



September 16, 2022

Via Email

Chair Megan Decker
Commissioner Letha Tawney
Commissioner Mark Thompson
Oregon Public Utility Commission
201 High Street SE, Suite 100
Salem, OR 97301-3398

RE: Use of Agent Subscription Model
Docket No. UM 1930

Common Energy's Reply Comments on the Agent Subscription Model

Dear Commissioners:

Common Energy, LLC (“Common Energy” or the “Company”)¹ respectfully submits these Comments to the Oregon Public Utility Commission (“OPUC” or the “Commission”) to support the continued use of what Staff terms the “agent subscription model” (the “Agent Subscription Model”).² Staff recommends that the Commission prohibit the use of the Agent Subscription Model in the Community Solar Program (“CSP”),³ despite unanimous consent among CSP Project Managers and Subscription Managers that the Agent Subscription Model

¹ Common Energy is one of the largest community solar providers in the country, operating in nine states and serving approximately 15,000 Subscribers. Common Energy has won numerous state awards for its work in community solar, and its personnel are recognized experts in community solar programs. Common Energy’s Board of Directors and advisors include some of the country’s leading experts in energy and energy law.

² Common Energy prefers the commonplace term agency agreements but uses Staff’s term in these comments in an effort to avoid confusion.

³ Staff Report for the September 22, 2022 Special Public Meeting at 1 (Aug. 23, 2022) [hereinafter Staff Report]. Staff frames its recommendation as about project eligibility, but this is not a proceeding to determine any project or participant’s status or rights. Common Energy interprets the Staff Report to recommend prohibiting the use of the Agent Subscription Model and not to recommend any specific action on eligibility.

provides valuable benefits and is essential to the CSP’s success.⁴ Common Energy provides these comments for two reasons. First, Common Energy explains the Agent Subscription Model, which is used in Oregon and other states, and how it supports the public interest. Second, Common Energy clarifies misunderstandings in the Staff Report and responds to each of Staff’s stated concerns. Common Energy respectfully urges the Commission not to adopt Staff’s recommendation and to take no action at this time, as none is needed.

In the alternative, if the Commission believes more guidance would be valuable, Common Energy recommends that the Commission direct Staff and the Program Administrator to develop a more nuanced approach, such as specific guidelines or requirements for CSP participants using the Agent Subscription Model. Common Energy agrees with the Oregon Solar + Storage Industries Association (“OSSIA”) that Staff’s blanket prohibition is “not flexible enough to recognize the benefits that [Agent Subscription Models] can bring to customers” and that the Commission should “take a more nuanced approach in order to recognize the benefits different [Agent Subscription Models] can bring.”⁵ For example, to provide partial payment and skipped payment accommodations that have been advocated, OSSIA and Common Energy previously proposed only prohibiting the use of an Agent Subscription Model that provides consolidated billing specifically to low-income Subscribers.⁶ This sort of narrow approach could enable Staff and the Commission to gain experience with the practices used in other states, without raising many of the concerns Staff has raised. Finally, additional guidance and process

⁴ Common Energy’s Comments at 1 (June 24, 2022); Oregon Shines Comments at 1 (July 1, 2022); Arcadia’s Comments at 2 (July 1, 2022); OSSIA Comments at 1-2 (July 1, 2022); *see also* OSSIA’s Comments at 1 (Aug. 3, 2022); Common Energy’s Additional Comments at 1 (Aug. 5, 2022).

⁵ OSSIA Comments at 1 (July 1, 2022).

⁶ OSSIA’s Comments at 1 (Aug. 3, 2022); Common Energy’s Additional Comments at 1 (Aug. 5, 2022).

is warranted because Staff's analysis leaves ambiguity regarding what business practices could be prohibited, which could lead to market confusion and uncertainty.

