

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Rulemaking  
Regarding The Washington Utilities &  
Transportation Commission's Jurisdiction  
And Regulation Of Community Solar  
Companies

DOCKET UE-171033

SECOND COMMENTS OF THE  
ENERGY PROJECT (CR 101)

**I. INTRODUCTION**

1           The Energy Project (TEP) files these comments in response to the Commission's Notice of Opportunity To Submit Written Comments regarding revised draft rules (Draft Rules), dated June 28, 2018. The purpose of this proceeding is to consider adoption of rules to provide a framework for Commission (UTC) regulatory oversight of community solar companies, pursuant to Engrossed Substitute Senate Bill (ESSB) 5939, which became effective July 7, 2017. The Energy Project filed Initial Comments in this rulemaking on March 1, 2018, and attended the March 6, 2018, workshop.

**II. COMMENTS**

2           In our Initial Comments, TEP recommended that the Commission include reporting, registration and informational requirements in its rules that would both help track the deployment of community solar projects in low-income communities and help facilitate broader access. The Energy Project recommended language for inclusion in the rules in each of these three areas. The Energy Project is concerned that the revised Draft Rules have not addressed these issues. The Energy Project respectfully requests that the rules be amended to better align with the legislative intent to foster participation by low-income customers in community solar deployment.

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Simon J. ffitc  
Attorney at Law  
321 High School Rd. NE,  
Suite D3, Box No. 383  
Bainbridge Island, WA 98110  
(206) 669-8197

3           As noted in our Initial Comments, ESSB 5939 made clear that the purpose of the  
legislation, *inter alia*, was to create “*opportunities for broader participation by low-income  
individuals and others who may not own the premises where a renewable energy system may be  
installed...*”.<sup>1</sup> In furtherance of this express legislative intent to broaden opportunities for low-  
income customers, the statute specifically provides that the Washington State University (WSU)  
Extension Energy program must submit a report to the legislature in November 2019 which  
includes “an evaluation of whether or not community solar projects are being deployed in low-  
income and moderate-income communities.”<sup>2</sup>

4           While the responsibility for submitting the 2019 report certainly lies with the WSU  
Extension Energy program, the statute also gives the UTC the jurisdiction to register and  
regulate community solar companies in Washington. Because of this special statutory role, the  
UTC is in an ideal position to gather information efficiently about deployment to low-income  
communities. This information should not only be useful to WSU in compiling its report, but  
will be of value to other stakeholders and policy makers in evaluating future deployment. While  
the WSU report is a one-time requirement in 2019, the UTC role is an ongoing one. The UTC  
can play a key role in helping to gather information that will be of significant importance to  
achieving the goals of statute.

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<sup>1</sup>ESSB 5939, Section 1 (emphasis added).

<sup>2</sup> ESSB 5939, Section 6 (30)(a)(iv)(A). The report to the legislature is due on November 1, 2019.

5 Community solar is increasingly recognized as an effective and practical vehicle for delivering the benefits of renewable energy to all segments of the utility’s customer base.<sup>3</sup> Policymakers have been seeking ways to increase low-income participation in community solar. ESSB 5939 endorses this concept, stating that: “[t]he purpose of community solar programs is to facilitate broad, equitable community investment in and access to solar power.”<sup>4</sup> To further this goal, the administrator of a community solar project “must administer the project in a transparent manner that allows for fair and nondiscriminatory opportunity for participation by utility customers.”<sup>5</sup> The Energy Project believes that these goals should be more fully reflected in the Draft Rules.

6 Our prior comments recommended specific amendments to the proposed registration, reporting, and information rules. While TEP continues to support adoption of all these changes, we believe the first priority among these is an annual reporting requirement regarding low-income projects. The Energy Project again, strongly recommends that the Commission’s rules include reporting on the extent of deployment of community solar projects that are intended to serve low-income customers. The Draft Rules already require that a company’s annual report include a list of the individual community solar projects it administers. Under TEP’s proposal, the company would simply have to identify which of those projects were “designed to facilitate participation by low-income customers” and provide any available information regarding low-income participation levels.

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<sup>3</sup> *Shared Solar: Current Landscape, Market Potential, and The Impact of Federal Securities Regulation* (Shared Solar Shared Solar at v. <https://www.nrel.gov/docs/fy15osti/63892.pdf> (National Renewable Energy Laboratory 2015).

