

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: April 20, 2021**

REGULAR ___ CONSENT ___ RULEMAKING X EFFECTIVE DATE N/A

DATE: April 12, 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. AR 644)
Request to initiate informal rulemaking to amend Community Solar Program rules.

STAFF RECOMMENDATION:

Adopt Staff's recommendation to open a rulemaking to amend Division 088 rules governing the Community Solar Program.

DISCUSSION

Issue

Whether the Commission should initiate a rulemaking to amend the Community Solar Program's rules in Division 088.

Applicable Rule

ORS 756.060 states, "The Public Utility Commission may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the commission".

ORS 757.386(2)(a) directs the Commission to establish a program that provides electric customers with the opportunity to share the costs and benefits of solar generation.

On June 29, 2017, the Commission adopted formal rules for Oregon's Community Solar Program under Oregon Administrative Rules (OAR) Division 88 of Chapter 860.

Analysis

Background

The Community Solar Program (CSP or Program) rules and the Program Implementation Manual (PIM) spell out standards for Project Manager conduct and interaction with the public and potential subscribers. However, the Program rules and PIM do not address Project Manager disputes, or escalation and review of issues associated with an individual Project Manager's failure to follow Program standards. Similarly, the CSP rules and the PIM outline specific project pre-certification and certification standards, but do not specifically discuss the process by which the Commission may revoke Project Manager registration, or project pre-certification or certification status, in the event that such revocation becomes necessary.

Staff requests this rulemaking to address this very narrow issue of status revocation and dispute resolution. Staff expects to consider status revocation rarely, if ever, and is not considering a particular status revocation within the Program at this time. Rather, Staff is requesting this rulemaking in response to guidance received from the Commission's Administrative Hearings Division that, since status revocation is contemplated by the PIM, a clear process should be articulated.

Status Revocation

Once the Commission grants project pre-certification or certification in the CSP, Project Managers are afforded the due process granted to a licensee. Consistent with the Administrative Procedures Act, this process must provide the licensee an opportunity for a hearing.

If revocation of project pre-certification or certification becomes necessary, or if issues arise with a registered Project Manager that require revocation of that Project Manager's registration with the Program, the Commission must afford the licensee a contested case hearing.¹ Though the contested case process is clearly articulated in Division 1 of the Commission's rules, specific processes for revoking CSP project or Project Manager status are not reflected in the Program rules. Staff plans to recommend adding a process for revocation of status to the CSP rules.

Dispute Resolution

Division 1 also contains the formal complaint process, which may provide Project Managers an appropriate avenue for resolving complaints with other Project Managers, the applicable electric utility, or the Program. Staff intends to incorporate Division 1 procedures into the CSP rules to provide a clear method for dispute resolution.

¹ ORS 183.310(2)(a)(C).

Proposed Process

Staff notes for stakeholders that this rulemaking will include two phases. The first is an informal phase that will begin upon Commission approval of this Staff recommendation. During this informal phase, Staff will publish draft CSP rules to Docket No. AR 644 and seek stakeholder feedback. Staff may then revise the draft rules based on input received from stakeholders.

At the end of the informal phase, Staff will return to the Commission at a public meeting to request the opening of a formal rulemaking. Rule changes will not be adopted until the end of that second, formal phase, which will include another written comment period and public hearing.

Conclusion

Staff recommends opening a rulemaking to amend Division 088 rules, consistent with this memo.

PROPOSED COMMISSION MOTION:

Adopt Staff's recommendation to open a rulemaking and commence the informal phase to amend the Community Solar Program's rules in Division 088.