The Agent Subscription Model is, at heart, a market response to a programmatic need. In the Staff Report, Staff defines the Agent Subscription Model as contractual provisions where CSP Subscribers “grant a limited power of attorney to an agent, typically a Project Manager or Subscription Manager, to do one or more of the following:”

- Administer the participant's electric utility account,
- Subscribe the participant to a CSP project, and
- Provide the participant with a consolidated bill, paid to the agent instead of the utility[.]⁷

Stated differently, the Agent Subscription Model describes contractual provisions wherein one party (here, a Subscriber) authorizes another person to perform certain tasks and services on the Subscriber's behalf and for the Subscriber's benefit. Any task must fundamentally be one the Subscriber could have performed themselves. By allowing Subscribers to delegate tasks in this way, the Agent Subscription Model simplifies the CSP experience for Subscribers and enables Project Managers and Subscription Managers to better meet Subscribers' needs.

By prohibiting the Agent Subscription Model, Staff proposes that the Commission prevent CSP Subscribers, including sophisticated industrial and commercial consumers, from exercising their rights under agency law and enjoying the benefits therein. Staff's recommendation, if adopted, would significantly harm the CSP. Confusingly, Staff generally recognizes the importance and value of activities that Project Managers and Subscription

⁷ Staff Report at 2. Previously, Staff defined the Agent Subscription Model as “allow[ing] the agent to” perform all three of the items listed above. Staff Draft Recommendation and Request for Comments at 1 (June 14, 2022) [hereinafter Staff Draft Recommendation].

Managers are currently performing through the use of an Agent Subscription Model.⁸ Yet, instead of allowing these activities to continue, Staff recommends prohibiting them and instead having “Staff ... work with the [Program Administrator (“PA”)] in 2022 to amend standard CSP contracts...” to authorize the same activities.⁹ There is no need to delay and increase administrative costs on Project Managers and Subscription Managers as Staff proposes.

Common Energy has organized its comments as follows: Section I explains the Agent Subscription Model in greater detail and how it aligns with and improves the existing CSP design. Section II summarizes the current CSP design and how the Agent Subscription Model fits within it. Finally, Section III acknowledges and resolves Staff’s stated concerns.

I. THE AGENT SUBSCRIPTION MODEL IS AN ESTABLISHED BEST PRACTICE THAT IS IN THE PUBLIC INTEREST AND BENEFITS THE COMMUNITY SOLAR PROGRAM

In implementing the CSP, the Commission, Staff, and all stakeholders should recognize the overarching framework and need to further the public interest. Common Energy views the ultimate question presented by Staff’s Report as follows:

How do we best fulfill customer interest in community solar, while minimizing ordinary risks of project development and minimizing the burden on Subscribers themselves?

The best solution includes the use of an Agent Subscription Model, including but not limited to one that allows for consolidated billing. Common Energy emphasizes that allowing Agent Subscription Models is the norm in other states with community solar programs, not the exception. Prohibiting them, as Staff recommends, would mean diverging from established best practices and requiring national community solar companies to unnecessarily alter their normal business practices. It would thereby discourage experienced community solar providers from

⁸ Staff Report at 12-13.

⁹ Staff Report at 13.

operating in the state, cause participants to lose investments already made in the Program, and deprive Oregonians from benefiting from the experience of other, more established community solar programs. If the Commission takes any action here, it should be to embrace established practice, not to prohibit proven and effective market-developed solutions to real problems faced by Project Managers and Subscribers.

Below, Common Energy provides two specific examples of programmatic problems that the Agent Subscription Model solves.

A. The Agent Subscription Model Can Ensure that Project Failures Do Not Become Programmatic Failures

It is well known that one issue for community solar programs is what to do when a Subscriber is enrolled to a project that subsequently fails, is delayed, or is completed with reduced capacity. The CSP has not yet sufficiently grappled with this issue. The Program Implementation Manual (“PIM”) essentially recognizes this as a problem to be solved in the future. It states:

Projects may be cancelled or fail to achieve commercial operation for many reasons. ... In the case of voluntary or involuntary Project cancellation, the Program Administrator will work with the Project Manager, Oregon Public Utility Commission and other parties to support the cancellation of the Project and find outcomes that minimize harm to impacted Participants and the Program.¹⁰

Further, the standard-form residential contracts currently employed in Oregon anticipate that Subscribers enroll to a single specific project, and the Project Manager must draft language as directed by the following language:

If the Project is terminated for any reason, before or after achieving commercial operation, the Project Manager must notify the Participant by mail within two weeks of the decision to terminate. The notice must describe the Participant’s options, rights and

¹⁰ PIM at 75-76.

remedies under this contract, including the refundability of any up-front payments.¹¹

Common Energy has noted that requiring Subscribers to enroll to a specified project is an unnecessary component of the template contracts and appears inconsistent with the CSP rules.¹² In any event, the CSP assumes that *Subscribers* must ultimately decide what to do if the project they signed up for is not successful.

