



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Revenue

- Preproposal Statement of Inquiry was filed as WSR 12-16-007; or
- Expedited Rule Making--Proposed notice was filed as WSR ; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: WAC 458-20-273 *Renewable Energy System Cost Recovery* – This rule explains the cost-recovery incentive program for renewable energy systems.

Hearing location(s):
Capitol Plaza Building
Fourth Floor Executive Conference Room
1025 Union Avenue SE
Olympia, Washington

Copies of draft rules are available for viewing and printing on our website at [Rules Agenda](#)

Date: November 12, 2013 **Time:** 10:00 AM

Call in option can be provided upon request.

Date of intended adoption: December 13, 2013
(Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Mark E. Bohe

Address: Post Office Box 47453
Olympia, Washington 98504-7453

E-mail: markbohe@dor.wa.gov
by November 12, 2013

Assistance for persons with disabilities: Contact Mary Carol LaPalm (360) 725-7499 or Renee Cosare (360) 725-7514 no later than 10 days before the hearing date. For Hearing Impaired please contact us via the Washington Relay Operator at (800) 833-6384.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this proposal is to incorporate the policy positions taken by the Department of Revenue in issued letter rulings and notices and incorporate public comments from the public meeting. Significant changes include:

- Dividing the rule into eight parts based on subject matter categories to make it easier to read;
- Clarifying the appeal procedures;
- Clarifying whether a participant in a non-utility community solar project has to be a customer of the utility serving the area where the community system is located;
- Clarifying state taxation issues relating to this incentive program;
- Clarifying whether a system may be leased; and
- Clarifying the acceptable use of financing to purchase of the system, including third-party financing and third-party system ownership.

Reasons supporting proposal: Senate Bill 5526 (Chapter 179, Laws of 2011) amended RCW 82.16.110 through RCW 82.16.120 adding solar stirling converters manufactured in Washington to the list of qualified renewable energy devices or components and the changes above were included to update the rule as described.

Statutory authority for adoption: RCW 82.32.300 and 82.01.060

Statute being implemented: RCW 82.16.110, 82.16.120, and 82.16.130

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

DATE October 2, 2013

NAME Alan R. Lynn

SIGNATURE

TITLE Assistant Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 02, 2013
TIME: 9:19 AM

WSR 13-20-130

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

Name of proponent:
Department of Revenue

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Mark Bohe	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1574
Implementation.... Alan R. Lynn	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1599
Enforcement..... Alan R. Lynn	1025 Union Ave. SE. Ste #544, Olympia ,WA	(360) 534-1599

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ()

e-mail

No. Explain why no statement was prepared. **This rule does not impose any new performance requirement or administrative burden on any small business not required by statute.**

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ()

e-mail

No: Please explain: **This is not a significant legislative rule as defined in RCW 34.05.328.**

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AMENDATORY SECTION (Amending WSR 10-17-004, filed 8/5/10, effective 9/5/10)

WAC 458-20-273 Renewable energy system cost recovery. (1) **Introduction.** This ~~((section))~~ rule explains the renewable energy system cost recovery program provided in RCW 82.16.110 through ~~((82.16.140))~~ 82-16-130. This program authorizes ~~((a customer investment cost recovery))~~ an incentive payment ~~((incentive payment))~~ based on production to ~~((help))~~ offset the costs associated with the purchase ~~((and use))~~ of renewable energy systems located in Washington state that ~~((produce))~~ generate electricity. Qualified renewable energy systems include:

- Solar energy systems;
- Wind generators; and
- Certain types of anaerobic digesters that process manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity.

~~((a) Any individual, business, local government, or participant in a qualifying community solar project that purchases and uses or supports such a system may apply for an incentive payment from the light and power business that serves the property. Neither a state governmental entity nor a federal governmental entity can participate in the incentive payment program.~~

~~((b) Participation by a light and power business in this incentive payment program is discretionary.~~

~~((c) No incentive payment may be made for kilowatt hours generated before July 1, 2005, or after June 30, 2020. The right to earn tax credits under this section expires June 30, 2020. Credits may not be claimed after June 30, 2021.~~

~~((2) **Definitions.**))~~ (2) This rule is divided into eight different parts based on subject matter category. The eight parts to this rule are as follow:

- Part I - Definitions;

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- Part II - Participation requirements;
- Part III - Application requirements;
- Part IV - General provisions;
- Part V - Computation of the amount of the incentive payment;
- Part VI - Manufactured in Washington state;
- Part VII - Tax issues;
- Part VIII - Appeal rights.

PART I - DEFINITIONS

The definitions in this ~~((section))~~ part apply throughout this ~~((section))~~ rule unless the context clearly requires otherwise.

~~((a))~~ (101) **"Administrator"** means an owner and assignee of a community solar project defined in ~~((e)(i) and (iii))~~ (103)(a) and (c) of this ~~((subsection))~~ part, that is responsible for applying for the ~~((investment))~~ cost recovery incentive on behalf of the ~~((other))~~ system's owners and performing such administrative tasks on behalf of the ~~((other))~~ owners as may be necessary; such as receiving ~~((invest-ment))~~ the cost recovery incentive payments, and allocating and paying appropriate amounts of such payments to ~~((other))~~ the owners.

~~((b))~~ (102) **"Applicant"** has the following three meanings in this definition.

~~((i))~~ (a) For other than community solar projects, applicant means an individual, business, or local government~~((r))~~ that owns the renewable energy system that qualifies under the definition of "customer-generated electricity."

~~((ii))~~ (b) For purposes of a community solar project defined in ~~((e)(i) or (iii))~~ (103)(a) or (c) of this ~~((subsection))~~ part, the administrator, defined in ~~((a))~~ (101) of this ~~((subsection))~~ part, is the applicant.

~~((iii))~~ (c) For purposes of a utility-owned community solar project defined in ~~((e)(ii))~~ (103)(b) of this ~~((subsection))~~ part, the utility will act as the applicant for its ratepayers that provide financial support to participate in the project.

~~((e))~~ (103) **"Community solar project"** means any one of the three definitions, below:

~~((i))~~ (a) A solar energy system located in Washington state that is capable of generating up to seventy-five kilowatts of elec-

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tricity and is owned by local individuals, households, nonprofit organizations, or nonutility businesses that is placed on the property owned in fee simple by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business.

~~((i))~~ (b) A utility-owned solar energy system located in Washington state that is capable of generating up to seventy-five kilowatts of electricity and that is voluntarily funded by the utility's ratepayers where, in exchange for their financial support, the utility gives contributors a payment or credit on their utility bill for their share of the value of the electricity generated by the solar energy system.

~~((iii))~~ (c) A solar energy system located in Washington state, placed on the property owned in fee simple by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business, that is capable of generating up to seventy-five kilowatts of electricity, and that is owned by a company whose members are each eligible for ~~((an investment))~~ a cost recovery incentive payment for the same customer-generated electricity as defined in ~~((e))~~ (105) of this ~~((subsection))~~ part.

~~((A))~~ (i) The cooperating local governmental entity that owns the property on which the solar energy system is located may also be a member of the company.

~~((B))~~ (ii) A member may hold an interest in the company constituting ownership of either a portion of the solar energy system or a portion of the value of the electricity generated by the solar energy system, or both.

