

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Adopting

WAC 480-103

Relating to Community Solar
Companies

DOCKET UE-171033

GENERAL ORDER R-595

ORDER ADOPTING RULES
PERMANENTLY

- 1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission (Commission) takes this action under Notice WSR # 18-17-134, filed with the Code Reviser on August 20, 2018. The Commission brings this proceeding pursuant to RCW 80.01.040 and RCW 80.04.160.
- 2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (RCW 34.05), the State Register Act (RCW 34.08), the State Environmental Policy Act of 1971 (RCW 43.21C), and the Regulatory Fairness Act (RCW 19.85).
- 3 **DATE OF ADOPTION:** The Commission adopts this rule on the date the Commission enters this Order.
- 4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires the Commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the Commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the Commission's responses to the comments reflecting the Commission's consideration of them.
- 5 To avoid unnecessary duplication in the record of this docket, the Commission designates the discussion in this Order, including appendices, as its concise explanatory statement, supplemented where not inconsistent by the Commission Staff memoranda preceding the filing of the CR-102 proposal and the adoption hearing. Together, these documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 02, 2018

TIME: 8:58 AM

WSR 18-20-098

6 **REFERENCE TO AFFECTED RULES:** This Order adopts the following sections of the Washington Administrative Code:

Adopt	WAC 480-103-001	Purpose and application.
Adopt	WAC 480-103-002	Definitions.
Adopt	WAC 480-103-007	Administrators.
Adopt	WAC 480-103-010	Registration and regulatory fees.
Adopt	WAC 480-103-020	Registration as a community solar company.
Adopt	WAC 480-103-030	Annual Reports and payment of regulatory fees.
Adopt	WAC 480-103-040	Suspension and cancellation of a registration.
Adopt	WAC 480-103-050	Disconnection of service.
Adopt	WAC 480-103-100	Information to customers, project participants, and applicants.
Adopt	WAC 480-103-105	Services and charges.
Adopt	WAC 480-103-110	Community solar company personnel.
Adopt	WAC 480-103-115	Application for participation in a community solar project.
Adopt	WAC 480-103-120	Deposits
Adopt	WAC 480-103-125	Transfer of project participation.
Adopt	WAC 480-103-130	Disclosure of private consumer information.
Adopt	WAC 480-103-135	Complaints and disputes.
Adopt	WAC 480-103-140	Electronic information.
Adopt	WAC 480-103-145	Meter tests.
Adopt	WAC 480-103-150	Retention and preservation of records and reports.
Adopt	WAC 480-103-155	Reports of accidents.
Adopt	WAC 480-103-999	Adoption by reference.

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:**
 The Commission filed a Preproposal Statement of Inquiry (CR-101) on October 18, 2017, at WSR # 17-21-097. The statement advised interested persons that the Commission was initiating a rulemaking to consider establishing rules to govern community solar companies. The Commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all registered electric and gas companies, the Commission's list of utility attorneys, and the interested persons in the last solar rulemaking docket regarding interconnectivity, docket UE-112133. Pursuant to the notice, the Commission received comments on or about

November 20, 2017, and held a workshop on March 6, 2018. The Commission received additional comments on March 1, March 22, and July 26, 2018.

