

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

RULEMAKING REGARDING THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION'S
JURISDICTION AND REGULATION OF
COMMUNITY SOLAR COMPANIES

DOCKET UE- 171033

THIRD COMMENTS OF PUBLIC COUNSEL

MARCH 21, 2018

I. INTRODUCTION

1. Pursuant to the Commission's March 7, 2018, Notice of Extension of Time to File Written Comments, Public Counsel respectfully submits the following additional comments on the Informal Draft Rules (Draft Rules) issued on February 16, 2018, and the stakeholder discussion from the March 6, 2018, workshop on Community Solar Companies.
2. Public Counsel appreciates the robust discussion on the Draft Rules at the workshop. However, we would like to clarify a few points. These comments are focused on provisions regarding: (1) the Listing of Community Solar Companies by the Commission, (2) Community Solar Agents, and (3) Customer Information.

II. PART II: REPORTING AND REGISTRATION REQUIREMENTS, REGULATORY AND REGISTRATION FEES

A. Listing of the Community Solar Companies Registered with the Commission

3. Under WAC 480-xxx-020 Annual reports and Regulatory Fees, the Community Solar Companies (and investor-owned utilities) must report by May 1 the individual community solar projects and services offered.¹ Public Counsel would like to reiterate two points on this issue. First, we strongly believe that (1) all investor-owned utility projects and services, and (2) all Community Solar Company's individual projects and services should be listed on the Commission's website and updated annually on May 1. As the rules are currently stated under 480-xxx-020, this list of projects and services administered by Community Solar Companies or investor-owned utilities must be updated annually and included in their annual reports to the Commission. Public Counsel recommends this list of community solar projects and services also be listed on the Commission's website for consumers' use. We believe this is necessary for providing potential participants all available information regarding their options when deciding upon which community solar option may be the best option for them. Public Counsel's recommended language for inclusion are underlined below:

(1) The commission requires, on an annual basis, a report from each community solar company that operated within the state during the prior calendar year. The report must be filed on or before the first day of May, to cover the operations of the prior calendar year. The report must include a statement of oath showing the community solar company's gross operating revenue from intrastate operations during the prior calendar year. The report must include a list of the individual community solar projects and related programs and services administered by the community solar company. These individual community solar projects and related programs and services listed in the annual report will be made available on the Commission's website.

(2) Each community solar company must, on or before the date specified WAC 480-xxx-020(1), pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of

¹ WAC 480-xxx-020(1) for Community Solar Companies and WAC 480-xxx-020(3) for investor owned utilities.

gross intrastate operating revenue, plus two-tenths of one percent of any gross intrastate operating revenue in excess of fifty thousand dollars.

- (a) The maximum regulatory fee is assessed each year, unless the commission issues an order establishing the regulatory fee at an amount less than the statutory maximum;
- (b) The minimum regulatory fee that the company must pay is twenty dollars;
- (c) The commission does not grant extensions for payment of regulatory fees; and
- (d) If a company does not pay its regulatory fee by May 1, the commission will assess an automatic late fee of two percent of the amount due, plus one percent interest for each month the fee remains unpaid.

(3) On or before the first day of May, each investor-owned utility operating community solar projects must file a list of the individual community solar projects and related programs and services offered by the utility. The individual community solar projects and related programs and services listed in the annual report will be made available on the Commission's website.

(4) All community solar projects and related programs and services will be listed on the Commission's website and updated annually on May 1.

4. Second, we believe that if a project is planned to be in-service after the annual May 1 registration update, the investor-owned utility or Community Solar Companies' projects and/or services should be listed as intended to be in service within the year and a prospective in-service date should be listed. This notification of an intended service date can simply state a month or a range of time in which the project and/or other offerings will be in service. Further, Public Counsel believes that this planned service date is not a mandatory requirement and will not involve penalties to the investor-owned or Community Solar Companies if the project is not in service by the issued date on the Commission website. An example of language addressing our recommendation is as follows:

(5) Prospective individual community solar projects and services or programs that are not yet in service by the annual report due date of May 1, but plan to be in service within the following 12 months, will be listed on the Commission's website with an intended in service date.

5. The language Public Counsel proposes allows further transparency for customers shopping for community solar projects and services.

III. PART III: CONSUMER RULES

A. Consumer Information

6. WAC 480-xxx-103 Information to Customers and Project Participants discusses how Companies must transparently administer their project(s) and allow for fair opportunity for participation by electric customers. While Public Counsel submitted several comments regarding this section, which were discussed at the March 6 workshop, we wanted to clarify two points. We reaffirm the other points raised, but do not repeat them here.
7. First, Public Counsel believes that each subsection under WAC 480-xxx-103 should apply to not only Community Solar Companies, but also to investor-owned utility offerings of community solar projects and services. We are aware that this section is related specifically to Community Solar Companies; however, given that Section 480-xxx-020(3) applies to investor-owned utilities, we believe it is not unreasonable to have this section also apply to investor-owned utilities. If inclusion of the requirement does not belong in this particular section of the proposed rules, it can be set out in a separate rule applicable to investor-owned utilities.
8. Second, in order to avoid any consumer protection issues regarding the contracts and subscriptions offered by Community Solar Companies, Public Counsel believes it is critical to add a subsection under WAC 480-xxx-103(8) requiring a clear statement disclosing the type of community solar project or services the customer is subscribing (or leasing) to and the mechanics of the program. Public Counsel specifically brings this to the Commission's attention to avoid issues experienced in other states regarding customer confusion on what they agreed to upon signing a community solar subscription or lease.