~~((d))~~ (104) For purposes of "**community solar project**" as defined in ~~((e))~~ (103) of this ~~((subsection))~~ part, the following definitions apply.

~~((i))~~ (a) "**Capable of generating up to seventy-five kilowatts of electricity**" means that the solar energy system will qualify if it generates seventy-five kilowatts of electricity or less. If the solar energy system or a community solar project produces more than seventy-five kilowatts the entire project is ineligible for the incentive payment program.

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~~((i))~~ (b) **"Company"** means an entity that is:

~~((A))~~ (i)(A) A limited liability company created under the laws of Washington state;

~~((II))~~ (B) A cooperative formed under chapter 23.86 RCW; or

~~((III))~~ (C) A mutual corporation or association formed under chapter 24.06 RCW; and

~~((B))~~ (ii) Not a "utility" as defined in ~~((d))~~ (v) (g) of this ~~((subsection))~~ part.

(iii) A limited partnership, trust, or other entity not listed in (b)(i)(A) through (C) of this part does not qualify as a "company."

(c) **"Local individuals, households, nonprofit organizations, or nonutility businesses"** mean two or more individuals, households, non-profit organizations, or nonutility businesses that ~~((are:~~

~~• Located))~~ reside on a property or have a business located on a property within the service area of the light and power business where the renewable energy system is located~~((+and~~

~~• Residents of Washington state))~~.

~~((iv))~~ (d) **"Nonprofit organization"** means an organization exempt from taxation under 26 U.S.C. Sec. 501 (c)(3) of the federal Internal Revenue Code of 1986, as amended, as of January 1, 2009.

~~((v))~~ (e) **"Owned in fee simple"** means ~~((an interest in land that is))~~ the broadest property interest allowed by law.

~~((vi))~~ (f) **"Solar energy system"** includes both a module-based solar energy system and a stirling converter-based solar energy system.

(g) **"Utility"** means a light and power business, an electric cooperative, or a mutual corporation that provides electricity service.

~~((e))~~ (105) **"Customer-generated electricity"** means a community solar project or the alternating current electricity that is generated from a renewable energy system located in Washington state, that is installed on an individual's, ~~((businesses'))~~ business', or local government's ~~((or utility's real))~~ property and the ~~((real))~~ property involved is served by a light and power business.

~~((i))~~ (a) Except for utility-owned community solar systems, a system located on a leasehold interest does not qualify under this definition. ~~((For a community solar project requiring the cooperation~~

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~~of a local governmental entity, the cooperating local governmental entity must own in fee simple the real property on which the solar energy system is located to qualify as "customer-generated electricity." A leasehold interest held by a cooperating local governmental entity will not qualify. However, for nonutility community solar projects, a solar energy system located on land owned in fee simple by a cooperating local governmental entity that is leased to local individuals, households, nonprofit organizations, nonutility businesses or companies will qualify as "customer-generated electricity."~~

~~(ii))~~ (b) Except for a utility-owned solar energy system that is voluntarily funded by the utility's ratepayers, "customer-generated electricity" does not include electricity generated by a light and power business with greater than one thousand megawatt hours of annual sales or a gas distribution business.

~~((f))~~ (106) **"Local governmental entity"** means any unit of local government of Washington state ~~((including))~~.

(a) What is an example of a local governmental entity? A local governmental entity includes, but is not limited to:

- Counties;
- Cities;
- Towns;
- Municipal corporations;
- Quasi-municipal corporations;
- Special purpose districts;
- Public stadium authorities; or
- Public school districts.

(b) What is not a local governmental entity? "Local governmental entity" does not include a state ~~((or))~~, federal, or tribal governmental entity, such as a:

- State park;
- State-owned building;
- State-owned university;
- State-owned college;
- State-owned community college; ~~((and))~~
- Federal-owned building; and
- Tribal-owned building.

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((g)) (107) **"Light and power business"** means the business of operating a plant or system of generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

((h)) (108) **"Gas distribution business"** means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

((i)) (109) **"Photovoltaic cell"** means a device that converts light directly into electricity without moving parts.

((j)) (110) **"Renewable energy system"** means:

- A solar energy system used in the generation of electricity;
- An anaerobic digester that processes livestock manure into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity; or
- A wind generator used for producing electricity.

((k)) (111) **"Solar energy system"** means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

((l)) (112) **"Solar inverter"** means the device used to convert direct current to alternating current in a (~~photovoltaic cell~~) solar energy system.

((m)) (113) **"Solar module"** means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

((3)) (114) **"Stirling converter"** means a device that produces electricity by converting heat from a solar source using a stirling engine.

PART II - PARTICIPATION REQUIREMENTS

(201) Participation by a light and power business in this incentive payment program is discretionary.

(202) Any individual, business, local government, or participant in a qualifying community solar project that owns such a system or is a participant of a community solar project that owns such a system may participate in this incentive payment program.

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(203) A state governmental entity, a federal governmental entity, or a tribal governmental entity cannot participate in the incentive payment program.

(204) Who may receive an incentive payment? (~~Any of the following may receive an incentive payment:~~

~~(a) An individual, business, or local governmental entity, not in a light and power business or in a gas distribution business owning a qualifying renewable energy system; or~~

~~(b) A participant in a community solar project with an ownership interest in the:~~

- ~~• Solar energy system;~~
- ~~• Company that owns the solar energy system; or~~
- ~~• Value of the electricity produced by the solar energy system.~~

~~(4))~~ Incentive payments may be received by:

- Customers of a light and power business that own a renewable energy system that produces "customer-generated electricity"; or
- Participants in a community solar project that owns a renewable energy system that produces "customer-generated electricity."

(205) Must ((you)) the owner of the property on which the renewable energy system is located be a customer of ((a)) the light and power business ((~~to be a recipient of an incentive payment~~))? Yes, only ((owners of qualifying)) renewable energy systems that produce "customer-generated electricity" located on interconnected properties ((belonging to)) owned by customers of ((a)) the light and power business serving the area in which the system is located are eligible ((to receive)) for participation in this incentive ((payments. This is because the)) program.

(206) Electricity generated by the renewable energy system must be able to be transformed or transmitted for entry into or operated in parallel with electricity transmission and distribution systems.

(207) In the case of community solar projects, the ((land)) property on which the renewable energy system is located ((may be)) is either:

- Owned in fee simple by a hosting local governmental entity; or
- Owned ((in fee simple)) or leased by ((a)) the utility ((and they will be the customer of the light and power business.

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~~(5))~~ that owns the system.

(208) The host of a community solar project must be:

• A customer of the light and power business serving the area in which the system is located; or

• The utility that owns the system located in its service area.

(209) The participants in a nonutility community solar project are not required to be customers of the light and power business serving the area in which the system is located but the local governmental entity hosting the community solar system must be a customer of that light and power business.

(210) Utility-owned community solar projects are voluntarily funded by the utility's ratepayers and only the utility's ratepayers may be participants.

(211) Eligible participants of a nonutility community solar project described under RCW 82.16.110 (2)(a)(i) are limited to local individuals, households, nonprofit organizations, or nonutility businesses. Therefore, to qualify:

• As "local" the participant must reside or have a business located on a property served by the same light and power business serving the area in which the system is located; and

• If two or more individuals are living together in one household with one customer account with the light and power business these individuals are in one household and though they may each individually participate in this program these same individuals living together in the one household will only receive one five thousand dollar annual limit.

