ORDER NO. 21-082

ENTERED Mar 12 2021

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1930

In the Matter of

PUBLIC UTILITY COMMISSION OF OREGON,

Penalty for Non-compliance with Community Solar Program Low-income Subscription Requirement.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on March 9, 2021, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:

Nolan Moser
Chief Administrative Law Judge

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ITEM NO. RA3

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: March 9, 2021

REGULAR __X__ **CONSENT** ____ **EFFECTIVE DATE** ____N/A____

DATE: March 1, 2021

TO: Public Utility Commission

FROM: Kacia Brockman

THROUGH: Bryan Conway, JP Batmale, and Sarah Hall **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. UM 1930)
Penalty for non-compliance with Community Solar Program low-income subscription requirement.

STAFF RECOMMENDATION:

Approve Staff's proposed penalty for non-compliance with the Community Solar Program (CSP or Program) low-income subscription requirement.

DISCUSSION:

Issue

Whether the Commission should approve Staff's proposed penalty to be imposed on Project Managers who fail to subscribe at least ten percent of their project's capacity to low-income participants within 12 months of project certification.

Applicable Rule or Law

ORS 757.386(2)(a) directs the Commission to establish a program that provides electricity customers the opportunity to share the costs and benefits of electricity generated by a community solar energy system.

ORS 757.386(9)(a) directs the Commission to determine a methodology by which 10 percent of the total Program capacity is made available for use by low-income residential customers.

On June 29, 2017, in Order No. 17-232, the Commission adopted formal rules for the CSP under OAR Division 88 of Chapter 860.

OAR 860-088-0050(3)(b) provides that the Commission will certify a project that demonstrates compliance with applicable low-income capacity requirements.

In accordance with OAR 860-880-0190, on December 17, 2019, in Order No. 19-438, the Commission adopted the CSP Program Implementation Manual (PIM) and the Program policies and procedures therein.

On January 12, 2021, in Order No. 21-015, the Commission adopted revisions to the PIM.

The PIM provides that at least 10 percent of the generating capacity of each project must be subscribed by low-income residential participants at the time of certification and throughout commercial operation of the project.[1]

On October 20, 2020, in Order No. 20-387, the Commission approved a 12-month Program-wide waiver of the low-income subscription requirement as a prerequisite for project certification.

Analysis

Background

The enabling statute of the CSP requires that 10 percent of total Program capacity be allocated for low-income residential participants.[2] To meet this Program-wide low-income capacity requirement, the Commission required Project Managers to subscribe at least 10 percent of each CSP projects' capacity to low-income participants (low-income subscription requirement) as a prerequisite for project certification.[3]

Throughout 2020, the COVID-19 pandemic made outreach to low-income customers extremely difficult. As a result, Staff recommended a temporary, Program-wide, low-income subscription requirement waiver. The Commission approved the waiver for a 12-month period beginning October 20, 2020.[4] The order specifies the following:

[1] CSP PIM version 20210112, Section 3.15, subsection 2.
[2] ORS 757.386(9)(a).
[3] OAR 860-088-0050(3)(b) and CSP PIM version 20210112, Section 3.15, subsection 2.
[4] Order No. 20-387, issued October 27, 2020.

1. A Project Manager may, by October 21, 2021, apply for project certification prior to meeting the 10 percent low-income subscription requirement without requesting an individual project waiver;
2. The Project Manager will be required to reserve 10 percent of a certified project's capacity for low-income subscriptions;
3. The Project Manager must fully subscribe 10 percent of a project's capacity with low-income participants within 12 months of project certification or face a penalty;
4. Staff will convene stakeholders to determine the appropriate penalty, which could be a financial penalty such as forfeiture of project revenues from sale of the unsubscribed portion of the project's low-income capacity allotment, and will recommend the appropriate penalty for Commission approval by May 1, 2021;
5. At the same public meeting, by May 1, 2021, Staff and the Program Administrator will update the Commission on CSP low-income recruitment under the waiver, informed by monthly activity reports Staff receives from the Low-Income Facilitator; and
6. By October 21, 2021, Staff will again update the Commission on the progress of CSP low-income recruitment under the waiver and recommend whether to continue with the waiver allowing projects to meet the low-income subscription requirement 12 months after certification, or to let the temporary waiver expire and revert to requiring projects to meet the low-income subscription requirement prior to certification.

