

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

RULEMAKING TO IMPLEMENT RULES
REGARDING THE UTILITIES AND
TRANSPORTATION COMMISSION'S
JURISDICTION AND REGULATION OF
COMMUNITY SOLAR COMPANIES.

DOCKET NO. UE-171033

INITIAL COMMENTS OF PUBLIC COUNSEL

November 20, 2017

I. INTRODUCTION

1. Pursuant to the Commission's October 19, 2017, Notice of Opportunity to File Written Comments, the Public Counsel Unit of the Washington State Attorney General's Office (Public Counsel) respectfully submits these comments in advance of the Commission's January 10, 2018, workshop. These comments address the implementation of ESSB 5939 and the Commission's regulatory oversight of community solar companies. RCW 80.28.375 grants the Commission authority to adopt rules regarding the regulatory oversight of community solar companies;¹ however, the Commission will not regulate these community solar companies.²
2. RCW 80.28.375 allows community solar companies, defined as "a person, firm, or corporation, other than an electric utility or a community solar cooperative that owns a community solar project and provides community solar project services to project participants" to provide community solar project services and engage in business practices in the state of Washington under specific conditions.³ In order to provide these community solar services, the

¹ RCW 80.28.375(7).

² RCW 80.28.375(11) and RCW 80.28.375(12).

³ ESSB 5939 § (10)(1) or RCW 80.28.370(1).

Commission must approve the company's application for registration prior to the company operating in the state. The Commission must approve the application within 30 days of receiving the application, either with or without issuing a notice for hearing.⁴ Additionally, community solar company registration with the Commission must be completed annually and at a minimum contain: (1) name and address of the company, (2) name and address of the companies registered agent, if applicable, (3) name, address, and title of each officer or director, (4) the company's most current balance sheet, (5) the company's latest annual report, if applicable, (6) a description of services the company offers and/or will offer, and (7) disclosure of any associated pending litigation against the company.⁵

3. RCW 82.16.170 provides minimal consumer protections regarding requirements for administrators, or the entity that organizes and administers the community solar project.⁶ Each administrator must provide a disclosure form containing the following: (1) understandable terms of how the incentive payment will be calculated, (2) disposition of transfers and any associated fees, (3) all recurring and nonrecurring fees, (4) description of billing and payment procedures, (5) details on compensation if there is project underperformance, (6) description of production methodology and estimates, (7) contact details for inquires and complaints, and (8) any other terms and conditions.⁷

4. Although ESSB 5939 provides a baseline of consumer protections for utility customers participating in community solar projects, Public Counsel believes supplemental consumer

⁴ RCW 80.28.375(5).

⁵ RCW 80.28.375(2).

⁶ RCW 82.16.160(1).

⁷ RCW 82.16.170(7).

protections should be addressed through this proceeding. The following responses by Public Counsel addresses these missing customer protection provisions.

II. NOTICE QUESTIONS

1. Consumer rules for electric companies are found in Washington Administrative Code (WAC) 480-100-103 through 480-100-199. Based on your understanding of community solar company business practices, are there any sections of WAC 480-100 that should not be applied to the new consumer protection rules and why? Are there additional consumer protection issues that we should address?

5. Public Counsel believes that the majority of rules in 480-100-103 to 480-100-199 provide an efficient foundation in creating rules pertaining to community solar companies. Below is the list of sections that Public Counsel recommends be amended to specifically address community solar companies:

- 480-100-103 Information to Consumers
- 480-100-108 Application for Service
- 480-100-113 Residential Services Deposit Requirement
- 480-100-118 Nonresidential Service Deposit Requirement
- 480-100-148 Service Responsibility
- 480-100-153 Disclosure of Private Information
- 480-100-173 Electric Utility Responsibility for Complaints and Disputes
- 480-100-178 Billing Requirements and Payment Date
- 480-100-179 Electronic Information
- 480-100-197 Adjudicative Proceedings where Public Testimony will be Taken
- 480-100-194 Publication of Proposed Tariff Changes to Increase Charges or Restrict Access to Services
- 480-100-195 Notice of Tariff Changes Other than Increases in Recurring Charges and Restrictions in Access to Services
- 480-100-198 Notice Verification and Assistance
- 480-100-199 Other Customer Notice

6. However, Public Counsel is not certain how and whether the rules listed below apply to community solar companies. At this time Public Counsel perceives the rules listed below are only applicable to regulated electric utilities providing distribution and transmission of electricity to customers:

