

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

PERMANENT ADMINISTRATIVE ORDER

DOE 6-2024

CHAPTER 330
DEPARTMENT OF ENERGY

FILED

08/23/2024 4:24 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Community Renewable Energy Grant Program Amendments

EFFECTIVE DATE: 09/16/2024

AGENCY APPROVED DATE: 08/16/2024

CONTACT: James Cogle
503-510-9726
community.grants@energy.oregon.gov

550 Capitol Street NE
First Floor
Salem, OR 97301

Filed By:
James Cogle
Rules Coordinator

RULES:

330-250-0010, 330-250-0040, 330-250-0080, 330-250-0090, 330-250-0130, 330-250-0140, 330-250-0150

AMEND: 330-250-0010

NOTICE FILED DATE: 06/26/2024

RULE SUMMARY: The amendment adds additional detail to the definition of consumer-owned utility to align it with recent legislative changes. As a result of legislative changes, the cost incurred by an applicant's partner is added in to the definition of planning cost and project cost, and so is accounted for in the cost to plan, acquire, construct and install the project. Greater detail is also provided on what role a partner may take.

CHANGES TO RULE:

330-250-0010

Definitions

For the purposes of this division, the following definitions apply:¶¶

(1) "Applicant" means a federally recognized Oregon Indian tribe, public body or consumer-owned utility that is applying for or has applied for a grant for the purpose of planning or developing a community renewable energy project.¶¶

(2) "Business site" means a site operated for business purposes that is owned by the applicant or partner or with whose owner the applicant or partner has a formal agreement to use the site.¶¶

(3) "Community renewable energy project" means one or more renewable energy systems, storage systems, microgrids or energy-related infrastructure that promote energy resilience, increase renewable energy generation or renewable energy storage capacity and provide a direct benefit to a particular community in the form of increased community energy resilience, local jobs, economic development or direct energy costs savings to families and small businesses.¶¶

(4) "Community energy resilience" means the ability of a specific community to maintain the availability of energy needed to support the provision of energy-dependent critical public services to the community following nonroutine disruptions of severe impact or duration to the state's broader energy systems.¶¶

(5) "Community energy resilience project" means a community renewable energy project that includes utilizing one or more renewable energy systems to support the energy resilience of structures or facilities that are essential to the public welfare.¶¶

(6) "Consumer-owned utility" means a municipal electricity utility, a people's utility district organized under ORS

chapter 261 that sells electricity or an electric cooperative organized under ORS chapter 62. This includes an electric cooperative organized under ORS chapter 62 that is operating in this state and formed for one or both of the following purposes:¶

(a) To generate, purchase, or obtain electric power, energy, transmission services, or ancillary services; or¶

(b) To represent one or more consumer-owned utilities in meeting rural, environmental, or renewable energy requirements and mandates.¶

(7) "Department" means the Oregon Department of Energy.¶

(8) "Director" means the director of the department.¶

(9) "Electric utility" means a consumer-owned utility or an electric company, as defined in ORS 757.600, that is engaged in the business of distributing electricity to retail electricity consumers in this state.¶

(10) "Energy" means electrical or thermal energy.¶

(11) "Energy resilience" means the ability of energy systems, from production through delivery to end-users, to withstand and restore energy delivery rapidly following nonroutine disruptions of severe impact or duration.¶

(12) "Environmental justice community" includes communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth and persons with disabilities.¶

(13) "Grantee" means an entity that has received an award of a grant for planning or developing a community renewable energy project and has executed a performance agreement with the department.¶

(14) "Good cause" for extending a timeline agreed upon in a performance agreement means that the grantee failed, or expects to fail, to meet the original deadline due to circumstances beyond the applicant's control, including a significant unforeseeable or uncontrollable circumstance such as supply chain disruptions or delays associated with utility interconnection. Good cause does not include changes to project scope.¶

(15) "Installation or construction" means the process of physical assembly of a system or supporting infrastructure at its operating location.¶

(16) "Opportunity period" means the timeframe specified in an opportunity announcement for the department to accept applications for a grant for planning or developing a community renewable energy project.¶

(17) "Partner" means an entity listed as a partner to an eligible applicant on an application for a grant award. A partner may be a federally recognized Oregon Indian tribe, public body, nonprofit entity, private business with a business site in Oregon, or owner of a rental property in Oregon. A partner may assist or take a lead role in the acquisition, installation, construction, or planning of a community renewable energy project. A partner may have a financial or ownership interest in the project. An entity whose only role is the provision of goods or services through a procurement contract are not considered a partner.¶

