

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: July 27, 2021

REGULAR X CONSENT _____ EFFECTIVE DATE _____ N/A _____

DATE: July 19, 2021

TO: Public Utility Commission

FROM: Joe Abraham

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

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. AR 644)
Request to open a formal rulemaking updating Community Solar Program rules.

STAFF RECOMMENDATION:

Staff recommends that the Commission issue a notice of proposed rulemaking to adopt the attached proposed Division 088 rules governing the Community Solar Program.

DISCUSSION

Issue

Whether the Commission should commence formal 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 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 (PM) conduct and interaction with the public and potential subscribers. However, the Program rules and PIM do not address PM disputes, or escalation and review of issues associated with an individual PM's failure to follow Program standards. Similarly, the CSP rules and the PIM outline specific project pre-certification and certification standards. Neither however, specifically discuss the process by which the Commission may revoke PM registration, or project pre-certification or certification status.

Staff requested a rulemaking on April 12, 2021, to address the very narrow issues of status revocation and dispute resolution. Staff expects to consider status revocation rarely, if ever. While status revocation is identified as an option in the PIM, the document does not include any guidance for executing. Staff opened this rulemaking in order to articulate a clear process for carrying out that option should status revocation ever be necessary.

The informal rulemaking phase began upon Commission approval of Staff's recommendation to open a rulemaking at the April 12, 2021 Public Meeting. On April 27 Staff published initial draft rules to Docket No. AR 644 and requested stakeholder comments. Staff received feedback on the draft rules from one stakeholder, Oregon Solar and Storage Industries Association (OSSIA). Staff conducted a follow-up meeting with OSSIA to discuss their comments. Staff then incorporated stakeholder feedback into final draft CSP rules and posted to the docket on June 28, 2021. Descriptions of rules, stakeholder comments, and proposed rule changes are included below. Staff is now returning to the Commission to request the opening of a formal rulemaking.

Dispute Resolution

Staff's initial draft rules for OAR 860-088-0110 ("Dispute Resolution") aimed to provide adequate clarification regarding how CSP participants and PMs may resolve disputes with other PMs, an electric company, the Low-Income Facilitator, Program Administrator, or the Commission. Staff's initial draft rules also clarified that PMs seeking to resolve disputes may use the contested case process, laid out in Division 1.¹ Division 1 contains the formal complaint process, which provides Project Managers an appropriate avenue for resolving complaints regarding the Community Solar Program.

Comments from OSSIA suggested clarifying the language to better describe which disputes may be resolved using the Division 1 processes. OSSIA also suggested Staff

¹ OAR 860-001-000, et seq.

include the ability for Project Managers to seek declaratory rulings related to Community Solar. In response to OSSIA's comments, Staff incorporated the suggested language clarifications into the final draft rules, included as Attachment A. Staff views the inclusion of declaratory rulings in the CSP dispute resolution rule as unnecessary because Project Managers are already able to seek declaratory rulings pursuant to ORS 756.450 and OAR 860-001-0430.

Project Manager Obligations

Staff's initial draft rules modified OAR 860-088-0130 ("Obligations of Project Managers") to include a requirement that PMs must provide "any information the PA or Staff determines is necessary to investigate issues and make decisions regarding PM participation and status in the program." Stakeholders expressed concerns about this language being overly broad as well as the lack of articulated protections for confidential information. Staff addressed these concerns by including a limitation that "such request for information shall not be unduly burdensome." The Public Utility Commission has robust policies for protecting confidential information. Staff intends to draft PIM revisions in future that clarify the process by which PMs can identify information they provide as confidential, and guidelines for treatment of confidential information. Staff will share the PIM revisions for public comment before making a recommendation to the Commission.

Revocation of Pre-Certification or Certification

Once the Commission grants a project pre-certification or certification in the CSP, PMs are afforded the due process granted to a licensee. Consistent with the Administrative Procedures Act, revocation of a license requires that the Commission provide a licensee the opportunity for a hearing.²

If revocation of project pre-certification or certification becomes necessary, or if issues arise with a registered PM that require revocation of that PM's registration with the Program, the Commission must afford the licensee a contested case hearing.³ 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's initial draft rules addressed this by adding a new rule, OAR 860-088-200 ("Revocation of Pre-certification or Certification") that describes the process for revocation of status to the CSP rules. Staff expects to consider status revocation rarely, if ever, and notes that the disciplinary probation process will remain the primary method for addressing violations of CSP rules and regulations. Project or PM status may only

² ORS 183.310(2)(a)(C).

³ ORS 183.310(2)(a)(C).

be revoked for failure to take required actions under the disciplinary probation process or for the other reasons listed in OAR 860-088-0200.