- 8 **SMALL BUSINESS ECONOMIC IMPACT ANALYSIS:** On June 28, 2018, the Commission issued a Small Business Economic Impact Questionnaire to all interested persons. The Commission received no responses to this questionnaire. The Commission has no evidence that the costs that companies will incur to comply with the proposed rules will be more than minor. Accordingly, no small business economic impact statement is required. In addition, the proposed rules implement statutory requirements and mirror existing processes for registering or certificating companies in the other industries the Commission regulates. All costs to comply with the proposed rules, therefore, are the result of legislative requirements and are comparable to the costs other companies incur to comply with current Commission practices and procedures.
- 9 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on August 20, 2018, at WSR #18-17-134. The Commission scheduled this matter for oral comment and adoption under Notice WSR #18-17-134 at 1:30 p.m., Wednesday, September 26, 2018, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission by September 21, 2018.
- 10 **WRITTEN COMMENTS:** The Commission received written comments from the Public Counsel Unit of the Office of the Washington Attorney General (Public Counsel) and collectively from Spark Northwest, NW Energy Coalition, and Solar Installers of Washington (Joint Commenters). We summarize these comments and our responses in paragraphs 13-21 below.
- 11 **RULEMAKING HEARING:** The Commission considered the proposed rules for adoption at a rulemaking hearing on Wednesday, September 26, 2018, before Chairman David W. Danner, Commissioner Ann E. Rendahl, and Commissioner Jay M. Balasbas. The Commission heard oral comments from Gregory J. Kopta, Administrative Law Judge, representing Commission Staff. Representatives from Spark Northwest, Public Counsel, and the Washington State University Extension Energy Program (WSU Energy Program) also provided comments.
- 12 **SUGGESTIONS FOR CHANGES:** Written and oral comments suggested changes to the proposed rules. The Commission will not make those changes for the reasons discussed below.

- 13 Public Counsel reiterates comments it made on previous drafts of the proposed rules during the CR-101 process. Specifically, Public Counsel recommends in its written comments that the rules require an unambiguous disclosure of the type of services to which the participant is subscribing and that the Commission maintain and post on its website all community solar projects, programs, and services. At the hearing, Public Counsel added that it continues to recommend that the Commission require companies to ensure that persons who sign contracts subscribing to their services be at least 18 years old and have authority to bind the household.
- 14 We understand Public Counsel’s concerns, but we do not find that they necessitate a change to the proposed rules. Proposed WAC 480-103-100(8) requires the community solar company to disclose “all material terms and conditions of participation in the company’s community solar project.” That subsection also contains an extensive, non-exclusive list of specific required disclosures, and subsection (n) requires disclosure of any other material terms and conditions. To the extent that the type of project or services is material, the rule thus already requires disclosure of that information. In addition, subsection (10) of this rule requires companies to “provide the commission with current copies of all of the company’s disclosure forms, pamphlets, brochures, and bill inserts prior to delivering such materials to customers, project participants, or applicants.” Commission Staff, therefore, will ensure that those documents disclose all material terms and conditions, including the type of service to which a participant is subscribing.
- 15 Public Counsel’s recommendation that the rules prohibit companies from allowing minors to subscribe to their services is similarly unnecessary. Washington law already provides that persons must be at least 18 years old “[t]o enter into any legal contractual obligation and to be legally bound thereby to the full extent as any other adult person.”¹ Any contract a minor signs for participation in a community solar project or service thus would effectively be unenforceable under existing law. As Public Counsel suggests, however, Commission Staff will monitor complaints it receives from consumers to determine whether companies are violating this law and if so, to recommend appropriate Commission action.
- 16 With respect to posting information on the Commission’s website, community solar projects, programs, and services are still under development and do not yet exist. Community solar companies and investor-owned utilities will submit information

¹ RCW 26.28.015(4). This statute also provides that minors may disaffirm any contracts they sign. RCW 26.28.030.

regarding community solar projects, programs, and services in compliance with proposed WAC 480-103-030, and RCW 82.16.170(10) requires the Commission to publish much of that information.² The experience the Commission gains in implementing the statute and these rules will better enable the Commission to determine the form and type of information that will be useful to include on the Commission's website. For the present, we do not find that the rules need to specify how or the extent to which the Commission will maintain and publish a list of community solar projects, programs, and services.