This memo addresses the fourth and fifth specifications listed above. It contains Staff's recommendation for an appropriate penalty for non-compliant Project Managers and provides an update on CSP low-income recruitment.

Proposed Penalty
If a Project Manager fails to fully subscribe 10 percent of the project's capacity to low-income participants within 12 months of project certification, the Project Manager will be subject to the penalty. The penalty will begin 12 months after project certification and will continue until 10 percent of the project's capacity has been subscribed to low-income participants, after which the penalty will be permanently removed. The penalty applies to all Project Managers equally, regardless of whether they rely on the Low-Income Facilitator for recruiting all or some of their project's low-income subscribers.

Under the penalty, the Project Manager will forfeit revenue generated by the unsubscribed portion of the project's 10 percent low-income capacity allotment. For example, if 8 percent of the project's capacity is subscribed to low-income participants, the Project Manager will forfeit revenue from the remaining 2 percent of the project's capacity which is reserved for, but not yet subscribed to, low-income participants. The utility pays the Program Administrator for a project's unsubscribed energy based on the utility's as-available avoided cost rate. For projects subject to the penalty, the Program Administrator will retain, rather than pass through to the Project Manager, the forfeited revenue. Forfeited revenue will be used to support the Low-Income Facilitator's low-income recruitment efforts.

After the low-income subscription requirement has been met and the penalty removed, the Project Manager will continue to reserve 10 percent of the project's capacity for low-income participants for the life of the project. However, the Project Manager will not be subject to the penalty again if the project's low-income subscriptions drop below 10 percent of the project's capacity due to future participant attrition.

Appropriateness of Proposed Penalty

Staff and the Program Administrator find that a financial penalty is likely to provide the appropriate motivation for the Project Manager to achieve the low-income subscription requirement. Other options, such as loss of a project's certification status or loss of a Project Manager's registration status in the CSP, would likely have broader implications for utility and participant agreements.

The table below shows sample revenues a Project Manager might receive from subscribed and unsubscribed capacity in a project's general and low-income capacity allocations for a project in PGE territory.[5] The difference between the subscribed and unsubscribed energy values is the Project Manager's lost revenue for failing to fully subscribe the project's capacity. The potential for lost revenue provides significant motivation for the Project Manager to fully subscribe the project's capacity, both general and low-income capacity. The higher subscription fee paid by general capacity subscribers normally provides financial incentive to the Project Manager to prioritize general capacity subscriptions over low-income capacity subscriptions. The proposed penalty will reverse that incentive. Forfeiture of revenues from unsubscribed low-income capacity results in a financial incentive to prioritize recruitment of low-income participants based on a greater loss of revenue for unsubscribed low-income capacity.

[5] The rates shown for subscribed energy represent the subscription fees set by the Project Manager. In this example, the subscription fee for general capacity subscribers is 95 percent of the participant's bill credit rate, and the subscription fee for low-income capacity subscribers is 80 percent of the participant's bill credit rate. The rate shown for unsubscribed energy is an approximation of the utility's "as-available" rate based on market prices. *See* PGE Schedule 201, definition of As-Available Rate.

	Subscribed Energy ($/kWh)	Unsubscribed Energy ($/kWh)	Revenue Lost from Lack of Subscriptions ($/kWh)
General capacity	$0.1067	$0.0293	$0.0774
Low-income capacity, no penalty	$0.0899	$0.0293	$0.0606
Low-income capacity, with penalty	$0.0899	$0.000	$0.0899

Staff proposes that the penalty be permanently lifted when the project meets the low-income subscription requirement, and not re-imposed if the project falls below the minimum low-income subscription requirement in the future. Staff believes this approach is reasonable because the lost revenue from unsubscribed low-income capacity, as well as the potential for probation, will continue to motivate the Project Manager to maintain full subscription of the project's low-income capacity.[6]

Use of Forfeited Revenues to Benefit Low-income Participants
Under the proposed penalty, the Program Administrator will collect and account for forfeited revenues, and will use those funds to support the Low-income Facilitator's recruitment efforts. Staff and the Program Administrator suggest that it is too early to specify how the funds will be used. The earliest that a penalty may be imposed is February 11, 2022, or 12 months from the date of the first project certifications.