(18) "Planning costs" means the costs related to planning paid by an applicant, or an applicant's partner, described under Oregon Laws 2021, chapter 508, section 30.¶

(19) "Project cost" means the actual cost of the acquisition, construction and installation of a renewable energy system incurred by an applicant, or an applicant's partner, before considering utility incentives.¶

(20) "Public body" means a public body as defined in ORS 174.109.¶

(21) "Qualifying community" means a community that qualifies as an environmental justice community.¶

(22) "Renewable energy system" includes:¶

(a) A system that uses biomass, solar, geothermal, hydroelectric, wind, landfill gas, biogas or wave, tidal or ocean thermal energy technology to produce energy. ¶

(b) One or more energy storage systems paired with an existing or newly constructed system described in paragraph (a) of this section. ¶

(c) One or more vehicle charging stations paired with an existing or newly constructed system described in paragraph (a) of this section. ¶

(d) Microgrid enabling technologies paired with an existing or newly constructed system described in paragraph (a) of this section, including microgrid controllers and any other related technologies needed to electrically isolate a community energy resilience project from the electric grid so that the project is capable of operating independently from the electric grid.

Statutory/Other Authority: ORS 469.040, Oregon Laws 2021, chapter 508 (House Bill 2021)

Statutes/Other Implemented: Oregon Laws 2021, chapter 508 (House Bill 2021)

RULE SUMMARY: The amendment removes the provision preventing planning grant applications to the program being amended during the opportunity period. The amendment includes the ability for work done, or funding received, by the partner to be included in planning grant application materials.

CHANGES TO RULE:

330-250-0040

Planning/Grant: Application

- (1) A federally recognized Oregon Indian tribe, public body or consumer-owned utility may apply for a grant for planning a community renewable energy project by submitting a complete grant application. The application must meet requirements provided by applicable statutes, these rules and the applicable opportunity announcement.¶
 - (a) An applicant may partner with a federally recognized Oregon Indian tribe, public body, nonprofit entity, private business with a business site in this state or owner of rental property in this state, but a grant for an approved application will only be awarded and released to an applicant that is a federally recognized Oregon Indian tribe, public body or consumer-owned utility.¶
 - (b) An application must be drafted in consultation with electric utilities that have customers in the communities covered by a community renewable energy project that is in the application and regional stakeholders for the purpose of ensuring feasibility.¶
- (2) The application must be in the form specified in the applicable opportunity announcement and these rules.¶
 - ~~(a) An applicant must submit a complete application during the opportunity period. For the purposes of this rule, the department considers an application "submitted" when the department receives the application. The department will not process applications received outside of an opportunity period.¶~~
 - ~~(b) The department will not accept amendments to applications during the opportunity period. An applicant may withdraw an application and submit a replacement application during the opportunity period.¶~~
- (3) The application must include the following information, at a minimum:¶
 - (a) Identification of applicant and partners:¶
 - (A) The name of the applicant.¶
 - (B) The name, address, email address and telephone number of the responsible party for the applicant.¶
 - (C) The names of any partners to the application, which may include a federally recognized Oregon Indian tribe, public body, nonprofit entity, private business with a business site in this state or owner of rental property in this state.¶
 - (D) For any partner that is a private business, documentation that the partner owns a business site(s) that is located in this state.¶
 - (E) For any partner that is an owner of rental property, documentation that the partner owns rental property(ies) that is located in this state.¶
 - (b) Evidence of consultation with the following entities:¶
 - (A) Written authorization from the applicant's governing body allowing submission of the application. ¶
 - (B) Confirmation that the applicant or partner consulted with the electric utility or utilities, as applicable. Applicants are encouraged to include information from the electric utility(-ies) that may assist the department in evaluating the feasibility of the proposed project. Confirmation may include:¶
 - (i) a letter from the electric utility(-ies) serving the communities covered by a community renewable energy project; or¶
 - (ii) other evidence that the applicant or partner has consulted the electric utility(-ies). ¶
 - (C) For any partner that is a public body, written authorization from the partner's governing body allowing submission of the application.¶
 - (c) A description of the applicant's or partner's consultation with regional stakeholders and community groups, and any additional community engagement process as part of developing the planning grant application. ¶
 - (d) The following information about the proposed community renewable energy project:¶
 - (A) Location, including city and county, where the community renewable energy project in the planning grant application would be constructed or installed.¶
 - (B) A description of the community renewable energy project, including major system components, to the extent known, such as renewable energy generation, energy storage, electric vehicle charging systems, and microgrid enabling technologies. If the community renewable energy project will add capacity to or be paired with an existing renewable energy system, for example pairing energy storage and/or microgrid enabling technologies with an existing solar photovoltaic array, the applicant must include a description of the existing renewable energy system.¶