This is sub-optimal, and many interested Subscribers will fall out of the program if it is not resolved because Subscribers lose interest and trust in the program when their project fails and they do not receive benefits. Asking them to re-sign up for a different project is a significant ask that is simply too burdensome for most Subscribers and provides no commensurate value to Subscribers. At a minimum, Subscribers that do not drop out will view Oregon's CSP as being difficult and user unfriendly.

This problem is best solved by proactive decision-making, including language in the Subscribers' contracts when they first sign up, and making use of an Agent Subscription Model.¹³ With an Agent Subscription Model, either incorporated in the Subscriber agreement or in a separate document, the Subscriber may authorize the Project Manager, Subscription Manager, or other agent to transfer their subscription to a different project in the event that the original project is cancelled or delayed. This reflects the agent providing a higher level of service without downside to the Subscriber and a Subscriber authorizing a solution before the problem occurs.

¹¹ General Market Standard Contract at 10, available at <https://www.oregoncsp.org/pm-resources/>. This text is "instructional" for Project Managers. *Id.* at 1.

¹² See Common Energy's Comments at 2-3 (Dec. 8, 2021)

¹³ Common Energy's Comments at 2-3 (Dec. 8, 2021).

This solution is viable because it aligns with the current CSP design. There is no prohibition of the Agent Subscription Models for Subscribers in the statute, Rules, or the PIM,¹⁴ which Staff concedes.¹⁵ In addition, there are agency principles actively embedded in the regulations. For example, the Commission delegated programmatic activities to various third parties, effectively authorizing them to act as the Commission's agents in the program.¹⁶ Similarly, the PIM recognizes that Project Managers may authorize agents to perform some activities in the program.¹⁷ Having Project Managers, Subscription Managers, or others act as agents for Subscribers is thus consistent with the CSP design and can be readily implemented.

B. A Material Public Interest Benefit of the Agent Subscription Model Is Consolidated Billing, which Provides Competitors such as Common Energy the Ability to Innovate by Making Subscriber Bills More Valuable, Simple, and Easy to Understand

A second benefit of an Agent Subscription Model is that consolidated billing makes bills more valuable, simple, and easy to understand. Consolidated bills can identify not only the charges, bill credits, and net savings, but also the details about how the CSP project is delivering environmental benefits. Thus, consolidated billing enables providers like Common Energy to provide bills that are more informative and easier for Subscribers to understand. Common Energy offers consolidated billing in other states and shared a sample bill with Staff, which is also attached to these comments as Attachment A.

Under the current CSP design, it is reasonable to assume that some, if not all, Subscribers face the possibility of multiple and separate bills. This is sub-optimal. The CSP would benefit

¹⁴ See generally ORS 757.386; OAR 860-088; PIM.

¹⁵ Staff Report at 2-3, 6.

¹⁶ E.g., OAR 860-088-0010(8) (“‘Program Administrator’ means a third-party directed by the Commission to administer the Community Solar Program.”).

¹⁷ E.g., PIM at 8 (“A Subscription Manager, if it is not the Project Manager itself, is the Agent designated by the Project Manager as being primarily responsible for conducting customer acquisition for a Project.”).

from offering *fully* consolidated bills through the use of an agent subscription model. This enables Subscribers to see one single bill with all the normal on-bill charges as well as any applicable off-bill charges. Subscribers then make one lump-sum payment for all charges rather than two separate payments. The agent then does the work of passing the on-bill charges on to the utility, so that all on-bill charges are processed in the ordinary fashion.