(212) Eligible participants of a nonutility community solar project that are business entities, such as a limited liability company or a corporation, will be analyzed for participant eligibility and the five thousand dollar annual limit by looking through the business entity to the members or stockholders that own the business entity.

PART III - APPLICATION REQUIREMENTS

(301) To whom do I apply? An applicant must apply to the light and power business serving the (~~real~~) property on which the renewable energy system is located. The applicant applies for an incentive payment based on customer-generated electricity during each fiscal

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year beginning on July 1st and ending on June 30th. (~~Participation by a light and power business in the cost recovery incentive program is voluntary. An applicant should first contact their light and power business to verify that it is participating~~

~~(6))~~ (302) **Do I need ((a)) an approved certification before applying to the light and power business?** Before submitting the first application to the light and power business for the incentive payment allowed under this section, the applicant must submit to the department of revenue a certification (~~(request)~~) in a form and manner prescribed by the department of revenue.

(a) There are two forms for this certification, found at the department of revenue's web site at (~~(www.dor.wa.gov)~~) <http://dor.wa.gov>, entitled:

- Community Solar Project Renewable Energy System Cost Recovery Certification; and
- Renewable Energy System Cost Recovery Certification.

(b) The department of revenue will evaluate these certifications (~~(requests with)~~) and may request assistance from the climate and rural energy development center (~~(at)~~) (also known as the Washington State University extension energy program) concerning technical equipment requirements.

(c) In the case of community solar projects:

- Only one certification can be obtained for each system;
- Applicants may rely upon a prior issued certification of the system;
- The administrator must apply for approval of the certification if it is a community solar project placed on property owned by a cooperating local government and owned by individuals, households, non-profit organizations, or nonutility businesses;
- The company acting as an administrator must apply for approval of the certification if it is a community solar project placed on property owned by a cooperating local government and owned by a company; and
- The utility acting as administrator must apply for approval of the certification if it is a utility-owned community solar project on property owned or leased by the utility.

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(d) **Property purchased with existing system.** Except for community solar projects, if an applicant has just purchased a property with a certified renewable energy system, the applicant must ~~((reapply for))~~ submit a new certification ~~((as the new owner with))~~ to the department of revenue.

(e) **Additions or changes to an existing certified system.** If the owner of an existing certified system adds to or makes other changes to the system, then the owner must apply to the department of revenue for approval of a new certification.

(f) **Requirements of the certification ~~((request))~~.** ~~((This))~~ The certification ~~((request))~~ must contain, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system:

(A) The applicant must be the owner of the renewable energy system, the administrator of a community solar project, or the company that owns the system in a company-owned community solar project.

(B) If the applicant is an administrator of a community solar project, the certification ~~((request))~~ must also include the current name and address of each of the participants in the community solar project.

~~((B))~~ (C) If the applicant is a company that owns a community solar project that is acting as an administrator, the certification ~~((request))~~ must also include the current name and address of each member of the company that is a participant in the community solar project.

(ii) The applicant's tax registration number;

(iii) Confirmation that the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) ~~((Any solar inverters and solar modules manufactured in Washington state;~~

~~(B))~~ A wind generator powered by blades manufactured in Washington state;

~~((C))~~ (B) A wind generator with an inverter manufactured in Washington state;

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~~((D))~~ (C) A solar inverter manufactured in Washington state;
~~((E))~~ (D) A solar module manufactured in Washington state;
(E) A solar stirling converter manufactured in Washington state;
(F) Solar or wind equipment manufactured outside of Washington state; or

(G) An anaerobic digester which processes manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity.

(iv) Confirmation that the electricity can be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems;

(v) The date that the local jurisdiction issued its final electrical permit on the renewable energy system; and

(vi) A statement that the applicant understands that this information is true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

~~((f))~~ (g) **Response from the department of revenue.** Within thirty days of receipt of the certification the department of revenue must notify the applicant whether the renewable energy system qualifies for an incentive payment under this section. This notification may be delivered ~~((by))~~ either by mail or electronically as provided in RCW 82.32.135.

(i) The department of revenue may consult with the climate and rural energy development center ~~((to determine eligibility for the incentive))~~ (also known as the Washington State University extension energy program) for technical advice regarding the renewable energy system and its components.

(ii) System certifications and the information contained therein are subject to disclosure under RCW 82.32.330 (3)~~((m))~~(1).

~~((7))~~ (h) What happens if the department of revenue notifies me that the original certification does not qualify for an incentive payment or provides me notice of intent to revoke approval of a certification? The department of revenue may deny or revoke the approval of a system's certification and you may appeal this final determination. The appeal provisions under Part VIII of this rule apply here.

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(303) **How often do I apply to the light and power business?** You must annually apply by August 1st of each year to the light and power business serving the location of your renewable energy system. The incentive payment applied for covers the production of electricity by the system between July 1st and June 30th of each prior fiscal year.

~~((+8+))~~ (304) **What about the application to the light and power business?** The department of revenue has two application forms for use by customers when applying for the incentive payment with their light and power business. These applications (~~((are))~~) found at the department of revenue's web site at www.dor.wa.gov, are entitled:

- Community Solar Project Renewable Energy System Cost Recovery Annual Incentive Payment Application; and
- Renewable Energy System Cost Recovery Annual Incentive Payment Application.

However, individual light and power businesses may create their own forms or use the department of revenue's form in conjunction with their additional addendums.

(a) Information required on the application to the light and power business. The application must include, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system:

(A) If the applicant is an administrator of a community solar project, the application must also include the current name and address of each of the participants in the community solar project.

(B) If the applicant is a company that owns a community solar project that is acting as an administrator, the application must also include the current name and address of each member of the company that is a participant in the community solar project.

(C) If the applicant is the utility involved with a utility-owned community solar project that is acting as an administrator, the application must also include the current name and address of each customer-ratepayer participating in the community solar project.

(ii) The applicant's tax registration number;

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(iii) The date of the notification from the department of revenue stating that the renewable energy system is eligible for the incentives under this section;

(iv) A statement of the amount of gross kilowatt-hours generated by the renewable energy system in the prior fiscal year; and

(v) A statement that the applicant understands that this information is provided to the department of revenue in determining whether the light and power business correctly calculates its credit allowed for customer incentive payments and that the statements are true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

(b) **Light and power business response.** Within sixty days of receipt of the incentive payment application the light and power business serving the location of the system must notify the applicant in writing whether the incentive payment will be authorized or denied.

(i) The light and power business may consult with the climate and rural energy development center (also known as the Washington State University extension energy program) to ~~((determine eligibility for the))~~ receive technical advice regarding this incentive payment program.

(ii) Incentive payment applications and the information contained therein are subject to disclosure under RCW 82.32.330 (3)~~((+m+))~~ (1).

(c) **Light and power business may verify initial certification of system.** Your light and power business has the authority to verify and make separate determinations on the matters covered in your earlier certification with the department of revenue. If your light and power business finds the certification process made an error in determining whether your renewable energy system's generated electricity can be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems, then the determination by the light and power business ~~((will be controlling and it has the authority to decertify your system))~~ may result in the department of revenue issuing a notice of intent to revoke approval of certification regarding the system. The appeal provisions under Part VIII of this rule apply here.