Stakeholders requested further clarification on a PM's right to a hearing and expressed concern that the grounds for status revocation are too broad and may create barriers for financing. Staff addressed these concerns, in part, by adding a reference to ORS 183.310(2)(a) and ORS 183.415, which describe the contested case process and notices of rights to a hearing. Further, Staff revisited the grounds for status revocation, and narrowed them to five distinct violations that may result in immediate revocation. Though fewer grounds are listed for revocation in the rule than originally proposed, Staff believes that this will not limit the CSP's ability to address issues. Staff notes that one of the violations, OAR 860-088-0200(e), allows for revocation due to "[f]ailure to take required corrective action under the disciplinary probation process as outlined in the Program Implementation Manual."

Finally, Staff chose not to address stakeholder requests to define terms such as dishonesty, deceit, and fraud, but encourages stakeholders to look to Commission decisions regarding the Division 38 rules which include the similar standards, including material misrepresentation, dishonesty, fraud, and deceit, for revocation of certification for Electricity Service Suppliers.⁴

Conclusion

Staff recommends commencing formal rulemaking to amend Division 088 rules, consistent with this memo.

PROPOSED COMMISSION MOTION:

Adopt Staff's recommendation to issue a notice of proposed rulemaking and adopt the proposed Division 088 rules governing the Community Solar Program.

⁴ See OAR 860-038-0400(14).

OAR Chapter 860 – Public Utility Commission
Division 088 – Community Solar Program Rules

860-088-0110

Dispute Resolution

(1) Any **participant** complaints related to the Community Solar Program received by an electric company, the Low-Income Facilitator, the Program Administrator, or the Commission are to be referred initially to the applicable Project Manager for resolution.

~~(2) a~~ The Project Manager must investigate each complaint and provide a written response to the complainant.

~~(3) b~~ If the Project Manager is unable to resolve the complaint, the complainant may request that the complaint be escalated to the Program Administrator. If the Program Administrator is unable to resolve the complaint, the Program Administrator must notify the complainant of the right to contact the Commission's Consumer Services Section to request assistance in resolving the dispute or to obtain information about filing a formal complaint under ORS 756.500.

~~(4) c~~ The Project Manager must compile and submit to the Program Administrator an annual report of complaints received over the past 12-month period. This report must include a description of each complaint, the parties to the complaint, and the resolution of the complaint.

(2) Project Managers seeking to resolve disputes related to the Community Solar Program may use the contested case process, OAR 860-001-000, et seq., to resolve disputes:

(a) between multiple Project Managers;

(b) between a Project Manager and an electric company; or

(c) between a Project Manager and PUC Staff, Program Administrator, or Low-Income Facilitator.

860-088-0130

Obligations of Project Managers

(1) The Project Manager must register with the Program Administrator.

(2) The Project Manager must comply with the standard of conduct established by Commission order. Upon notice of a potential compliance deficiency, the Project Manager will be afforded the opportunity to meet with Commission Staff and the Program Administrator to work toward a resolution. If the compliance deficiency is not

resolved, the Commission may direct the Program Administrator to withhold payments to the Project Manager and take other action as permitted by rule, statute, or contract.

(3) The Project Manager must provide any information the Program Administrator or Staff determines is necessary to investigate issues and make decisions regarding Project Manager participation and status in the program. Such request for information shall not be unduly burdensome.

(-3 4) For the collection of ownership or subscription fees owed to the Project Manager, the Project Manager must use the Commission-approved on-bill payment method described in OAR 860-088-0120(3).

(a) The Project Manager may use a modified on-bill payment method if agreed to by the Program Administrator and the electric company.

(b) The Project Manager may request approval of an alternative fee collection method for ownership or subscription configurations incompatible with the available on-bill payment methods.

860-088-0200

Revocation of Pre-certification or Certification

(1) Upon review of a written complaint, upon recommendation by the Program Administrator, or on its own motion the Commission may, after reasonable notice and opportunity for hearing, consistent with ORS 183.310(2)(a) and ORS 183.415, revoke the pre-certification or certification of a Project and/or registration of a Project Manager for reasons including the following:

(a) Material misrepresentations in its application for pre-certification, certification, project amendments, or in any report of material changes in the facts upon which the pre-certification or certification was based;

(b) Material misrepresentations in solicitations, agreements, or in the administration of participant contracts;

(c) Dishonesty, fraud, or deceit that benefits the Project Manager or disadvantages customers;

(d) Failure to maintain compliance with the standards for pre-certification or certification, found in OAR 860-088-0040 and OAR 860-088-0050 respectively;

(e) Failure to take required corrective action under disciplinary probation process as outlined in the Program Implementation Manual.