

**UE 171033 – Community Solar Rulemaking
Stakeholder Comments regarding CR-101 Preproposal Statement of Inquiry**

	Topic	Commenter	Commenter Response	Staff Comments
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?	Avista	Most sections in 480-100 are not applicable as community solar companies are not replacing electric utilities. Applicable sections are 480-100-153 - Disclosure of private information and 480-100-173 - Electric utility responsibility for complaints and disputes. Avista may have additional recommendations as the rule making progresses.	
		Public Counsel	Public Counsel supports using the majority of 480-100 as a foundation in creating consumer protection rules pertaining to community solar companies, including: <ul style="list-style-type: none"> • 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 	we agree elements of these rules are important: Consumer Protection to draft rules on each of these topics.

UE 171033 – Community Solar Rulemaking
Stakeholder Comments regarding CR-101 Preproposal Statement of Inquiry

			<ul style="list-style-type: none"> • 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 <p>Public Counsel also supports the adoption of new rules pertaining to the early termination of community solar projects and billing in cases of disconnection or reconnection. Further limitations of conditions in the disclosure form, payment complications, and solicitations should be addressed in this proceeding.</p>	
		<p>Pacific Power</p>	<p>Pacific Power believes that some rules from 480-100 should apply to community solar companies:</p> <ul style="list-style-type: none"> • WAC 480-100-103 Information to Customers – minimum availability of information should be set. This should include a website and toll-free telephone number to provide information about terms, costs and benefits of participation, and to respond to customer inquiries and complaints. The commission should establish required disclosures including project description, total participation cost, estimated output, energy benefit, tax benefit, participation terms, billing terms, REC ownership, and dispute resolution. • WAC 480-100-108 Application for service – Pacific Power does not object to limitations being applied to the application process or the information that can be requested from customers 	

UE 171033 – Community Solar Rulemaking
Stakeholder Comments regarding CR-101 Preproposal Statement of Inquiry

			<p>by a community solar company. Though the Commission should understand that some sensitive customer information may be needed from the applicant for a credit check.</p> <ul style="list-style-type: none"> • WAC 480-100-113 Residential services deposit requirements – Pacific Power does not believe it necessary to dictate when and for how long a deposit may be charged by a community solar company. The Commission should develop specific requirements for community solar projects that require deposits: <ul style="list-style-type: none"> ○ How deposits are treated when held in escrow ○ Whether deposits can be accessed to provide operating capital for project development ○ Under what circumstances a solar company should refund a deposit ○ Whether partial refunds are permitted and the circumstances ○ Protection of funds if the project does not move forward • WAC 480-100-148 Service responsibility – The Commission should develop requirements for operation and maintenance of the solar facility to ensure the company maintains the facility through the life of the agreement. • WAC 480-100-153 Disclosure of private information – The Commission should continue to include provisions restricting the use and distribution of sensitive participant information, without participant consent. • WAC 480-100-173 Electric utility responsibility for complaints and disputes – The commission 	
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UE 171033 – Community Solar Rulemaking
Stakeholder Comments regarding CR-101 Preproposal Statement of Inquiry

			<p>should develop a dispute resolution process specific for community solar companies. These companies should be required to agree to the process. Contracts between community solar companies and participants should include provisions allowing the Commission to dissolve contracts for non-performance by the community solar company.</p> <ul style="list-style-type: none"> • WAC 480-100-178 Billing requirements and payment date – Much of this rule does not apply to the relationship between community solar and a participant. At a minimum companies should be required to: <ul style="list-style-type: none"> ○ Show the total amount due and payable. ○ Show the date the bill becomes delinquent if not paid. ○ Show the amount of kilowatt-hours produced by the customer’s share of the community solar project over the billing period. ○ Show the total compensation provided to the participant over the billing period. ○ Show the community solar company’s business address, business hours, and a toll-free telephone number and an emergency telephone number by which a customer may contact the utility. <p>The Commission should evaluate whether placing limits on the ability of community solar companies to collect contractual payments in non-payment situations is appropriate. At a minimum, a review of the contract between the community solar company and the participant should be conducted to ensure that</p>	
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UE 171033 – Community Solar Rulemaking
Stakeholder Comments regarding CR-101 Preproposal Statement of Inquiry

