

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 665

In the Matter of

Rulemaking to Amend Community Solar
Program Rules in OAR 860-088-0040.

ORDER

DISPOSITION: STAFF’S RECOMMENDATION ADOPTED

This order memorializes our decision, made and effective at our May 16, 2024 Regular Public Meeting, to adopt Staff’s recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

Made, entered, and effective May 17 2024.

Megan W. Decker
Chair

Letha Tawney
Commissioner

Les Perkins
Commissioner



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.

ITEM NO. RM1

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: May 16, 2024**

REGULAR X CONSENT EFFECTIVE DATE May 16, 2024

DATE: May 6, 2024

TO: Public Utility Commission

FROM: Benedikt Springer

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

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. AR 665)
Request to open a formal rulemaking and issue a notice of proposed rulemaking to amend Community Solar Program rules in OAR 860-088-0040.

STAFF RECOMMENDATION:

Staff recommends the Commission open a formal rulemaking and issue a notice of proposed rulemaking to amend Community Solar Program (CSP or Program) rules in OAR 860-088-0040.

DISCUSSION:

Issue

Whether the Commission should open formal rulemaking and issue a notice of proposed rulemaking to amend CSP rules in OAR 860-088-0040, allowing the Commission to delegate decision-making authority regarding pre-certifications, waivers, extensions, and amendments.

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."

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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.

On January 24, 2024, in Order No. 24-018, the Commission opened a rulemaking to consider changes to the CSP rules in OAR 860-088-0040.

Analysis

Background

This rulemaking is intended to narrowly address one issue. Since January 26, 2022, under Commission Order Nos. 22-019¹ and 24-018² authority to grant non-controversial project pre-certifications, waivers, extensions, and amendments in the Program is delegated to the CSP Program Administrator (PA), as described in the Program Implementation Manual (PIM).³ This is a temporary waiver of OAR 860-088-0040(3-6), expiring on January 23, 2025.⁴ Without the waiver, Staff would have to bring any request of pre-certification, waiver, extension, or amendment to a public meeting for Commission decision. Instead, under the current process, Staff reviews the Program Administrator's (PA) 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.

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 136 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

¹ UM 1930, [Order No. 22-019](#), January 26, 2022.

² UM 1930, [Order No. 24-018](#), January 24, 2024.

³ The PIM can be found in UM 1930, [Order No. 22-007](#), January 11, 2022. See Section 4.5.4.

⁴ UM 1930, [Order No. 24-018](#), January 24, 2024. OAR 860-088-0040 can be found [here](#).

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non-controversial Public Meeting agenda items, allowing the Program to provide timely decisions to project developers.

Based on this experience, Staff believes that there is sufficient evidence to justify a permanent continuation of the delegated authority and asked the Commission to open a rulemaking to amend CSP rules in OAR 860-088-0040. The Commission adopted Staff's recommendation on January 24, 2024, in Order No. 24-018.

Explanation of Proposed Rule Change

Staff proposes to remove language requiring Commission Orders to grant pre-certifications, waivers, extensions, and amendments in the CSP from OAR 860-088(3)-(6). This will allow the PUC to adopt program rules in the PIM that permanently delegate to the PA decision-making authority regarding pre-certifications, waivers, extensions, and amendments. If the proposed rules are adopted, Staff will make changes to the PIM through its annual review process.

The proposed changes to the existing rules are shown as follows. Additions are shown with **bold** text. The complete rule can be found in Attachment A.

860 860-088-0040 Project Pre-Certification

- (3) The Program Administrator reviews applications for pre-certification in the order received to determine compliance with applicable requirements ~~and presents applications to the Commission for pre-certification~~. The Program Administrator must notify the Project Manager of any deficiencies and allow reasonable time for remedy.
- (4) Once **a project is the Commission-pre-certifieds a project**, the Project Manager 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 Project Manager must submit a new application for pre-certification to be considered for participation in the Community Solar Program.
- (6) The ~~Project Manager~~ must seek ~~Commission~~ approval of any modification to a pre-certified project relating to project elements set forth in the Program Implementation Manual. An amendment will not extend the 18-month period. The Program Implementation Manual will prescribe the form and manner of amendment submission and approval.

Stakeholder Comments

Because of minimal impact, Staff did not consult a rules advisory committee. Draft rules were posted for public comment in AR 665 and UM 1930 from April 3, 2024 to April 18,

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2024. Staff received one public comment. The Oregon Solar + Storage Industries Association (OSSIA) stated: “We support the request for permanent delegation of this authority and have no specific comments other than support.”

Conclusion

Staff believes that there is sufficient evidence to justify a permanent continuation of the delegated authority. Staff has concluded the informal phase of rulemaking, receiving only positive feedback. Staff now recommends the Commission open a formal rulemaking and issue a notice of proposed rulemaking to amend Community Solar Program rules.

PROPOSED COMMISSION MOTION:

Open a formal rulemaking and issue a notice of proposed rulemaking to amend Community Solar Program rules in OAR 860-088-0040.

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Chapter 860**Public Utility Commission****860-088-0040****Project Pre-Certification**

- (1) The Project Manager must submit an application for project pre-certification to the Program Administrator.
- (2) An application for pre-certification must include:
 - (a) Documentation of Project Manager registration;
 - (b) A detailed description of the project including location, nameplate capacity, performance characteristics, and plan for project end of useful life;
 - (c) Permitting requirements and status of compliance;
 - (d) All documentation relevant to the interconnection process as provided in OAR chapter 860, division 82;
 - (e) Participant acquisition approach;
 - (f) Proposed marketing materials;
 - (g) Proposed forms and standard contracts for ownership interests and subscriptions;
 - (h) Plan for meeting applicable low-income capacity requirements;
 - (i) Payment of any applicable application fees; and
 - (j) Other information or documentation as set forth in the Program Implementation Manual.
- (3) The Program Administrator reviews applications for pre-certification in the order received to determine compliance with applicable requirements ~~and presents applications to the Commission for pre-certification~~. The Program Administrator must notify the Project Manager of any deficiencies and allow reasonable time for remedy.
- (4) Once ~~a project is the Commission pre-certified~~ ~~a project~~, the Project Manager 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 Project Manager must submit a new application for pre-certification to be considered for participation in the Community Solar Program.
- (6) The Project Manager must seek ~~Commission~~ approval of any modification to a pre-certified project relating to project elements set forth in the Program Implementation Manual. An amendment will not extend the 18-month period. The Program Implementation Manual will prescribe the form and manner of amendment submission and approval.

Statutory/Other Authority: OL 2016, ch 28, sec. 22

Statutes/Other Implemented: OL 2016, ch. 28, sec. 22