- 480-100-123 Refusal of Service
- 480-100-128 Disconnection of Service
- 480-100-133 Reconnecting Service after Disconnection
- 480-100-138 Payment Arrangements
- 480-100-143 Winter Low-Income Payment Program
- 480-100-163 Service Entrance Facilities
- 480-100-168 Access to Premises; Identification
- 480-100-183 Complaint Meter Tests
- 480-100-188 Payment Locations
- 480-100-193 Posting of Tariffs for Public Inspection and Review

7. While Public Counsel does believe there should be provisions regarding early or general termination of community solar projects, and the logistics of billing in cases of disconnection or reconnection, these rules should be devised specifically to address community solar projects rather than amending consumer rules for electric utilities. Finally, several other consumer protection issues, such as limitations of conditions in the disclosure form, payment complications, and solicitations, require addressing in this proceeding. We address these in our response to Question Four.

2. We examined WAC 480-14 as an example of rules for applications; reporting; fees; and suspension; cancellation, and reinstatement of permits. Specifically, we looked at WAC 480-14-140, 480-14-150, 480-14-180, 480-14-190, 480-14-220, 480-14-230, and 480-14-999. Based on your understanding of community solar company business practices, are there other rules that should be considered? In addition, which rules do you disagree with and why?

8. Public Counsel does not disagree with the use of WAC 480-14 motor carrier provisions. However, we believe RCW Chapter 18.27– Registration of Contractors, provides a more robust framework for drafting the community solar company procedural regulations. The activity of contracting is more analogous to community solar companies than the activity of motor carriers. Commission Staff identified seven provisions in WAC 480-14 that it deems applicable to community solar companies. By comparison, RCW Chapter 18.27 contains 27 provisions that

may be relevant to regulating community solar companies: RCW 18.27.020, 030, 040, 060, 062, 070, 075, 100, 102, 104, 120, 200, 205, 210, 220, 225, 250 – 290, and 310 – 390. For these reasons, the Commission may find Chapter RCW 18.27 more useful.

3. ESSB 5939 identifies community solar projects as no larger than 1000 kilowatts with at least 10 participants. If a project has fewer than 10 participants, does that project need to be included on the list published by the commission?

9. Public Counsel has several interpretations and responses to this question. First, we will respond to the definition and interpretation of a community solar project and how it relates to the ‘listing’ of registered community solar companies. Second, we will answer the question of retention and projects that may have had 10 participants at the time of annual registration, but may drop below the required amount within an annual registration year.

A. Definition and Interpretation of Community Solar Project

10. RCW 82.16.160 defines “community solar project” as, “a solar energy system that has a direct current nameplate generating capacity that is no larger than one thousand kilowatts and meets the applicable eligibility requirements established in RCW 82.16.165 and 82.16.170.”⁸ RCW 82.16.170(2) requires that a community solar project, “have a direct current nameplate capacity that is no more than one thousand kilowatts and must have at least ten participants or one participant for every ten kilowatts of direct current nameplate capacity, whichever is greater” (Emphasis added).⁹ Public Counsel interprets RCW 82.16.170(10) to mean the Commission must list community solar projects, as defined in RCW 82.16.160(4) as well as community solar projects that have, “one participant for every ten kilowatts of direct current nameplate capacity.”

⁸ RCW 80.28.370 also defines community solar project as “solar energy system that has a direct current nameplate generating capacity that is no larger than one thousand kilowatts”.

⁹ ESSB 5939 § 7(2) or RCW 82.16.175(2).

11. In regards to the ‘listing’ of community solar companies by the Commission, Public Counsel interprets ESSB 5939 to require the Commission to list all community solar projects offered by either investor-owned utilities or community solar companies. This means all community solar projects meeting RCW 82.16.160(4) requirement offered by a community solar company must be listed, rather than listing only the community solar companies offering services in Washington State. Public Counsel considers this an essential condition for providing transparency between the community solar company and the potential participant, as is required in RCW 82.16.170(3).

12. Public Counsel believes the Commission to have broad authority to promulgate rules to determine the listing methodology for community solar companies applying for registration. One such methodology (rule) should require the disclosure of the intended number of projects to be organized for the year of registration in which the community solar company is applying. This listing per community solar company must be updated at the time of each annual updated registration. Moreover, Public Counsel believes that the list of registered community solar companies and their associated community solar projects should state whether it is a separate third party entity, regulated electric utility, or an affiliate of a regulated electric utility for clarity.

