

**Working Draft - Rules to implement Community Renewable Energy Project Grant Program established by House Bill 2021 (2021), Sections 29 through 32**

**Creating a new rules division 330-250**

**330-250-0000**

**Purpose and Applicability of Rules in OAR 330, Division 250**

(1) These Division 250 rules implement the Community Renewable Energy Project Grant Program established under Oregon Laws 2021, chapter 508, sections 29 through 32 (House Bill 2021) for the purpose of:

- (a) Offsetting the cost of planning and developing community renewable energy projects;
- (b) Making community renewable energy projects economically feasible for qualifying communities;
- (c) Promoting small-scale renewable energy projects; and
- (d) Providing direct benefits to communities across this state in the form of increased community energy resilience, local jobs, economic development or direct energy cost savings to families and small businesses.

(2) These Division 250 rules apply to all applicants for community renewable energy project grants under the program established under Oregon Laws 2021, chapter 508, sections 29 through 32. The rules provide procedures for submitting applications, department review and selection of projects for potential grant award, the development of performance agreements and the disbursement of grant funds.

**Commented [A1]:** Rule summary: 330-250-0000 provides a reference to HB 2021 (2021) which is the bill that authorizes the Community Renewable Energy Project grant program. The purpose of the rules in Division 250 is to provide a process and procedures for implementing the program.

**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 infrastructures 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.

**Commented [A2]:** Rule summary: 330-250-0010 contains definitions of terms used in the rules. Many definitions are repeated from HB 2021 (2021) section 29.

(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.

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

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

(9) "Electric company" and "electricity service supplier" have the meanings given those terms in ORS 757.600.

(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 to meet the original deadline due to the grantee's excusable mistake or an unforeseeable or uncontrollable circumstance not caused by the grantee.

(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.

(18) "Planning costs" means the costs related to planning paid by an applicant 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, 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 subsection.

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

(d) Microgrid enabling technologies, 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.

### 330-250-0020

#### **Opportunity Announcements**

(1) The department shall announce the availability of grants for the Community Renewable Energy Project Grant Program by issuing opportunity announcements.

(2) The department shall issue separate opportunity announcements for each calendar interval that funding is available for the following categories:

(a) Planning a community renewable energy project that qualifies as a community energy resilience project;

(b) Developing a community renewable energy project that qualifies as a community energy resilience project;

**Commented [A3]:** Rule summary: 330-250-0020 lists the information that ODOE will provide in each opportunity announcement. HB 2021 section 30(6) requires ODOE to issue periodic opportunity announcements listing the four categories of projects for which grant funding will be available.

(c) Planning a community renewable energy project that does not qualify as a community energy resilience project; and

(d) Developing a community renewable energy project that does not qualify as a community energy resilience project.

(3) If the cumulative total of all grants awarded under an opportunity announcement is less than the total amount of funding available for that opportunity announcement, the department may reallocate the balance to future opportunity announcements.

(4) Each opportunity announcement shall include the following information:

(a) Objectives for the opportunity announcement;

(b) Dates of the opportunity period;

(c) Where to find the required application forms, associated materials, and instructions;

(d) Minimum technical requirements for renewable energy systems based on industry standards;

(e) Guidance on submitting an acceptable renewable energy resource assessment;

(f) The criteria to be applied in evaluating and prioritizing applications for grant awards in the competitive review process;

(g) The total amount of grant funds available under the opportunity announcement; and

(h) Other information the department considers necessary.

### 330-250-0030

#### **Allocation of Grant Funds**

(1) The department shall allocate 50 percent or more of the initial appropriation for the Community Renewable Energy Project Grant Program to grants for planning or developing community renewable energy projects that primarily serve one or more qualifying communities, as directed by Oregon Laws 2021, chapter 508, section 30(7).

(2) In approving applications and awarding grant moneys, the department shall prioritize projects located in qualifying communities across the state, as directed by Oregon Laws 2021, chapter 508, section 30(10).

**(3) The department shall provide resources on its website to assist applicants in demonstrating:**

**(a) That the project(s) in the application will be located in one or more qualifying communities.**

**Commented [A4]:** Rule summary: 330-250-0030 provides information about how ODOE will allocate grant funds, including the requirements in HB 2021 section 30(7) that at least 50 percent be allocated to projects that primarily serve one or more qualifying communities and that 50 percent or more be allocated to projects that qualify as community energy resilience projects.