			<p>contractual remedies are evenly balanced between the parties.</p> <ul style="list-style-type: none"> WAC 480-100-193 Posting of tariffs for public inspection and review - the Commission should require that community solar companies provide clear information to participants on the costs and benefits of participation in the project. This information should be reviewed by the Commission for accuracy, and should be publicly available for review and reference by the participant throughout the operation of the project. 	
		A&R Solar	<p>A&R Solar does not believe WAC 480-100 applies to community solar. A&R Solar encourages the Commission to create rules to enforce the disclosures outlined in Section 7 of ESSB 5939, including requirements to disclose a project’s recurring or nonrecurring charges, billing procedures, production projections, contact information, etc.</p>	
		Northwest Renewables	<ul style="list-style-type: none"> WAC 480-100-108 – Northwest Renewables does not believe the application process would be as linear as prescribed in rule. It is also conceivable that community solar projects would fill up, community solar companies need to have a process to refuse service. WAC 480-100-123(1)(c) – Would not allow community solar companies to install community solar in a micro-grid orientation where companies would take advantage of power purchase agreements with project participants. Northwest Renewables suggests making edits to allow for micro-grid installations. 	

UE 171033 – Community Solar Rulemaking
Stakeholder Comments regarding CR-101 Preproposal Statement of Inquiry

			<ul style="list-style-type: none"> • WAC 480-100-188(2) – Community solar companies do not need to take cash payments from project participants. • WAC 480-100-193 through 480-100-199 – Community solar companies should only be responsible for disclosure of tariffs to potential and current project participants as well as the UTC. Public disclosure of arrangements is more appropriate for utilities. • WAC 480-100-203 – Northwest Renewables suggests that community solar companies use general accounting principles, not FERC code. • WAC 480-100-238 – Community solar companies should not be subject to the IRP process. • WAC 480-100-242 through 480-100-262 – Community solar companies should be free to issue securities as they deem necessary. Given the private nature of community solar companies these regulations do not allow the flexibility needed. 	
		<p>NW Energy Coalition</p>	<p>Several of these rules need to be modified to better accommodate community solar projects:</p> <ul style="list-style-type: none"> • WAC 480-100-103 Information to consumers – Should be broadened to include information on community solar projects interconnected with the utility. Information on participation costs, management or administration fees and operations should be provided in a clear and transparent fashion to all customers, either by the utility or the administrator. • WAC 480-100-153 Disclosure of private information - May make it more difficult for 	

UE 171033 – Community Solar Rulemaking
Stakeholder Comments regarding CR-101 Preproposal Statement of Inquiry

			<p>customers to participate in a community solar project. This section may impose barriers to non-utility administrators locating possible customer participants or communicating with utility customers about non-profit or public housing administered projects.</p> <ul style="list-style-type: none"> • WAC 480-100-173 Electric utility responsibility for complaints and disputes - May not work as written. Customers may have disputes with the administrator, rather than the utility. Clarification is needed on how those disputes should be handled. 	
		<p>Clean Energy Collective</p>	<p>Clean Energy Collective does not find WAC 480-100 to be relevant or a good baseline for the community solar industry. CEC suggests using regulations for residential solar installers or contractors as a starting point, if they exist in Washington. CEC suggests two consumer protection components from ESSB 5939 1) establish responsibilities for responding to consumer complaints or disputes and 2) 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.</p> <p>CEC does not support the requirement of a performance bond, as they are more costly to establish and maintain. CEC would prefer the establishment of an escrow account.</p> <p>CEC believes customer education is an important aspect of consumer protection. CEC states that RCW</p>	

UE 171033 – Community Solar Rulemaking
Stakeholder Comments regarding CR-101 Preproposal Statement of Inquiry

