

December 21, 2012

Mr. David W. Danner
Executive Director and Executive Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

RE: Comments of Renewable Northwest Project and Northwest Sustainable Energy for Economic Development

Docket No. UE-112133 - Commission's November 21, 2012 Notice of Opportunity to Submit Written Comments on Interconnection Draft Rules and Notice of Opportunity to Respond to Small Business Impact Statement (SBEIS) Questionnaire

Renewable Northwest Project ("RNP") and Northwest Sustainable Energy for Economic Development ("Northwest SEED") appreciate the opportunity to comment on the Interconnection Draft Rules, and applaud the work of the Model Rule Workgroup and all the stakeholders that contributed to amending the rules governing the interconnection of generation facilities (WAC 480-108). RNP and Northwest SEED are restricting their comments in this document to the seventh question raised by the Commission, which proposed an addition to the "interconnection customer" definition to address third party ownership of net metering systems: "A net-metered Interconnection Customer may lease from, or purchase power from, a third party owner of an on-site generating facility."

The proposal to address third party ownership in the definition of "interconnection customer" is welcome and timely. Clarifying that third party ownership of facilities is permissible is among the most important interconnection clarifications identified by the Interstate Renewable Energy Council (IREC) in their model procedures.¹ Furthermore, the National Governors' Association listed clarifying regulations for third party ownership as one of the top ten state policy innovations that can help advance renewable energy goals.²

Net-Metering Has Broad Benefits

Net-metering is the billing arrangement between customers with generation facilities (which they may or may not own) on their property and their utility. The customers realize savings because the energy they generate on-site reduces their electricity bills. The customers pay only for the electricity they require that is in excess of what they generate—*i.e.*, their net consumption.

¹ Interstate Renewable Energy Council, *Model Interconnection Procedures* (2009 Ed.), at p. 1, available at <http://irecusa.org/wp-content/uploads/2010/01/IREC-Interconnection-Procedures-2010final.pdf>.

² National Governor's Association Issue Brief and White Paper, "Ten Trends to Track: State Policy Innovations to Advance Energy Efficiency and Renewable Energy." #7-Clarify Regulations for Third Party Owners of Solar PV.

Net-metering is a powerful, market-based, easy-to-administer tool to encourage distributed generation, or numerous smaller sources of local generation. Distributed generation has many benefits: it keeps energy dollars local; it encourages in-state economic development and the creation of jobs; it enhances security and reliability of the electric grid by reducing outages caused by natural disasters; it reduces electric line losses by siting generation where the power is used; it reduces air pollution and greenhouse gas emissions; and it leads to greater energy independence.

Third Party Ownership Promotes Net-Metered Distributed Generation

For customers, one of the greatest barriers to having a generating facility on their property is the high upfront cost. Third party ownership enables many more people to tap into the benefits of on-site generating facilities for little or no money down. In such cases, the third party installs, owns, operates and maintains the generating facility. The customer signs a power purchase agreement (PPA) with the third party owner to purchase electricity from the generating facility for a pre-determined period, typically 15 to 20 years, and at a locked-in rate. The customer then receives on-site generated electricity at a stable price, while the third party acquires other benefits such as tax credits and depreciation (as well as income from the power they are selling).

Third party ownership would make net-metered on-site electricity generation more affordable for more customers.³ Without the availability of third party financing for on-site generating facilities, only the very wealthy have access to this technology. Third party ownership has been shown to be the most popular method for financing residential generating facilities: for example, in mature solar markets such as California, Arizona and Colorado, third-party ownership has become the dominant model for financing residential facilities.⁴

WUTC Action Can Facilitate Third Party Ownership

A key barrier to the further deployment of third party ownership financing models in Washington is the absence of a clear statement that third party ownership is consistent with net-metering regulations and, more broadly, that third party owners of net-metered solar facilities do not fall within the WUTC's jurisdiction. For the following reasons, RNP urges the WUTC to state clearly that third party ownership is compatible with net-metering and does not give rise to WUTC jurisdiction.

For a generating facility that will offset all or part of the load of a utility customer (a net-metered system), the person or entity that has filed to interconnect the facility to an electric delivery system is the utility customer, regardless of whether the customer or a third party owns the generating facility. If that customer—*i.e.*, the net-metering “Customer-generator” under RCW 80.60.010(2) and the “Interconnection customer” under WAC 480-108-010—wishes to host and receive the electrical output from a generating facility under contract with a third party, rather than own the generating facility outright, the basic

³ See, *e.g.*, Dryry, E. et al., The transformation of southern California's residential photovoltaics market through third-party ownership. Energy Policy (2012), doi:10.1016/j.enpol.2011.12.047.

⁴ CSI Database, Arizonagoessoalr.com, GTM U.S. Solar Market Insight 2012 Fig 2–8.

relationship between customer and utility does not change. It is entirely appropriate for the Commission's rules to state, as proposed in Question 7, that "[a] net-metered Interconnection Customer may lease from, or purchase power from, a third party owner of an on-site generating facility." In addition to supplementing the definition of "Interconnection Customer" in WAC 480-108-010, the Commission may also wish to clarify, either in its order or by separate rule amendment, that its definition of "Generating Facility" includes facilities whose *electrical output* is owned by the interconnection customer.⁵

Plainly, this contractual relationship with the customer-generator/interconnection customer does not make a third party company an "electric company." See WAC 480-108-010; RCW 80.60.010(3); RCW 80.04.010(12); *Inland Empire Rural Electrification, Inc. v. Department of Public Service*, 199 Wn. 527, 537, 92 P.2d 258 (1939). Most significantly, the business of a third party owner of net-metered solar facilities that contracts with select customer-generators is not one dedicated to public use. A third party owner offers solar leases or power purchase agreements to "particular individuals of its own selection," *Inland Empire*, 199 Wn. at 537, and therefore is not a public service company or electric company under the relevant analysis. Although an express statutory exclusion would provide the greatest certainty for third party owners, the Commission can take an important step by indicating clearly that it does not view third party owners of net-metered generating facilities as jurisdictional electric companies.

Conclusion

RNP and Northwest SEED appreciate the attention that the WUTC has given to regulatory changes that can advance distributed generation at little to no cost to the state. The Model Rule Workgroup's technical improvements are significant, and RNP and Northwest SEED appreciate all of the work that went into developing them. In addition to adopting them, the Commission should take another enormous step forward for distributed generation by clarifying the policy and legal framework for third party ownership models.

Sincerely,

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⁵ The definition in WAC 480-108-010 could be revised as follows: "'Generating facility' means a source of electricity that is owned, or whose electrical output is owned, by an interconnection customer[.]" Alternatively, the Commission could indicate in its adoption order that it interprets the existing phrase "owned by the interconnection customer" to modify "electricity" rather than "source."