B. Retention and Participation Effects on Community Solar Projects

13. Public Counsel recognizes there may be a potential for retention issues within a community solar project that may lead to changing participation rates within an annual registration period. With this contention in mind, Public Counsel believes that at the time a community solar company applies for registration, it must meet the requirement of a community solar project and must be listed with the Commission. However, if at any time between annual registrations, the community solar company does not meet the community solar project

definition, the community solar company and/or its administrator must inform the Commission of this change with a provision for rectifying the issue in its participation rates. Thus, the community solar project will remain listed, although it will temporarily not be a community solar project as conditioned in RCW 82.16.175(2). If this participation issue persists, Public Counsel believes that the Commission will have grounds to penalize community solar company for that specific project.

4. Based on your understanding of community solar company business practices, are there other rules that should be considered? Which rules do you disagree with and why?

14. Public Counsel has several additional consumer protection concerns not addressed in the Commission's prompt, such as: (a) Soliciting, (b) Complaints and Disputes, (c) Financial and Billing Processes, (d) Customer Notices and Agreements, and (e) Customer Education.

A. Community Solar Company Solicitations

15. ESSB 5939 is generally silent on matters regarding solicitations by community solar companies.¹⁰ Marketing by community solar companies can come in many forms, for example, door-to-door sales, by telephone, on the Internet, and direct mailing. With these different methods for advertising and soliciting, comes the potential for misrepresentation of subscriptions and the potential for deceptive practices.¹¹ Public Counsel perceives this to be of great concern, considering there are minimal restrictions on the number of community solar projects that may be operating at one time.¹² Public Counsel believes the Commission should enact restrictions,

¹⁰ The only reference to solicitations is in RCW 80.28.375(1), in which advertising, soliciting, offering, or entering a community solar agreement cannot occur unless the company is registered with the Commission.

¹¹ Barbara Alexander and Janee Briesemeister. *Solar Power on the Roof and in the Neighborhood: Recommendations for Consumer Protection Policies* (March 2016) (available at: <https://www1.maine.gov/ag/news/FINAL%20Solar%20Power%20Consumer%20Protection%20Report.pdf>).

¹² RCW 82.16.165(13)(a) states, (a) For community solar projects and shared commercial solar projects in any fiscal year for which the Washington State University extension energy program estimates that fifty percent of

similar to those enforced in the state of Maryland, on soliciting.¹³ For example, COMAR 20.62.05.18 requires identification of an agent, when conducting door-to-door sales, and COMAR 20.62.05.03 provides marketing disclosures, and limits on Internet and telephone solicitations.

16. Public Counsel recommends the Commission consider imposing restrictions on solicitations in Washington State. Specifically, Public Counsel advocates for a rule requiring a community solar company's employee or agent to present their identification as an agent for a community solar project, as well as their affiliation to other community solar companies, when soliciting or offering its community solar project services to possible participants.¹⁴

B. Community Solar Complaints and Disputes

17. Under RCW 80.28.375(7) the Commission may adopt rules to, "establish the community solar company's responsibilities for responding to customer complaints and disputes." RCW 80.28.375(8) allows the Commission to suspend or revoke a registration upon complaint by an interested party or on the Commission's own motion for violations of statute or Commission rules. RCW 80.28.375(9) allows the Commission to penalize community solar companies for violations. While, the statute is silent on how customer complaints and disputes will be processed and who is responsible for managing complaints, it follows from a holistic

the remaining funds for credit available to a utility for renewable energy systems certified under this section as of July 1, 2017, have been allocated to community solar projects and shared commercial solar projects combined. However, this limitation is only for the certification of the Washington State University extension energy program, which a community solar company may apply for after its application for registration has been approved by the Commission.

¹³ Code of Maryland Regulation (COMAR) [20.62.05](#) Community Solar Energy Generation Systems (Consumer Protection).

