



July 26th, 2018

RE: Docket UE-171033
Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

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UTIL. AND TRANSP.
COMMISSION

Dear Mark L. Johnson ,

The following are joint comments referencing the Revised Draft Rules and rulemaking regarding the Washington Utilities and Transportation Commission's jurisdiction and regulation of community solar companies, Docket UE-171033.

Spark Northwest is a regional non-profit organization focused on creating communities powered by locally controlled, affordable, clean energy. We have helped cities and organizations throughout Washington state implement solar energy programs. Through our Access Solar program, we are working with affordable housing providers, community organizations, and the solar industry to develop community solar projects for the benefit of low income properties and tenants.

The Bonneville Environmental Foundation (BEF) seeks to break down barriers to renewable energy adoption. BEF has partnered with with over 15 consumer owned utilities in Washington State, to assist in the development of community solar programs that allow their customers to share in the costs and benefits of local solar energy. BEF has a strong interest in an equitable, sustainable, and simple community solar program for all Washingtonians.

Front and Centered is a statewide coalition of organizations and groups rooted in communities of color and people with lower incomes working together for climate justice in Washington State.

The NW Energy Coalition is an alliance of about 100 environmental, civic, and human service organizations, progressive utilities, and businesses in Oregon, Washington, Idaho, Montana and British Columbia. We promote development of renewable energy and energy conservation, consumer protection, low-income energy assistance, and fish and wildlife restoration on the Columbia and Snake rivers.

The Solar Installers of Washington (SIW) is our state's professional solar trade association.

Thank you for the opportunity to provide input, and together our organizations have been active in helping promote community solar as a solution to more equitably provide access to solar energy benefits in Washington State. While we want the community solar program overall to succeed, we have a particular interest in using the program structure as a tool for low-income customers and housing providers. In working through this process, we understand that there are complexities to any new program launch, and

have been engaging with housing providers, community groups, and utilities on potential financial, ownership and benefit allocation models.

We have a number of concerns and questions about the rules as drafted, and hope that either through discussion or modification of the rules, we can get greater clarity and develop a structure that works for inclusion of low income customers and housing entities. In general, our concerns are that the draft rules envision a regulatory structure that is overly prescriptive, and tailored to oversee large organizations with significant resources and overhead, with a large scale of project development. Many of the models and projects we are working on are smaller in nature. The following comments reflects some topic areas and suggestions for changes that would clarify or streamline the regulatory oversight of entities involved in community solar. We provided some of these comments (on the informal draft rules) in a March 21st, 2018 filing as well.

General Comments about Applicability

There still is some lack of clarity in the rules about what entities must apply for registration with the commission. The draft rules in WAC 480-xxx-001(2) seem to envision community solar companies as existing either in conjunction with an administrator, or as a standalone company providing numerous project services to participants. It is not clear whether in the definition of “community solar company” in WAC 480-xxx-002, an organization would need to both own the project and provide project services to participants in order to fall under regulation, or if a passive owner (for example a tax equity owner) would also need to register if they are not providing any services to participants. This interpretation is also unclear in another element: If a company, (for example a solar contractor) provides only some elements of project services such as warranty support, would they need to register with the UTC? Also it is not clear how a public housing authority would be regulated when serving the role of administrator, potentially without the involvement of community solar company. These are technically government agencies and expressly authorized under the law to be administrators, but are not persons, firms, or corporations, even though they could conceivably have an ownership role in a project. In particular for housing agencies we are hoping there could be lower barriers to participation in organizing community solar.

In some of the projects that we are envisioning, an affordable housing provider would seek to build a solar energy project on-site, and engage their tenants to be participants in the project, leveraging federal tax incentives as well as grant funding to reduce the costs. Some of the annual incentive payment would be split to cover financing costs of the project, though many of the project and contractual details are still being determined, and hinge on the outcome of this docket. Clarity in these relationships and point of regulation is very important for the success of our efforts.

Additionally, the definition of “Applicant” is confusing, as in the WA Renewable Energy Cost Recovery Incentive Program (The WA Incentive Program) the applicant is defined as being the administrator of the project that applies for incentives with Washington State University (WSU).

Suggestions:

- Remove the requirement for UTC registration for community solar projects administered in a manner where all participants of a community solar project are also residents/customers of the

property where the project is located. This could include apartment buildings as well as other housing provider types like manufactured home parks. In this model, there is an inherent existing relationship between the project and the customers receiving benefit. The housing provider also has an existing expectation of stability and fair accounting related to management of the property. There may still be a company involved solely in ownership of the solar assets, but they would not be providing services to participants. We would argue that the existing relationship already provides a degree of consumer and data protection, and that a housing provider acting as an administrator would still need to register and be overseen by WSU in applying for the WA Incentive Program.