Common Energy understands that the Oregon CSP has undertaken significant efforts to consolidate billing, but Common Energy disagrees that billing is 100% consolidated in Oregon, as Staff assumes.¹⁸ The Commission’s rules require utilities to develop on-bill payment methods that enable the collection and remittance of fees owed to Project Managers, the Program Administrator and Low-Income Facilitator, and any other Commission ordered fees.¹⁹ The rules also require Project Managers to use the “Commission-approved on-bill payment method” for collecting “ownership or subscription fees owed to the Project Manager,” unless they obtain agreement or approval of an alternative method.²⁰ “Ownership or subscription fees” are not specifically defined. The PIM outlined the approved options for subscription fees as a capacity-based or production-based model.²¹

The PIM also recognizes that Project Managers may collect other fees off-bill. For instance, the PIM states that “Projects Managers may charge a fee to transfer or cancel a subscription (except to low-income Participants) that would be collected separately from a Participant’s utility bill.”²² Similarly, the Program Administrator’s Billing & Payments Guide for Project Managers *requires* that certain charges not be consolidated on a utility bill:

¹⁸ See Staff Report at 6.

¹⁹ OAR 860-088-0120(3).

²⁰ OAR 860-088-0130(4).

²¹ PIM at 42.

²² PIM at 87.

Off Bill Charges

Any additional charges levied by a Project Manager *must be collected off-bill* by the Project Manager. This includes any permissible early termination fees, transfer fees, resizing fees, or late fees. All off-bill methods of collecting fees must be described in the Participant Agreement. In the event of any non-payment, Project Managers must provide instructions for procedures for off-bill collection.²³

It is Common Energy's understanding that a Project Manager's decision to seek any "additional charges" that would be collected off-bill is project-specific and should be reflected in the project's pre-certification or certification materials, such as a proposed contract form.²⁴ Subscription Managers like Common Energy²⁵ do not have direct control over a Project Manager's decision to seek or obtain approval for any additional charges. It is the Project Manager who is responsible for making these decisions and communicating them clearly to any partners, including but not limited to Subscription Managers.

In any event, it is appropriate and necessary for overall program design to assume that, while all Subscribers will certainly face on-bill charges and credits, at least some Subscribers will face additional off-bill charges. Thus, at least some Subscribers may face multiple bills, contrary to Staff's statements otherwise. Authorizing consolidated billing through the use of an Agent Subscription Model would benefit Subscribers and thus would be in the public interest.

²³ *Billing & Payments Guide for Project Managers* at 4, available at <https://www.oregoncsp.org/pm-resources/> (emphasis added).

²⁴ *E.g.*, OAR 860-088-0040(2) ("An application for pre-certification must include ... Proposed marketing materials [and] Proposed forms and standard contracts for ownership interests and subscriptions"). It is imperative for Subscribers to be able to understand marketing materials and subscription contracts, including any fees involved.

²⁵ Common Energy is also a registered Project Manager but has so far chosen to participate in the CSP through collaboration with other developers, which allows it to focus its efforts on ensuring the best possible Subscriber experience. *See* <https://portal.oregoncsp.org/p/RegisteredProgramManagers/>.

The above two issues are only examples of benefits available through the use of an Agent Subscription Model. An Agent Subscription Model is an excellent solution to these bigger problems. Further, an Agent Subscription Model does not specifically require any action from the Commission to authorize or implement.

II. STAFF’S CONCERNS ARE UNCLEAR AND OVERBROAD, AND THEY DO NOT JUSTIFY A BLANKET PROHIBITION ON AGENT SUBSCRIPTION MODELS

Common Energy appreciates Staff’s diligence in exploring this matter and hopes to find a productive solution that best serves the CSP, Subscribers, and the public interest. Unfortunately, Staff’s proposal to broadly prohibit Agent Subscription Models will not achieve this goal. Common Energy has closely reviewed Staff’s Report and believes Staff’s concerns can be organized in the following four categories: 1) concerns about achieving the CSP design principles, which the Agent Subscription Model facilitates; 2) concerns specific to low-income Subscribers, which are not specific or unique to the Agent Subscription Model; 3) concerns about Agent Subscription Models that offer consolidated billing, which is an important but small subset of potential Agent Subscription Models; and 4) concerns about contract terms not in standard contracts, which the CSP allows. Common Energy summarizes these categorical concerns and responds to each below.