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~~((9))~~ (305) What are the ~~((possible))~~ procedures an applicant and their light and power business ~~((may))~~ follow in setting up incentive payments? This ~~((subsection))~~ section first discusses ~~((recommended))~~ procedures an applicant ~~((should))~~ follows when requesting that the light and power businesses set up an applicant's incentive payments and ~~((second))~~ then discusses the ~~((possible))~~ procedures the light and power business ~~((may))~~ follows.

(a) Steps an applicant ~~((may))~~ must take if the light and power business is participating in the incentive program include, but are not limited to:

~~((• Contacting their light and power business to ask whether it is participating and what application procedures apply;))~~

- Submitting an application to the light and power business that serves ~~((their))~~ the property where the renewable energy system is located;

- Submitting to the light and power business proof that the applicant's renewable energy system ~~((is certified))~~ certification was approved by the department of revenue for the incentive payment program;

- Submitting to the light and power business a copy of the approved certification and letter from the department of revenue; and

- Signing an agreement that the light and power business will provide to the applicant.

(b) Steps the applicant's local light and power business ~~((may))~~ must take if it is participating in the incentive program include, but are not limited to:

~~((• Sending a utility serviceman to inspect the system;))~~

- Installing an electric production meter, if one meeting its specifications is not already installed, since a production-grade meter is required to properly measure the system's gross production;

- Reading the applicant's production meter at least annually;

- Processing the annual incentive payment;

- Notifying the applicant within sixty days whether the incentive payment is authorized or denied;

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- Calculating annual (~~(production)~~) incentive payments based on the meter reading or readings made prior to the accounting date of July 1st of the system's annual gross production; and

- (~~(Sending)~~) Paying the applicant's incentive payment on or before December 15th.

The light and power business may pay the applicant's incentive payment by either sending a check (~~(on)~~) or (~~(before December 15th;~~ and

- ~~• Alternatively, the light and power business may credit)~~ crediting the applicant's account (~~(on or before December 15th)~~). However, if the applicant is a net generator, that applicant must be paid by check. (~~(Net generator means the measured difference, in kilowatt-hours between the electricity supplied to a power and light business' customer and the electricity generated by the same customer from the renewable energy system and delivered to the light and power business at the same point of interconnection that is in excess of the electricity used at the same location.~~

~~(10))~~ (306) **How may the procedures differ** (~~(with my light and power business)~~) **when dealing with a utility-owned solar energy system?** A utility-owned community solar project is voluntarily funded by ratepayers of the specific (~~(light and power business)~~) utility offering the program. A utility for purposes of this incentive program is a specific type of light and power business, electric cooperative, or mutual corporation that provides retail electric service to customers. A light and power business, electric cooperative, or mutual corporation that generates electricity but only sells power to wholesale customers does not qualify as a utility for the incentive program. Only customer-ratepayers of that utility may participate in the program. In exchange for a customer's support, the utility gives contributors a payment or credit on their utility bills for the value of the electricity produced by the project. It is important that the customer-ratepayers realize when contributing to this program, they are in effect investing in the utility to receive a stated "value." This value is defined in the agreement between the customer-ratepayers and the utility and this agreement is a contract. Customer-ratepayers need to

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protect their interest in this investment the same as a person would in any other investment.

~~((11))~~ (307) **What is the formal agreement between the applicant and the light and power business?** The formal agreement between the applicant and the light and power business serving the property governs the relationship between the parties. This document may:

- Contain the necessary safety requirements and interconnection standards;
- Allow the light and power business the contractual right to review the applicant's substantiation documents for four years, upon five working days' notice;
- Allow the light and power business the contractual right to assess against the applicant, with interest, for any overpayment of incentive payments;
- Delineate any extra metering costs for an electric production meter to be installed on the applicant's property;
- Contain a statement allowing the department of revenue to send proof of the applicant's system certification electronically to applicant's light and power business, which will include the applicant's department of revenue taxpayer's identification number;
- Contain other information required by the light and power business to effectuate and properly process the applicant's incentive payment; and
- In the case of a utility-owned solar energy system, contain a detailed description of the "value" the customer-ratepayer will receive in consideration of the financial support given to the utility.

PART IV - GENERAL PROVISIONS

~~((12))~~ (401) **Is there a time limitation of when incentive payment may be made for a system's generated electricity?** Yes, incentive payments may only be made for kilowatt-hours generated on or after July 1, 2005, through June 30, 2020. The right to earn tax credits under this section expires June 30, 2020. Credits may not be claimed after June 30, 2021.

(402) **Who must own the property on which the renewable energy system is located to qualify for incentive payments?** The answer de-

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pends on whether the renewable energy system is singly owned or community owned.

(a) Single-owned systems, meaning systems owned by individuals, businesses, and a local governmental entity that is not in the light and power business, must be located on property owned by the same person that owns or leases the system under a long-term lease of at least ten years duration with an option to purchase at the end of the lease term for a set fair market value. Thus, single-owned systems must have a unity of ownership between the owned property on which the system is located and the owned or long-term leased system.

(b) There are three types of community solar projects that have different property ownership requirements.

- The standard community solar project described by RCW 82.16.110 (2)(a)(i) and the company-owned community solar project described in RCW 82.16.110 (2)(a)(iii) require that the hosting local governmental entity own the property on which the system is located in fee simple. A solar energy system located on property owned in fee simple by a co-operating local governmental entity that is either owned or under a long-term lease of at least ten years duration with an option to purchase at the end of the lease term for a set fair market value to local individuals, households, nonprofit organizations, nonutility businesses or companies will qualify for the incentive program.

- The utility-owned community solar project described in RCW 82.16.110 (2)(a)(ii) requires that the utility either own or lease the property on which the system is located.

(403) **Must the renewable energy system be owned or can it be leased?** The renewable energy system must be either owned or subject to a long-term lease of ten years or more by the ((individual, business, local governmental entity, utility in a utility-owned renewable energy system, local individuals, households, nonprofit organizations or nonutility business in a community-solar project, or company in a company-owned system)) customer receiving the incentive payments from a single-owned system's generated electricity or by the community solar project's company, utility owner, or local owners receiving the incentive payments from a community-owned system's generated electricity. Leasing a renewable energy system ((does not constitute ownership))

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requires that the property's owner leasehold interest in the singly owned system and the community-system owner's leasehold interest in the community solar project is ten years or more in duration with an option to purchase at the end of the lease term for a set fair market value.

(404) **May the purchase of the renewable energy system be financed?** Yes, the purchase of a renewable energy system through financing that uses standard practices of the lending industry will not disqualify the owner from participation in this incentive program. Further, a third party may finance and own the renewable energy system provided the property owner's leasehold interest in the singly owned system and the community-system owner's leasehold interest in the community solar project is ten years or more in duration with an option to purchase at the end of the lease term for a set fair market value.

((+13+)) (405) **Must you keep records regarding your incentive payments?** Applicants receiving incentive payments must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received.

(a) **Examination of records.** Such records must be open for examination at any time upon notice by the light and power business that made the payment or by the department of revenue.

(b) **Overpayment.** If upon examination of any records or from other information obtained by the light and power business or department of revenue it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the light and power business may assess against the person the amount found to have been paid in excess of the correct amount of the incentive payment. Interest will be added to that amount in the manner that the department of revenue assesses interest upon delinquent tax under RCW 82.32.050.

