energy's standard enhanced billing and is responding to that interpretation of this question:

Common Energy does not make changes to a subscriber's phone number or postal mailing address on file with the utility. Common Energy would only consider doing so if requested by a subscriber.

Oregon Public Utility Commission
OPUC Docket UM 1930
May 2, 2022
Common Energy's Response to OPUC Staff Request 02

OPUC Staff Information Request 02

Please describe how and how often customers are reminded to review their online utility account for any communications that may have not been forwarded to the customer.

Response to OPUC Staff Information Request 02

Common Energy interprets this question to be about Common Energy's actions under an agency agreement for subscribers who agree to Common Energy's standard enhanced billing and is responding to that interpretation of this question:

Common Energy does not remind subscribers to review their online utility account. With Common Energy's enhanced billing, nothing changes about a customer's ability to access their utility account, they can continue to access and review their account as they see fit.

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Common Energy's Response to OPUC Staff Request 03

OPUC Staff Information Request 03

Please describe what steps a customer must take to reestablish ability to pay their utility bill directly.

- a. What information is needed by the customer to re-establish control of their utility account?

Response to OPUC Staff Information Request 03

Common Energy interprets this question to be about Common Energy's actions under an agency agreement for subscribers who agree to Common Energy's standard enhanced billing and is responding to that interpretation of this question:

Subscribers always maintain control over their utility online account. A subscriber can always log into their account and make a direct payment to their utility if they wish, at any time.

Oregon Public Utility Commission
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May 2, 2022
Common Energy's Response to OPUC Staff Request 04

OPUC Staff Information Request 04

Please describe the process for transferring full, partial, or late payment to the utility.

- a. If partial or late payments are handled differently, please describe how.
- b. Does the payment submission process follow the existing programmatic billing processes, whereby the utility transfers Program fees to the Program Administrator who in turn pays the PM?

Response to OPUC Staff Information Request 04

Common Energy interprets this question to be about Common Energy's actions under an agency agreement for subscribers who agree to Common Energy's standard enhanced billing and is responding to that interpretation of this question:

Common Energy makes payments to the utility in full on behalf of the subscriber electronically via the payment mechanism in the subscriber's online utility account.

- a. Common Energy makes full payments only and, due to ACH system constraints, does not currently process partial payments. If a subscriber wishes to make a partial payment directly to their utility, they could do so. Please see IR 3.

Late payments are processed the same as on-time payments as soon as funds from the subscriber are available. If the subscriber's payment to Common Energy is late, Common Energy has a standard series of email and phone follow-ups with the subscriber and delivers payment to the utility once received from the subscriber. In its four years of operating, Common Energy has never assessed its own late fee. However, it has helped subscribers pay late fees assessed by utilities.

- b. Yes.

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Common Energy's Response to OPUC Staff Request 05

OPUC Staff Information Request 05

Please describe how long a customer would receive benefit/savings if a community solar project stops operating, and the customer cannot be migrated to another project

Response to OPUC Staff Information Request 05

The answer to this question is defined by the program itself and not by Common Energy. Per the program design, if a community solar facility were to stop producing such that credits cease, then the subscriber would no longer experience savings from that facility. In this case Common Energy would seek to work with the PA to assign the subscriber to available capacity on another community solar facility in order to continue the flow of credits and savings.

Subscribers who receive enhanced bills would continue to receive the benefit of enhanced bills from Common Energy until the subscription agreement is terminated.

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May 2, 2022
Common Energy's Response to OPUC Staff Request 06

OPUC Staff Information Request 06

Please describe what ways, if any, customers could be allowed to make payments if the Community Solar Program does not allow projects to require that some or all participants to use auto-pay.

Response to OPUC Staff Information Request 06

Common Energy interprets this question to be about Common Energy's actions under an agency agreement for subscribers who agree to Common Energy's standard enhanced billing and is responding to that interpretation of this question:

Please see IRs 3 and 4. Whether by ACH or credit card, Common Energy subscribers pay with auto-pay. From Common Energy's perspective it would be hard to understand or justify a policy that prohibits a company, operating in a competitive environment, from setting its own reasonable business practices.

Oregon Public Utility Commission
OPUC Docket UM 1930
May 2, 2022
Common Energy's Response to OPUC Staff Request 07

OPUC Staff Information Request 07

Please describe if and how partial payments could be accepted in the instance that the Community Solar Program required projects to accept partial payments from some or all customers.

Response to OPUC Staff Information Request 07

Common Energy interprets this question to be about Common Energy's actions under an agency agreement for subscribers who agree to Common Energy's standard enhanced billing and is responding to that interpretation of this question:

Please see IRs 3 and 4. Due to ACH rules, Common Energy does not process partial payments.

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Common Energy's Response to OPUC Staff Request 08

OPUC Staff Information Request 08

Please describe the ways in which the ability to support participants and the participant experience may be impacted if the Program does not allow the use of agent agreements (or one or more parts of Common Energy's agent agreement) for some or all customers.