- 17 The Joint Commenters are disappointed that the rules do not reflect their recommendations and requested clarifications in their previous comments in this docket and state that it is unlikely that any community solar companies will register with the Commission in light of the burdens imposed by the statute and these rules. They also express concern that there will not be sufficient funding remaining under the current incentive program to accommodate new entrants. Finally, they urge the Commission to take a view of community solar beyond the incentive program established in the statute and begin now to develop a longer term, sustainable model for expanded access and opportunities for low-income customers to benefit from solar deployment. At the adoption hearing, Spark Northwest also advocated exemption of public housing authorities from the rules, contending that they have pre-existing relationships with participants and thus the consumer protection rules are unnecessary.
- 18 We do not find the proposed rules to be unduly burdensome. They closely follow the legislature's direction to the Commission to register community solar companies and protect consumers and are comparable to rules the Commission has adopted for the other industries it regulates. Commission Staff is experienced with these types of requirements and will assist all companies seeking to provide community solar services to understand and comply with applicable regulations. To the extent that a rule is unduly burdensome as applied in certain circumstances, a company may request that the Commission modify that rule to better fit the situation while accomplishing the statutory goals. We nevertheless are constrained by the authority the legislature granted to the Commission and must comply with statutory requirements.
- 19 With respect to the availability of incentive funds, Jacob Fey, the WSU Energy Program Director, confirmed at the adoption hearing that \$80 million of the program's total grant

² The statute requires the Commission to "publish, without disclosing proprietary information, a list of the following: (a) Entities other than utilities, including affiliates or subsidiaries of utilities, that organize and administer community solar projects; and (b) Community solar projects and related programs and services offered by investor-owned utilities."

of \$110 million currently is spoken for, and the remainder is going quickly, but money remains available for community solar companies. We will do what we can to promptly register eligible companies so that they can access these financial incentives.

20 Finally, in response to the Joint Commenters, we are sympathetic to their goal of facilitating low-income consumers' ability to access solar energy projects and services. The Commission is open to further discussion about what it can do in that regard, but the Commission can only exercise authority the legislature has granted. This rulemaking was established to implement RCW 80.28.375, and the proposed rules are limited to that purpose. To the extent that the Commission has authority to expand the scope of community solar operations beyond the bounds of the current incentive program, we are willing to explore available options, but any such exploration and discussion must occur outside of this rulemaking.

21 We also cannot grant Spark Northwest's request to exempt public housing authorities from regulation under the proposed rules. The Commission's mandate extends to the entities that the statute requires to obtain registration from the Commission and comply with consumer protection requirements. The legislature defined community solar companies broadly, and the proposed rules incorporate that definition. Pursuant to both the statute and the proposed rule, a public housing authority is a community solar company subject to regulation if it owns a community solar project in Washington and provides community solar project services to project participants. The Commission can waive its rules under appropriate circumstances, but it cannot alter statutes. Accordingly, the Commission cannot exempt public housing authorities from regulation if they meet the statutory definition of a community solar company.

22 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should adopt the rules as proposed in the CR-102 at WSR # 18-17-134.

23 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that it should adopt WAC 480-103 to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser. The Commission is aware that time is of the essence in companies' ability to access funding from the incentive program. The urgency does not arise from a legislative mandate or from imminent danger to public health, safety, or welfare, so we do not find a basis for making the rules effective earlier than the

statute requires. We nevertheless will allow companies to file applications for registration as community solar companies consistent with the requirements in the proposed rules as of the effective date of this order so that the Commission can begin registering eligible companies as soon as the rules become effective.

ORDER

THE COMMISSION ORDERS:

- 24 The Commission adopts WAC 480-103 to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2). In anticipation of the rules becoming effective, the Commission will immediately begin to accept applications for registration as a community solar company consistent with the requirements in these rules.

- 25 This Order and the rule set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to RCW 80.01 and RCW 34.05 and WAC 1-21.

DATED at Olympia, Washington, October 2, 2018.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION



DAVID W. DANNER, Chairman



ANN E. RENDAHL, Commissioner



JAY M. BALASBAS, Commissioner

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 21, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Appendix A

Revised Rules