(c) **Underpayment.** If it appears that the amount of incentive paid is less than the correct amount of incentive payable, the light and power business may authorize additional payment.

((+14+)) (406) **Do condominiums or community solar projects need more than one meter?** No, the requirement of measuring the kilowatt hours of customer-generated electricity for computing the incentive payments only requires one meter for the renewable energy system, not

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one meter for each owner, in the case of a condominium, or each applicant, in the case of a community solar project. Thus for example, in the case of a renewable energy system on a condominium with multiple owners, while such a system would not qualify as a community solar project, only one meter is needed to measure the system's gross generation and then each owner's share can be calculated by using each owner's percentage of ownership in the condominium building on which the system is located. With regard to a community solar project, only one meter is needed to measure the system's gross generation and each applicant's share in the project can be calculated by each applicant's interest in the project.

(407) When community solar projects are located on the same property, how do you determine whether their systems are one combined system or separate systems for determining the seventy-five kilowatts limitation? In determining whether a community solar project's system is capable of generating more than seventy-five kilowatts of electricity when more than one community solar project is located on one property, the department of revenue will treat each project's system as separate from the other projects if there are:

- Separate meters;
- Separate inverters;
- Separate certification documents submitted to the department of revenue; and
- Separate owners in each community solar project, except for utility-owned systems that are voluntarily funded by the utility's ratepayers, which must have a majority of different ratepayers funding each system.

(408) Are the renewable energy system's environmental attributes transferred? The environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the investment cost recovery incentive. RCW 82.16.120(8). An environmental attribute is often designated as a renewable energy credit and gives the holder of the credit the benefits from the generation of the new power from a renewable source. In the case of utility-owned community solar system, the util-

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ity involved owns the environmental attributes of the renewable energy system.

PART V - COMPUTATION OF THE AMOUNT OF THE INCENTIVE PAYMENT

(501) **How is an incentive payment computed?** The computation for the incentive payment involves a base rate that is multiplied by an economic development factor determined by the amount of the system's manufacture in Washington state to determine the incentive payment rate. The incentive payment rate is then multiplied by the system's gross kilowatt-hours generated to determine the incentive payment.

(a) **Determining the base rate.** The first step in computing the incentive payment is to determine the correct base rate to apply, specifically:

- Fifteen cents per economic development kilowatt-hour; or
- Thirty cents per economic development kilowatt-hour for community solar projects.

If requests for incentive payments exceed the amount of funds available for credit to the participating light and power business, the incentive payments must be reduced proportionately.

(b) **Economic development factors.** For the purposes of this computation, the base rate paid for the investment cost recovery incentive may be multiplied by the following economic development factors:

(i) For customer-generated electricity produced using solar modules or stirling converters manufactured in Washington state, two and four-tenths;

(ii) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;

(iii) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment, or using a wind generator equipped with blades manufactured in Washington state, one; and

(iv) For all other customer-generated electricity produced by wind, eight-tenths.

(c) **What if a ((solar)) renewable energy system has both a module and inverter manufactured in Washington state, both a stirling converter and inverter manufactured in Washington state, or ((a wind generator has)) both blades and inverter manufactured in Washington**

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state? In these (~~two~~) three situations the above-described economic development factors are added together. For example, if your system is solar and has both solar modules and an inverter manufactured in Washington state, you would compute your incentive payment by using the factor three and six-tenths (3.6) (computed 2.4 plus 1.2). Therefore, you would multiply either the fifteen cent or thirty cent base rate by three and six-tenths (3.6) to get your incentive payment rate and then multiple this by the gross kilowatt-hours generated to get the incentive payment amount. (~~Further~~) The incentive payment is calculated the same in a situation involving a solar stirling converter and inverter, resulting in a combined factor of three and six-tenths (3.6) (computed 2.4 plus 1.2). However, if your wind generator has both blades and an inverter manufactured in Washington state you would multiply the fifteen cent(~~s~~) base rate by two and two-tenths (2.2) (computed 1.0 plus 1.2) to (~~get~~) calculate your incentive payment rate and then multiply this by the kilowatt-hours generated (~~to get~~) for the incentive payment amount.

(d) **Tables for use in computation.** The following tables describe the computation of the incentive payment using the appropriate base rate and then multiplying it by the applicable economic development factors to determine the incentive payment rate. The incentive payment rate is then multiplied by the gross kilowatt-hours generated. The actual incentive payment you receive must be computed using your renewable energy system's actual measured gross electric kilowatt-hours generated.

Annual Incentive Payment Calculation Table for Noncommunity Projects

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Customer-generated power applicable factors	Base rate (0.15) multiplied by applicable factor equals incentive payment rate	Gross kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
Solar modules <u>or solar stirring converters</u> manufactured in Washington state Factor: 2.4 (two and four-tenths)	\$0.36		
Solar or wind generating equipment with an inverter manufactured in Washington state Factor: 1.2 (one and two-tenths)	\$0.18		
Anaerobic digester or other solar equipment or wind generator equipped with blades manufactured in Washington state Factor: 1.0 (one)	\$0.15		
All other electricity produced by wind Factor: 0.8 (eight-tenths)	\$0.12		
Both solar modules and inverters manufactured in Washington state. Factor: (2.4 + 1.2) = 3.6	\$0.54		
Wind generator equipment with both blades and inverter manufactured in Washington state. Factor: (1.0 + 1.2) = 2.2	\$0.33		

Annual Incentive Payment Calculation Table for Community Solar Projects

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Customer-generated power applicable factors	Base rate (0.30) multiplied by applicable factor equals incentive payment rate	Gross kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
Solar modules <u>or solar stirring converters</u> manufactured in Washington state Factor: 2.4 (two and four-tenths)	\$0.72		
Solar equipment with an inverter manufactured in Washington state Factor: 1.2 (one and two-tenths)	\$0.36		
Other solar equipment Factor: 1.0 (one)	\$0.30		
Both solar modules and inverters manufactured in Washington state. Factor: (2.4 + 1.2) = 3.6	\$1.08		

(e) **Examples to illustrate how incentive payments are calculated.**

Assume for the following ten examples that the renewable energy system involved generates 2,500 kilowatt-hours.

(i) If a noncommunity solar energy system has a module or solar stirring converter manufactured in Washington state (~~and~~) combined with an inverter manufactured out-of-state the computation would be as follows: $(0.15 \times 2.4) \times 2,500 = \900.00 .

(ii) If a noncommunity solar energy system has an out-of-state module (~~and~~) or solar stirring converter combined with an inverter manufactured in Washington state the computation would be as follows: $(0.15 \times 1.2) \times 2,500 = \450.00 .

(iii) If a noncommunity solar energy system has (~~both~~) modules (~~and~~) or solar stirring converters manufactured in Washington state combined with an inverter manufactured in Washington state the computation would be as follows: $(0.15 \times (2.4 + 1.2)) \times 2,500 = \$1,350.00$.

(iv) If wind generator equipment has out-of-state blades (~~and~~) combined with an inverter manufactured in Washington state the computation would be as follows: $(0.15 \times 1.2) \times 2,500 = \450.00 .