A. Staff Misunderstands the Practical Necessity of the Agent Subscription Model to Achieving CSP Tier 2 Goals

Staff asserts that the Agent Subscription Model is “inconsistent” with CSP design principles and the Commission’s requirements for Tier 2 projects.²⁶ Contrary to this assertion, Common Energy agrees with OSSIA that Agent Subscription Models “are a critical component of how [Program Managers] will be able to meet the new 50% residential subscriber requirement

²⁶ Staff Report at 4.

for Tier 2 projects.”²⁷ Confusingly, Staff separately “recognizes the importance of a simple participant onboarding process,”²⁸ which the Agent Subscription Model can facilitate.²⁹

Staff appears to misunderstand the practical realities of enrolling Subscribers, particularly the difficulties associated with enrolling high numbers of residential and low-income Subscribers as envisioned for Tier 2, and how some Agent Subscription Models may facilitate that process. Instead of prohibiting this solution, the Commission should allow Project Managers and Subscription Managers to continue to leverage best practices in working to achieve CSP goals.

B. Prohibiting the Agent Subscription Model Would Not Resolve Staff’s Concerns About Low-Income Subscribers

Staff raises several concerns about barriers to low-income participation, such as needing an email address to sign up.³⁰ Staff indicates these concerns arose from reviewing “practices in the [Agent Subscription] Model.”³¹ As Common Energy previously noted, these barriers are unrelated to the use of agency agreements.³² Perhaps more relevant, they are largely unrelated to the use of an Agent Subscription Model. Prohibiting Agent Subscription Models for all customers would have zero effect on whether Project Managers require subscribers to sign up electronically or not, for example.

Further, Common Energy emphasizes again that the use of any Agent Subscription Model, including consolidated billing, is an *option* for Subscribers, not a requirement. Staff should not recommend prohibiting a majority of subscribers from being able to access benefits out of concerns that a subset of subscribers will not chose to partake of those benefits.

²⁷ OSSIA Comments at 1 (Aug. 3, 2022).

²⁸ Staff Report at 12.

²⁹ *E.g.*, Oregon Shines Comments at 1-2.

³⁰ Staff Report at 8.

³¹ Staff Report at 8.

³² Common Energy Comments on Staff Draft Agent Subscription Model at 2, 18 (June 24, 2022).

To the extent these concerns persist, Common Energy notes again that OSSIA and Common Energy previously proposed only prohibiting the use of an Agent Subscription Model that provides consolidated billing specifically to low-income Subscribers.³³ This sort of narrow approach could enable Staff and the Commission to gain experience with the practices used in other states, without raising many of the concerns Staff has espoused.

C. Staff’s Concerns about Consolidated Billing Do Not Apply to All Agent Subscription Models and Should Be Considered Separately

Despite Staff’s proposed blanket prohibition, it appears that most of Staff’s concerns relate specifically to Agent Subscription Models that offer consolidated billing,³⁴ which is an important but small subset of potential Agent Subscription Models. In brief, Common Energy’s Agent Subscription Model does not present any of the risks that Staff is concerned with. If the Commission is inclined to adopt guidelines for the use of an Agent Subscription Model, Common Energy believes that the terms Common Energy has adopted as good policy could be appropriate to impose as requirements.

1. Explanation of How Consolidated Billing Works and Provides Value

Consolidated billing aids subscribers by presenting only one bill rather than multiple bills. As explained earlier, the Oregon CSP has somewhat consolidated billing, but there can be off-bill charges. It is Common Energy’s understanding that a Project Manager’s decision to seek any “additional charges” that would be collected off-bill is project-specific and should be reflected in the project’s pre-certification or certification materials, such as a proposed contract

³³ OSSIA’s Comments at 1 (Aug. 3, 2022); Common Energy’s Additional Comments at 1 (Aug. 5, 2022).

³⁴ Staff Report at 5-9 (stating concerns with account access, billing confusion, bill data transfer, billing system management, and other billing requirements, like equal-pay provisions).

form.³⁵ Subscription Managers like Common Energy³⁶ do not have direct control over a Project Manager's decision to seek or obtain approval for any additional charges. It is the Project Manager who is responsible for making these decisions and communicating them clearly to any partners, including but not limited to Subscription Managers.

Further, consolidated billing enables providers like Common Energy to provide bills that are more informative and easier for subscribers to understand. Consolidated bills can identify not only the charges and bill credits but also the details about how the CSP project is delivering environmental benefits.