- (e) Grant amount requested and estimated budget for planning costs, including costs associated with:
 - (A) Consulting fees, including design and engineering;
 - (B) Load analysis;
 - (C) Siting, excluding property acquisition;
 - (D) Ensuring code compliance;
 - (E) Interconnection studies;
 - (F) Transmission studies; and
 - (G) Other expenditures, summarized by purpose.
- (f) If applicable, a detailed description or other documentation of the extent to which the community renewable energy project would be located in and/or will serve one or more qualifying communities.
- (g) If applicable, a description of how the community renewable energy project would support the energy resilience of structures or facilities essential to the public welfare.
- (h) A description of how the community renewable energy project would integrate with broader community energy and environmental goals.
- (i) Additional information as needed to demonstrate that the planning in the application meets the requirements under Oregon Laws 2021, chapter 508, sections 30(3) and 31(1)(c), which are reproduced below in section (4) of this rule.
- (j) A description of any other grants that the applicant or partner has been or may be awarded for the planning in the application.
- (k) Other information requested in the opportunity announcement.
- (4) In order to be considered for a planning grant, the applicant must demonstrate in the application that:
 - (a) As required under Oregon Laws 2021, chapter 508, section 30(3), the planning:
 - (A) Is for a project located in this state but outside a city with a population of 500,000 or more;
 - (B) Will be completed within six months of execution of the performance agreement or a reasonable time frame if good cause to extend the deadline is demonstrated;
 - (C) Will result in a proposal for developing a community renewable energy project; and
 - (D) Incorporates feedback from:
 - (i) Members of qualifying communities served by the community renewable energy project;
 - (ii) Businesses located in the communities served by the community renewable energy project;
 - (iii) Electric utilities that have customers in the communities served by the community renewable energy project; and
 - (iv) Other regional stakeholders.
 - (b) As required under Oregon Laws 2021, chapter 508, section 31(1)(c), that the planning proposal is for a community renewable energy project that:
 - (A) If for producing energy, but not intended to increase energy resilience:
 - (i) Will make use of an adequately available renewable energy resource to produce the energy;
 - (ii) Has a specific market for the energy; and
 - (iii) Will reasonably and efficiently connect or transmit the energy to the specific community identified in the application; or
 - (B) If for increasing energy resilience:
 - (i) Will increase the energy resilience of a specific structure or facility or collection of structures or facilities essential to the public welfare; and
 - (ii) Will provide energy resilience benefits to the specific structure or facility or to the collection of structures or facilities.
- (5) Oregon Laws 2021, chapter 508, section 30(10) directs the department to prioritize applications that meet the following criteria when awarding grant funds. Applicants are encouraged to include information detailing the extent to which the proposal in the application:
 - (a) Includes community energy resilience projects.
 - (b) Demonstrates significant prior investments in energy efficiency measures at the project location or will result in aggregate improvements to demand response capabilities.
 - (c) Is for projects located in qualifying communities across the state.
 - (d) When applicable, is for projects constructed in part or in whole by disadvantaged business enterprises, emerging small businesses or businesses that are owned by minorities, women or disabled veterans.
 - (e) Includes inclusive hiring and promotion policies for workers working on the projects.
 - (f) Incorporates equity metrics in OAR 330-250-0160 for evaluating the involvement of and leadership by people of low income, Black, Indigenous or People of Color, members of tribal communities, people with disabilities, youth, people from rural communities and people from otherwise disadvantaged communities in the siting, planning, designing or evaluating of the proposed community renewable energy projects.
 - (g) Helps the applicant achieve goals included in the applicant's natural hazard mitigation plans as approved by the

Federal Emergency Management Agency.

Statutory/Other Authority: ORS 469.040, Oregon Laws 2021, chapter 508 (House Bill 2021)

Statutes/Other Implemented: Oregon Laws 2021, chapter 508 (House Bill 2021)

RULE SUMMARY: The amendment includes a requirement for agreements entered into after August 1, 2024, that if the applicant has a partner, there must be a written agreement between partner and applicant before grant funds are released by ODOE to the applicant. The amendment also adds in incentives and grants received by a partner for the project when calculating the final release of grant funds.