9. For example, in Vermont the Attorney General issued a guidance for community solar companies operating in the state. This guidance was issued to cease the solar companies’ deceptive marketing practices and false claims that the participants of community solar projects were purchasing ‘renewable’ energy. In this case, third-party solar companies were marketing that consumers would be purchasing and using renewable energy, when in fact the RECs associated with these projects were being sold to utilities in other states. Thus, consumers are “helping generate solar energy” not “using solar energy from that project”.²

10. Another example occurred in Minnesota, where the Attorney General received an influx of complaints concerning the high number of solicitations and confusion surrounding the community solar offers.³ Consumers were confused about the different models and types of programs being offered through these solicitations, including solicitations that they may have signed up for. While only one investor-owned utility was required to offer community solar programs, many other utilities, cooperatives, and third parties also began soliciting for their own community solar projects, which contained a variety of program models. The Minnesota Attorney General’s Office and the Minnesota Department of Commerce issued a fact sheet to assist consumers in understanding these programs and identified several concerns for consumers to consider when deciding to participate in a community solar project.⁴ The following are some

² State of Vermont, Office of the Attorney General, William H. Sorrell, *Guidance for Third-Party Solar Projects*, <http://www-assets.vermontlaw.edu/Assets/iee/Guidance%20on%20Solar%20Marketing%20%28ID%2085283%29.pdf>; Kevin Jones, Mark James, and Heather Huebner. *Do You Know Who Owns Your Solar Energy? The Growing Practice of Separating Renewable Attributes from Renewable Energy Development and its Impact on Meeting Our Climate Goals*, 28 Fordham ELR 197 (2017), available at <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1787&context=elr>.

³ Minnesota Public Radio, *Solar Gardens: Minnesota Attorney General Pursues Complaints*, (Mar. 2, 2016) <https://www.mprnews.org/story/2016/03/02/solar-garden-complaints-minnesota-electricity-consumers>.

⁴ The Office of Minnesota Attorney General, *Community Solar Gardens*, <https://www.ag.state.mn.us/Consumer/Publications/CommunitySolarGardens.asp> (last visited Mar. 21, 2018);

business models that have been pursued in Minnesota: purchasing a portion of solar energy, purchasing a portion of the system, requiring an upfront payment, or pay-as-you-go (i.e. requiring only monthly payments).⁵ Furthermore, most of these subscriptions are between 20 to 25 years and directly states who owns the renewable energy credits (RECs).

11. Given the different models employed in Minnesota, Public Counsel believes we may be presented with the same issue of differing models and corresponding customer confusion in Washington State. Public Counsel believes that in order to prevent this occurrence, a provision should be added to the disclosure form regarding the type of program the customer is subscribing to and the mechanics of the program.

12. The following is Public Counsel's suggested language under WAC 480-xxx-103(8):

(8) The community solar company must provide to each applicant relevant rate information and a disclosure form that explains the rights and responsibilities of a community solar company customer. The community solar company may provide this information in an electronic format consistent with provisions in this chapter governing the use of electronic information. The disclosure form must include all material terms and conditions of participation in the project, including but not limited to, at a minimum the following:

- (a) Information about the community solar company's regular business hours, mailing address and toll-free number;
- (b) Plain language disclosure of the terms under which the project's share of any incentive payment will be calculated by the Washington State University extension energy program over the life of the project;
- (c) A clear statement describing the type of program the participant is entering and the mechanics of the program or services offered;
- (de) Contract provisions regulating the disposition or transfer of the project participant's interest in the project, including any potential costs associated with such a transfer;
- (ed) An explanation of the community solar company's processes to establish credit, deposits, delinquent accounts and cancellation;
- (fe) All recurring and non-recurring charges;

Minnesota Department of Commerce, *Tips About Community Solar: 10 Questions You Should Ask*, <https://mn.gov/commerce/consumers/your-home/energy-info/solar/tips-about-community-solar.jsp> (last visited Mar. 21, 2018).

⁵ Minnesota Department of Commerce, *Tips About Community Solar: 10 Questions You Should Ask*, <https://mn.gov/commerce/consumers/your-home/energy-info/solar/tips-about-community-solar.jsp> (last visited Mar. 21, 2018).

- (gf) A description of the billing and payment procedures;
- (hg) A description of any compensation to be paid in the event of project underperformance;
- (ih) Current production projections and a description of the methodology used to develop the projections;
- (ji) Contact information for questions and complaints;
- (kj) The dispute resolution process, and the commission's informal complaint procedures to be followed if the customer remains dissatisfied with the community solar company's dispute process; and
- (lk) Any other terms and conditions of the services provided by the administrator.