<sup>4</sup> ESSB 5939, Section 7 (1).

<sup>5</sup> ESSB 5939, Section 7 (3).



7 This can serve three purposes: (1) it will help provide the information that will ultimately  
be needed for the legislative reporting requirement, (2) it will help provide the Commission,  
other policy makers, and interested stakeholders a way to track over time the extent to which  
community solar projects are achieving “broad, equitable community investment,” and (3) it may  
prompt community solar projects to consider designing projects that include opportunities for  
participation by low and moderate income customers. All of these would be positive outcomes.

8 One practical concern raised during the rulemaking was how the term “low-income  
customer” should be defined for reporting purposes. While this is a reasonable question, TEP  
does not see this issue as a barrier to a reporting requirement for two reasons. First, TEP’s  
proposed rule language simply requires the company to identify if the project was “designed to  
facilitate” low-income participation. The company is not required to speculate about the income  
of participants, or conduct eligibility reviews, solely for reporting purposes. Instead, the  
reporting requirement would effectively only apply to those projects where the company itself is  
by design seeking to reach low-income customers. To the extent that a company is already  
gathering demographic information for program design and operation, little if any added burden  
should be created.

9 Secondly, TEP’s proposed language would allow for flexibility in the definition of low-  
income with no need for a specific formula in rule. The term “low-income” has a range of  
definitions in Washington across a range of programs and services. State Investor-Owned Utility  
(IOU) energy assistance funds set eligibility at 125 percent or 150 percent of Federal Poverty  
Level (FPL), depending on the company. Federal LIHEAP sets eligibility at 125 percent.  
Weatherization programs set eligibility at 200 percent of FPL. Metrics such as the ALICE

(Asset Limited, Income Constrained, Employed)<sup>6</sup> analysis, or the Self-Sufficiency Standard<sup>7</sup> use other definitions. To the extent a company is attempting to reach customers that fall into any of these categories, the intent of the statute is being furthered.

10 While the WSU report is required to use a specific statutory definition of low-income in its analysis,<sup>8</sup> companies that report low-income projects to the UTC could in effect be “flagged” for review by WSU which could then determine whether the criteria for its own report were met. It does not appear TEP’s proposed reporting requirement would be redundant to the WSU report. Based on communications with WSU Energy staff, it is TEP’s understanding that while WSU gathers information about proposed low-income projects in the certification phase, TEP’s proposal for reporting of low-income customers served would complement WSU’s information by helping track actual participants after the programs are in operation.

11 Proposed Rule Language For Annual Reports

12 The Energy Project submits the following recommended additions to the annual reporting requirement in the Draft Rules.

13 Recommended language

**WAC 480-xxx-030 Annual reports and payment of regulatory fees.**

**(1) Annual reports.**

(a) *Community solar companies.* Each community solar company must file a report on or before May 1 each year on the community solar company’s operations within the state of Washington for the prior calendar year. The company must submit the annual report on the form furnished by the commission and must include all information, documentation, and support the commission requires in the form or the form’s instructions. The report must include:

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<sup>6</sup> UnitedWayALICE.org/PNW.

<sup>7</sup> <http://www.selfsufficiencystandard.org/washington>.

<sup>8</sup> ESSB 5939, Section 6(30)(a)(iv)(A) references RCW 43.63A.510 which defines “low-income” as income between 50 and 80 percent of area median income.

- (i) A statement under oath of the community solar company's gross operating revenue from intrastate operations during the prior calendar year; and
  - (ii) A list identifying all of the company's community solar projects and related programs and services within the state of Washington, including identification of projects that are designed to facilitate participation by low-income customers, and any data regarding the level of low-income participation.
- (b) *Investor-owned utilities.* On or before May 1 each year, each investor-owned utility operating a community solar project must file a list identifying all of the utility's community solar projects and related programs and services within the state of Washington, including identification of projects that are designed to facilitate participation by low-income customers, and any data regarding the level of low-income participation.

### III. CONCLUSION

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The Energy Project respectfully requests consideration of these recommended additions to the Draft Rules. The Energy Project believes that these changes will help the UTC community solar rules better advance the intent of ESSB 5939 to broaden participation in community solar for the benefit of all Washington consumers. The Energy Project looks forward to working with the Commission, Staff, and other stakeholders as these rules are further developed.