			82.16.170 sets the administrator, not the community solar company as the party to provide project participants with the disclosure form, containing all the material terms and conditions of participation in a project. CEC believes the UTC should not duplicate this requirement. CEC states that in its experience existing state and federal consumer protection laws are robust enough to protect community solar participants. The UTC should also avoid placing pre-emptive restrictions on contract terms, and not interfere in a way that could limit the ability of community solar companies to offer innovative projects and products.	
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?	Avista	No comments	Suzanne to draft rules for registration, both initially and annually. Include fee for the first registration and a fee for the annual reporting. Include language for revoking and canceling.
		Public Counsel	Public Counsel does not object to the use of WAC 480-14, but believes RCW Chapter 18.27 provides a more robust framework for the drafting of community solar procedural regulations. Specifically Public Counsel highlights RCW 18.27.020, 030, 040, 060,	

UE 171033 – Community Solar Rulemaking
Stakeholder Comments regarding CR-101 Preproposal Statement of Inquiry

			062, 070, 075, 100, 102, 104, 120, 200, 205, 210, 220, 225, 250 – 290, and 310 – 390 for consideration.	
		Pacific Power	Pacific Power believes that the rules referenced above could provide a model to be replicated for the development of community solar company regulations.	
		A&R Solar	Believes that WAC 480-14 provides an appropriate framework but recommends the Commission research existing frameworks for applications, reporting requirements, and fees that are currently used in other states.	
		Northwest Renewables	These WACs seem to fit community solar well. Though it should be noted that community solar is electronic in nature, not hazardous. The fee requirements should reflect this. WAC 480-14-250 – Solar is electronic, not hazardous in nature, the insurance requirements should reflect this.	
		NW Energy Coalition	Since community solar projects will be administered and managed by a utility, a utility subsidiary, a non-profit or a public housing entity, it seems the registrations should be as comprehensive and straightforward as possible	
		Clean Energy Collective	CEC recommends the UTC use experience from processes that are used for solar installers or contractors in Washington. CEC also states that the UTC should seek to minimize administrative costs on community solar companies and project participants and avoid redundancy with WSU processes. CEC is generally okay with the minimum requirements laid out in ESSB 5939, but notes that requests for financial	

UE 171033 – Community Solar Rulemaking
Stakeholder Comments regarding CR-101 Preproposal Statement of Inquiry

			or accounting information should be maintained in a confidential manner.	
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?	Avista	Language in ESSB 5939, Section 7(2) indicates that limiting projects to at least ten participants will not be sufficient. Avista advocates that any community solar project serving customers of an electric utility under the jurisdiction of the commission should be published. It will be beneficial for the commission and other stakeholders to be aware of community solar companies serving customers of utilities under the commission’s jurisdiction.	
		Public Counsel	Public Counsel believes that the Commission must list community solar projects as defined in RCW 82.16.160(4) as well as projects that have “one participant for every ten kilowatts of direct current nameplate capacity” (RCW 82.16.170(2)). 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 also advocates for requiring the community solar company and/or its administrator to notify the commission if its customer retention falls below the community solar project definition at any time between annual registrations. That notification should contain a plan for restoring participation rates. In Public Counsel’s proposal the community solar	

UE 171033 – Community Solar Rulemaking
Stakeholder Comments regarding CR-101 Preproposal Statement of Inquiry

			project would remain listed but temporally not meet the community solar project requirements in RCW 82.16.175(2). If a project does not restore participation the Commission would be within its authority to penalize the community solar company.	
		Pacific Power	Pacific Power does not believe that the Commission should limit inclusion in the list to projects that have already secured 10 participants. Pacific Power believes that this list could provide a public service by connecting potential participants with projects in the development stages. An alternate approach could be to provide a bifurcated list of projects. One list would publish projects that have successfully interconnected and have secured a minimum of 10 participants, ensuring their viability as a community solar project. The other list could be of projects in the development stage where additional customers are required to allow the project to move forward.	
		A&R Solar	A&R’s interpretation is that projects are not eligible for the Community Solar program unless there are 10 or more participants.	
		Northwest Renewables	All community solar projects should be published on the UTC’s list.	
		NW Energy Coalition	NW Energy Coalition states that all community solar projects each entity organizes, and if the entity administers multiple projects, should be published.	Note: The actual response includes this quote: “all entities that organize and administer community solar projects” (section 7(10)(a) and (b)) This exact wording does not exist in ESSB 5939 or RCW 82.16.170, though the actual language in the bill and law comes close.
		Clean Energy Collective	CEC recommends that the minimum requirements associated with the number of participants be a	

