

## UM 1930 – Community Solar Program

### Request for public comments on Staff’s recommended modifications to Program Implementation Manual

August 24, 2021

Staff is posting recommended modifications to the CSP Program Implementation Manual (PIM) in advance of the August 26 Special Public Meeting. Written comments should be submitted to the UM 1930 docket through September 6. Comments will inform Staff’s final Tier 2 proposal to be presented at the September 21 Special Public Meeting.

The recommended modifications to the PIM extend Staff’s Program proposal published July 16, 2021.<sup>1</sup> The set of PIM changes aim to simplify and streamline the program, better support carve-out projects, and address unintended program outcomes and program administration and procedural issues.

**Please email comments on this draft proposal for modifications to the Program Implementation Manual to [puc.filingcenter@puc.oregon.gov](mailto:puc.filingcenter@puc.oregon.gov) by September 7, 2021.**

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<sup>1</sup> <https://edocs.puc.state.or.us/efdocs/HAH/um1930hah153659.pdf>

## UM 1930, Oregon Community Solar Program (CSP) Proposed Modifications to Program Implementation Manual

This document describes OPUC Staff’s recommended modifications to the Program Implementation Manual (PIM) of the Oregon Community Solar Program (Program). This document extends Staff’s draft proposal<sup>2</sup> to release the 79 MW capacity remaining in the Program’s “interim capacity tier,” and modify some elements to better achieve the Program’s goals. Please refer to that Staff proposal as a reference for the recommendations discussed below.

Staff seeks written comments on the recommendations below by September 7, 2021. **Please email comments to [puc.filingcenter@puc.oregon.gov](mailto:puc.filingcenter@puc.oregon.gov).**

Staff proposes the following series of PIM modifications. These have been developed with available data, stakeholder feedback, and observations by the Program Administrator (PA) and Staff.

- Recommendations 1-6 address simplifying and streamlining the Program for the benefit of residential and low-income customers, Project Managers, the Project Administrator, Staff, and the Commission.
- Recommendations 7-9 address better supporting the development of carve-out projects, including pursuing a simplified interconnection process for small projects.
- Recommendations 10-12 address unintended Program outcomes related to Project Managers subscribing customers.
- Recommendations 13-14 address Program administration and procedural issues.

### 1. Simplify Residential and Low-Income Participant Contracts

Staff proposes to simplify the contracting experience for residential and low-income participants through the following changes:

- a. Revise the residential and low-income standard contracts to use plainer language and eliminate unessential provisions so the templates. Ensure that contract templates are simpler and substantially shorter in length.
- b. Remove certain required terms and conditions that apply to all projects from the contract templates. Instead publish terms and conditions in a separate document with standard customer protection provisions that is housed on the Program website.

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<sup>2</sup> Docket No. UM 1930, *Community Solar Program Staff draft proposal and request for comments*, July 16, 2021, <https://edocs.puc.state.or.us/efdocs/HAH/um1930hah153659.pdf>

- c. Make reference to this protections and disclosures document in the standard contracts, ensuring that participants have access to this information and projects are bound by it. However, to streamline contracts, do not include this language in the contracts themselves.

### **Rationale**

The Program requires that all participant contracts with residential and low-income participants adhere to Program-provided templates. Non-residential participant contracts do not need to follow a dedicated template but must include certain information as well as a Program-provided disclosure checklist.

Project Managers, participants, and the Low-Income Facilitator have indicated that the Program-required contracts for residential and low-income participants are too long and complex. This can create a barrier for residential customer recruitment. Staff understands this feedback, but notes that the contracts contain certain necessary customer protections and disclosures that cannot be removed.

## **2. Provide Programmatic Language Services, and Require Projects to Accept Non-English Speaking Participants**

Staff proposes to require Project Managers to accept non-English speakers referred by the Program's Low-Income Facilitator. Staff also proposes to provide programmatic voice translation services to Project Managers to serve non-English speaking participants.

### **Rationale**

The Program's Low-Income Facilitator notes that a sizeable number of potential low-income participants do not speak English, and that most Project Managers to date are unable to provide translation services to multiple languages.

Staff and the PA suggest requiring that Project Managers make a good-faith effort to serve any participant referred by the Low-Income Facilitator, regardless of the participant's primary language. The Program would pay up to a certain cost for a voice translation service through a dedicated Program Administrator subcontractor. These services would be available to Project Managers as they interact with non-English speaking utility customers and enroll them in the Program. The Program already provides translated versions of the residential and low-income contract template in Spanish, Russian, and Vietnamese for Project Managers in adapting written materials.

