

Hearing Officer Report

To: Energy Planning and Innovation Division, Oregon Department of Energy
From: Wendy Simons, Hearing Officer
Date: December 19, 2019
Subject: Rulemaking to create a rebate program for solar electric systems and paired solar and storage systems, implementing HB 2618 (2019)

Hearing Date and Location: December 3, 2019, 1:30 p.m., Oregon Department of Energy, 550 Capitol Street NE, Salem, OR, 97301

Title of Proposed Rule: Creates rebate program for solar electric systems and paired solar and storage systems.

Background: The proposed rules would create a new division in ODOE administrative rules to implement House Bill 2618, adopted by the 2019 Legislative Assembly and codified as Oregon Laws 2019 Chapter 655. House Bill 2618 creates a new program offering rebates for solar electric systems and paired solar and storage systems.

Program funds will be used to issue solar and solar storage system rebates, which are paid to the installing contractor of the system. The rebate amount will be passed on to the customer as savings on the net cost of the system.

Twenty-five percent of the rebate budget will be reserved for low- and moderate-income households and low-income service providers. No more than 50 percent of the rebate budget will be used for low-income service providers.

Rebates may cover up to 40 percent of the net cost for a residential system installed for a customer that is not considered low- or moderate-income, and up to 60 percent of net cost for a low-income customer or low-income service provider. For residential projects, the maximum rebate is \$5,000 for a solar electric system and \$2,500 for an energy storage system. For low-income service providers, the caps are \$30,000 for solar electric and \$15,000 for an energy storage system.

The department filed a Notice of Proposed Rulemaking and Hearing on October 30, 2019 with the Oregon Secretary of State. The notice was published in the November 2019 Oregon Bulletin.

This report summarizes the testimony and public input received during the public hearing and written comment period as required under ORS Chapter 183.

Summary of December 3, 2019 Public Hearing:

The rulemaking hearing convened at 1:33 p.m. with four members of the public attending in person and five members of the public attending by telephone. Six department staff attended in person, including the hearing officer; one department staff attended by telephone.

Attendees (telephone): Casey Dilloway, A&R Solar; Jason Johnson, Energy Solutions; Marla Harvey, Mid-Columbia Economic Development District; representative, McKinstry (name not identifiable on recording); Alexia Kelley, Spark NW; Rob Del Mar, Oregon Department of Energy

Attendees (in person): Angela Crowley-Koch, Oregon Solar Energy Industries Association; Jeni Hall, Energy Trust of Oregon; Juan Fernandez, Blue Raven Solar; John Phillips, private citizen; John Hobbs, Alan Zelenka, Robin Freeman, Cathy Connolly, Michael Williams and Wendy Simons, Oregon Department of Energy; Patrick Rowe, Department of Justice.

Summary of Comments Received at the Public Hearing:

Seven comments were received at the public hearing, some of which were the same as, or a partial summary of, written comments submitted during the public comment period. In the case of commenters who presented both in person and in writing, this report will note when comments were presented in person and address the organization's comments and the Department's responses under "Summary of Written Comments" below.

Angela Crowley-Koch, OSEIA: Presented comments in person - see written comments and responses below.

Juan Fernandez, Blue Raven Solar: Would institutions such as nonprofit residential treatment facilities and long-term care facilities for persons with disabilities and the elderly qualify? Which category would these facilities fall under? Income tax credits do not apply to them, and they are often unaware of solar incentive programs.

ODOE response: The facilities described would qualify for a rebate under the definition of "low-income service provider" if they demonstrate that they serve low- or moderate-income individuals.

Marla Harvey, Mid-Columbia Economic Development District: Presented comments in person – see written comments and responses below.

Jason Johnson, Energy Solutions: Due to limited funding for the program, only a few hundred rebates will be issued. He hopes the program will receive more funding in the future. Hopes

that the program will learn from experiences in Washington state: as program funds run low, there is a lot of uncertainty about whether rebates will be available which is hard for homeowners who want to participate.

ODOE response: Several comments recommend that the Department post frequent updates on fund balances on its website to reduce uncertainty for contractors and their customers. The Department's intention is to provide ample feedback to participants about the availability of program funds.