CHANGES TO RULE:

330-250-0080

Planning Grant: Performance Agreement

(1) The department may offer a performance agreement for planning a community renewable energy project to an applicant only if it determines that the project in the application meets all requirements under Oregon Laws 2021, chapter 508, sections 29 through 32, these rules and the applicable opportunity announcement.¶

(2) The performance agreement shall include information provided by the applicant.¶

(3) Applicants shall have 30 calendar days from the date on which the performance agreement is provided to the applicant to accept the performance agreement. An applicant's failure to accept the performance agreement by the deadline may cause rejection of the grant application.¶

(4) If an applicant fails to enter into a performance agreement within 30 calendar days of the date on which the department provided the performance agreement to the applicant, the department may select alternative applicants, in order of their ranking, that also meet all requirements under Oregon Laws 2021, chapter 508, sections 29 through 32, these rules and the applicable opportunity announcement.¶

(5) A performance agreement for planning a community renewable energy project entered into between the State Department of Energy and an applicant must provide, at a minimum: ¶

(a) A grant in an amount not to exceed \$100,000 that covers up to 100 percent of the reasonable planning costs including, but not limited to, costs associated with: ¶

(A) Consulting fees.¶

(B) Load analysis. ¶

(C) Siting, excluding property acquisition. ¶

(D) Ensuring code compliance. ¶

(E) Interconnection studies. ¶

(F) Transmission studies. ¶

(G) Other reasonable expenditures made in the community renewable energy project planning process. ¶

(b) The department shall reduce the grant amount, if the grant combined with other incentives and grants received by the applicant or partner exceeds 100 percent of the planning costs.¶

(c) A grant may not be used to cover any fixed costs the applicant would incur in the applicant's normal course of business such as existing staff salaries or overhead costs.¶

(d) The department may recover grant moneys if a grantee fails to abide by the performance agreement or if planning is not completed within six months of execution of the performance agreement or a reasonable time frame if good cause to extend the deadline is demonstrated. ¶

(6) For a performance agreement for planning a community renewable energy project entered into on or after August 1, 2024, if the applicant has a partner, the applicant must have a written agreement with the partner prior to grant moneys being released to the applicant. The agreement must include the right for the department to audit all documentation relating to the project and may be required to include other terms or requirements as specified by the department in the performance agreement. The department may request a copy of the written agreement prior to releasing grant moneys. ¶

(7) The department may release up to 30 percent of the grant moneys provided for in a performance agreement, not to exceed 30 percent of planning costs, upon entering into a performance agreement with an applicant for planning a community renewable energy project, to be spent on eligible planning costs. The department shall release the remaining grant moneys upon completion of planning under the terms of the performance agreement and receipt of items listed under section (78).¶

(78) Upon completion of the planning for which a grant was awarded, the grantee must provide the department with the following information:¶

(a) A copy of the plan completed under the performance agreement.¶

(b) An itemized list of the incurred costs for items listed in section (5)(a)(A)-(G).¶

(89) If a grantee fails, or expects to fail, to complete the planning within the time frame specified in the performance agreement, the grantee must notify the department in writing in a timely manner. The notification

must describe the cause of the delay, measures taken by the grantee to resolve the delay, and a revised timeline for completing the planning. If the director determines that the grantee has demonstrated good cause for the delay, the department and the ~~applicant~~ grantee may agree to an extended deadline. If the director determines that the grantee has not demonstrated good cause for the delay, the department may terminate the performance agreement and recover any grant moneys released to the applicant.

Statutory/Other Authority: ORS 469.040, Oregon Laws 2021, chapter 508 (House Bill 2021)

Statutes/Other Implemented: Oregon Laws 2021, chapter 508 (House Bill 2021)

RULE SUMMARY: The amendment removes the provision preventing development grant applications to the program being amended during the opportunity period. The amendment includes the ability for stakeholder consultation work done by the partner to be included in development grant application materials.

CHANGES TO RULE:

330-250-0090

Project Development Grant: Application

(1) A federally recognized Oregon Indian tribe, public body or consumer-owned utility may apply for a grant for developing a community renewable energy project by submitting a complete grant application. The application must meet requirements provided by applicable statutes, these rules and the applicable opportunity announcement.¶

(a) An applicant may partner with a federally recognized Oregon Indian tribe, public body, nonprofit entity, private business with a business site in this state or owner of rental property in this state, but a grant for an approved application will only be awarded and released to an applicant that is a federally recognized Oregon Indian tribe, public body or consumer-owned utility.¶

(b) An application must be drafted in consultation with electric utilities that have customers in the communities covered by a community renewable energy project that is in the application and regional stakeholders for the purpose of ensuring feasibility.¶

