

ORDER NO. 22-019

ENTERED Jan 26 2022

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1930

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON,

Requests Waiver of OAR 860-088-0040(3)-  
(6) in the Community Solar Program.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on January 25, 2022, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.



BY THE COMMISSION:

A handwritten signature in blue ink, appearing to read "Nolan Moser".

**Nolan Moser**  
Chief Administrative Law Judge

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: JANUARY 25, 2022**

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

**DATE:** January 17, 2021

**TO:** Public Utility Commission

**FROM:** Joe Abraham

**THROUGH:** Bryan Conway, JP Batmale, and Sarah Hall **SIGNED**

**SUBJECT:** OREGON PUBLIC UTILITY COMMISSION STAFF:  
(Docket No. UM 1930)  
Request for waiver of OAR 860-088-0040(3)-(6) in the Community Solar Program.

**STAFF RECOMMENDATION:**

Approve Staff's proposed waiver of OAR 860-088-0040(3)-(6) to allow the Program Administrator to exercise the delegated authority granted by the Commission in the Community Solar Program (CSP or Program).

**DISCUSSION:**

Issue

Whether the Commission should approve Staff's proposed waiver of the Oregon Administrative Rules, OAR 860-088-0040(3)-(6).

Applicable Rule or Law

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 CSP under OAR Division 88 of Chapter 860.

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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 accordance with OAR 860-880-0190, on December 17, 2019, in Order No. 19-438, the Commission adopted the CSP Program Implementation Manual and the program policies and procedures therein.

The Commission adopted revisions to the PIM on January 12, 2021, in Order No. 21-015 and on January 11, 2022, in Order No. 22-007.

### Analysis

#### *Background*

On January 11, 2022, the Commission adopted revisions to the Program Implementation Manual (PIM) that delegate Commission authority to the Program Administrator (PA) to pre-certify projects, grant waivers, grant extensions, and approve amendments. As Staff laid out in its memo on January 11, a streamlined process will be used for approving project applications for pre-certification, project amendment, extensions, and rule waivers as follows:

- Staff will post a project approval recommendation to UM 1930 with a comment period of two weeks from the posting date.
- Stakeholders may file comments to the same docket in support or opposition of the recommendation.
  - If no comments in opposition are received prior to the effective date, the recommendation becomes binding and goes into effect.
  - If comments in opposition are received prior to the effective date, the recommendation will not go into effect and the matter will be referred to the Commission for a decision at the next available public meeting.
- Project Managers (PMs) may the appeal the PA's decisions to the Commission.

#### *Requested Waiver*

Because OAR Chapter 860 Division 88 specifies that the Commission will make many of the now delegated approvals, implementation of the approved PIM modifications requires a modification to the Administrative Rules. To allow PMs to begin submitting applications for the remaining Program in Q1 of 2022, Staff is seeking a 24-month waiver of OAR 860-088-0040(3)-(6), as follows:

- (3) The PA reviews applications for pre-certification in the order received to determine compliance with applicable requirements and presents applications to

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the *Commission* for pre-certification. The PA must notify the PM of any deficiencies and allow reasonable time for remedy.

(4) Once the *Commission* pre-certifies a project, the PM may execute contracts with participants for ownership or subscription interests.

(5) A project remains pre-certified for a period of 18 months, unless granted an extension by *Commission* order. If not certified within this period, the project forfeits its place in the queue of pre-certified projects. The PM must submit a new application for pre-certification to be considered for participation in the Program.

(6) The PM must seek *Commission* approval of any modification to a pre certified project relating to project elements set forth in the PIM. An amendment will not extend the 18-month period. The PIM will prescribe the form and manner of amendment submission and approval.

As discussed in the PIM modifications memo, the approximate four-week delay between a project recommendation for approval and the point at which it is pre-certified can impact project viability during inflexible points in project development timelines. The delay can also negatively impact the Program's reputation with PMs, and consume Staff and Commission time and resources in approving noncontroversial recommendations. Staff believes that mitigating these risks and impacts constitutes good cause for waiving OAR 860-088-0040(3)-(6).

By granting a 24-month rule waiver, the Program will be able to continue operating as envisioned. A waiver will also provide Staff sufficient time to ensure that the PIM modifications increase administrative efficiency as well as engage stakeholders in the rulemaking process.

#### *Impact on Program*

In Order No. 21-317, new Program rules for the remainder of the initial capacity tier will become "effective upon adoption of the revised PIM and CSP rules." Along with Order No. 22-007, which revised the PIM, the Commission's approval of this waiver would complete the requirements for implementation of the revised rules applicable to the remainder of the initial capacity tier. The revised CSP rules will become effective upon approval of this waiver by the Commission.

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Conclusion

A waiver of OAR 860-088-0040 (3)-(6) is necessary to enable implementation of the Commission approved PIM modifications. Granting the requested waiver for 24-months would allow the Program to continue to function while providing Staff adequate time to ensure the proposed PIM modifications are effective and adequate, and complete a rulemaking.

**PROPOSED COMMISSION MOTION:**

Approve Staff's recommended waiver of OAR 860-088-0040(3)-(6) for 24-months.