(v) If wind generator equipment has blades manufactured in Washington state (~~and~~) combined with an out-of-state inverter the computation would be as follows: $(0.15 \times 1.0) \times 2,500 = \375.00 .

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(vi) If wind generator equipment has both blades and an inverter manufactured in Washington state the computation would be as follows: $(0.15 \times (1.0 + 1.2)) \times 2,500 = \825.00 .

(vii) If wind generator equipment has both out-of-state blades and an out-of-state inverter the computation would be as follows: $(0.15 \times 0.8) \times 2,500 = \300.00 .

(viii) If a community solar energy system has ~~((a))~~ modules or a solar stirling converter manufactured in Washington state ~~((and))~~ combined with an out-of-state inverter the computation would be as follows: $(0.30 \times 2.4) \times 2,500 = \$1,800.00$.

(ix) If a community solar energy system has ~~((an))~~ out-of-state modules ~~((and))~~ or solar stirling converters combined with an inverter manufactured in Washington state the computation would be as follows: $(0.30 \times 1.2) \times 2,500 = \900.00 .

(x) If a community solar energy system has both modules ~~((and))~~ or solar stirling converters manufactured in Washington state combined with an inverter manufactured in Washington state the computation would be as follows: $(0.30 \times (2.4 + 1.2)) \times 2,500 = \$2,700.00$.

~~((15))~~ (502) Is there an annual limit on an incentive payment to one payee? There is an annual limit on an incentive payment.

(a) Applicant limit. No individual, household, business, or local governmental entity is eligible for incentive payments of more than five thousand dollars per year. If two or more individuals are living together in one household with one customer account with the light and power business these individuals are in one household and though they may each individually participate in this program these same individuals living together in one household will only receive one five thousand dollar annual limit.

(b) Community solar projects.

• Each owner or member of a company in a community solar project located on a cooperating local government's property is eligible for an incentive payment, not to exceed five thousand dollars per year, based on their ownership share.

• Each ratepayer in a utility-owned community solar project is eligible for an incentive payment, not to exceed five thousand dollars

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per year, in proportion to their contribution resulting in their share of the value of electricity generated.

- Eligible participants of a community solar project that are business entities, such as a limited liability company or a corporation, will be analyzed for purposes of the five thousand dollar annual limit by looking through the business entity to the members or stockholders that own the business entity and combining the owners' interests from all eligible systems under this incentive program when determining whether any of the individual owners exceed their five thousand dollar annual limit.

PART VI - MANUFACTURED IN WASHINGTON STATE

(601) What constitutes manufactured in Washington? ((The statute authorizing this incentive payment program defines a "solar module" to mean the smallest nondivisible self contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output. Thus, for a module to qualify as manufactured in Washington state, the manufactured module must meet this definition. However,))

(a) For a solar inverter, solar module, stirling converter, or wind blade to qualify as manufactured in Washington state, the manufactured component must meet these definitions.

- "Solar inverter" means the device used to convert direct current to alternating current in a solar energy system.

- "Solar module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

- "Stirling converter" means a device that produces electricity by converting heat from a solar source utilizing a stirling engine.

- "Wind blade" is the portion of the rotor component of wind generator equipment that converts wind energy to low speed rotational energy.

(b) Is combining products manufacturing? When determining whether an inverter, module, stirling converter, or blades are manufactured in Washington the department of revenue ((will apply the definition of manufacturing in WAC 458-20-136. Of particular interest is WAC 458-20-136(7), which defines when assembly constitutes manufacturing. The de-

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~~partment of revenue, in consultation with the climate and rural energy development center at Washington State University's energy extension, will apply this rule on manufacturing when analyzing a request for certification))~~ considers various factors in determining if a person combining various items into a single package is engaged in a manufacturing activity. Any single one of the following factors is not considered conclusive evidence of a manufacturing activity:

(i) The ingredients are purchased from various suppliers;

(ii) The person combining the ingredients attaches his or her own label to the resulting product;

(iii) The ingredients are purchased in bulk and broken down to smaller sizes;

(iv) The combined product is marketed at a substantially different value from the selling price of the individual components; and

(v) The person combining the items does not sell the individual items except within the package.

~~((16))~~ (602) How can an applicant determine the system's level of manufacture in Washington state? ((For systems installed after the date this section is adopted,)) The manufacturer must request approval from the department of revenue of its certification that the manufacturer's product, such as an inverter, module, stirling converter, or wind blade qualifies as made in Washington state. The manufacturer must supply the department of revenue with a statement delineating the ((system's)) product's level of manufacture in Washington state, signed under penalty of perjury.

(a) Field visit to view manufacturing process. The department of revenue will perform a field visit to view the manufacturing process for the product, which may also include, but is not limited to:

• An inspection of the process by an engineer or other technical expert;

• Testing and evaluation of a product pulled off the production line;

• Review of purchase invoices to verify the vendor sources for the parts used in the manufacturing of the product;

• Inspection of the production line; and

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• Requests for clarification concerning questions, if any, discovered during the inspection.

(b) Approval or disapproval of manufacturer's certification. The department of revenue will issue a ~~((binding letter ruling to the manufacturer stating its determination))~~ written approval or disapproval of the manufacturer's certification of a product qualifying as made in Washington state.

~~((a))~~ (c) Manufacturer's statement. This manufacturer's statement must be specific as to what processes were carried out in Washington state to qualify the ~~((system))~~ product for one or more of the multiplying economic development factors discussed in subsection ~~((13))~~ (14) of this section. The manufacturer can request ~~((a binding letter ruling))~~ an approval of its certification from the department of revenue at ~~((this))~~ its web address: [http://dor.wa.gov\(/content/contactus/con_TaxRulings.aspx\)](http://dor.wa.gov(/content/contactus/con_TaxRulings.aspx)).

~~((b))~~ (d) Penalty of perjury. The manufacturer's statement must be under penalty of perjury and specifically state that the manufacturer understands that the department of revenue will use the statement in deciding whether customer incentive payments and corresponding tax credits are allowed under the renewable energy system cost recovery incentive payment program.

~~((e))~~ (e) Inspection of product's manufacturing process. The department of revenue reserves the right to perform an inspection of the manufacturing processes for each product, such as an inverter, module, wind blade, or solar stirling converter, that has been previously certified as manufactured in Washington state. This is to verify that the product continues to qualify as manufactured in Washington state. This inspection will not occur more than once a year and will include a field visit as described in (a) of this subsection.

(f) Document retention. The applicant must retain this documentation for five years after the receipt of applicant's last incentive payment from the light and power business.

