



Colorado Springs Utilities
c/o Scott Hente
PO Box 1103
Colorado Springs, CO 80947-0010

September 21, 2011

Re: Community Solar Program

Dear Mr. Hente and Board Members,

We applaud the City of Colorado Springs Utilities (“CSU”) for showing their leadership in being the first municipal utility in Colorado to offer community solar. Our company, the Clean Energy Collective (CEC), is the only active third-party developer of community solar gardens in the state of Colorado. Our sole mission is to build, maintain, insure and operate community-owned solar gardens with maximum financial and environmental benefit for utilities and their customers. CEC’s award-winning program serves hundreds of utility customers who may not have had access to solar energy before. We currently operate 1MW of community solar (2 facilities) in the Roaring Fork and Grand River Valleys in western Colorado through Holy Cross Energy. Our organization was recently selected to develop, operate and maintain 1MW of community solar for San Miguel Power Association, plans to develop up to 6MW in 2012 through PSCo and is working with franchise partners across the nation to make community solar programs a reality. We are very excited and look forward to having the opportunity to provide sound community solar solutions in CSU territory over the coming year.

While there is much to congratulate in the draft program, our on-the-ground experience in implementing these programs leads us to have several suggested refinements of CSU’s proposed guidelines. The following questions and concerns outline key issues which we feel must be adequately addressed to insure that the community solar program in CSU territory is a success for the utility, adequately protects CSU and provides the consumer-protection necessary for your community members.

1) CSU will not pay the developer for any unsubscribed generation.

We believe that the last thing CSU and community solar movement wants to see is a program setback. Therefore, we feel it is imperative that each program is vetted completely on all avenues including: legal footing, consumer protection, and long term viability. This particular program tenant has caused the CEC concern.

The proposed Interconnection Agreement would require the Facility Owner to provide electricity to CSU for free for so long as, and to the extent, the Facility Owner has not



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subscribed with CSU customers for 100 percent of the generating capacity. This provision raises legal concerns. First, under PURPA, an electric utility is required to pay for power produced by a Qualifying Facility at certain minimum rates. Payment of zero is not an option, and we think this tenant could give rise to issues with the Federal Energy Regulatory Commission (FERC) and possibly also the PUC. Second, this requirement by CSU, which is a governmental entity, would deprive the Facility Owner of the use of its property in two ways: it would deny the Facility Owner any profitable use of its solar panels for a period of time and it would take the energy produced by the panels without providing any compensation. Such a deprivation of property without just compensation would violate the United States Constitution. In both cases, the program could face legal action which would have the effect of delaying its implementation, at least, if not also completely invalidating the program. Therefore, we feel it is prudent for the success of the program that these legal issues be vetted completely or avoided altogether prior to implementing any program.

Furthermore, due to securities and tax law, as well as general project financing requirements, developers must build and interconnect systems without using money from individual consumers (putting consumer capital at risk). Therefore, under the proposed plan, project investors and financiers will view building systems with no commitment for payment for the generation as an extreme financial risk. Further, traditional financiers will not finance this type of project whatsoever with such risks of non-payment for the energy produced. Instead, the increased risk will lead to increased cost of investment capital and fewer good solutions for you and your customers as the proposed structure does not support sound business practices. These adverse outcomes could lead to various negative consequences:

1. Passing on the increased costs. Most if not all developers will have to pass the increased cost of investment on to the customers (your community members). This increased cost to the customer will make the participation in the program less attractive, and given the risk, may even render the program nonviable.
2. Force experienced and sophisticated developers out of the market leaving only inexperienced and unsophisticated developers to build projects using customer money. Thus exposing the customers to undue project construction and long-term operational risk, which in and of itself will violate several laws if not structured carefully. Worse, should a project fail, each of these customers could lose their money, hurting your community members, the economy and leaving CSU with a black eye.



