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Re: Docket UE-171033, CR-101. Comments of Clean Energy Collective on Rulemaking to implement rules regarding the Utilities and Transportation Commission's jurisdiction and regulation of community solar companies

Clean Energy Collective (CEC) submits the following comments in response to the Washington Utilities and Transportation Commission's (Commission or UTC) Notice of Opportunity to Submit Written Comments issued in Docket UE-171033.

BACKGROUND

CEC is the nation's leading community solar solutions provider. We have more than 175 community solar projects built or under development with 33 utility partners across 15 states serving thousands of customers – including families, businesses, government, and institutional customers. We are engaged in every aspect of the business, from project development and financing, marketing and customer acquisition, integration with utility billing systems, to long term operations and maintenance. As such, we find ourselves at the forefront of best practice development and put considerable effort toward ensuring our approach is one that delivers long term value to customers, and considerable time toward educating industry partners, advocates, and interested policy makers on what makes for successful community solar programs. Of note, CEC is partnered with Avista Corporation on their community solar project located in the City of Spokane Valley. We are headquartered in Louisville, CO, with offices around the country.

CEC has reviewed ESSB 5939 and the UTC's Notice of Opportunity to File Written Comments, and provide the following responses to the four questions included in that Notice.

RESPONSES TO 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?**

CEC is unaware of any state community solar program whereby the community solar companies are regulated as "Electric Companies" (i.e., utilities), and we find that WAC 480-100 would be, for the most part, not relevant and/or unreasonable with regards to community solar company regulation. Further, rules for utilities are not a good baseline for determining rules for community solar companies. The relationship between a community solar company and their project participant is more akin to the relationship between (non-community) solar companies and individual installations on personal property, rather than the arrangement between a utility and its customers. In contrast to utilities, community solar companies work with a finite number of customers (maybe a couple hundred per project) and there is never a threat (to project participants) of electricity shut-off as a result of non-payment of community solar subscription fees. If Washington has specific consumer protection regulations for residential solar installers or contractors, we recommend that be used as a reference or starting point for determining any potential rules on community solar companies.

CEC identifies two primary components of ESSB 5939 that suggest a potential consumer protection need: (1) where it states the UTC may adopt rules that establish "the community solar company's responsibilities for responding to customer complaints and disputes;" and (2), that the UTC "may require the procurement of a performance bond or other mechanism sufficient to cover any advances or deposits the community solar company may collect from project participants or order that the advances or deposits be held in escrow or trust." This first issue is addressed *for utilities* in WAC 480-100-173, "Electric Utility Responsibility for Complaints and Disputes," and may provide some guidance for establishing complaint and dispute resolution for community solar companies, however we would again emphasize that these be catered more similarly to a solar installer or contractor rather than utility. On the second issue, CEC is supportive of providing assurance that up-front deposits by project participants be held in escrow during the development of a project. This is a best practice that CEC actually leverages in projects throughout the country. That said, we are *not* supportive of requiring performance bonds as these require more time and costs to establish and maintain compared to an escrow account, without any clear consumer protection advantage over an escrow.

In addition to holding upfront-subscriber deposits in escrow, CEC also identifies education as an important instrument of consumer protection. For example, Minnesota provides a reasonable example of a standardized disclosure form[1], which developers are required to respond to if a subscriber so chooses to request the information in the disclosure. These types of checklists can help surface key contract details for customers. That said, these disclosures should not take the place of the contract or be so long and overwhelming that they overload or distract the customer from the primary financial considerations. Notably, RCW 82.16.170 addresses the need for the "administrator", rather than community solar company, to provide project participants with a disclosure form containing all the material terms and conditions of participation in a project, including a comprehensive list of contract-

[1] See Xcel Energy's Minnesota Community Solar Garden Subscriber Disclosure Checklist. http://www.xcelenergy.com/staticfiles/xe/Marketing/Files/MN-SRC-CERTS-Disclosure-Checklist.pdf

related items.[2] Therefore, it seems the UTC should not duplicate this requirement as it could create unnecessary administrative burden and costs for all parties.

Finally, in the fifteen states where we've operated, we've found that existing state and federal consumer protection laws are robust enough to protect consumers engaged in a community solar project. Indeed, CEC is currently unaware of any known problems with community solar programs operating across the country, including those in the state of Washington. The UTC and WSU should seek to minimize the administrative costs and burden on administrators, community solar companies, and project participants. The UTC and WSU should avoid placing pre-emptive restrictions on contract terms and not directly interfere with company-participant agreements in a way that could limit the ability of community solar companies to offer innovative projects and products that best fit customer needs. The specifics of those and other elements are associated with the unique costs and benefits of each project, and should be determined in the company-participant agreement rather than a standardized rule. This is an area of market innovation and competition, where community solar companies can differentiate their terms and conditions in response to consumer interests and demand.

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?**

WAC 480-14 appears to be focused on "common carriers[3]," which is a classification we have not experienced in other markets. CEC does not have a full grasp of all Washington codes and laws, but as noted in our response to Question #1, we recommend the UTC leverage experience from processes that are used for solar installers or contractors in the state. That said, UTC should also be seeking to minimize administrative cost impacts on community solar companies (and therefore project participants) to the extent it could dissuade interest in the program and to avoid unnecessary redundancy with WSU processes.

That said, the law does provide some basic guidance on the registration of community solar companies from which the UTC should be able to establish a process. We are generally OK with the minimum requirements laid out, however we note that any request for financial or accounting information relating to the community solar company's business should be processed and maintained in a confidential manner. In addition, as noted in our response to Question #1, there should not be a requirement for a performance bond which are costly and can be challenging to obtain, particularly when a more simple requirement to hold deposits in escrow can achieve the same consumer protection objective.

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[2] RCW 82.16.170. http://app.leg.wa.gov/RCW/default.aspx?cite=82.16.170

[3] Defined in WAC 480-14-040 as meaning: any person who undertakes to transport property, including general commodities, materials transported by armored car service, and/or hazardous materials, for the general public by motor vehicle for compensation, including under individual contracts or agreements, and including motor vehicle operations of other carriers by rail or water and of express or forwarding companies.

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?**

CEC would clarify here that ESSB 5939 is clear that the definition of a community solar project (aside from being no larger than 1000 kW-dc) must have at least 10 participants, "**or one participant for every ten kilowatts of direct current nameplate capacity, whichever is greater.**" So, factually speaking this question should be edited to include the possibility of a project that does have a participant for every 10 kW-dc of capacity, but that does not add up to 10 participants in total.

In any case, CEC would recommend that the minimum requirements associated with the number of participants be a condition of being listed publicly as a community solar project, but that there be some grace period allowed for subscription changes during the project's operation.

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?**

As emphasized in our responses to Questions #1-2, CEC flags again here that the UTC should avoid over-regulating community solar projects and companies as this could have a negative impact on the participation in the program without a clear benefit. Community solar markets continue to sprout up throughout the country however there are programs that have been around several years which have demonstrated that this is not a market that requires heavy regulatory oversight. Existing state and federal laws associated with commerce and consumer protection rules incorporated for solar installations and solar contract activity are typically sufficient. Other measures, such as requiring escrow accounts for deposits by participants and the use of standard disclosures can provide additional assurance that customers are fully aware of the details associated with their participation and that their upfront payments will not go to waste.

CEC appreciates the opportunity to comment and we look forward to continuing the conversation in the coming months. Please do not hesitate to reach out directly for additional input from the community solar company perspective.

Sincerely,

/s/ Charlie Coggeshall

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