(c) An applicant must apply for a grant before starting installation or construction of a renewable energy system included in the application. ¶

(2) The application must be in the form specified in the opportunity announcement and these rules.¶¶

~~(a) An applicant must submit a complete application during the opportunity period. For the purposes of this rule, the department considers an application "submitted" when the department receives the application. The department will not process applications received outside of an opportunity period.¶~~

~~(b) The department will not accept amendments to applications during the opportunity period. An applicant may withdraw an application and submit a replacement application during the opportunity period.¶~~

(3) The application must include the following information:¶

(a) Identification of applicant and partners:¶

(A) The name of the applicant.¶

(B) The name, address, email address and telephone number of the responsible party for the applicant.¶

(C) The names of any partners to the application, which may include a federally recognized Oregon Indian tribe, public body, nonprofit entity, private business with a business site in this state or owner of rental property in this state.¶

(D) For any partner that is a private business, documentation that the partner owns a business site(s) that is located in this state.¶

(E) For any partner that is an owner of rental property, documentation that the partner owns rental property(ies) that is located in this state.¶

(b) Evidence of consultation with the following entities:¶

(A) Written authorization from the applicant's governing body allowing submission of the application. ¶

(B) Confirmation that the applicant consulted with the electric utility or utilities, as applicable. Applicants are encouraged to include information from the electric utility(-ies) that may assist the department in evaluating the feasibility of the proposed project, including a high-level assessment of the impacts of the proposed project on existing utility infrastructure and the estimated costs for interconnection of the proposed project. Confirmation may include:¶

(i) A letter from the electric utility(-ies) serving the communities covered by a community renewable energy project; or¶

(ii) other evidence that the applicant has consulted the electric utility(-ies).¶

(C) For any partner that is a public body, written authorization from the partner's governing body allowing submission of the application.¶

(c) A description of the applicant's or partner's consultation with regional stakeholders, community groups and any additional community engagement process as part of developing the project development grant application.¶

(d) The following information about any renewable energy systems that are part of the proposed community renewable energy project:¶

(A) A detailed description of the project's systems and the systems' operation, including major system components, such as renewable energy generation, energy storage, electric vehicle charging systems, and

microgrid enabling technologies. If the community renewable energy project will add capacity to or be paired with an existing renewable energy system, for example pairing energy storage and/or microgrid enabling technologies with an existing solar photovoltaic array, the applicant must include a description of the existing renewable energy system. ¶

(B) If the project is for generating renewable energy: ¶

(i) Nameplate capacity; ¶

(ii) The projected amount of net energy the system will generate, in kWh per year; and ¶

(iii) A resource assessment demonstrating adequate resource supply for the proposed system operations. The resource assessment must describe the type of resource available, explain how the applicant evaluated the resource and describe how the system will access the resource. ¶

(C) If the project is for energy storage: ¶

(i) Technical specifications including manufacturer's information for the selected technology and all major system equipment including but not limited to batteries, inverters and controls; ¶

(ii) Nameplate power capacity in Watts; ¶

(iii) Nameplate energy capacity in kWh; ¶

(iv) Proposed operational use cases for the storage system including emergency backup power, providing grid services, demand reduction, arbitrage or any other planned uses. ¶

(D) The proposed location of the project and an assessment of the suitability of the site; ¶

(E) Technical specifications including manufacturer's information for the selected technology and all major system equipment; ¶

(F) A description of the operation of the system, including information that demonstrates the system will operate for at least five years; ¶

(G) A statement of compliance with applicable state and local regulations and that the applicant will notify the appropriate agencies and obtain required licenses and permits; and ¶

(H) If applicable, a detailed description of how the community renewable energy project will support the energy resilience of structures or facilities essential to the public welfare. ¶

(e) The following information relating to the grant amount: ¶

(A) The anticipated total project cost, which must be documented by providing a list of itemized costs, which the applicant shall designate as either eligible or non-eligible for the grant. The department shall review project costs for eligibility. ¶

(B) The amount of local, state, or federal incentives, whether anticipated or received, directly related to the renewable energy system(s). ¶

(C) The amount of grant requested by the applicant. ¶

(f) The following information relating to project planning: ¶

(A) A description of the applicant's installation or construction financing plan. ¶

(B) A project management plan that contains the following elements: ¶

(i) A detailed project schedule with major milestones during development, construction and operation, including the target construction start date and target operational date of the system. ¶