330-250-0030 also requires ODOE to provide resources on its website to assist applicants who seek to demonstrate that their proposed project will be located in, or will serve, a qualifying community, and/or that disadvantaged communities are involved in designing the proposed project.

(b) That the project(s) in the application will serve one or more qualifying communities.

(c) 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.

(4) The department shall allocate 50 percent or more of the initial appropriation for the Community Renewable Energy Project Grant Program to grants for planning or developing community renewable energy projects that qualify as community energy resilience projects, as directed by Oregon Laws 2021, chapter 508, section 30(7).

### 330-250-0050

#### **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:

**Commented [A5]:** Rule summary: 330-250-0050 provides details about the information that applicants for planning grants will be required to provide in their applications.

330-250-0050(4) repeats the lists of eligibility requirements from HB 2021, while 330-250-0050(5) repeats the list of criteria the bill directs ODOE to use in prioritizing applications when awarding planning grant funds.

(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 business site(s) that are located in this state.

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

(b) Letters from the following entities:

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

(B) A letter from the electric utility serving the communities covered by a community renewable energy project, including:

(i) confirmation that the applicant consulted with the electric utility; and

(ii) information that may assist the department in evaluating the feasibility of the proposed project.

(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 consultation with regional stakeholders 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.

(e) Grant amount requested and estimated budget for planning costs, including costs associated with:

(A) Consulting fees;

(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 will support the energy resilience of structures or facilities essential to the public welfare.

(h) 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.

(i) A description of any other grants that the applicant has been or may be awarded for the planning in the application.

(j) 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 as determined by rule;

(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 projects that meet the following criteria. 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 300-250-0170 [The bill directs ODOE to work with EJ Task Force to develop metrics, which will be included in rules] 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.



### 330-250-0060

#### Planning Grant: Eligible and Ineligible Costs

All reasonable planning costs are eligible to be covered by the Community Renewable Energy Project Grant Program. Eligible planning costs include, but are not limited to, costs associated with:

- (1) Consulting fees;
- (2) Load analysis;
- (3) Siting, excluding property acquisition;
- (4) Ensuring code compliance;
- (5) Interconnection studies;
- (6) Transmission studies; and
- (7) Other analysis and studies necessary for planning a renewable energy system.

**Commented [A6]:** Rule summary: 330-250-0060 specifies which planning costs will be eligible to be covered by a planning grant under the program. Specific cost items are repeated from HB 2021 section 31(1)(1)(A).

### 330-250-0070

#### Planning Grant: Eligibility and Completeness Review of Application

(1) Following the opportunity period, the department shall review all planning grant applications to determine whether:

- (a) All sections of the application are complete as outlined in the opportunity announcement;
- (b) The applicant is eligible to receive a grant;
- (c) Any listed partners meet the definition of a partner in 330-250-0010(17); and
- (d) The application demonstrates that the planning and the proposed community renewable energy project meet all requirements under Oregon Laws 2021, chapter 508, section 30(3) and section 31(1)(c) and these rules.

(2) If the department finds that the application meets all requirements, the application will move into the competitive review process and the department shall notify the applicant in writing.

(3) The department shall deny all incomplete applications and applications the department has determined do not meet the requirements under Oregon Laws 2021, chapter 508, sections 29 through 32 and these rules. The department shall notify applicants in writing of the reason for denial of the application.

(4) The department considers the completeness review a test; the decision to deny an incomplete application is not an action subject to review under ORS chapter 183.

**Commented [A7]:** Rule summary: 330-250-0070 describes the process that ODOE will follow for reviewing planning grant applications to make sure they are complete and that the applicants, partners, and the proposed project listed in the application meet all requirements in HB 2021. Applications must be complete in order to be considered for a planning grant.

### 330-250-0080

#### Planning Grant: Competitive Review of Application

(1) The department shall conduct a competitive review of all planning grant applications that pass the eligibility and completeness review.

**Commented [A8]:** Rule summary: 330-250-0080 describes the process for the competitive review of planning grants. ODOE may use external reviewers for evaluating all or part of each application, but the ODOE director retains the authority to make the final decision on awarding planning grants. 330-250-0080 also lists the criteria that ODOE must use to prioritize applications.

(2) The department may appoint external reviewers to evaluate all or part of each application for one or more categories listed under the opportunity announcement as part of the competitive review process. However, the director shall make the final decision on planning grant awards.