It is unclear to Common Energy if Staff understands how this process works. To explain, consolidated billing has a Subscriber pay a Project Manager or Subscription Manager, who then pays the appropriate portion to the utility, including any portion that will eventually be paid to the Project Manager for the Subscriber's subscription. There is zero change to the current billing structure, at least under Common Energy's Agent Subscription Model.

2. Staff's Concerns Do Not Apply to Common Energy's Approach

Common Energy found the Staff Report unclear regarding the specific and discrete concerns with the Agent Subscription Model. Common Energy believes Staff's billing-related concerns can be separated into 8 concerns, which we have clearly identified to explain why there should be no prohibition on the Agent Subscription Model. If the Commission ultimately believes that restrictions should be imposed, then they should be narrowly drafted to address any

³⁵ *E.g.*, OAR 860-088-0040(2) ("An application for pre-certification must include ... Proposed marketing materials [and] Proposed forms and standard contracts for ownership interests and subscriptions"). It is imperative for subscribers to be able to understand marketing materials and subscription contracts, including any fees involved.

³⁶ Common Energy is also a registered Project Manager but has so far chosen to participate in the CSP through collaboration with other developers, which allows it to focus its efforts on ensuring the best possible subscriber experience. *See* <https://portal.oregoncsp.org/p/RegisteredProgramManagers/>.

specific concerns. Common Energy understands that Staff’s concerns are: 1) duplication of CSP infrastructure and need for additional ratepayer funds to change, which is unsupported; 2) reduced access to utility bills, which does not occur; 3) loss of consumer protections, which is vague but could inform narrow nuanced guidelines; 4) unenrollment from equal-pay programs, which Common Energy does not do unless a Subscriber asks; 5) requirement for full automatic payments, which is not specific to the Agent Subscription Model; 6) reduced access to communications, which is highly unlikely with Common Energy’s automated system; 7) needing to “re-establish” account access, which is unnecessary because Common Energy Subscribers never lose account access in the first place; and 8) additional complexity and potential confusion for the PA and participants, which is to be expected in any market offering.

a. Consolidated Billing Does Not Impact CSP Infrastructure and Should Not Require Additional Funds

Staff repeatedly described consolidated billing as “duplicative” of existing CSP infrastructure and then claims implementation would require additional ratepayer funds.³⁷ Common Energy explained earlier that most but not all CSP costs are consolidated, and there are additional benefits to enhanced billing that explains the environmental benefits from a subscription.³⁸ Further, in prior comments, Common Energy asked Staff to explain this concern, because Common Energy sees no need for any change or any possible need for funds.³⁹ When Staff asked Common Energy via discovery “Does the payment submission process follow the existing programmatic billing processes, whereby the utility transfers Program fees to the Program Administrator who in turn pays the [Program Manager]?” the answer was a simple,

³⁷ Staff Report at 5, 7, 9.

³⁸ See *supra* Section I.B.

³⁹ Common Energy Comments at 19 (June 24, 2022).

unequivocal “Yes.”⁴⁰ Staff has not explained the investment, and Common Energy maintains there should be zero need for any change to the billing infrastructure.

b. Subscribers Do Not Lose Access to Utility Bills

Staff worries that Subscribers might suffer reduced access to their utility bill.⁴¹ Common Energy Subscribers always retain access to their utility account, including their bills. For instance, Common Energy noted in discovery that “Subscribers always maintain control over their utility online account. A subscriber can always log into their account... if they wish, at any time.”⁴²

c. If Staff Has Specific Concerns About Consumer Protections, Those Could Form the Basis of Nuanced Guidelines

Staff worries about the loss of consumer protections in consolidated billing.⁴³ Staff’s concerns are vague. Common Energy supports robust consumer protections and would be interested in understanding Staff’s concerns better. To the extent that there is a need for consumer protections in the CSP, Staff’s specific concerns should be clearly identified. Then, they could be a useful item for further discussions in which the way in which other states have ensured consumers are protected, and, if necessary nuanced changes could be made, rather than a blanket prohibition.

⁴⁰ See Common Energy Comments, Attachment B, Common Energy’s Response to OPUC Staff Request 04 (June 24, 2022).