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Suggestion: CSU agrees to pay the developer \$0.09/kWh for up to two years after Interconnection. During the life of the system CSU pays the developer the avoided cost of power for any unsubscribed power. This incentivizes the developer to fully subscribe the system, yet provides some financial assurance in the start up phase of the project. It also continues to provide CSU clean power at fair and competitive rates (no incremental costs) for the unsubscribed portions and avoids any legal issues associated with nonpayment.

2) Request for binding contract between CSU and the customer regarding bill credits.

The draft program language states that the “bill credit may be changed from time to time.” Customers will have no legal assurance that the utility will pay them the bill credit over the life of the system. Solar is a long term and expensive investment to customers, which deserves a contractually binding commitment from the Utility to purchase the power or at least provide some assurance that the economics do not unjustly change substantially.

Suggestion: CSU modifies the proposed sheet 40 tariff to include a minimum price equal to the average retail rate or issues an Implementation Agreement along with the Interconnection Agreement whereby CSU agrees to pay the customer for the power produced at a rate not less than the average retail rate. This will allow the tariff to be variable but will provide customer in those projects that do get built to have the required certainty that the power produced from their purchase of community solar will in fact be purchased at a fair and reasonable rate for the long term required for energy projects to make financial sense.

3) Rate escalator needed to mirror rooftop benefits.

As drafted, there does not appear to be a rate escalator that would track with general rate increases. The intent of a community solar program is to give more customers access to solar ownership and its benefits, the most prominent of which is a hedge toward future energy inflation by investing in energy production (solar). If rates increase, then an “on-site” renewable energy producer/customer receives a bill credit that tracks with those rate increases. Community solar customers deserve the same opportunity.

Suggestion: See suggestions made for item #2 above or include provisions that CSU agrees to adjust the reimbursed rate at least once each year to match retail rate escalation over the same period.



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4) Ownership of RECs produced without CSU incentives.

If CSU does not pay the customers for RECs through the incentive/rebate program then the RECs produced should be the property of the customer.

Suggestion: Clarify the same or determine a REC payment amount of \$0.03 / kWh for such scenarios.

5) Only residential and educational customers are eligible to participate in the program and minimum sizing further limits participation.

We request that CSU standardize an impartial offering between customer classes and types. Allowing only educational customers to participate but not other types of non-profits seems unnecessarily limiting and confusing to potential customers. CEC requests that the program be open to a broader segment of customers, either by opening this offering to all commercial rate customers or by choosing a more qualified selection tool, such as opening this up to all non-profit customers. Furthermore, it is our assumption that all rate payers will be affected by the community solar program (rates), yet seems inequitable that only a select few rate payers are able to participate in, and benefit from, the affecting program. Additionally, we see no added benefit to requiring a minimum 1,000 watt customer interest. This level of purchase, several thousand dollars, will prevent the program from serving low income families and community members. However, single panel increments (~240 watts), from 1 panel to 120% of the required load, will open the program to more participants at far less than \$1000 as well as allow participants the flexibility to buy what they can afford and add subsequent panels when they have the finances necessary.

Suggestion: Open the program to all rate payers, providing all members the opportunity to participate equally. Lower the minimum customer interest size from 1,000 watts to a single panel (approximately 240 watts).

6) No requirement for Developers to insure long-term system viability.

Community Solar is a new concept whose time has come, but we realize that as new concept it is still a long-term investment for the customers in any community solar program. Therefore, community solar developers and the utilities that are bringing this new and innovative concept to the public share the responsibility to the customer to insure that the systems that are being developed have a sound plan for long-term viability. Additionally, CSU's Interconnection Agreement requires continual system insurance, but the program does not currently provide a required mechanism to fund such insurance. This presents additional unnecessary risk to CSU, the city and the participating community members.



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Suggestion: In the interest of participating community members, we believe that as part of the program, CSU should require that each developer setup an O&M fund (escrow or trust on behalf of the customers) that should be funded in an amount equal to \$0.30/W at the time of customer sale. Additionally, CSU should require that a percentage of the monthly credit be allocated to the O&M fund for ongoing insurance, maintenance and operations. This amount will be deducted from each customer's credit and paid into the O&M fund. We suggest at least 5%.