(ii) A description of how the applicant will manage installation and construction, verification of system construction and start-up, and operations and maintenance requirements. If the applicant has developed a commissioning plan, the application must describe the plan. ¶

(g) A detailed description or other documentation of the extent to which the community renewable energy project will be located in and will serve one or more qualifying communities. ¶

(h) Information on the number and types of jobs directly connected to the awarding of the grant that will be: ¶

(A) Created by the project; and ¶

(B) Sustained throughout construction, installation and operation of the project. ¶

(i) A description of how the community renewable energy project will integrate with broader community energy and environmental goals. ¶

(j) Additional information as needed to demonstrate that the community renewable energy project(s) meets the requirements under Oregon Laws 2021, chapter 508, section 30(4)(b), which is reproduced in section (4) of this rule; and ¶

(k) Any other information the director considers necessary to determine whether the project complies with these rules and Oregon Laws 2021, chapter 508, sections 29 to 32. ¶

(4) In order to be considered for a project development grant, the applicant must demonstrate in the application, as required under Oregon Laws 2021, chapter 508, section 30(4)(b), that the project(s) included in the application: ¶

(a) Is located in this state but outside a city with a population of 500,000 or more; ¶

(b) Will begin construction within 12 months of execution of the performance agreement and be completed within 36 months of execution of the performance agreement or a reasonable time frame if good cause to extend the

deadline is demonstrated; ¶

(c) Results in increased community energy resilience, local jobs, economic development or direct energy cost savings to families and small businesses; ¶

(d) Complies with applicable state and local laws and regulations and has the required licenses and permits; ¶

(e) Does not exceed 20 megawatts of nameplate capacity, if the project is for generating renewable energy; and ¶

(f) Will operate for at least five years.¶

(5) In approving applications and awarding grant moneys, the department is directed under Oregon Laws 2021, chapter 508, section 30(10) to prioritize applications that meet the following criteria when awarding grant funds. Applicants are encouraged to submit documentation describing the extent to which the proposal in the application:¶

(a) Includes community energy resilience projects. ¶

(b) Demonstrates significant prior investments in energy efficiency measures at the project location or will result in aggregate improvements to demand response capabilities. ¶

(c) Is for projects located in qualifying communities across the state. ¶

(d) When applicable, is for projects constructed in part or in whole by disadvantaged business enterprises, emerging small businesses or businesses that are owned by minorities, women or disabled veterans. ¶

(e) Includes inclusive hiring and promotion policies for workers working on the projects. ¶

(f) Incorporates equity metrics in OAR 330-250-0160 for evaluating the involvement of and leadership by people of low income, Black, Indigenous or People of Color, members of tribal communities, people with disabilities, youth, people from rural communities and people from otherwise disadvantaged communities in the siting, planning, designing or evaluating of the proposed community renewable energy projects. ¶

(g) Helps the applicant achieve goals included in the applicant's natural hazard mitigation plans as approved by the Federal Emergency Management Agency.

Statutory/Other Authority: ORS 469.040, Oregon Laws 2021, chapter 508 (House Bill 2021)

Statutes/Other Implemented: Oregon Laws 2021, chapter 508 (House Bill 2021)

RULE SUMMARY: The amendment includes a requirement for agreements entered into after August 1, 2024, that if the applicant has a partner, there must be a written agreement between partner and applicant before grant funds are released by ODOE to the applicant. The amendment adds in incentives and grants received by a partner for the project when calculating the final release of grant funds. It adds partners into the requirement to comply with the law and to allow ODOE to inspect the project or proposed location. The amendment also adds in the recent legislative addition of an additional payment step in the release of development grant funds and the requirements associated with the release of those funds. The amendment also specifies that the grant may not be used to cover fixed costs the applicant would incur in their normal course of business.

CHANGES TO RULE:

330-250-0130

Project Development Grant: Performance Agreement

- (1) The department may offer a performance agreement for developing a community renewable energy project to an applicant only if it determines that the project in the application meets all requirements under Oregon Laws 2021, chapter 508, sections 29 through 32, these rules and the applicable opportunity announcement.¶
- (2) The performance agreement shall include information provided by the applicant.¶
- (3) The following are the maximum grant amounts under a performance agreement:¶
 - (a) For a community renewable energy project that qualifies as a community energy resilience project, a grant may cover up to 100 percent of the project cost not to exceed \$1 million. The department shall reduce the grant amount, if the grant combined with other incentives and grants received by the applicant or partner exceeds 100 percent of the project costs. ¶
 - (b) For a community renewable energy project that does not qualify as a community energy resilience project, a grant may cover up to 50 percent of the project cost not to exceed \$1 million. The department shall reduce the grant amount, if the grant combined with other incentives and grants received by the applicant or partner exceeds 100 percent of the project costs. ¶
- (4) Applicants shall have 30 calendar days from the date on which the performance agreement is provided to the applicant to accept the performance agreement. An applicant's failure to accept the performance agreement by the deadline may cause rejection of the grant application.¶
- (5) If an applicant fails to enter into a performance agreement within 30 calendar days of the date on which the department provided the performance agreement to the applicant, the department may select alternative applicants, in order of their ranking, that also meet all requirements under Oregon Laws 2021, chapter 508, sections 29 through 32, these rules and the applicable opportunity announcement.¶
- (6) The performance agreement must include the following terms and may also include additional terms:¶
 - (a) The maximum amount of the grant and the entity to which funds will be disbursed.¶
 - (b) A listing of the documentation that the grantee must provide to the department prior to the disbursement of grant funds including, but not limited to, an account of renewable energy system costs.¶
 - (c) The amount by which the department may reduce the grant in response to changes in actual project cost.¶
 - (d) The maximum duration of the performance agreement.¶
 - (e) The requirement that the grantee install or construct the community renewable energy project substantially as described in the application.¶
 - (f) The requirement that installation or construction of the project begin within 12 months after the date that the performance agreement is signed by all parties. The performance agreement must include details of the work that must be completed within 12 months to meet this standard.¶
 - (g) The requirement that the grantee make periodic reports to the department on the status of the project during project development and during installation or construction of the project.¶
 - (h) The requirement that the applicant or partner obtain all applicable licenses, permits or other authorizations that are required for the project and comply with applicable federal, state and local laws and regulations.¶
 - (i) The requirement that the grantee or partner allow the department to inspect the project or its proposed location at any time during project development, installation or construction to verify compliance with the performance agreement. The department shall schedule inspections during normal working hours, following reasonable notice to the applicant.¶
 - (j) Reporting requirements during the first five years of project operation, including information on jobs, quantity of energy produced annually and other information outlined in the performance agreement.¶

- (k) A provision allowing the performance agreement to be terminated for reasons stated in the agreement and subject to terms described in the agreement. ¶
- (l) A provision allowing the department to recover grant moneys if: ¶
- (A) The grantee fails to abide by the performance agreement;¶
- (B) The project fails to begin construction within 12 months of execution of the performance agreement or a reasonable time frame if good cause to extend the deadline is demonstrated; or ¶
- (C) The project is not completed within 36 months of execution of the performance agreement or a reasonable time frame if good cause to extend the deadline is demonstrated. ¶
- (7) For a performance agreement for developing a community renewable energy project entered into on or after August 1, 2024, if the applicant has a partner, the applicant must have a written agreement with the partner prior to grant moneys being released to the applicant. The agreement must include the right for the department to conduct a physical inspection of all the project and to audit all documentation relating to the project and may be required to include other terms or requirements as specified by the department in the performance agreement. The department may request a copy of the written agreement prior to releasing grant moneys.¶
- (8) The department may release up to 30 percent of the grant moneys provided for in a performance agreement, not to exceed 30 percent of project cost, upon entering into a performance agreement with an applicant for developing a community renewable energy project, with the remaining grant moneys to be released upon project completion under the terms of the performance agreement, if upon entering the performance agreement the applicant demonstrates having if upon entering the performance agreement the applicant demonstrates that the applicant or a partner of the applicant has: ¶
- (a) Taken meaningful steps to seek site control, including but not limited to an option to lease or purchase the site or an executed letter of intent or exclusivity agreement to negotiate an option to lease or purchase the site; ¶
- (b) Filed a request for interconnection with a host utility or appropriate transmission provider; and ¶
- (c) Met any other requirements provided by the department in the performance agreement.¶
- (89) For project development grants, subject to paragraph (8), the department may release up to 30 percent of additional grant moneys provided for in a performance agreement, not to exceed 30 percent of project cost for community renewable energy projects that qualify as community energy resilience projects, and not to exceed 15 percent of project cost for community renewable energy projects that do not qualify as community energy resilience projects upon entering into a performance agreement with an applicant for developing a community renewable energy project, if the applicant demonstrates that the applicant or a partner of the applicant has:¶
- (a) Fulfilled all requirements from paragraph (8);¶
- (b) Incurred eligible costs equaling a minimum of 25% of projected grant moneys prior to a request for additional grant moneys;¶
- (c) Provided an updated project budget that details eligible and ineligible costs;¶
- (d) Started construction or installation of the renewable energy system at the project location or will start no later than 60 days after the submission of the request for grant moneys, and not later than the required construction start date. This may be demonstrated by submitting to the Department approval from the authority having jurisdiction for construction of the system to start alongside supporting documentation such as bills of lading, contractor agreements, or other relevant and timely documentation; and;¶
- (e) Met any other requirements provided by the department in the performance agreement.¶
- (10) Grant moneys not released under 330-250-0130(8) or (9) shall be released upon project completion under the terms of the performance agreement.¶
- (11) The department may require a legal sufficiency review of a performance agreement by the Oregon Department of Justice prior to execution.¶
- ~~(9)12~~ If a project fails, or expects to fail, to begin or complete construction within the time frame specified in the performance agreement, the grantee must notify the department in writing in a timely manner. The notification must describe the cause of the delay, measures taken by the grantee or partner to resolve the delay, and a revised timeline for beginning or completing the project. If the director determines that the grantee has demonstrated good cause for the delay, the department and the grantee may agree to an extended deadline. If the director determines that the grantee has not demonstrated good cause for the delay, the department may terminate the performance agreement and recover the grant moneys.¶
- ~~(10)3~~ The department may recover grant moneys if the project fails to abide by the performance agreement.¶
- (14) A grant may not be used to cover any fixed costs the applicant would incur in the applicant's normal course of business, such as existing staff salaries or overhead costs.