⁴¹ Staff Report at 5-6.

⁴² See Common Energy Comments Attachment B, Common Energy’s Response to OPUC Staff Request 03 (June 24, 2022); see also Common Energy Comments Attachment B, Common Energy’s Response to OPUC Staff Request 02 (June 24, 2022).

⁴³ Staff Report at 5.

d. Common Energy Does Not Unenroll Subscribers from Equal-Pay Programs Unless Subscribers Request It

Staff worries about agents unenrolling Subscribers from equal-pay programs.⁴⁴ Staff previously claimed that this was a “standard practice” for Common Energy, and Common Energy emphasizes again that it is not.⁴⁵ Subscribers always have the option to unenroll from equal-pay programs, but this is the Subscriber’s decision.

e. Requiring Full, Automatic Payments Is Common and Not Unique to the Agent Subscription Model

Staff argues that consolidated billing requires Subscribers to make full, automatic payments.⁴⁶ Common Energy requires full, automatic payments, because it is necessary using ACH infrastructure, which keeps costs low. However, this is not intrinsic to the Agent Subscription Model. In any event, the CSP does not require a different approach.

Further, Common Energy emphasizes again that Agent Subscription Models and consolidated billing are *options* for Subscribers, not requirements. Staff should not recommend prohibiting a majority of subscribers from being able to access benefits out of concerns that a subset of subscribers will not chose to partake of those benefits.

f. Automated Forwarding Makes It Highly Unlikely Subscribers Would Miss Any Utility Communication

Subscribers do not suffer “reduced access” by having a third party send them communications rather than having a utility do so. Staff appears concerned with third parties needing to “choose to pass” communications on, but this is a misunderstanding.⁴⁷ Common Energy, for example, offers an automated forwarding system for email that minimizes even the

⁴⁴ Staff Report at 6-7.

⁴⁵ Staff Draft Recommendation at 4-5; Common Energy Comments at 18 n41 (June 24, 2022).

⁴⁶ Staff Report at 6.

⁴⁷ Draft Recommendation at 3; Staff Report at 5-6.

risk of human error. Further, Common Energy makes zero changes to other communication methods. As noted in discovery, “Common Energy does not make changes to a subscriber’s phone number or postal mailing address on file with the utility. Common Energy would only consider doing so if requested by a subscriber.”⁴⁸ Thus, there is no change to phone or mailing notifications.

If Staff is worried about third parties sending communications rather than utilities, it should state so and explain why this is the case. Assuming for the sake of argument that there is a valid concern, a simple solution would be to enable both subscribers *and* third parties to receive utility notifications. In other states, Common Energy makes no change to a customer’s email access because there is an option to list multiple email addresses. This appears to not be an option currently in Oregon, but the records are not complete in that respect.⁴⁹

g. Subscribers Never Need to “Re-Establish” Account Access

Common Energy understands that some of Staff’s concerns relate to participant access to their utility account or utility communications.⁵⁰ As explained previously, Common Energy’s Subscribers never lose access to their utility account.⁵¹ Common Energy noted in discovery that “Subscribers always maintain control over their utility online account. A subscriber can always log into their account... if they wish, at any time.”⁵² This also means that Subscribers never need to “re-establish” access, as Staff claims.⁵³

⁴⁸ See Common Energy Comments, Attachment B, Common Energy’s Response to OPUC Staff Request 01 (June 24, 2022).

⁴⁹ But see OAR 860-021-0017 (requiring utilities to let customers designate a third-party to receive utility notices and bills). It is unclear how this rule is being implemented.

⁵⁰ Staff Report at 6.

⁵¹ Common Energy Comments at 15 (June 24, 2022).

⁵² See Common Energy Comments, Attachment B, Common Energy’s Response to OPUC Staff Request 03 (June 24, 2022); see also Common Energy Comments, Attachment B, Common Energy’s Response to OPUC Staff Request 02 (June 24, 2022).