B. Consumer Protections regarding Agents of Community Solar Companies

13. Under WAC 480-xxx-104 Community Solar Company Agents, certain employees must undergo a criminal background check and must not have been convicted of specific crimes, such as “theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance within the past five years”.⁶ While Public Counsel did not submit comments on this section of the Draft Rules, we participated in this discussion during the workshop.

14. Public Counsel believes that the Community Solar Company’s should be responsible for establishing the requirement and the qualifications of their agents, although we do believe that a background check should be required. We have reviewed the Maryland rules for community solar, as well as the Illinois rules regarding retail energy suppliers (RES) agents, which we utilized for establishing our initial recommendations regarding the solicitations of community solar agents in our comments filed on March 1, 2018.⁷ Illinois has several provisions regarding the marketing practices of RES agents, such as in-person solicitations, online marketing, direct

⁶ WAC 480-xxx-104(2)(c).

⁷ Maryland Community Solar Rules, Chapter 20.62.05, *available at* <http://mdrules.elaws.us/comar/20.62.05>; Illinois Retail Energy Supplier, Title 83 Part 412.170, *available at* <ftp://www.ilga.gov/jcar/admincode/083/08300412sections.html>.

mail, and telemarketing.⁸ However, it does not include any restrictions on particular crimes the agent cannot be convicted of committing in order to conduct door-to-door sales.⁹

15. The Code of Maryland Regulations has several sections regarding the relationship of the subscriber organization (i.e. community solar companies) to its agents, agent qualifications and standards, and agent training.¹⁰ Regarding the agents conducting door-to-door sales, agents must complete a process similar to competitive electricity suppliers' agents, which involves a review of criminal history every 36 months.¹¹ Again, these rules do not include specific crimes that the agents cannot be convicted of committing. Thus, given that both the Illinois and Maryland rules allow companies to determine their own restrictions on criminal history and background, we would recommend the following language to the rules under WAC 480-xxx-104:

(1) A community solar company shall develop standards and qualifications for individuals it chooses to hire as its agents. A community solar company may not hire an individual that fails to meet its standards.

(2) A community solar company may not permit a person to conduct door-to-door activities until it has obtained and reviewed a criminal history record.

(a) A community solar company must complete a criminal background check for every person to conduct door-to-door activities;

(b) The community solar company must keep evidence that it has completed a criminal background check for every person the company intends to hire for door-to-door activities for as long as that person is employed and for seven years thereafter; ~~and~~

~~(c) No community solar company may hire a person who has been convicted of any crime involving theft, burglary, assault, sexual misconduct, identity theft, fraud, false statements, or the manufacture, sale, or distribution of a controlled substance within the past five years.~~

(3) When a community solar company contracts with an independent contractor or vendor to perform door-to-door activities, the community solar company shall document that the contractor or vendor has performed criminal background investigations on all agents in accordance with this regulation and with the standards set by the community solar company.

⁸ IL Title 83 Part 412, Subpart B Marketing Practices.

⁹ Under Part 412.170 Conduct, Training, and Compliance of RES Agents requires agents to participate in a training program for the sale and marketing of energy in Illinois and must meet requirements of "other rules, the Act, and the Consumer Fraud and Deceptive Business Practices Act."

¹⁰ Code of Maryland Regulations, Section 20.62.05.15 to 20.62.05.18.

¹¹ Code of Maryland Regulations, Section 20.53.08.02.

- (a) A community solar company may satisfy this requirement by obtaining from the independent contractor or vendor a written statement affirming that the criminal background check was performed by them or under their supervision in accordance with this regulation and with standards set by the community solar company and presented in writing.
- (4) A community solar company shall periodically audit whether the background checks completed by its independent contractor or vendor have been completed in accordance with this regulation.
- (5) A community solar company must establish requirements and training for its agents.
 - (a) The training must be documented and retained for 5 years after the training was completed.
- (65) A community solar company shall issue an identification badge to agents to be worn and prominently displayed when conducting door-to-door activities or appearing at public events on behalf of a community solar company. The badge shall:
 - (a) Accurately identify the community solar company, its trade name, and its logo;
 - (b) Display the agents photograph;
 - (c) Display the agents full name; and
 - (d) Display a customer service phone number for the community solar company.
- (76) Upon first contact with a customer, an agent shall:
 - (a) Identify the community solar company they represent; and
 - (b) State that they are not working for and are independent of the customer's local utility company or another community solar company.
- (87) When conducting door-to-door activities or appearing at a public event, an agent may not wear apparel or accessories or carry equipment that contains branding elements, including a logo that suggests a relationship that does not exist with a utility, government agency, or another community solar company.
- (98) A community solar company or community solar company agent may not say or suggest to a customer that a utility customer is required to choose a community solar company.

IV. CONCLUSION

16. Public Counsel appreciates the opportunity to submit these supplemental comments after the conclusion of the March 6, 2018, workshop. We look forward to reviewing other stakeholder comments and further discussions on the rules pertaining to Community Solar Companies.