July 6, 2023

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: Community Solar Program Changes
Docket No. UM 1930

Common Energy's Comments on the Subscription Manager Capacity Limit and Draft Modifications to the Program Implementation Manual

Dear Commissioners:

Common Energy LLC ("Common Energy" or the "Company") respectfully submits these Comments to the Oregon Public Utility Commission (the "Commission") to (a) oppose draft modifications to the Program Implementation Manual ("PIM") with respect to section 3.13.5, which proposes to permit participants to sign conditional subscription contracts to create waitlists; and (b) oppose any change to the 50% capacity limit for Subscription Managers ("SMs") in the Oregon Community Solar Program (the "Program"), including such changes proposed by Arcadia to apply the 50% limit only to the portion of the project that the SM is managing. As will be made clear in the ensuing paragraphs, both of the modifications would enable one SM, namely Arcadia, to monopolize the *entire* Program, and therefore will harm the Program by: (i) limiting consumer choice; (ii) limiting developer choice; (iii) decreasing competition; and (iv) creating existential risks to the success of the Program.

I. BACKGROUND

Common Energy is one of the largest community solar servicers in the United States and currently manages over 300MW of community solar projects across the country. Common Energy is a registered Project Manager in Oregon, and currently participates in the Community Solar Program as a Subscription Manager.

Common Energy is in good standing with the Program, and has a track record of advocating for sensible rule changes that benefit all Program participants, including spearheading

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the effort to permit Project Managers to move subscribers from one project to another, which the Commissioners have approved (with pending language in the PIM).

Common Energy is active in ten states, including Oregon, and therefore has the benefit of observing the competitive practices of many market participants, including Arcadia, in many different community solar programs, with many different community solar program administrators, including with the Program. Arcadia's tactics are, in summary, to acquire large numbers of "waitlisted" subscribers in advance of securing project capacity, and then use these waitlisted subscribers to win a disproportionate share of a program, and stifle competition in the market. As will be illustrated further below, the proposed changes—to the PIM and to the existing capacity limit—would permit Arcadia to take these anticompetitive actions in Oregon.

On June 21, 2023, Arcadia announced that it had acquired Oregon Shines, a subscription portfolio of "of nearly 84 MWdc," making Arcadia "the largest manager of community solar projects in the state of Oregon."[1] As of July 2023, Arcadia has raised over $495 million in capital,[2] more than 10x any other community solar provider in the country.

II. COMMENTS

A. The Proposed Change To Section 3.13.5—Permitting Project Managers To Sign Subscription Agreements In Advance Of Securing Project Capacity—Is Designed To Stifle Competition In The Program

At present the Program requires that a Project Manager ("PM") (or its agent) subscribe customers only after having an approved Project to serve the subscribers. This sensible provision has the effect of leveling the playing field, enabling all SMs to compete to work with PMs on the *merit* of their subscriber acquisition and management capabilities.

Without this existing provision in the Program, the company with the most capital will dominate the Program. This is because a well-capitalized company, like Arcadia, will simply spend money in advance to subscribe the entire Program, e.g., the Second Offering representing 79MW, before having project capacity to serve subscribers. Then Arcadia will use these acquired, "waitlisted," subscribers to win contracts with developers to serve as their SM. Smaller competitors who do not have such capital will not be able to acquire subscribers in advance, and therefore will be severely disadvantaged in the Program by this proposed change in the PIM.

The pathway for one player to monopolize the program will be further illustrated in a detailed example, considering the proposed change to the PIM; specifically, the proposed change that reads: "Project Managers and Subscription Managers may not sign more Conditional Subscription Contracts than would be necessary to enroll twenty-five percent of the total Pre-

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[1] Arcadia Acquires Oregon Shines, PR Newswire (June, 21, 2023), https://www.prnewswire.com/news-releases/arcadia-acquires-oregon-shines-301857044.html.
[2] Crunchbase, Arcadia: https://www.crunchbase.com/organization/arcadia-power-2.

certified and Certified Project capacity represented by that Project Manager or Subscription Manager."[3]

(a) Based on the June 2023 press release, Arcadia has acquired 84MW of community solar projects from Oregon Shines. Let us assume that Arcadia had, prior to the acquisition, at least 16MW of community, and therefore now has 100MW of Pre-Certified and Certified community solar projects in the state of Oregon;

(b) With the new, proposed language, Arcadia would be able to promptly add 25% of its represented project capacity, or 25MW of new subscriptions, to a newly created "waitlist";

(c) Then, Arcadia would promptly inform all project developers that Arcadia has 25MW of subscribers available for new projects, thereby using the waitlist to pre-empt competition with other SMs, and win management contracts for an additional 25MW;

(d) Then, pursuant to the new PIM language, Arcadia would move the 25MW of "waitlist" subscribers to the new Pre-Certified or Certified projects;

(e) Then, pursuant to the new rules, Arcadia would have a total of 125MW of "Pre-Certified or Certified" projects and a waitlist of zero;

(f) Then, Arcadia would have the ability, again, pursuant to the new proposed PIM language, to subscribe another 25%, now equal to 31.25MW of new subscribers and add this to its waitlist; and repeat the entire cycle again.

