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UE -171033 Community Solar Rulemaking  
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**WAC 480-xxx-006 Definitions.**

It was noted in the workshop that "community solar companies" are defined by statute as those who own a project *and* provide community solar project services. The statutory definition must be followed in the rulemaking. At the same time, the Commission may wish to adopt certain consumer protections that apply to mere project owners (i.e. "passive owners") and other requirements that apply to the provider of community solar project services, whether or not the provider has an ownership stake.

A recent order from the New York Public Service Commission, "Establishing Oversight Framework and Uniform Business Practices for Distributed Energy Resource Suppliers," Case 15-M-0180, October 19, 2017 (NYPSC Order) is more concerned with distinguishing between mass-market suppliers and "small" DER suppliers deploying new products and services than with distinguishing between owners and service providers. It is relevant in that it identifies a limited set of "passive" regulations that apply more universally, while imposing affirmative obligations to act on those who will be engaged in mass marketing to customers.

Add a definition for "CSP Service Provider", meaning an entity that provides community solar project services to project participants; this may include an administrator as provided under RCW 82.16.110.

Installers have also requested a clause excluding from regulation as community solar companies "those involved in the design or installation of a project".

- One approach would be to provide that a contractor or other third party that provides community solar project services is not subject to regulation as a community solar company, so long as a registered community solar company has contracted to assume responsibility for the actions of the contractor or other third-party agent acting on its behalf or under its direction. Consider also stipulating separately that if a Community Service Company (CSC) or project owner enlists a third party to assist in marketing, data collection or analysis, billing, or any other community solar project services, that CSC or owner is responsible for making commercially reasonable efforts to ensure the third party's activities conform with the relevant rules and requirements.
- Clarify which duties may be assumed by a CSP Service Provider on behalf of one or multiple owners.

Consider including in the definition section a definition for "incentive payments" that specifies these are the payments under RCW 82.16.110 through RCW 82.16.170. There are references throughout

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but only some refer to RCW 82.16 and others do not (i.e. in 480-xxx-228, and 480-xxx-050, potentially causing confusion.

**WAC 480-xxx-030** as drafted already requires registration only of those who engage in business as a solar community company, which includes advertising, soliciting, offering, or entering into an agreement to both own a community solar project and provide project services. As such, it does not by its terms impose requirements on "passive owners".

- Subsection (4) might be expanded to address some level of registration requirements to entities holding ownership interests of 10 percent or more in the community solar company.
- In addition, (4)(g) should be expanded to require disclosure of regulatory sanctions imposed in the last two years against the entity or its affiliates throughout the US, and pending investigations by law enforcement or regulatory agencies throughout the US.

**WAC 480-xxx-103 (8):**

(b) Explicitly require disclosure of the potential value of any federal, state, and local tax credits, electric utility rate credits, Renewable Energy Credits, incentives, or rebates that the customer may be required to sign over to the Community Solar Company.

Include attribution of whether the company or the customer will retain ownership of any RECs associated with the project.

- Where the community solar company is retaining REC ownership, require a statement that the customer may not claim that its premises are served by the solar energy from that system.
- Where a portion of the benefits are directed to subsidize low income customers, this should not foreclose a customer from claiming that through its participation it is supporting the community.

**Contractual requirements in addition to disclosure form**

The draft rules prescribe disclosures that must be made by the CSC, but do not establish contract terms that must be included or are forbidden. It is not clear that disclosures would be incorporated directly into the contract giving rise to a consumer's ability to directly bring an action for breach of contract. Consider providing a stronger link between the effect of disclosures on the contract, i.e.:

- "In the event that the text in the completed disclosure given to a customer differs from or is in conflict with a term stated elsewhere in the agreement between the CSC or CSP Service Provider and that customer, the term described by the text in the customer disclosure statement shall constitute the agreement with the customer notwithstanding the conflicting term expressed elsewhere."
- Contracts must be written in plain language and be provided in the same language that the CSC/Provider has used to market to the customer.

**WAC 480-xxx-114 Disposition or transfer:** Clarify that in addition to reducing participation by gift or sale to another individual, it is permissible for an individual to gift or sell their share back to the community solar company or another entity.

- Alternately, it seems the purpose of this section is not to authorize, but rather prohibit: No community solar company may prevent a participant from reducing their participation by sale or transfer to another individual or individuals. . . . This may be a place where framing the statement as a prohibition will be clearer.

Thank you,

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