7) Developer Qualifications for the timely development of sound solutions. We understand that CSU does not want to limit ideas or methods of customer participation and in no way wants to be a party to contracts between the developers and the customers. All of these are reasonable goals on the part of CSU. However, community solar is a new and innovative idea with very complex legal and tax underpinnings that require a certain level of "know how" and financial capability. Additionally, it will hurt CSU's intended success within the community solar program if contemplated projects are not built in a timely fashion or if prospectors sit on awarded applications for extended periods of time. Therefore, there should be a mechanism that helps insure that the community solar projects for CSU are developed by individuals and companies with the required "know how" and financial capability. We suggest that the easiest way for CSU accomplish this is to require a sizable demonstration of financial capability with any application. Most investors and or developers will not place money at risk without the "know how" behind it to insure it will be returned.

Suggestion: This can be accomplished by requiring that \$0.20 per watt submitted in any application be placed in escrow with CSU at the time of application (100 kW = \$20,000). Should the project be awarded, such amount will be held by CSU until interconnection at which time it will be placed into the O&M escrow fund set up by the developer (as part of the \$0.30 / W required in #6 above). If the project is not awarded, such amount shall be immediately released back to the developer.

8) Credit information responsibilities and tracking. In addition to the credit data required of the Community Solar Garden Facility on a monthly basis, we also suggest that the Facility be required to provide a reconciliation report to CSU that details the prior month and current month readings and the tie-out to the active customer interests, and any unsubscribed interests, to such values. We also recommend that a monthly customer status report be provided to CSU as a requirement, which details any changes in customer status (new customers, terminated customers and customer edits). Both of these reports will help insure



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that CSU is receiving accurate information that appropriately represents the ownership within each Facility and the correct crediting thereof.

Suggestion: Facility must provide monthly reconciliation and customer status report to CSU prior to the 10th of each month. The reconciliation report shall include: each facilities' previous and present meter readings, total kWh of facility credit and comparison to all customer kWh of credits plus maintenance. Status reports shall show any new customers, terminated customers and changes in a customer's interest (interest amount, account number, address, etc.).

Miscellaneous suggestions:

- Community solar rebate form: amend item # 3 and Terms and Conditions item #10 (30% maximum) to reference the cost of the customer's interest "before any tax incentives". With current grants and other specialty programs, tax incentives are sometimes applied at the time of tax filing or upfront at the time of payment in some instances. This will treat both scenarios, and your community members, equally.
- Community solar rebate form: amend Terms and Conditions item #3 to specify that only one incentive is available per panel in the community solar facility for the life of such facility. Meaning, if an interest receiving a rebate is sold to another customer, the second customer cannot apply for a second rebate on the same interest / panels. This is another reason to insure that the Facility Operator has robust customer tracking and accountability procedures in place upon which CSU can rely on.
- Interconnection Agreement: section 2.1 allows for the termination of the Interconnect Agreement after 20 years for any reason. This puts the facility and participating community members under considerable risk and limits the ability to borrow funds on the member's interest. The facility will have considerable life remaining at 20 years and solar is a long-term payoff, potentially compromising the member's interest. We have commonly seen interconnection agreements that are solely able to be terminated upon non-performance of the terms of the agreement. We assume this provides adequate protection for CSU while also protecting its participating members.
- Interconnection Agreement: section 4.5.1 details the interconnection voltage requirements (120 V). Any system of this size (100 kW+) will require at least a 3 phase 277/480 V service; we suggest you update the requirements accordingly.

We are very excited to be considered for participation within your community solar program and to help make it a tremendous success for CSU and your participating community members. We are willing to provide our input and assistance at any time should you want further explanation of the suggestions above or feedback on other considerations. Should you wish to



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Speak with us concerning any of these issues kindly contact the undersigned at (970) 948-6309. We appreciate your attention to these items and look forward to the program launch.

Sincerely,

Paul Spencer
President

cc: Mayor Steve Bach, Colorado Springs City Council, John Romero (CSU)



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