In the interim, Staff and the Program Administrator will work to overcome barriers to low-income recruitment and participation and to identify the best use of the funds. Staff will share its findings with the Commission in October 2021 when it recommends whether to extend the low-income waiver period as directed by Order No. 20-387.

Stakeholder Feedback
The penalty proposed here is the same as the potential penalty mentioned in Order No. 20-387, granting the Program-wide waiver. It is also the same penalty agreed to by the Project Manager who received the first CSP project certifications in February 2021.[7]

On January 14, 2021, Staff requested stakeholder feedback on the proposed penalty from UM 1930 stakeholders, Project Managers, and the CSP's interested parties list maintained by the Program Administrator. Staff also invited alternative penalty proposals. Staff received written comments in support of the proposed penalty from

[6] Project Managers are required to ensure that a project remains in compliance with participation requirements or face probation after a 60-day cure period. See PIM version 20210112 Section 5.5.
[7] See Order No. 21-042, issued February 12, 2021.

OSEIA and Arcadia, included as Attachments A and B, respectively.[8] No party suggested an alternative penalty.

In addition to supporting the proposed penalty, OSEIA expresses concern about the challenges to low-income recruitment presented by both the pandemic and Program processes. Staff and the Program Administration are working to address these challenges as described in the next section.

Arcadia supports the proposal, but suggests that the per-kWh penalty decrease as the subscribed low-income capacity approaches 10 percent. Staff finds that such a sliding scale would provide diminishing incentives, making full subscription of 10 percent Program capacity less likely. Arcadia also suggests that the penalty should be levied on the Low-Income Facilitator instead of on the Project Manager in cases where the Project Manager relies on the Low-Income Facilitator for low-income recruitment. Staff disagrees with Arcadia's suggestion because it would discourage Project Managers from recruiting their own low-income participants and incentivize them to rely on the Low-Income Facilitator in order to avoid a penalty. Project Managers are not compensating the Low-Income Facilitator for recruiting project participants. Instead, they are utilizing a Program service available to all Project Managers. The Commission placed the ultimate responsibility on the Project Manager when it established a per-project low-income subscription requirement as a means to achieve the statutory Program-wide low-income subscription requirement.

Ongoing Challenges to Low-income Participation in the CSP
COVID-19 continues to present recruitment barriers, including inability to conduct in-person outreach combined with the digital divide, limited resources and other priorities of partner organizations serving low-income residents, and media attention focused on national and local crises.

Additionally, a significant new barrier has been identified by the Program Administrator and Staff. The CSP was designed to minimize the risk to low-income participants by ensuring that monthly bill credits will always exceed monthly subscription fees.[9] However, under the hierarchy by which utilities must apply credits to the charges on the participant's bill, a partial or missed payment will cause the participant to fall into arrears with the Project Manager, despite the CSP credit being higher than the Project

[8] On February 19, 2021, after submitting comments on the proposed penalty, OSEIA, Oregon Solar Energy Industries Association, changed its name to OSSIA, Oregon Solar + Storage Industries Association.
[9] Project managers must offer subscription fees to low-income participants that provide a minimum 20 percent discount from the participant's bill credit rate, which varies by utility. See PIM version 20210112, Section 3.15, subsection 4.

Manger's subscription fee.[10] This arrearage risk is exacerbated by the current economic situation, in which the Low-Income Facilitator has identified that 28 percent of low-income customers currently signed up to participate in the CSP have made partial utility payments over the last 12 months. Because of this risk, community-based organizations who serve vulnerable populations and often partner with the Low-Income Facilitator on outreach are reluctant to promote the Program until the risk of incurring new debt is managed.