Response to OPUC Staff Information Request 08

Common Energy provides the following services under the agency agreement. These services could not be provided in the absence of the agency agreement:

- 1) Automatic adjustment of allocation from the community solar facility so that ongoing credit deliveries reflect changes in subscriber electricity usage. Common Energy monitors subscriber electricity usage on an ongoing basis and adjusts credit deliveries accordingly. In the absence of this service, most subscribers will receive too many or too few credits over the course of their subscription.
- 2) Automatic assignment to an alternative project if a project to which a subscriber was assigned stops producing credits. Please see IR 5 for more information.
- 3) Delivery of enhanced statements that communicate information not on the utility bill: savings and clean energy this period for this subscriber; simple calculation of savings this period for this subscriber; savings and clean energy subscription-to-date for this subscriber; clean energy produced to date for this solar farm; email address, phone number, and web URL for Common Energy.

Aside from the practical effects, as noted above, from Common Energy's perspective it would be hard to understand or justify a policy that prohibits a company, operating in a competitive environment, from setting its own reasonable business practices. Common Energy notes that individuals and businesses designate agents to manage all types of services on their behalf, which is their right as a matter of law.

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Common Energy's Response to OPUC Staff Request 09

OPUC Staff Information Request 09

Please list and provide details for any and all reasons why a Community Solar participant may be charged fees in addition to those already included in the Oregon Community Solar Program.

Response to OPUC Staff Information Request 09

Common Energy interprets this question to be about Common Energy's actions under an agency agreement for subscribers who agree to Common Energy's standard enhanced billing and is responding to that interpretation of this question:

All of Common Energy's subscriber agreements are structured to provide a service to subscribers that saves them money. Accordingly, Common Energy does not charge participants any fees aside from collecting payments for credits. In Oregon, to date, Common Energy has also taken the extraordinary measure to work with its partners to absorb the Oregon Community Solar Program's administrative fees to further maximize subscriber savings. To our knowledge, we are the only market participant who does this.

Subscribers who choose to pay via credit card incur a processing fee charged by the credit card company, as is typical in many industries, which is passed through to the subscriber. This fee covers real costs that Common Energy incurs and does not generate any profit for Common Energy. Common Energy also incentivizes subscribers to avoid this fee by paying via ACH. Common Energy's subscriber agreement allows Common Energy to collect fees for late payments, but as previously noted in IR 4, Common Energy has never collected late payment fees and does not have plans to collect them.

Subscribers that initiate arbitration are expected to pay at least a portion of the filing fee, but, like the credit card fee, this does not generate any profit for Common Energy.

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Common Energy's Response to OPUC Staff Request 10

OPUC Staff Information Request 10

To the extent known, please list and provide details for any and all reasons why an agency agreement might result in a participant incurring fees in addition to those already included in the Program from the participant's utility, financial institution, or another party.

Response to OPUC Staff Information Request 10

Please see IR 9 for information on enhanced billing. Common Energy understands this question to be specifically about the agency agreement itself and is responding to that interpretation of this question:

There are no incremental fees associated with Common Energy's agency agreement.

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Common Energy's Response to OPUC Staff Request 11

OPUC Staff Information Request 11

Please describe if Common Energy would remain part of a Community Solar Project if it were not permitted to use an agent agreement.

- a. If so, please describe in detail the customer experience.

Response to OPUC Staff Information Request 11

This question requires speculation about rules that are not in existence, so Common Energy does not have an answer at this time. In our judgement and experience, an inability to use an agency agreement would limit options for consumers and reduce both participation and the impact of the Oregon Community Solar Program.

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Common Energy's Response to OPUC Staff Request 12

OPUC Staff Information Request 12

Please provide an example of Common Energy's monthly bill and all related content.

Response to OPUC Staff Information Request 12

Common Energy interprets this question to be about Common Energy's actions under an agency agreement for subscribers who agree to Common Energy's standard enhanced billing and is responding to that interpretation of this question:

Common Energy is providing a copy of its monthly bill. Please see accompanying file labeled "Sample Statement of Savings 2021 - 1A – OR.PDF." Common Energy is not certain what is intended by "related content."

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Common Energy's Response to OPUC Staff Request 13

OPUC Staff Information Request 13

Is there any situation where bill collection agencies might be utilized?

Response to OPUC Staff Information Request 13

Common Energy does not use collection agencies and does not plan to use them.

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Common Energy's Response to OPUC Staff Request 14

OPUC Staff Information Request 14

Please describe if Common Energy would remain part of a Community Solar Project if it were not permitted to use a consolidated bill.

- a. If so, please describe how this would impact participant experience.

Response to OPUC Staff Information Request 14

This question requires speculation about rules that are not in existence, so Common Energy does not have an answer at this time.