- Remove the confusing references to “Applicant” in the draft rules, as this seems well covered by references to “customers” and “participants”

Framing of Program beyond Incentives, and the Role of Utilities

The draft rules appear to be written with the express function of applying to community solar projects under the WA Incentive Program. In numerous places related to the definition of community solar, including the maximum size requirement (WAC 480-xxx-002)(7), these standards are referenced. However, this approach and limited view presents two key problems:

First, the incentive is quickly being reserved and is unlikely to last much longer. According to WSU¹, the amount of allocated funding is already close to \$75 million out of a \$110 million maximum, and a number of utilities have already closed their programs. We support additional incentive mechanisms to fund community solar projects.

Second, the rules seem to omit the role of the utilities in the transaction, either in providing potential bill credits or in verifying that participants are indeed customers eligible to receive incentives. As the legislation does not specify that utilities must allocate bill credits associated with the energy proportionally from a community solar project, it will be up to each project to determine the energy valuation. However, under some models the administrator may also transfer economic benefit to participants through a Power Purchase Agreement or other vehicle. Utilities may also choose voluntarily to provide bill credit to participants, which would require communication with administrators on a regular basis. This range of different benefit flows should be captured in the rules, but is not mentioned.

The definition as stated of “community solar project” is both very vague, and overly limiting at the same time. The definition should speak to the shared benefit of a project, and how that is allocated on a proportional basis to customers based on their participation, and the flow of incentive or energy value. Instead, it seems that any project less than 1MW could conceivably be a community solar project. In the future, we may see policies that increase this threshold, and the rules should be based on a definition not of system size, but rather a reflection of how community solar is different than on-site commercial-scale solar. When finalizing these rules, we should think beyond the current incentive program, as it has a rapidly narrowing window of potential.

¹ WSU Renewable Energy System Incentive Updated 7/16 :
<http://www.energy.wsu.edu/incentedashboard/programsummary.html#creditavailable>

Suggestions:

- Add language related to potential role of the Administrator (WAC 480-xxx-002 (1)) in interacting with the utility to verify customer eligibility information, and the potential role of the utility in allocating bill credits to participants.
- Use a less prescriptive definition of community solar system, which is not tied to the size and structural limits of the current incentive program, such that these rules could be applied to new models even after the incentive is expired.

Program Inclusion, Data and Metrics for Low Income Participation

Much of our work is focused on how to bring the benefits of solar to more people, specifically including low income customers and people of color that have often been left out of past incentive and program opportunities. We think it is useful for there to be consistent measurement of the program and reporting at a broad level of who is benefitting from community solar. As part of the enabling legislation, ESSB 5939 includes a legislative finding and states, in part:

“The legislature finds and declares that stimulating local investment in distributed renewable energy generation is an important part of a state energy strategy....The legislature intends to increase the effectiveness of the existing renewable energy investment cost recovery program by [reducing the maximum incentive] ... and by creating opportunities for broader participation by low-income individuals and others who may not own the premises where a renewable energy system may be installed....

The legislature intends ... that deployment of community solar projects is balanced among eligible utilities, nonprofits, and local housing authorities.”²

We don't see this type of balance of projects or opportunity for low income participation reflected in the draft rules. Indeed, it is likely that we will primarily see utility-led projects under the WA Incentive Program, as there are fewer barriers to project launch with consumer-owned utilities. While we have also been working with some of these utilities to build low-income inclusion goals into their programs, it is important that these elements and measurement be a component of non-utility projects as well.

In previous comments submitted, we have advocated for data collection standards to assist in these efforts. We do not see any mention of goals or metrics in the rules by which the UTC would know anything about the demographics of the participants, and think it important to raise this again.

Suggestions:

- In the annual report section, WAC 480-xxx-008, (Annual reports and regulatory fees) include non-attributable demographic data and geographic data for active, enrolled customers, including income range, primary language at home, and self-identified race and ethnicity, as well as geographic data for the zip codes in which the company is pursuing customers. Make reporting of this information part of the annual requirements, including identification of projects that are designed to facilitate participation by low-income customers, and any data regarding the level of low-income participation.