This is a serious problem that Staff, the Program Administrator, and the utilities have been working to address. In the meantime, the Program has intentionally altered its low-income outreach to mitigate the potential debt risk. The Low-Income Facilitator has narrowed its outreach to primarily low-income homeowners it serves with weatherization programs. These homeowners have a history of paying their utility bills in full each month, so are less likely to face complications stemming from partial payments. Upon Staff instruction, PGE has indefinitely delayed a direct mailing to customers who have received energy assistance.

At the annual Program update in May, Staff will provide the Commission with a progress update on low-income recruitment and a potential solution to the arrearage risk. Staff will also report on low-income recruitment in October, at the end of the low-income waiver period.

Conclusion

Staff finds that the proposed penalty provides an appropriate financial incentive for Project Managers to achieve the low-income subscription requirement for their projects and is supported by stakeholders.

PROPOSED COMMISSION MOTION:

Approve Staff's proposed penalty for non-compliance with the Community Solar Program low-income subscription requirement.

[10] The CSP bill credit is applied to energy charges first, before it is applied to the CSP subscription fee. Therefore, a partial payment by a participant will result in a portion of the CSP subscription fee remaining as balance due.

OSEIA
Oregon Solar Energy Industries Association

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

January 22, 2021

RE: Low-income Recruitment Penalty

Dear Chair Decker, Commissioner Tawney and Commissioner Thompson,

The Oregon Solar Energy Industries Association (OSEIA) and the Project Managers (PMs) it represents appreciates the diligence by staff and the Program Administrators to create a fair penalty if a PM does not meet the 10% low-income subscriber requirement. OSEIA supports staff's recommended penalty.

However, we also need to express concern about the difficulty in signing up low-income customers to Community Solar projects. While the pandemic has certainly contributed to the difficulties in signing up low-income ratepayers, we remain concerned that the current process is not functioning well and we look forward to discussing the issue further with Community Energy Project and the Program Administrators.

Thank you for the opportunity to comment.

Sincerely,

Angela Crowley-Koch
Executive Director

PO Box 14927, Portland, OR 97293-0927
Email: admin@oseia.org
www.oseia.org

Arcadia

January 28, 2021

Oregon Public Utility Commission
Oregon Community Solar - Low-Income Recruitment Penalty
Request for Comments - January 14, 2021

Thank you for the opportunity to provide feedback to the Oregon Public Utility Commission on the proposed penalty for failing to subscribe 10 percent of project capacity to low-income subscribers within one year of certification. Commission Order 20-387, which temporarily waives, for a period of 12 months, the 10 percent low-income customer requirement for all Project Managers demonstrates the Commission's ability to adjust program requirements as needed during the unforeseen challenges that have arisen due to the COVID-19 pandemic. We appreciate the ongoing efforts of the Commission and Commission staff to ensure a thriving Oregon Community Solar Program.

Background

Founded in 2014, Arcadia is the first nationwide digital energy services platform. We connect residential utility customers with clean energy while helping them save money. Depending on the local market structure, we provide a number of services to our customers, including renewable energy credit purchasing, retail supply brokerage, and community solar. We currently have more than 450,000 customers, spread across all 50 states.

Arcadia is the market leader in managing residential community solar subscriptions. We have more than 35,000 customers signed up to join community solar across DC, CO, IL, MA, MD, ME, NY, and RI, and more than 450 MW of community solar projects under management, with 150 MW in operation and already providing savings to subscribers. In Oregon, Arcadia is already serving more than 5,000 residential customers who could be offered a spot on a community solar project as soon as commercial operation dates approach.

We have developed the most consumer-friendly approach to community solar in the market, providing a simple, two-minute sign-up with guaranteed savings, no credit checks, and no cancellation fees. Our proprietary software includes algorithms that automatically match customers to project, manage churn replacement, optimize allocations across every subscriber, and check for billing errors, every month, to ensure full subscription rates without imposing any risk on the customer.