(3) Through competitive review, the department's internal review team and external reviewers, if applicable, shall evaluate applications for planning grants according to the criteria described in these rules and the applicable opportunity announcement. Depending on the opportunity announcement objectives, the reviewers and the director may give greater or lesser weight to each of the criteria listed in rules.

(4) The director shall determine whether the planning grant application is for a community renewable energy project that qualifies as a community energy resiliency project.

(5) The department shall review the information provided in the application against industry standards to determine whether the renewable energy system proposed for planning is technically feasible and should operate in accordance with the representations made by the applicant.

(6) The department shall list evaluation criteria in the opportunity announcement.

(7) In evaluating applications and awarding grant moneys, the department shall prioritize planning proposals:

(a) As directed under Oregon Laws 2021, chapter 508, section 30(10); and

(b) According to the opportunity announcement objectives.

(8) After considering all the criteria in this rule, the director may award a grant to one or more applicants, conditioned upon the execution of a performance agreement that satisfies OAR 330-250-0090. The director may also create a list of alternative applicants who may be awarded a grant if one or more of the applicants to whom the director awarded a grant does not timely execute a performance agreement with the department. The department shall notify applicants of the outcome of the competitive review.

### **330-250-0090**

#### **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.

**Commented [A9]:** Rule summary: 330-250-0090 describes the process and the content for performance agreements between ODOE and the recipients of planning grants, including: the cap on award amounts; the costs that a grant may cover; a process for recovering grants if the grantee does not abide by the terms of the performance agreement; and a process for extending the timeline in the performance agreement for good cause.

(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:

(i) Consulting fees.

(ii) Load analysis.

(iii) Siting, excluding property acquisition.

(iv) Ensuring code compliance.

(v) Interconnection studies.

(vi) Transmission studies.

(vii) Other reasonable expenditures made in the community renewable energy project planning process as determined by the department by rule.

(b) 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.

(c) 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) 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)(i)-(vi).

(7) If a grantee fails to complete the planning within the time frame specified in the performance agreement, the grantee must notify the department in writing. 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 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.

### **330-250-0100**

#### **Project Development Grant: Application**

**Commented [A10]:** Rule summary: 330-250-0100 provides details about the information that applicants for project development grants will be required to provide in their applications.

330-250-0100(4) repeats the lists of eligibility requirements from HB 2021, while 330-250-0100(5) repeats the list of criteria the bill directs ODOE to use in prioritizing applications when awarding grant funds for project development.

(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.

(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 business site(s) that are located in this state.

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

(b) Letters from the following entities:

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

(B) A letter from the electric utility serving the communities covered by a community renewable energy project confirming that the applicant consulted with the electric utility and that the proposed project is feasible.

(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 consultation with regional stakeholders 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.

(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.

(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 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) 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

(j) Any other information the director considers necessary to determine whether the project is in compliance 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, if the project is for producing electricity.

(5) In approving applications and awarding grant moneys, the department is directed under Oregon Laws 2021, chapter 508, section 30(10) to prioritize projects that meet the following criteria. 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 300-250-0170 [The bill directs ODOE to work with EJ Task Force to develop metrics, which will be included in rules] 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.

**330-250-0110**

**Project Development Grant: Eligible and Ineligible Costs**

(1) The following project costs are eligible to be covered by the Community Renewable Energy Project Grant Program:

- (a) The cost of components of all proposed renewable energy systems included in the project.
- (b) Materials and supplies required for the construction and installation of the proposed renewable energy system(s).
- (c) The cost of title searches, escrow fees, permits fees, license fees and shipping.
- (d) Design or engineering expenses related to renewable energy system components.
- (e) Environmental studies, including source testing.
- (f) Other costs the department determines should be included.

(2) The following project costs are not eligible to be covered by the Community Renewable Energy Project Grant Program:

- (a) Costs paid by a person other than the applicant or a partner of the applicant.
- (b) Interest and warranty charges.
- (c) Litigation or other legal fees and court costs.
- (d) Patent searches, application and filing payments.
- (e) Costs to maintain, operate or repair the renewable energy system.
- (f) Administrative costs to apply for grants, incentives, loans, tax credits or other funding for a project.
- (g) Training or education expenses.
- (h) Costs that are incurred to bring a host building up to building code standards or otherwise repair the building in order to install the system, including design or engineering expenses.
- (i) Donated, in-kind or volunteer labor and materials.
- (j) Other costs the department determines should be excluded.