### **3. Adjust the Entity Signing the Community Solar Power Purchase Agreement (PPA)**

Staff proposes to permit the owner of the solar project to sign the Community Solar Power Purchase Agreement with utilities, regardless of whether the owner is the Project Manager. As part of the project Certification Process, Project Managers would be required to attest that they own the solar project. If a Project Manager does not own the solar project, they would be required to attest they are under contract with the project owner to manage the project within the Program. Project Managers would also be required to agree to be bound by the conditions of the Program as described in the PIM and Community Solar Purchase Agreement.

#### **Rationale**

Currently, the Program requires that Project Managers sign the utility Community Solar Power Purchase Agreement. This ensures that Project Managers are bound by the conditions of the Community Solar Power Purchase Agreement, including the terms of payment for subscribed and unsubscribed energy. Because Project Managers and project owners are often separate parties, this has raised practical issues, as the project owner is typically the entity that would sign any form of power purchase agreement.

To address the issue, Staff proposes to allow the project owner to be the signatory entity, and to require the additional attestation from Project Managers at the time of Certification.

### **4. Adjustments to Certification Requirements**

Staff proposes the following modifications to Program Certification requirements, effective for all projects:

- a. Require final construction drawings at the time of project Certification, rather than as-built plans.
- b. Allow projects to request Certification before they are constructed, so long as the Project Manager attests that under current construction schedules, projects would begin operations within three months of the time of the date of Certification request.
- c. In lieu of the construction requirement, require that a project submit an executed interconnection agreement at the time of Certification.
- d. For PGE projects, require that Project Managers provide a signed Non-Disclosure Agreement covering the provision of participant energy consumption information through the Program Platform. This information includes records of monthly kWh consumption by the Participant, which would be used by Project Managers to manage subscription sizes and mitigate the risk of over-subscription.

## Rationale

Modifications a-c above are intended to ease Project Manager concerns regarding the project Certification timeline. Currently, the Program requires projects to be fully constructed before requesting Certification, and to provide as-built drawings as evidence of constructed status. Following Certification, a project has up to six months to become operational. Two other critical thresholds that a project must meet before Certification are (1) executing a Community Solar Power Purchase Agreement with the utility; and (2) subscribing at least 50% of project capacity.

The Program has heard two points of Project Manager feedback related to these requirements:

- As-built construction drawings are typically not available until after a project has already begun operation.
- The inability to request Certification until construction is complete introduces a 3-4 week delay in a project beginning operations and participants receiving benefits. This delay is due to the requirements and timing of OPUC public meetings.

The intent of the above proposed changes is to streamline the project development timeline while still ensuring that projects achieve significant development milestones before becoming Certified. This progress includes obtaining an executed interconnection agreement and community solar purchase agreement, recruiting participants to fill at least 50% of project capacity, requesting Certification, and receiving final Commission approval by the time construction is complete and the project is ready to come online. Staff acknowledges that there is some risk in certifying projects that have not yet been constructed. This risk, however, is mitigated by the use of key development thresholds as certification requirements, and the six-month time limit that a project has to begin operations after it has been certified.

The fourth proposed modification for Certification relates to the process by which utilities will share participant information through the platform. To support project managers in understanding the risk of participant over-subscription, the Program will provide monthly consumption information to project managers regarding actively enrolled participants. Staff has discussed this process with utilities, and agree with utilities that care is required when providing sensitive customer information via the platform. PGE has expressed a preference that project managers explicitly sign a non-disclosure agreement before receiving sensitive customer information through the platform. To accommodate this preference, Staff proposes to collect a signed non-disclosure agreement as a Certification requirement for projects in PGE services area.

## 5. Ease Project Manager Registration Requirements

Staff proposes to require proof of insurance at the time of Project Pre-certification, rather than Project Manager Registration, and to accept W-9 information from fiscal sponsors if necessary.

### Rationale

Project Managers Registration is intended to be a first step in the Community Solar project development process. Project Managers are also required to be registered with the Program before they may begin customer outreach. As such, the Registration process entails minimal requirements, and Project Managers must only provide basic information, a W-9, and meet insurance requirements.