Casey Dilloway, A&R Solar: Presented comments in person – see written comments and responses below.

Alexia Kelley, Spark NW: Encouraged the Department to clarify that public entities who serve low-income and moderate-income persons qualify for the program, and to avoid the need for the Department to make one-off decisions. Encouraged the Department to consider the length of time needed to complete LI/MI and LISP projects. Hood River is trying to figure out which of its public entities would qualify. See written comments by Alexia Kelley and Marla Harvey below for additional detail.

ODOE response: The Department intends to add language to the draft rules allowing local government entities such as a city, county or school district which use public buildings to provide social services to low- or moderate-income individuals, or to provide emergency shelter and/or communications in disaster situations, to qualify as a "low-income service provider." The entity must provide documentation to the Department that it provides assistive or emergency services to low- or moderate-income individuals.

Jeni Hall, Energy Trust of Oregon: Presented comments in person – see written comments and responses below.

At the conclusion of the hearing, the hearing officer thanked those who participated in the rulemaking proceeding and stated that written comments would be accepted until 5 p.m. on December 3, 2019. The hearing ended at 2:16 p.m.

Summary of Written Comments:

Eight written comments were received during the public comment period.

Angela Crowley-Koch, OSEIA:

- The definition of operational date appears to require that utilities have installed the bidirectional meter and that the system be operational, while 330-240-0030(1)(o) seems to require only that the net-metering agreement be completed. OSEIA recommends that only the net-metering need be completed to avoid bottlenecks.

- Recommends that the rules ensure that contractors can subcontract out installation to electrical contractors if the general contractors do not hold an electrical contractor license themselves. OSEIA members have both business models.
- Requests that the Department include an additional path for low- and moderate-income verification, preferably self-verification.
- Requests the Department clarify the categories for projects built by and for low-income service providers that are housing developers.
- Request further clarification of the definition of “low-income service provider” with regard to local government entities serving low-income populations.
- OSEIA is concerned about placing a limit on the number of reservations for low- and moderate-income projects. These projects will likely take longer to put together and complete. Also, there may be low-income projects that include multiple homes (above the limit).
- OSEIA recommends the Department ensure that contractors only need to enter project information into the program software one time.
- Recommends that ODOE post fund balances daily, or preferably in real-time, and by category.
- Recommends that funds held for reservations are secured for the designated projects.
- Requests that ODOE include in the rules a timeline for when rebate checks will be issued; preferably within 30 days of a rebate request.
- Requests a clarification on which funds will be made available April 15, 2020.
- Requests minimum standard system requirements, similar to Energy Trust of Oregon project requirements: TSRF \geq 75 percent; at least 10 years of usable roof life remaining; equipment installed according to manufacturers’ specifications; array sized to operate within the current, voltage and power limits approved and warranted by the inverter manufacturer; owners receive manual meeting minimum requirements.
- OSEIA would like to know how ODOE will inform contractors about project eligibility requirements
- OSEIA supports the rates in the draft rules, with different rates for customers with and without access to utility incentives.

ODOE response: The Department thanks OSEIA for their extensive comments and engagement with the HB 2618 rulemaking process.

- *The Department has removed the requirement for completed projects to have either a net-metering agreement or interconnection agreement; the Department believes the requirement to receive all local structural and electrical permits is sufficient proof of completion.*