1. **Describe the financial impact to the Project Manager of forfeiting unsubscribed energy payments for low-income capacity, and whether this is an effective penalty.**

The financial impact to a Project Manager of forfeiting unsubscribed energy payments for low-income capacity will be significant. This will encourage Project Managers to continue to recruit low-income subscribers until they reach the 10 percent threshold. However, Arcadia would encourage the Commission to create additional granularity in this penalty. For example, consider a Project Manager that has reached 8 percent low-income subscribers versus a Project Manager that has reached 4 percent low-income subscribers. The former project has clearly performed better than the latter and should not face the same penalty level. Structuring the financial penalty to work on a scale allows this difference in performance between projects be more accurately reflected in the penalty. For example, each percentage point a Project Manager gets closer to 10% low-income subscribers would result in a lower financial penalty for the remaining percentage. A Project Manager will still have the incentive to continue low-income recruitment, but the penalty will more accurately reflect each Project Manager's relative status towards the program requirement of 10 percent.

2. **Describe the impact/risk to low-income customers if Project Managers fails to recruit the required allotment within 12 months of project certification.**

If a Project Manager fails to recruit the required allotment within 12 months of project certification, the impact/risk to low-income customers is the missed opportunity of bill savings and participation in a community solar project.

3. **Are there other financial penalties, or non-financial penalties that could be levied on Project Managers for failing to recruit the required low-income subscription 12 months after project certification?**

We don't recommend additional penalties at this time. The Commission and Commission staff should continue to work closely with Project Managers on the specific hurdles they are facing with low-income recruitment.

4. **Some Project Managers have opted to recruit low-income customers on their own, while others have opted to rely on the Low-Income Facilitator for all or a portion of their projects' low-income recruitment requirements. Describe whether and/or how Staff should consider separate penalties for Low-Income Facilitator versus PM-led recruitment.**

The Commission should certainly consider separate treatment of Project Managers that rely on the Low-Income Facilitator versus those that are solely responsible for low-income recruitment. A well structured penalty produces an incentive for the one receiving the penalty to comply or comport with the desired market outcome. In this case the desired result is for all Project Managers to meet the required 10 percent low-income subscriber threshold for community solar projects. If the Project Manager is relying on the Low-Income Facilitator for this recruitment, but the Project Manager is the one being penalized, that is a failure to properly align incentives. In this case, the penalty must be levied on the Low-Income Facilitator themselves.

5. **How can the Low-Income Facilitator best assist Project Managers in their recruitment of low-income customers?**

The Low-Income Facilitator can best assist Project Managers in the recruitment of low-income customers by continuing to examine program wide data on recruitment and identifying the most successful processes for placing low-income subscribers on projects. They can also work with the Commission to identify if any additional financial incentives or bill credit rate structures should be modified to reflect the true cost of low-income recruitment.

6. **Are there any other risks or inequities (for low-income customers, Project Managers, or other stakeholders) Staff and the Program Administrator should consider in its recommendation?**

The best thing that could be done for low-income customers is to prove out a successful community solar program, and have continued interest in projects being developed and open for subscribers. Arcadia believes a significant consideration in this process should be the potential for long-term harm to the market if there is not continued flexibility in fulfilling the low-income requirement. At this time, during a global pandemic, recruitment for all customers is increasingly difficult, and low-income subscribers are no different. A key element to a successful community solar market is educating customers about what community solar is and the potential benefits to a community solar subscription. Traditional marketing efforts are valuable, but word of mouth from existing subscribers is potentially the most valuable marketing channel. It would be unfortunate for the program to ultimately fail because the rules and requirements were overly prescriptive in the initial days of the program. We have seen across the country that the best tool for recruitment is the ability to point to other program participants and the benefits they are seeing from a community solar subscription.

Conclusion

We appreciate the opportunity to provide these comments and would be happy to answer any questions you may have. Please do not hesitate to contact Madeline Gould at madeline.gould@arcadia.com or (713) 248-0481 if you would like to discuss anything stated in our response further.

Sincerely,

Madeline Gould
Policy Specialist
Arcadia