¹⁴ COMAR [20.62.05.18](#) requires the agent to display and wear a badge with: (1) accurate identification of organization, its trade name, and its logo, (2) display the agent's photograph, (3) agents full name, and (4) customer service phone number. The agent must also state that that they are not working for and independent from the local distribution company and other organizations.

reading of the statute that the Commission’s Consumer Protection Specialists and the community solar companies would have primary responsibility in managing customer complaints. In any event, Public Counsel believes that a discussion is warranted on which entity will be responsible for managing complaints. Furthermore, these complaints should be tracked for possible persistent issues, possible complaints that may be brought forth by interested parties, and/or penalties to be issued by the Commission

C. Financial and Billing Processes

18. RCW 82.16.165(21)(b) states, “a utility is not liable for incentive payments to a customer-owner if the utility has disconnected the customer due to a violation of a customer service agreement, such as nonpayment of the customer's bill, or a violation of an interconnection agreement.” However, ESSB 5939 is silent on matters of billing logistics regarding the kilowatt-hour credit for community solar projects. Public Counsel believes that the following instances require discussion in this proceeding:

- If a utility customer participating in a community solar project does not make a full payment or misses a monthly utility bill payment, will the customer receive its monthly bill credit?
- If a customer misses one payment to the utility or a payment directly to the community solar company, will the community solar company terminate the customer’s subscription or lease to the project?
- If a utility customer participating in a community solar project misses a fixed payment directly to the community solar company, will the customer receive its intended monthly credit from the utility?
- If a customer is disconnected by the utility company while participating in a community solar project, will the customer ‘lose’ its monthly credit? Will this credit accrue?
- Can a customer participating in a community solar project ‘gift’ its monthly credit?
- If a customer participating in a community solar project does not have any kilowatt-hour usage (or the credit is more than the energy used) for that applicable month, will the customer ‘lose’ that monthly credit? Will this credit accrue?

19. Public Counsel welcomes discussing possible recommendations regarding whether these conditions should be included in a rule or whether specific terms should be placed into the consumer service agreement or disclosure form.

D. Customer Service Agreements (Disclosures)

20. Public Counsel believes that there should be general rules with restrictions on the provisions included in the disclosure form or customer agreement. Public Counsel recommends the following:

- A limit on the possible upfront payment or deposit (if any) for participation in a community solar project.
- A limit on the duration of a contract term.
- Unlimited number of transfers (with or without associated fees).
- Limit on the amount of fees to be paid by customers, such as late payment, early termination, or transfer fees.
- Instances for notification should be clearly stated, such as underperformance and changes in pricing (i.e. if an annual true-up is required, outages, change in project ownership).
- Participating customers should be allowed to change (increase or decrease) their allocation of kWh during the duration of their contract with an associated price limitation.
- The disclosure form should state whether this is a subscription (lease) or purchase of kWh. Additionally, the disclosure form should state whether the customer agreement (disclosure) is a 'savings' program, (i.e. participation in the project will lead to savings)¹⁵ or whether participation in this program is similar to a 'green tariff program'.

Public Counsel looks forward to having discussions with interested parties on the items listed above.

E. Customer Education

21. Public Counsel regards customer education as an additional preventative measure for reducing the number of consumer protection related incidences. Providing customer education

¹⁵ If a program is marketed as a 'savings' program, future costs and benefits should be shown by in the disclosure form.

on community solar projects and the general process of participating in these projects can assist customers in making informed decisions and avoiding fraudulent marketing or misleading proposals.¹⁶ Public Counsel welcomes ideas on how to educate community solar project participants. Some examples include an informational website,¹⁷ utility mail inserts, or informational packets and/or a summary of the project provided with the disclosure forms directly distributed by community solar companies.

III. CONCLUSION

22. Public Counsel believes that a critical aspect of implementing ESSB 5939 is ensuring customer protection issues are addressed and rules employed to mitigate possible negative effects. Public Counsel supports the efforts of the state of Washington to develop this market, as well as allowing renters and homeowners, who have not previously been able to participate, to utilize these solar programs. We look forward to the discussion and collaboration with other interested parties addressing the various consumer protection issues in this arena.
23. Public Counsel appreciates the opportunity to submit these comments. We will attend the workshop on January 10, 2018, and look forward to reviewing comments of other stakeholders.

¹⁶ Diana Chace and Nate Hausman, *Consumer Protection for Community Solar: A Guide for States*. Clean Energy States Alliance. (June 2017) (available at: <https://www.cesa.org/assets/2017-Files/Consumer-Protection-for-Community-Solar.pdf>).

¹⁷ Clean Energy Resource Teams, *Community Solar Gardens*. <https://www.cleanenergyresourceteams.org/solargardens> (last visited Nov. 20, 2017); Community Solar. <http://mncommunitysolar.com/> (last visited Nov. 20, 2017).