² 2017 ESSB 5939 Section 1

- In the definition of “Private Consumer Information”, add these elements above into the list of protected information.
- In Section WAC 480-xxx-103 (Information to customers and project participants), create standards such that : “The community solar company must administer the project in a transparent manner that allows for fair and nondiscriminatory opportunity for participation by utility customers, including low-income customers.”

Management and Marketing of Community Solar

There are a few elements that are unclear about how community solar could be marketed, and the potential burden for community solar companies and/or administrators.

The requirement in WAC 480-xxx-100 related to the disclosures is a complicated list of requirements, and this is an area in particular where we suggest that the commission consider how this would apply to smaller projects or organizations, using a lens of both consumer protection but also encouragement of new models for community organizations to get involved. We are concerned there may be too many prescriptive hurdles that could disincentivize a housing provider or non-profit from even pursuing projects. Some of our past comments have addressed this as well, but we wanted to highlight a few subsections:

- In the provision of a toll-free number (sec 6), the requirement that calls be returned within one business day may be overly burdensome for small organizations. We are unclear if this standard exists elsewhere, and suggest a slightly broader window. Also, this seems to omit email correspondence, and in today’s world we should seek to also have parallel standards for email communications.
- In the annual report to project participants (Sec 9), it is unclear what is meant by “total value of the participant’s share of the project”. Is this to be a projection of future value, or a summation of payments delivered, or a valuation of the market value of that portion of the project. It is also not clear if we are talking about only the incentive value of the participation, or also the energy value as determined by the utility. We suggest greater clarity here.
- In providing copies of marketing material to the commission (Sec 10), it is unclear at what point in the process these materials are provided, but it appears from that language that it would be prior to any distribution on a real-time basis, not as a part of annual reporting. This seems like a huge regulatory burden, and individual vetting of each piece of collateral would lead to major delays in marketing. At the same time, this does not seem to cover web advertising or email communication, which may be a more prevalent form of marketing than print collateral. We suggest that this be changed, such that all marketing material is provided once annually, but the commission would not be required to see each piece before distribution.
- In the section related to hiring practices and criminal background checks, we appreciate the changes and clarification about how these provisions apply only to door-to-door marketing activities. These were primary concerns of ours related to racial and social equity in hiring practices, and think the current approach to provide greater flexibility and individual company policies is a good step, though we suggest additional language towards non-discriminatory hiring practices be incorporated into the section WAC 480-xxx-110

Related to other elements of management and reporting, we also have concerns about consistency in the allocation of regulatory fees, and in particular, what is counted as “gross operating revenue” for the purposes of community solar in WAC 480-xxx-030. For instance, is the full WA Incentive Program payment considered to be part of the revenue, or only the initial capital inflows from customers and financing required to build the project? Effectively, there could be a situation where the community solar company is paying multiple times for the same flow of money, and fees paid on gross revenue could be a burden if most of that is flowing back out to customers. Though we understand that a tenth of a percent is a small assessment, the margins and complexity of community solar don’t provide for much to begin with.

In the context of housing providers, we are attempting to create models for community solar where the benefit is delivered to tenants as an automatic part of their tenancy in a qualified low-income building, at no cost to the participant. It is not clear how the requirements for affirmative consent in WAC 480-xxx-140 Electronic Info (3) would apply in that case. We suggest that the rules be changed to require this affirmative consent only if money is to be paid by the participant in order to be a part of the community solar project.

Additionally, we have some technical concerns about the requirement in WAC 480-xxx-145 related to meter testing, as we are not sure how this would practically be implemented. Meters are typically property of the utility, and cannot be checked or modified by the customer. We suggest that this requirement be dropped, or be clarified to include language relating to the ownership and responsibility of the meter.

We thank you for your consideration of these issues, and look forward to future opportunities to engage in this docket before the rules are finalized..

Sincerely,

Jaimes Valdez
Policy Manager

Spark Northwest
1402 3rd Ave; Ste 901
Seattle, WA 98101

Evan Ramsey
Director, Renewable
Energy Group

**Bonneville
Environmental
Foundation**
240 SW 1st Avenue
Portland OR 97204

Deric Gruen
Director of Programs

**Front and Centered
% Latino Community
Fund**
PO Box 30669
Seattle, WA 98103

Joni Bosh
Senior Policy Associate

**Northwest Energy
Coalition**
811 1st Ave, Suite 305
Seattle, WA 98104

Bonnie Frye Hemphill
Policy Co-Director,
Board
**Solar Installers of
Washington**