

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: January 23, 2024**

**REGULAR** \_\_\_\_\_ **CONSENT**  X  **EFFECTIVE DATE** \_\_\_\_\_ **N/A** \_\_\_\_\_

**DATE:** January 16, 2024

**TO:** Public Utility Commission

**FROM:** Benedikt Springer

**THROUGH:** JP Batmale and Sarah Hall **SIGNED**

**SUBJECT:** OREGON PUBLIC UTILITY COMMISSION STAFF:  
(Docket No. UM 1930)  
Open a rulemaking to consider changes to Community Solar Program rules in OAR 860-088-0040 and extend the current rule waiver of OAR 860-088-0040(3-6) for 12 months.

**STAFF RECOMMENDATION:**

Staff recommends the Commission open rulemaking docket to consider changes to OAR 860-088-0040 and extend the current waiver of Subsections (3-6) for an additional 12 months.

**DISCUSSION:**

Issue

Whether the Commission should open a rulemaking docket to consider changes to OAR 860-088-0040(3)-(6) and extend the current rule waiver for 12 months for the Community Solar Program (CSP or Program).

Applicable Rule or Law

ORS 756.060 states, "The Public Utility Commission may adopt and amend reasonable and proper rules and regulations relative to all statutes administered by the commission" and to "adopt and publish reasonable and proper rules to govern proceedings and to regulate the mode and manner of all investigations and hearings of public utilities and telecommunications utilities and other parties before the commission."

ORS 757.386(2)(a) directs the Commission to establish a program that provides electricity customers the opportunity to share the costs and benefits of electricity generated by a community solar energy system.

On June 29, 2017, in Order No. 17-232, the Commission adopted formal rules for the Community Solar Program under OAR Chapter 860, Division 088.

According to OAR 860-088-0005(2) upon request or its own motion, the Commission may waive any of the Division 088 rules for good cause shown.

In Order No. 22-019, the Commission enacted the delegation of Commission authority to the Program Administrator to pre-certify projects, grant waivers, grant extensions, and approve project amendments, so long as such actions are not contested or controversial.

## Analysis

### *Background*

On January 11, 2022, in Order No. 22-007, the Commission adopted Staff's recommendation to modify Section 4.5.4 of the Program Implementation Manual (PIM) in order to delegate Commission authority to the Program Administrator (PA) to grant non-controversial project pre-certifications, waivers, extensions and amendments. As a follow up to these PIM changes, the Commission enacted the Delegation of Commission authority to the Program Administrator and waived OAR 860-088-0040(3)(6) for 24 months.<sup>1</sup> The waiver is set to expire on January 25, 2024.

Staff made two arguments in its request for the waiver:<sup>2</sup>

(1) Staff asserted that the delegation of authority would increase program efficiency without causing undue risks to the public or hardships for participants. Bringing non-controversial recommendations to the Commission causes four-week delays between Program Administrator recommendations to grant pre-certifications, waivers, extension, or amendments and final decisions. This can be detrimental to project development timelines and negatively impact the program's reputation among participants. Additionally, the delegation of authority preserves Staff and Commission time and resources.

(2) Staff argued that 24 months would be sufficient time to review the effectiveness of the delegated authority and conduct a rulemaking to codify it in rules if appropriate.

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<sup>1</sup> See UM 1930, Order No. 22-019, January 26, 2022.

<sup>2</sup> Commission Order 22-019, Appendix A, p. 3.

Under the permitted delegation of authority, Staff reviews the Program Administrator's Project recommendations. If Staff finds the PA's recommendations to be non-controversial, Staff posts the recommendations to Docket No. UM 1930 with a public comment period of two weeks.

- If no comments in opposition are received prior to the end of the comment period, the recommendation goes into effect.
- If comments in opposition are received prior to the end of the comment period, the recommendation does not go into effect and Staff brings the matter to the Commission for a decision at the next available public meeting.

*Impact of Delegated Authority on Administrative Efficiency and Risk*

Between January 26, 2022, and December 22, 2023, the Program Administrator used its delegated authority in 136 instances which were bundled into 48 filings in Docket No. UM 1930. Of the 138 recommendations made by the PA, none received comments substantiating Commission review. Delegation of authority to the PA resulted in regulatory streamlining and saved the Commission consideration of at least 48, non-controversial, Public Meeting items, allowing the Program to provide timely decisions to project developers.

**Table 1: Type and Number of PA Delegated Authority Filings**

Topic of PA Filing	Number
Certification Deadline Extension	65
Pre-Certification	32
Project Transfer	23
Consent to Collateral Assignment	12
Operational Deadline Extension	3
Waiver to WREGIS Registration	1

The majority of the decisions concerned deadline extensions and cited interconnection or supply chain issues as the reasons for delay. In Q3 2023, Staff and the PA began implementing steps with the objective of increasing transparency into the drivers of delays and decreasing them. The Program Administrator now request projects to provide more detailed information when requesting waivers, including certification extension deadlines. The Program plans to implement numerous additional measures in early 2024 to better understand and mitigate future delays from project development and interconnection issues, and to increase related accountability.

*Initiate Rulemaking for Narrow Changes to OAR 860-088-0040*

It took time to understand the implication of the delegated authority, but Staff now finds that delegated authority for non-controversial, non-contested CSP project decisions should be made permanent through changes to OAR 860-088-0040(3)-(6). Staff notes for stakeholders that this rulemaking will include two phases. The first is an informal phase that will begin upon Commission approval of this Staff recommendation. During this informal phase, Staff will publish draft rules to Docket UM 1930 and seek stakeholder feedback. Staff may then revise the draft rules based on input received from stakeholders. Staff will then return to the Commission at a public meeting in Q3, 2024 to request the opening of a formal rulemaking. Led by the Administrative Hearings Division, this formal phase will include a public hearing and comment period.

Conclusion

Staff believes that there is sufficient evidence to justify a permanent continuation of the delegated authority. Staff needs additional time to conduct the rulemaking, which will commence after adoption of the present motion and enter its formal phase in Q3, 2024. In the meantime, Staff believes it prudent to continue the delegation of authority through waiver of OAR 860-088-0040(3)-(6) for an additional 12 months.

**PROPOSED COMMISSION MOTION:**

Open a rulemaking to consider changes to Community Solar Program rules in OAR 860-088-0040 and extend the current rule waiver of OAR 860-088-0040(3-6) for 12 months.