It is presumably not Staff's intention to provide a mechanism for one SM to dominate the entire Program, which the proposed provision would surely do. It is further not in the Program's best interest to introduce a systemic risk to the entire Program's success by having the majority of projects controlled by one SM, especially one which, according to available market research, is not profitable. Some limits of market share and total capacity must be maintained within the Program to avoid direct monopolization, and indirect monopolization, in circumvention of Staff's intent.

As further evidence of Arcadia's intentions, Arcadia's July 6 letter states, "Arcadia continues to support removal of a cap on the total allocation allowed for the subscribed waitlist…."[4] Arcadia's intentions are clear and obvious for all to see.

In addition to the aforementioned, the proposed change would impose a new, reporting burden on the Program and all market participants, because they would, presumably, need to

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[3] Staff's Request for Public Comments, Revised PIM at page 50 (June 21, 2023).
[4] Arcadia's Comments at page 3 (July 6, 2023).

report the size of their waitlisted customers, which would then need to be verified, to maintain compliance with the Program.

Further, Common Energy notes that the Draft Modifications to the PIM:

(a) cites five market participants are advocating for this rule change.[5] Three of the five entities are effectively the same: Arcadia,[6] Oregon Shines (now owned by Arcadia), and TLS Capital (owned by the same owner of Oregon Shines). The other two entities, Fleet Development and Solarize Rogue, are very small entities with virtually no experience competing with Arcadia in other markets, and would therefore not anticipate the actions and outcomes described above;

(b) states: "The stakeholders stress the importance of allowing PMs and their agents to establish project waitlists for fully subscribed Pre-Certified and Certified projects, and where utility customers sign contracts as they enter the waitlist,"[7] but provide no evidence for this underlying assertion;

(c) states: "The stakeholders also stress this practice is critical for project financing and for minimizing revenue loss by allowing for the quick replacement of departing Participants."[8] With respect to the first assertion about financing, Common Energy manages over 80 community solar projects, representing over $400 million in assets, and over its six-year operational history, not one developer or PM has ever stated a waitlist was critical for project financing. With respect to the second assertion regarding replacing subscribers, it is standard practice among virtually every SM to subscribe only 80-90% of a subscriber's usage to a project up-front. This practice builds in a 10-20% churn buffer to every project, obviating the need for a waitlist.[9]

In summary, Common Energy opposes changes to section 3.13.5 and the establishment of any waitlist in general, as this change will enable one well-capitalized player to dominate the entire Program, will massively distort competition, will decrease consumer choice, will decrease developer choice, and will create systemic risks to the Program by enabling one SM to acquire a disproportionate share of the Program's projects.

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[5] Staff's Request for Public Comments at page 3.
[6] As of July, 2023, Arcadia has raised over $495 million. Despite this, by information and belief, Arcadia is not profitable. Permitting an unprofitable entity from having an outsized role in a state-funded program creates existential risks to the program itself: If Arcadia fails, the entire Program and all participants will incur harm and damages.
[7] Staff's Request for Public Comments at page 3.
[8] Staff's Request for Public Comments at pages 3-4.
[9] I.e., if 10% of the subscribers cancel their subscriptions, this same amount can be immediately reallocated to the other subscribers, since every subscriber is 10-20% under-subscribed.

B. The Proposed Change To The Capacity Limit Will Enable One Player To Monopolize The Program And Acquire 100% Of The 79MW Second Offering (And Subsequent Offerings)

In its April 18, 2023 letter, Arcadia proposes to eliminate the currently established, and previously well-vetted, capacity limits for Subscription Managers that were set by Staff.[10] In its Arcadia appears to propose that the limits be changed such that 50% current limit apply to only the "portion of the project's capacity" that a Subscription Manager is managing. Common Energy opposes both proposals.

The current limit was thoughtfully considered by Staff and was and remains sensible. A brief summary of its history, and how staff developed these limits, is attached hereto in the Appendix.