UE 171033 – Community Solar Rulemaking
Stakeholder Comments regarding CR-101 Preproposal Statement of Inquiry

			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?	Avista	No comments.	
		Public Counsel	<p>Public Counsel brings up several additional consumer protection concerns:</p> <ul style="list-style-type: none"> • Soliciting - ESSB 5939 is generally silent on matters regarding solicitations by community solar companies. The potential is present for misrepresentation of subscriptions and the deceptive practices. Public Counsel is concerned and believes the Commission should enact restrictions. A possible model can be found in Maryland’s restrictions on soliciting COMAR 20.62.05.03 and COMAR 20.62.05.18. Public Counsel would like to see requirements that community solar company employees or agents 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. • Community Solar Complaints and Disputes - the Commission should adopt rules in accordance with RCW 80.28.375(7). It stands to reason that the 	

UE 171033 – Community Solar Rulemaking
Stakeholder Comments regarding CR-101 Preproposal Statement of Inquiry

			<p>Commission’s Consumer Protection Specialists and community solar companies would have primary responsibility in managing customer complaints. A discussion around which entity will be responsible for managing complaints is warranted. Additionally, complaints should be tracked for persistent issues for possible complaints that may be brought forth by interested parties, and/or penalties to be issued by the Commission.</p> <ul style="list-style-type: none"> • Financial and Billing Processes – Public Counsel would like to see further clarification of RCW 82.16.165(21)(b), which states that the utility is not responsible for incentive payments if the customer has violated the service agreement such as nonpayment of a bill or interconnection agreement. <ul style="list-style-type: none"> ○ What if the customer does not make a full monthly payment? ○ If the customer misses one payment to the utility or community solar company will the customer’s subscription or lease be terminated? ○ If a utility customer misses a fixed payment to the community solar company will the customer receive their monthly credit from the utility? ○ If a customer is disconnected by the utility while participating in a community solar project, will the customer lose the monthly credit? Will the credit accrue? ○ Can a customer participating in a community solar project gift their monthly credit? 	
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UE 171033 – Community Solar Rulemaking
Stakeholder Comments regarding CR-101 Preproposal Statement of Inquiry

			<ul style="list-style-type: none"> ○ If a customer participating in a community solar project does not have any kilowatt-hour usage will the customer lose the monthly credit? Does the credit accrue? <p>Public Counsel would also like to see restrictions on the provisions included in the disclosure form or customer agreement. Public Counsel recommends:</p> <ul style="list-style-type: none"> ● 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 ‘saving’ 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’. 	
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UE 171033 – Community Solar Rulemaking
Stakeholder Comments regarding CR-101 Preproposal Statement of Inquiry

			<p>As a preventive measure Public Counsel would like to see customer education measures discussed. Ideas include:</p> <ul style="list-style-type: none"> • Informational website • Utility mail inserts • Information packet and/or a summary of the project provided with the disclosure forms directly distributed by community solar companies 	
		Pacific Power	No comments	
		A&R Solar	Recommends that the Commission reference expertise from the Coalition for Community Solar Access for best practices used in other states with successful community solar frameworks.	
		Northwest Renewables	No comments	
		NW Energy Coalition	<p>The disclosures required in new section 7(3) through (8) may need to be explained further in the development of rules. For example, what constitutes “fair and non-discriminatory” opportunities for participation, or what constitutes “a reasonable fee” to cover organizing and administration costs and how will that be presented to customers as an impact on bills.</p> <p>Since the cost cap for the entire solar program in Washington is low enough that parties are worried the incentive will be exhausted in a relatively short time, we urge the Commission to adopt rules as expeditiously as possible, so projects may be developed.</p>	Note: NW Energy’s response is copy and paste here. I believe they are referencing section 7(3) through (8) of ESSB 5939.

UE 171033 – Community Solar Rulemaking
Stakeholder Comments regarding CR-101 Preproposal Statement of Inquiry

		Clean Energy Collective	CEC believes that the UTC should avoid over-regulating community solar companies. CEC states that new projects are constantly being developed but the projects that have lasted for several years demonstrate that the industry does not need heavy regulation. CEC believes that escrow accounts for deposits and standard disclosures “will not go to waste”.	
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