The Program has heard feedback that these requirements may pose a barrier for community-based Project Managers that lack existing insurance and may not have a formal structure. These Project Managers would also have to pay certain costs before being permitted to have preliminary conversations with community members. To allow community groups to investigate project feasibility without committing to programmatic costs, Staff proposes to enforce insurance requirements at the time of Project Pre-certification rather than Registration. Staff also clarifies that W-9 information from fiscal sponsors will be accepted at the time of Registration.

## 6. Delegate Certain Project Approvals to the Program Administrator

Staff proposes streamlining the process for making project-level approvals by implementing the following recommendations:

- a. Delegate the authority to pre-certify projects, grant waivers, grant extensions, and approve amendments to the PA.
- b. Provide the PA and OPUC Staff the option to defer any project approval to the Commission.
- c. Establish a process for project managers to appeal the PA's rejection of any pre-certification, waiver, extension, or amendment request to the Commission.

### Rationale

Under current PIM requirements, most project approvals, including pre-certification, waivers, extensions, and amendments, must be made by the Commission. Requirements and timing of public meetings introduce a 3-4 week delay from when the PA makes a project

recommendation and approval is granted by the Commission. Most recommendations are approved via the Commission’s consent agenda without comment from stakeholders.

As OAR Chapter 860 Division 88 specifies that the Commission will make each of the above approvals, this proposal would require a modification to the administrative Program rules before it may be implemented. As Senate Bill 1547 (2016) specifies that Commission will certify projects, Staff does not propose to delegate the Certification process to the PA. Certification is addressed in recommendation #4.

## **7. Adjust Eligibility Criteria for the Program Carve-out**

To be eligible for Program carve-out capacity, Staff proposes projects meet all criteria in at least one of the following four categories:

- a. Low-Income Participation Criteria
  - i. A project reserves 50% of project capacity for low-income participants.
  - ii. Verification of this would be done by the PA at the time of Certification.
- b. Underserved Community Participation Criteria
  - i. A Project Manager or a project partner is either a:
    - Federally-recognized tribe
    - Public entity
    - A 501(c)(3) nonprofit organization that (i) is registered with the Oregon Secretary of State, Corporation Division, (ii) is not identified on the Oregon Department of Justice list of “Disqualified Charities,” and (iii) has a stated mission and track record of delivering programs directly benefiting communities and individuals including, but not limited to, Black, Indigenous, and other communities of color, communities experiencing lower incomes, federally recognized Indian tribes, rural communities, coastal communities, communities with limited infrastructure, and other communities and individuals traditionally underrepresented in public processes and programs to incent and advance solar energy installations.
  - ii. The project commits to the qualified entity above leading outreach efforts to subscribe underserved members of their community to at least 50% of the project
  - iii. The project must submit a marketing plan to the PA at the time of pre-certification, and must submit documentation of outreach at the time of Certification.

c. Small Community-Sited Project Criteria

- i. A project manager or a project partner is either a Federally-recognized tribe, public entity, or 501(c)(3) nonprofit organization that represents a distinct geographic community or community group.
- ii. The project is sized no larger than 360 kW-AC.
- iii. The above qualified entity plays a central role in the identification and selection of a project site, and the project commits that the entity subscribing members of their community to at least 50% of the project.
- iv. The project would submit a marketing plan describing this effort at the time of pre-certification, as well as documentation of outreach at the time of Certification.

d. Participant Ownership Criteria

- i. The project is owned by participants, either directly or as members of a cooperative.

## Rationale

The carve-out capacity is intended to deliver projects that either (1) serve substantial numbers of low-income participants or people from under-served communities, or that (2) demonstrate significant community-level control or leadership in the development process. See Staff's recommendations for retaining carve-out capacity dated July 16, 2021.<sup>3</sup>

The current carve-out definition (defined based on size and project manager sector) has been insufficient in meeting these objectives for two reasons. First, the carve-out allows small projects managed by private-sector entities that do not provide notable community involvement or benefits. Second, the carve-out requires that community-led projects be managed by the involved community group. This requires a long-term project commitment that may be unsuitable to the capacity and strengths of community-based organizations. Under the proposed criteria, project size and the organizational status of the Project Manager would no longer be strict determinants of a project's carve-out eligibility.