Common Energy understands Arcadia's proposal to mean that there would be a new reporting paradigm for each project in the Program, and that an SM might manage only a portion of the project's total size, i.e., the project is 2.8MWdc, and SMs now have the option to manage 100% of the project, i.e., 2.8MWdc, or may have the option of managing only 50% of the project, i.e., 1.4MWdc. If this is accurate, this change would have a transformative effect on the Program and again enable one player, in this case, Arcadia, to effectively control 100% of the Program. This is because large corporations can subscribe up to 50% of the Program, and large corporations require very little management to serve. Accordingly, an SM could very easily transfer the management of large corporations to a PM after acquisition, and thereby reduce its 100% portion of the project's capacity down to 50%, after acquiring the subscribers, providing a pathway to control 100% of the Program.

The pathway for one player to monopolize the program under this modified rule will be further illustrated in a detailed, example below:

(a) Arcadia acquires subscribers equivalent to the *entire* Second Offering, i.e., 79MW, in advance of securing Pre-Certified or Certified Projects to serve those subscribers, pursuant to Section A, as described previously;

(b) Arcadia uses its 79MW of waitlist subscribers to secure a SM contract for a new portfolio of say 20MW;

(c) The 20MW portfolio has availability for 10MW of large corporations, pursuant to the rules of the Program;

(d) Arcadia acquires the 20MW of subscribers, but then transfers the "management" of the large corporations to the PM, thereby reducing its management of the portfolio to 10MW, even though it was originally contracted for the entire 20MW;

[10] Arcadia repeats this recommendation in its comments filed July 6, 2023.

(e) Arcadia repeats this process until it has acquired SM all 79MW of the Second Offering, and transferred management of 39.5MW to the PM, thereby monetizing the entire 79MW of subscribers it acquired prior to the Second Offering.

In addition, Arcadia's July 6, 2023 letter states the following: "However, Arcadia fully supports raising these capacity limits for SMs for the reasons previously provided in Arcadia's comments submitted to the docket on April 18, 2023." And "Moreover, the cap restricts competition in the market, as any SM that has hit its cap is precluded from offering its services to PMs for new capacity."[11] <u>This is precisely the intent of the capacity limit in the first place, which Staff rightly implemented.</u> Again, there can be no question about Arcadia's intentions.

In summary, Common Energy opposes changes to the definition of capacity limit because the current capacity limit (a) was thoughtfully considered and developed by Staff; (b) provides a concrete backstop to prevent any one SM from acquiring more than 50% of Program capacity; (c) prevents any SM from manipulating the rules in ways Staff did not intend and does not intend now; and finally, (d) as described above, Arcadia's proposed change will enable it to dominate the entire Program, will massively distort competition, will decrease consumer choice, will decrease developer choice, and will create a systemic risk to the entire Program by enabling one SM to acquire a disproportionate share of the Program's projects.

III. SUMMARY CONCLUSION

Staff has done an exceptional job partnering with Program participants to make sensible changes that benefit all participants, and creating a Program that encourages fair competition and consumer choice. However, the two proposed changes described above are counter to those goals, and instead will limit consumer choice, stifle competition, and enable one participant to dominate the entire Program.

Common Energy opposes both of these changes and respectfully requests that Staff and the Commission: (a) reject the ability to acquire subscribers in advance of projects; and (b) maintain the 50% capacity limit as currently implemented.

Dated this 6th day of July, 2023.

Respectfully submitted,

<u>/s/Richard Keiser</u>
Signatory

[11] Arcadia's Comments at page 3.

APPENDIX: HISTORY OF THE CAPACITY LIMIT

In December 2019, as part of the Program's implementation efforts, Staff recommended, and the Commission adopted, an initial 25% capacity limit on PMs.[i] At that time, before the Program launched, Staff knew that some PMs may develop portfolios of projects, rather than only a single project, and proposed the limit to allow PMs to develop multiple projects "while still maintaining competition."[ii] About two years later, Staff recommended that, because "the Program has demonstrated adequate customer choice" with multiple, separate portfolios of projects, a higher capacity limit of 50% should apply to PMs and also SMs in the Second Offering.[iii] Portland General Electric Company ("PGE") opposed raising the limit, but Staff reasonably determined retaining the lower limit may "restrict projects financially and create risk without meaningfully adding to customer choice."[iv] Thus, the capacity limit has been carefully adopted and refined to promote competition and customer choice, consistent with the public interest and the Program's overall goals.

[i] Order No. 19-438 at 1-2, Appendix A at page 13 (Dec. 19, 2019).
[ii] Order No. 19-438, Appendix A at page 14.
[iii] Order No. 22-007, Appendix A at page 6 (Jan. 11, 2022).
[iv] Order No. 22-007, Appendix A at page 6.

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