⁵³ Staff Report at 6.

h. Any Market-Based Program Is Subject to Complexity and Potential Confusion As It Evolves

Finally, Staff expresses concern that Agent Subscription Models with consolidated billing “introduce[s] additional complexity for the PA and potential confusion for participants.”⁵⁴ Staff argues this is administratively burdensome.⁵⁵ Common Energy respectfully disagrees. First, consolidated billing specifically aims to reduce confusion about the CSP’s mix of on- and off-bill charges, which is confusing for Subscribers. Further, consolidated billing also aims to provide more information to Subscribers in one place, making it easier for them to understand what their subscription is achieving.

In any event, the CSP is a market-based program that will benefit from flexibility and a diverse range of subscription offerings. Dictating a single approach may seem simpler, but that does not guarantee a better or more robust CSP. Common Energy supports minimizing points of confusion, and also delivering beneficial CSP offerings like consolidated billing.

D. Staff Overstates the Variations from Standard Contract Terms

Staff expresses concern with “additional contracts” but appears to be concerned with any non-required contract language.⁵⁶ Project Managers have a right to impose additional contract requirements. Staff’s Report does not provide background that Common Energy views as important for the Commission’s consideration. The CSP uses Commission-approved standard contract templates, which identify and describe the terms that must be included.⁵⁷ They are not simple fill-in-the-blank contracts, like the Commission-approved utility CSP purchase contracts.⁵⁸ Instead, there are many provisions which invite the Project Manager to draft text

⁵⁴ Staff Report at 7.

⁵⁵ Staff Report at 7.

⁵⁶ Staff Report at 6.

⁵⁷ See Order No. 19-438 (Dec. 19, 2019) (approving contract templates).

⁵⁸ E.g., PGE Compliance Filing pursuant to Order No. 21-192 (July 2, 2021).

consistent with their business preferences. In addition, the PIM specifically allows Project Managers and Subscription Managers “to impose additional requirements” on Subscribers, so long as the additional terms “do not discriminate based on race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status or source of income.”⁵⁹ Staff’s concern about additional contract language appears directly contradictory to the above CSP guidelines.

Further, Common Energy notes that Staff talks about “additional contracts” when the Agent Subscription Model can be present either in the Subscriber contract or in a separate document. Common Energy prefers to have Subscribers see the two as separate documents (and in some cases are approved with one click), as it is important that Subscribers understand they are not obligated to agree to the Agent Subscription Model. However, if Staff views it as important to have a single document, despite the possible confusion, then Common Energy would be willing to consider a different approach.

III. CONCLUSION

For the foregoing reasons, the Commission should decline to adopt Staff’s recommendation. Common Energy recommends that the Commission take no action at this time. In the alternative, if the Commission believes more guidance would be valuable, then Common Energy recommends that the Commission direct Staff and the Program Administrator to develop a more nuanced approach, such as specific guidelines or requirements for CSP participants using the Agent Subscription Model.

⁵⁹ PIM at 52.

Dated this 16th day of September 2022.

Respectfully submitted,

/s/Malcolm D. Bliss

Malcolm D. Bliss

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Attachment A

Common Energy Example Statement of Savings



Account Number: **002896**
 Invoice Number: 00014379
 Date: 2/16/2021

Total Amount
\$153.92

Account Name:
 Service Address:

Payment Scheduled for
2/26/2021

Bill Summary

PGE Electricity	\$162.08
PGE Other Charges	\$-0.41
Subtotal	\$161.67
Clean Energy Credit Received	\$155.02
Cost of Clean Energy (5% Discount)	\$147.27
Your Savings with Common Energy	\$7.75
Credit Card Processing Fee*	\$0
Total	\$153.92

Credit Bank

Starting Bank Balance	0 kWh
Clean Energy Allocated	1,380 kWh
Clean Energy Used	1,380 kWh
Credit Bank	0 kWh
Credit Rate	\$0.11234

Your Impact

This month you enabled **1,380 kWh** of clean energy and prevented **551 pounds** of carbon dioxide from entering your community. This is the equivalent of planting 11 trees!

Since joining Common Energy you enabled **15,486 kWh** of clean energy and prevented **5,885 pounds** of carbon dioxide from entering your community. This is the equivalent of planting 71 trees!



***2.9% Credit Card Processing Fee. Avoid this fee by switching to automatic payments from your bank account.**

QUESTIONS?

Feel free to ring us anytime at 844-440-9682 or email savings@commonenergy.us