Staff welcomes specific feedback on the following questions:

- Are the carve-out priorities described above reasonable and accurate?
- Are the pathways above well-suited to encourage increased participation from community groups in the Program?
- Are there additional project types that should be considered for carve-out eligibility?

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<sup>3</sup> <https://edocs.puc.state.or.us/efdocs/HAH/um1930hah153659.pdf>



## 8. Clarify the Timing of Contracting for Participant-Owners

Staff proposes to clarify in the PIM that participant-owned projects may collect necessary funding from participants for development activities prior to Pre-Certification.

### Rationale

The PIM prohibits projects from signing contracts with participants prior to Pre-certification. To date, there is one Participant-owned project in the Program, and the project had noted that they would need to raise capital from participant-owners to pay for certain development activities (such as system design, interconnection applications, and Program fees) prior to Pre-certification. Staff propose to clarify in the PIM that the collection of funds for these purposes from project owners are not considered to be covered by participant contracts, and are not prohibited prior to Pre-certification. This would apply even if project owners also participate in the project.

## 9. Pursue a Simplified Interconnection Project for Small Projects

Staff proposes to open dialogue with utilities to determine whether a simplified interconnection akin to net metering can be provided for certain qualifying projects.

### Rationale

The launch of the Community Solar Program was accompanied by the development of a dedicated interconnection queue and pathway for CSP projects in PGE and Pacific Power service areas. Among other changes, this dedicated queue allows Community Solar projects to forgo the network resource study portion of the interconnection study process if the project is sized below the minimum daytime load of the local distribution feeder. Outside of the specific modifications made in developing this queue, all projects still interconnect according to the OAR Chapter 860 Division 82 Small Generator Interconnection Rules.

This dedicated interconnection pathway has resulted in the general market portion of the Program being fully allocated, but Staff has heard concerns from small community-led projects regarding the complexity of the process for smaller projects. Because they interconnect “in front of the meter” a smaller community solar project can be similar in size, location and technical details to a typical commercial net metering project but are processed through the Small Generator Interconnection Queue. Small, community-led project proponents and the solar installers they work with are more accustomed to the simpler net metering process, and projects report that the complexity of the Small Generator Interconnection Queue has been one barrier to these kinds of projects coming online.

While any changes to small project interconnection would be adopted outside of the PIM, Staff seeks comments from stakeholders on whether such a modification would be practical and useful, and what appropriate eligibility criteria would be.

## 10. Refine Project Manager Capacity Limits

Staff recommends the following changes to the per-project manager Program capacity limits, effective for newly released Program capacity only:

- a. Increase the Program Manager capacity limit from 25% to 50% of the Program capacity available of a given Program tier and utility service area.
- b. Expand this requirement so that no project manager or parent entity may be allocated more than 50% of capacity within a given Program tier. Also, no more than 50% of capacity within a given Program tier may be marketed by the same subscription management partner, partners, or group of collaborators.
- c. Allow the PA to exercise reasonable discretion in determining whether projects are intended to be marketed as part of the same portfolio. This would be based on marketing plan information submitted by the project and the involvement of key organizations across projects. This discretion is intended to prevent a scenario where, for example, two legally distinct entities conduct outreach and subscriber management of separate project portfolios, but where the same individuals have control over both entities and closely coordinate their activities in the market.

### Rationale

To ensure that participants have adequate choice in their options for community solar projects, the Program places limits on the amount of Program capacity that an individual project manager may be allocated. In the initial offering, this limit was set to 25% of the initial capacity release, separately for PGE and PAC service area. No limit was placed on per-project manager capacity in Idaho Power service area given the small overall capacity allocation in that utility.

In practice, the Program has evolved so that many project managers are partnering with separate entities for participant outreach and management activities. These subscription management entities are then marketing portfolios of projects (which may include projects of multiple project managers) as a single customer option. As the purpose of limiting per-project manager capacity is to ensure healthy customer choice, Staff proposes refinements to the current requirements to better focus on the way that projects are marketing to participants.

Staff believes that the first tier of the Program has demonstrated adequate customer choice, with 3-4 separately marketed portfolios of projects under development in both PAC and PGE service area. Based on currently waitlisted projects, Staff expects a similar degree of customer choice in the next tier of Program capacity. This proposal is intended to ensure that this level of

customer choice is maintained in the Program, without disrupting the development of projects already in the Program capacity queue.