Statutory/Other Authority: ORS 469.040, Oregon Laws 2021, chapter 508 (House Bill 2021)

Statutes/Other Implemented: Oregon Laws 2021, chapter 508 (House Bill 2021)

AMEND: 330-250-0140

NOTICE FILED DATE: 06/26/2024

RULE SUMMARY: Clarifies that when amending a performance agreement, the requirement to demonstrate the length of time the project shall remain in operation relates to development grants.

CHANGES TO RULE:

330-250-0140

Amendments to Performance Agreement

- (1) If a grantee wishes to amend a performance agreement entered into with the department under OAR 330-250-0080 or OAR 330-250-0130 or change any aspect of a community renewable energy project, the grantee must submit a written amendment request to the director.¶
- (2) The grantee must describe the proposed change to the performance agreement or community renewable energy project and the reasons for the change.¶
- (3) The grantee must demonstrate that the project, with the proposed change(s), will continue to meet the requirements of statute, rule and the opportunity announcement; be technically feasible, will operate as represented and for a development grant, will remain in operation for at least five years. The grantee has the responsibility to provide complete technical documentation supporting any amendment request. The department may deny amendment requests submitted without such justification.¶
- (4) If an amendment request does not include all information needed to complete the review, the department may provide the grantee a written request for additional information. If the grantee does not provide the requested information to the department within 30 calendar days, the department may deny the request.¶
- (5) The department shall evaluate amendment requests to determine whether the proposed change(s) would have affected the outcome of competitive review, which may result in denial of the amendment request or pro-rating the award amount, based on energy generated, planning costs, or project cost.¶
- (6) The department shall not increase an award amount as the result of an amendment.¶
- (7) The department shall decide whether to approve the amendment request.¶
 - (a) If approved, the department shall draft an amended performance agreement, which may contain new or amended conditions and requirements. The amended performance agreement shall become effective upon signature by all parties.¶
 - (b) If denied, the department shall notify the grantee in writing. The notice will include the reasons for the denial of the amendment request.¶
 - (c) The grantee may accept the denial of the amendment request and comply with the terms of the performance agreement or the grantee may terminate the performance agreement according to its terms and return any grant funds previously disbursed.

Statutory/Other Authority: ORS 469.040, Oregon Laws 2021, chapter 508 (House Bill 2021)

Statutes/Other Implemented: Oregon Laws 2021, chapter 508 (House Bill 2021)

AMEND: 330-250-0150

NOTICE FILED DATE: 06/26/2024

RULE SUMMARY: The amendment adds in the ability for ODOE to audit all partner documentation.

CHANGES TO RULE:

330-250-0150

Compliance

The department reserves the right to conduct a physical inspection of all projects and to audit all grantee or partner documentation relating to a project for which a grantee and the department have entered into a performance agreement.

Statutory/Other Authority: ORS 469.040, Oregon Laws 2021, chapter 508 (House Bill 2021)

Statutes/Other Implemented: Oregon Laws 2021, chapter 508 (House Bill 2021)