~~((d) Certificate of manufacture in Washington state.~~ If the department of revenue has issued a binding letter ruling stating a module, inverter, or blades qualifies as manufactured in Washington state, the manufacturer may apply to the climate and rural energy de-

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~~velopment center at Washington State University energy program for a certificate stating the same.~~

~~(17)) (g) Denial or revocation of approval of certification. The department of revenue may revoke the approval of certification that a product, such as an inverter, module, stirling converter, or wind blade is "made in Washington state" when it finds that the product does not qualify for certification as manufactured in Washington state.~~

~~The appeal provisions under Part VIII of this rule apply here.~~

~~(603) **What about guidelines and standards for manufactured in Washington?** The climate and rural energy development center at the Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.~~

~~((18) **Do condominiums or community solar projects need more than one meter?** No, the requirement of measuring the kilowatt hours of customer generated electricity for computing the incentive payments only requires one meter for the renewable energy system, not one meter for each owner, in the case of a condominium, or each applicant, in the case of a community solar project. Thus for example, in the case of a renewable energy system on a condominium with multiple owners, while such a system would not qualify as a community solar project, only one meter is needed to measure the system's gross generation and then each owner's share can be calculated by using each owner's percentage of ownership in the condominium building on which the system is located. With regard to a community solar project, only one meter is needed to measure the system's gross generation and each applicant's share in the project can be calculated by each applicant's interest in the project.~~

~~(19) **Is there an annual limit on an incentive payment to one payee?** There is an annual limit on an incentive payment.~~

~~(a) **Applicant limit.** No individual, household, business, or local governmental entity is eligible for incentive payments of more than five thousand dollars per year.~~

~~(b) **Community solar projects.**~~

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~~• Each owner or member of a company in a community solar project located on a cooperating local government's property is eligible for an incentive payment, not to exceed five thousand dollars per year, based on their ownership share.~~

~~• Each ratepayer in a utility-owned community solar project is eligible for an incentive payment, not to exceed five thousand dollars per year, in proportion to their contribution resulting in their share of the value of electricity generated.~~

~~(20) **Are the renewable energy system's environmental attributes transferred?** Except for utility owned community solar systems, the environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the incentive payment. In the case of utility owned community solar system, the utility involved owns the environmental attributes of the renewable energy system.~~

~~(21) **Is the light and power business allowed a tax credit for the amount of incentive payments made during the year?** A light and power business will be allowed a credit against public utility taxes in an amount equal to incentive payments made in any fiscal year under RCW 82.16.120. The following restrictions apply:~~

~~• The credit must be taken in a form and manner as required by the department of revenue.~~

~~• The credit for the fiscal year may not exceed one-half percent of the light and power business' taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater.~~

~~• Incentive payments to applicants in a utility-owned community solar project as defined in RCW 82.16.110 (1)(a)(ii) may only account for up to twenty-five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all utility-owned community solar projects in total may not exceed twenty-five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if Light and Power Business' taxable power sales are six million dollars,~~

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~~the maximum available credit is one hundred thousand dollars, which is greater than one-half percent of the six million dollar taxable power sales. Of that one hundred thousand dollars, the maximum amount of incentive payments to applicants in a utility-owned solar project is twenty-five thousand dollars.~~

- ~~Incentive payments to participants in a company-owned community solar project as defined in RCW 82.16.110 (1)(a)(ii) may only account for up to five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all company owned community solar projects in total may not exceed five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if Light and Power Business has thirty million dollars in taxable power sales, the maximum total tax credit available to the light and power business is one hundred fifty thousand dollars. Of this one hundred fifty thousand dollars, the maximum tax credit that the light and power business can claim relative to incentive payments to participants in a company-owned community solar project is seven thousand five hundred dollars. Alternatively, the maximum tax credit that light and power business can claim relative to incentive payments to applicants in a utility-owned solar project is thirty-seven thousand five hundred dollars.~~

Computation examples. The following table provides:

Taxable Power Sales by the light and power business	Maximum tax credit (greater of .5% of total taxable power sales or \$100,000)	Maximum amount of tax credit available for incentive payments in a utility-owned community solar project	Maximum amount of tax credit available for incentive payments in a company-owned community solar project
\$5,000,000	\$100,000	\$25,000	\$5,000
\$50,000,000	\$250,000	\$62,500	\$12,500
\$500,000,000	\$2,500,000	\$625,000	\$125,000

- ~~The credit may not exceed the tax that would otherwise be due under the public utility tax described in chapter 82.16 RCW. Refunds will not be granted in the place of credits.~~

- ~~Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years.~~

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~~(22) When community solar projects are located on the same property, how do you determine whether their systems are one combined system or separate systems for determining the seventy-five kilowatts limitation?~~ In determining whether a community solar project's system is capable of generating more than seventy-five kilowatts of electricity when more than one community solar project is located on one property, the department of revenue will treat each project's system as separate from the other projects if there are:

- ~~• Separate meters;~~
- ~~• Separate inverters;~~
- ~~• Separate certification documents submitted to the department of revenue; and~~
- ~~• Separate owners in each community solar project, except for utility owned systems that are voluntarily funded by the utility's ratepayers, which must have a majority of different ratepayers funding each system.~~

~~(23) What if a light and power business claims an incentive payment in excess of the correct amount?~~ For any light and power business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments will be immediately due and payable.

- ~~• The department of revenue will assess interest but not penalties on the taxes against which the credit was claimed.~~
- ~~• Interest will be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and will accrue until the taxes against which the credit was claimed are repaid.)~~

PART VII - TAX ISSUES REGARDING RENEWABLE ENERGY INCENTIVE PROGRAM

~~((24)) (701) Does the department of revenue consider the incentive payment ((taxable)) gross income subject to Washington state taxation? ((No, the department of revenue does not consider the incentive payment an applicant receives to be taxable income.~~

~~(25)) The answer will depend on whether the electricity is generated by a singly owned system or a community solar system.~~

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(a) Are singly owned renewable energy systems subject to the B&O tax? No. The incentive payments for the electricity generated by the singly owned systems are not taxable. This is because that person is not engaged in an activity with the object of gain, benefit, or advantage. All the electricity generated by the system is consumed by the system's owner on that person's own property. This is an energy conservation activity involving that person's own property.

(b) Do incentive payments received for the electricity generated by a community solar project's system constitute gross income subject to the business and occupation tax? Yes. The incentive payments for the electricity generated by the nonutility community solar systems are taxable. Nonutility community solar projects are engaged in a business activity because the project involves the object of gain, benefit, or advantage to the project's owners. The energy generated by the solar system is not consumed by the system owner at its property, but is instead purchased and consumed by the system's host at the host's property. The sole benefit to the system's owners is the income from the electricity generated. Therefore, all incentive payments received for the electricity generated by a community solar project's system constitute gross income subject to tax.

(702) When must a nonutility community solar project register and file a return with the department? A nonutility community solar project receiving incentive payments under the incentive program will need to register with the department of revenue unless its annual gross income is below the exemption amount for requiring registration. WAC 458-20-101(2) explains that a business whose gross income from all business activities is under the annual exemption amount is not required to register, so long as other requirements are met.

(703) If a community solar project has gross income above the annual exclusion amount and is required to register, does it then owe tax? Even some community solar projects that receive gross income above the annual exclusion amount or are otherwise required to register with the department may still not owe any tax. This is because of the small business credit provided by RCW 82.04.4451 that applies to the business and occupation tax. Consequently, many smaller community

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solar projects may be able to apply the small business tax credit to offset their business and occupation tax liability.

(704) If I owe business and occupation tax after applying the small business credit, what is the tax category? If there is gross income in excess of the small business credit, the category under the business and occupation tax would be "service and other."