### **11. Revise Participant Affiliate Rules**

Staff proposes to modify participant affiliate rules in the following way, effective for newly released Program capacity only:

- a. Different divisions or bureaus of the same government entity will be considered affiliated, rather than unaffiliated participants.
- b. Different campuses of a college or university will be considered affiliated, rather than unaffiliated participants.
- c. Any utility meters associated with the same utility account number will be considered affiliated participants.

### **Rationale**

The Program currently places limits on the amount of capacity that a participant may subscribe to. A single participant may not subscribe to more than 2 MW of Program capacity, and a group of affiliated participants may not subscribe to more than 4 MW of Program capacity. The PIM includes guidelines on what participants are considered affiliated for the purposes of this rule. For example, different locations of the same business are considered affiliated participants, while franchises that do not share ownership are not.

The current participant affiliate rules lack clarity in certain areas, and reduce project manager certainty. For example, the PA has been asked to determine whether a particular local government building should be allocated to one bureau or another and what the geographic extent of a campus is in the case of nearby facilities. These revisions are intended to remove this gray area and provide more certainty for projects and participants.

### **12. Define and Limit Participation of Affordable Housing Providers as Low-Income Participants**

Staff proposes to describe and place limits on the pathway for Affordable Housing Providers to participate in the Program with the following recommendations, effective for newly released Program capacity only:

- a. Include in the PIM the mechanism for affordable housing participation as described in Order 19-392.<sup>4</sup>

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<sup>4</sup> <https://apps.puc.state.or.us/orders/2019ords/19-392.pdf>

- b. Specify that at least half of a project's required low-income capacity (5% of total project capacity) must be filled by individual low-income subscribers rather than by housing providers.
- c. Adjust the net savings that must be passed on to align with any future changes in the low-income bill discount. For example, if the required low-income bill credit discount is raised from 20% to 40%, the minimum share of net savings that must be passed on by the housing provider directly to residents would increase from 75% to 87.5%.

### **Rationale**

Commission Order 19-392 provides a participation pathway for low-income residents in affordable housing buildings who do not hold utility accounts or pay their utility bills directly. Housing providers are permitted to enroll qualifying residents as low-income participants in the Program, so long as the provider takes certain actions, including passing on 75% of net financial benefits of participation directly to residents. This has proven to be a popular option for projects recruiting and enrolling low-income participants. Staff supports this option being available for low-income participation in the Program but propose to limit it in scale so that the Program remains available for individual low-income participants.

### **13. Include Language on Pre-Certification and Certification Revocation and Project Manager Interactions**

Staff proposes to include language in the PIM that describes the process of revoking a project's pre-certified or certified status, as well as to include language prohibiting project managers from unduly interfering with other projects in the Oregon Community Solar Program.

### **Rationale**

The Commission has initiated a rulemaking in Docket AR 644 to revise OAR Chapter 860 Division 88 to include, among other things, a process for revoking a project's Pre-Certified or Certified status.<sup>5</sup> The draft rulemaking describes a revocation process, which must be reflected in the PIM if adopted. Additionally, Staff has received a request from a project manager to include language in the Program code of conduct governing the behavior of project managers towards each other, which Staff agrees is reasonable.

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<sup>5</sup> Access AR 644 docket: <https://apps.puc.state.or.us/edocketsSearch/eDocketsSearch>

#### **14. PIM Adjustments to Accommodate Needs of Capacity Release or Utility Data Transfer**

Staff proposes to make the following additional changes the PIM:

- a. Clarify that Tier 2 capacity will be allocated from the Program waitlist in serial queue order rather than via lottery.
- b. Clarify in the PIM that participation, including both bill credits and consumption for the purposes of excess generation, will be tracked at the level of utility identifier designated by their utility. For PGE this is the Service Point Identifier, for Pacific Power this is the Customer Agreement Number, and for Idaho Power this is the Service Agreement Number.
- c. Adjust the definition of projects in the PIM to clarify that projects cannot combine solar arrays at multiple sites; these sites must be treated as separate projects.
- d. Clarify that any site receiving unmetered electric service from their utility is ineligible to participate in the Program.

#### **Rationale**

The first proposed change above is necessary to prevent any confusion regarding the allocation of Tier 2 capacity and reflects Program administrative rules. The remaining changes and clarifications are necessary to accommodate the needs of the Program's data transfer process with utilities, and the practical necessity that consumption cannot be tracked for unmetered sites.