- *ODOE has revised the draft rule language to clarify that subcontractors may install or construct systems receiving a rebate, as long as they meet certification requirements.*
- *The Department plans to retain the requirement for low- or moderate-income households to demonstrate program eligibility through proof of enrollment in a program meeting the income thresholds in the rules; in the event the program receives additional resources in the future, the Department plans to revisit the issue of income verification.*
- *Regarding the issues raised regarding housing developers who qualify as low-income service providers, an affordable housing developer who is a non-profit or public entity meeting program guidelines could potentially qualify for a rebate for a system at its office facility or at an affordable housing project such as an apartment complex. A for-profit affordable housing developer could only qualify for a rebate at an eligible affordable housing project.*
- *The inclusion of local government entities in the definition of “low-income service provider” is addressed above.*
- *Regarding the issue of limits on the number of reservations for low- or moderate-income projects, the Department has amended the draft rules to allow a contractor to hold up to 20 reservations for non-LMI installations and up to 20 reservations for LMI installations at any one time.*
- *The Department’s software should require most, if not all, project information to be entered only one time.*
- *The issue of posting fund balances for the program is addressed above.*
- *Once funds are reserved for an installation, another installation will not be able to reserve or claim those funds for the length of the reservation period.*
- *Regarding issuance of rebate checks, the Department of Administrative Services will issue checks; ODOE will convey this request to DAS.*
- *The Department has clarified the language in the draft rules regarding funds made available on April 15, 2020.*
- *Regarding minimum standard system requirements, ODOE intends to add language about minimum TSRF requirements to the rule language; however, ODOE does not have the staff resources to provide verification of system designs. The Department is focusing on high standards for participating contractors in order to ensure high quality projects.*
- *All project and contractor eligibility requirements will be included in the permanent program rules and will be posted on the ODOE website.*

Alexia Kelley, Spark NW and Marla Harvey, Mid-Columbia Economic Development District: Recommend the Department establish a clearer and broader definition of low-income service provider,” in particular considering emergency services supporting low-income communities.

- Community colleges and K-5 schools often provide child care, health and counseling services to low income households.
- Low-income community members are often the most vulnerable in disasters. Working communications for emergency responders helps ensure protection of vulnerable populations in emergency situations.
- In rural communities, public buildings may serve multiple functions including as a heating, cooling or communications center for vulnerable populations in a power outage.
- One alternative could be to include in the “low-income service provider” definition any public entity serving a community with at least 25 percent of the population qualifying as low income.

ODOE response: The Department thanks Spark NW and the Mid-Columbia Economic Development District for their thoughtful engagement with the HB 2618 rulemaking process. See response above regarding public entities serving low- and moderate-income individuals.

Casey Dilloway, A&R Solar: Comments are aimed at creating a transparent and stable project that stretches budget as long as possible.

- Supports requirement for Energy Trust Allies to have four-star rating even if they also have NABCEP certification
- Recommend that Department also require the following to formalize a reservation: evidence of a customer payment or deposit; and proof of filing for, although not necessarily approval of, any required permits and/or utility interconnection agreements
- Recommend the Department track the number of cancelled or unfulfilled reservations per contractor
- Recommend the Department lower rates to \$0.15/watt for customers with access to a utility incentive and \$0.45/watt for customers without such access; this would enable the program to serve more customers and for project funds to last a longer time, which is preferable to having funds made available in phases or limiting the number of reservations per contractor
- Recommend that the reservation and extension periods both be shortened from six months to three months
- Recommend that the frequency of updates on fund balances be daily, and that it be stated in rule
- Recommend that the Department allow electronic filing for all paperwork

ODOE response: The Department thanks A&R Solar for their thoughtful comments and engagement with the HB 2618 rulemaking process.

- *The Department appreciates the intent behind adding requirements such as a customer deposit or filing for a permit in order to secure a reservation; the Department will consider adding these or similar requirements in the future if they seem necessary to ensure that a high percentage of reservations result in rebates paid.*
- *The software feature that would allow for electronic signatures are not in the Department's budget for the program at this time. Contractors will need to scan or take photos of documents and send them using PowerClerk.*
- *ODOE appreciates that lower rebate rates would stretch program funds for a longer time; however, feedback ODOE received during the stakeholder process supports the rates proposed in the draft rules, and the Department believes the proposed rates strike the right balance between competing considerations.*
- *Similarly, feedback from stakeholders has mostly supported a six-month (180 day) reservation period, but the Department will track the time it takes contractors to convert reservations into rebates and may recommend changes to the reservation period in the future.*
- *The frequency of fund balance updates is addressed above.*

Jeni Hall, Energy Trust of Oregon:

- Notes that Energy Trust has moved to five-star rating system, so ODOE can delete language in draft rules about three-star system; also, the draft rules should be narrowed to refer to solar trade allies, rather than trade allies generally.
- ODOE may want to provide an alternative process for approving contractors who have not yet been able to achieve Energy Trust rating; Energy Trust only updates the list every four months.
- Notes an inconsistency in completion requirements: one part of rules requires bidirectional meter and that the system be operational, while elsewhere the system is only required to have a completed net metering agreement. Requiring the installation of a bidirectional meter could be a bottleneck.
- Financing charges are typically rolled into total project cost; ODOE may need to provide space in its software system for contractors to itemize ineligible costs.
- The definition of a contractor in 330-240-0010(1) does not match up with the business model where "construct or install" work is subcontracted out to a licensed electrician.
- ODOE should clarify that funds available on April 15, 2020 includes only non-low- or moderate-income funds not yet claimed from the January 22, 2020 funding cycle.

ODOE response: The Department thanks Energy Trust of Oregon for their extensive comments and thoughtful engagement with the HB 2618 rulemaking process.

- *The Department has changed the language relating to Energy Trust solar trade allies and the start rating system as recommended*
- *ODOE plans to retain the requirement for contractors who are solar trade allies to have a four-star rating or higher, in order to reward strong performance by contractors. New solar trade allies will be able to participate in the future as they achieve a four-star rating.*
- *The Department has removed the requirement for completed projects to have either a net-metering agreement or interconnection agreement; the Department believes the requirement to receive all local structural and electrical permits is sufficient proof of completion.*
- *The Department will consider the suggestion to track ineligible project costs in PowerClerk as it finishes building out its system.*
- *The Department has addressed the issues of subcontractor qualifications and clarifying the availability of funds on April 15, 2020, above.*

Dan Chia, Tesla:

- Concerned about the limit of 20 reservations per contractor at a time; propose that it there is a limit that it be raised to 50, or that the Department allow a contractor five additional new reservations when one reservation has been converted into a rebate.
- Concern that the reservation limit could lead to stranded funds; an alternative solution could be to institute a cap for the first three months of the program only
- Request that the Department allow e-signatures for verification of project information

ODOE response: The Department thanks Tesla for their comments and engagement with the HB 2618 rulemaking process.

- *The feedback received during the stakeholder outreach process generally supports retaining reservation limits in the rules. However, the Department has amended the draft rules to allow a contractor to hold up to 20 reservations for non-LMI installations and up to 20 reservations for LMI installations at any one time.*
- *The software feature that would allow for electronic signatures are not in the Department's budget for the program at this time. Contractors will need to scan or take photos of documents and send them using PowerClerk.*

John Phillips, private citizen: Requests that the Department clarify the date that contractors will be able to first submit reservation applications; the draft rules are unclear on this point.

ODOE response: The Department thanks Mr. Phillips for his comments and interest in the HB 2618 rulemaking process. The Department has attempted to improve the clarity of rule language relating to key dates for the program.

Kelli Hewitt, E2 Solar, Inc.: Suggests that the Department increase the reservation limit for low income residential projects to take into account the likelihood that contractors will need to invest time in creating a successful business model for these projects and that these projects are likely to require financing and hence a larger up-front financial outlay by contractors.

ODOE response: The Department thanks E2 Solar for their comments and engagement with the HB 2618 rulemaking process. The Department heard from several stakeholders during our outreach process that contractors may encounter challenges serving low-income residential customers. The Department has amended the draft rules to allow a contractor to hold up to 20 reservations for non-LMI installations and up to 20 reservations for LMI installations at any one time. Additionally, ODOE will monitor program uptake in the low- or moderate-income residential sector closely and may propose changes to the program to increase uptake for this market segment.

James Reismiller, Abundant Solar: Recommend the Department post fund balances at least bi-weekly on its website.

ODOE response: The Department thanks Abundant Solar for their comments and engagement with the HB 2618 rulemaking process. As noted above, several comments recommend that the Department post frequent updates on fund balances on its website to reduce uncertainty for contractors and their customers. The Department's intention is to provide ample feedback to participants about the availability of program funds.