(705) What other payments received by a nonutility community solar project are gross income possibly subject to tax? The payments from sales of electricity to the hosting local governmental entity that a nonutility community solar project receives for the consumption by the hosting local governmental entity of the electricity generated by the community-solar system is gross income to the community solar project. The amount of the gross income from the host's consumption of the system's generated electricity is the value of that electricity. This is the contractually agreed value between the parties or the equivalent retail value generally charged by the light and power business serving the property. This gross income is subject to the public utility tax since it is income from a system for the generation of electrical energy. RCW 82.16.010 and 82.16.020. However, the public utility tax has an exemption amount described at RCW 82.16.040 that may apply.

(706) Are the fees paid by members of the company in a company-owned community solar project subject to state taxation? Yes, administrative fees that the company in a company-owned community solar project charges its members is gross income for the company. This gross income is subject to business and occupation tax under the "service and other" category.

(707) Are the sale of renewable energy credits subject to state tax? Yes, the sale of renewable energy credits constitute gross income subject to tax.

(a) If the renewable energy credits created by the community solar system are sold together with the electricity generated by the system, then both the electricity and renewable energy credits will be subject to public utility tax.

(b) However, if the sale of the renewable energy credits and system's generated electricity are sold and priced separately, then the

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renewable energy credits will be subject to the business and occupation tax under the "service and other" category and the generated electricity will be subject to public utility tax.

(708) Is a nonutility community solar project subject to the leasehold excise tax? Yes. The use of the local government's property that is hosting the community solar system is subject to leasehold excise tax, which is measured by the contract rent. This is because there is a private lease of publicly owned real property. Leasehold excise tax is in lieu of the property tax. Leasehold excise tax is measured by the maximum attainable contract rent received by the lessor paid for use of the public property. Contract rent is the amount of consideration due as payment for the leasehold interest. Consideration does not have to be in the form of cash. RCW 82.29A.020 and 82.29A.030.

(709) What is the relationship between the department of revenue and the light and power business under this program? The department of revenue is not regulating light and power businesses; it is only administering a tax credit program relating to the public utility tax. Therefore, for purposes of ~~((the customer investment cost recovery))~~ this incentive payment program, the department of revenue will generally focus its audit of light and power businesses to include, but not be limited to, whether:

- Claimed credit amount equals the amount of the total incentive payments made during the fiscal year;
- Each individual incentive payment is properly calculated;
- Payment to each applicant or participant in a community solar project is proportionally reduced by an equal percentage if the limit of total allowed credits is reached;
- Applicant payments are based on measured gross production of the renewable energy systems measured by a production grade meter read at least annually by the light and power business; and
- The credit and incentive payment limitations have not been exceeded.

(710) Is the light and power business allowed a tax credit for the amount of incentive payments made during the year? A light and power business will be allowed a credit against its public utility

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taxes in an amount equal to incentive payments made to its customers or participants in a nonutility community solar project in any fiscal year under RCW 82.16.120. The following restrictions apply:

- The credit must be taken in a form and manner as required by the department of revenue.

- The credit for the fiscal year may not exceed one-half percent of the light and power business' taxable power sales due under RCW 82.16.120 (1)(b) or one hundred thousand dollars, whichever is greater.

- Incentive payments to applicants in a utility-owned community solar project as defined in RCW 82.16.110 (2)(a)(ii) may only account for up to twenty-five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all utility-owned community solar projects in total may not exceed twenty-five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if a light and power business's taxable power sales are six million dollars, the maximum available credit is one hundred thousand dollars, which is greater than one-half percent of the six million dollar taxable power sales. Of that one hundred thousand dollar credit limit, the maximum amount of incentive payments to applicants in a utility-owned solar project is twenty-five thousand dollars.

- Incentive payments to participants in a company-owned community solar project as defined in RCW 82.16.110 (2)(a)(iii) may only account for up to five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all company-owned community solar projects in total may not exceed five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if a light and power business has thirty million dollars in taxable power sales, the maximum total tax credit available to the light and power business is one hundred fifty thousand dollars. Of this one hundred fifty thousand

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dollar credit limit, the maximum tax credit that the light and power business can claim relative to incentive payments to participants in a company-owned community solar project is seven thousand five hundred dollars. Alternatively, the maximum tax credit that the light and power business can claim relative to incentive payments to applicants in a utility-owned solar project is thirty-seven thousand five hundred dollars.

Computation examples. The following table provides:

<u>Taxable power sales by the light and power business</u>	<u>Maximum tax credit (greater of .5% of total taxable power sales or \$100,000)</u>	<u>Maximum amount of tax credit available for incentive payments in a utility-owned community solar project</u>	<u>Maximum amount of tax credit available for incentive payments in a company-owned community solar project</u>
<u>\$5,000,000</u>	<u>\$100,000</u>	<u>\$25,000</u>	<u>\$5,000</u>
<u>\$50,000,000</u>	<u>\$250,000</u>	<u>\$62,500</u>	<u>\$12,500</u>
<u>\$500,000,000</u>	<u>\$2,500,000</u>	<u>\$625,000</u>	<u>\$125,000</u>

- The credit may not exceed the tax that would otherwise be due under the public utility tax described in chapter 82.16 RCW. Refunds will not be granted in the place of credits.

- Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years.

(711) What if a light and power business claims an incentive payment in excess of the correct amount? For any light and power business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments will be immediately due and payable.

- The department of revenue will assess interest but not penalties on the taxes against which the credit was claimed.

- Interest will be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and will accrue until the taxes against which the credit was claimed are repaid.

PART VIII - APPEALS RIGHTS

(801) What are the appeal rights under the renewable energy incentive payment program? There are four different types of actions

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that could result in a right to an appeal. The four types of actions are the department of revenue:

- Denying a system's certification;
- Revoking a system's certification;
- Denying a manufacturer's certification of a product qualifying as made in Washington state; and
- Revoking a manufacturer's certification of a product qualifying as made in Washington state.

(a) **Same appeal procedures for all four types of action.** The denial or revocation of a certification, described above, are all subject to the same appeal procedures described below. All the appeals involving this renewable energy incentive program are conducted as formal adjudicative proceedings under RCW 34.05.413 through 34.05.476 and chapter 10-08 WAC.

(b) **File your appeal petition within thirty days of receiving notice of the department's action.** If you want to contest the department's action, you must file a timely appeal petition within thirty days of service of the notice of the agency action. RCW 34.05.010(19) defines "service" and includes both service by mail and personal service.

The notice issued by the department will provide you with an explanation of the department's reasons for the denial or revocation and advise you how you may appeal the decision if you disagree. The department's action will be final unless you file an appeal petition with the department within thirty days of service of the notice of the department's action. A form that may be used for contesting the action by the department is available from the department on its web site at <http://dor.wa.gov>, entitled: Appeal Petition.

(802) **Presiding officer - Final order - Review.** For both a denial of an application for certification and a notice of intent to revoke a previously approved certification, the presiding officer of a formal adjudicative proceeding will be the director, department of revenue, or such person as the director may designate. The presiding officer, whether the director of the department of revenue or such person as the director has designated, will make the final decision and will enter a final order as provided in RCW 34.05.461 (1)(b).

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(803) **Petitions for reconsideration.** RCW 34.05.470 governs petitions for reconsideration and provides petitions for reconsideration must be addressed to or delivered to the presiding officer at the address provided in the final order. The petition for reconsideration must be filed and served as required by WAC 10-08-110.

(804) **Judicial review.** Judicial review of the final order of the presiding officer is governed by RCW 34.05.510 through 34.05.598.