**Commented [A11]:** Rule summary: 330-250-0110 specifies which costs will be eligible to be covered by a project development grant under the program. Specific cost items are similar to eligible project costs allowed under the ODOE Renewable Energy Development (RED) Grant program rules.



### [330-250-0120](#)

#### **Project Development Grant: Eligibility and Completeness Review of Application**

- (1) Following the opportunity period, the department shall review all project development grant applications to determine whether:
- (a) All sections of the application are complete as outlined in the opportunity announcement.
  - (b) The applicant is eligible to receive a grant;
  - (c) Any listed partners meet the definition of a partner in 330-250-0010(17);
  - (d) The application demonstrates that the proposed community renewable energy project meets all requirements under Oregon Laws 2021, chapter 508, section 30(4)(b) and these rules; and
  - (e) The applicant is applying prior to the installation or construction of the renewable energy system.
- (2) If the department finds that the application meets all requirements, the application will move into the competitive review process and the department shall notify the applicant in writing.
- (3) The department shall deny all incomplete applications and applications the department has determined do not meet the requirements under Oregon Laws 2021, chapter 508, sections 29 through 32 and these rules. The department shall notify applicants in writing of the reason for denial of the application. If an applicant applies for a grant after installation or construction of a renewable energy system has started, the department shall deny the application.
- (4) The department considers the completeness review a test; the decision to deny an incomplete application is not an action subject to review under ORS chapter 183.

**Commented [A12]:** Rule summary: 330-250-0120 describes the process that ODOE will follow for reviewing project development grant applications to make sure they are complete and that applicants, partners, and the proposed project listed in the application meet all requirements in HB 2021. Applications must be complete in order to be considered for a project development grant.

#### **Project Development Grant: Competitive Review of Application**

- (1) The department shall conduct a competitive review of all project development grant applications that pass the eligibility and completeness review.
- (2) The department may appoint external reviewers to evaluate all or part of each application for one or more categories listed under the opportunity announcement as part of the competitive review process. However, the director shall make the final decision on project development grant awards.
- (3) Through competitive review, the department's internal review team and external reviewers, if applicable, shall evaluate applications for grants according to the criteria described in these rules and the applicable opportunity announcement. Depending on the opportunity

**Commented [A13]:** Rule summary: 330-250-0130 describes the process for the competitive review of project development grants. ODOE may use external reviewers for evaluating all or part of each application, but the ODOE director retains the authority to make the final decision on awarding project development grants. 330-250-0130 also lists the criteria that ODOE must use to prioritize applications.

announcement objectives, the reviewers and the director may give greater or lesser weight to each of the criteria listed in rules.

(4) The director shall determine whether the application is for a community renewable energy project that qualifies as a community energy resiliency project.

(5) The department shall review the information provided in the application against industry standards to determine whether the system is technically feasible and should operate in accordance with the representations made by the applicant.

(6) The department shall list evaluation criteria in the opportunity announcement.

(7) In evaluating applications and awarding grant moneys, the department shall prioritize project development proposals:

(a) As directed under Oregon Laws 2021, chapter 508, section 30(10); and

(b) According to the opportunity announcement objectives.

(8) After considering all the criteria in this rule, the director may award a grant to one or more applicants, conditioned upon the execution of a performance agreement that satisfies OAR 330-250-0100. The director may also create a list of alternative applicants who may be awarded a grant if one or more of the applicants to whom the director awarded a grant does not timely execute a performance agreement with the department. The department shall notify applicants of the outcome of the competitive review.

(9) If an applicant has not started installation or construction of a renewable energy system, an applicant may apply again for the same project in a future opportunity period by submitting a new application.

### **330-250-0140**

#### **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 resiliency 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 exceeds 100 percent of the total costs associated with the project.

**Commented [A14]:** Rule summary: 330-250-0140 describes the process and the content for performance agreements between ODOE and the recipients of project development grants, including: the cap on award amounts depending upon whether a project qualifies as a community energy resiliency project; the costs that a grant may cover; requirements that grantees must meet, such as periodic status reports to ODOE; a process for recovering grants if the grantee does not abide by the terms of the performance agreement; and a process for extending the timeline in the performance agreement for good cause.

(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 exceeds 100 percent of the total costs associated with the project.

(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) 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 amount 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 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 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.

(j) 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.

(6) 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:

(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 by rule, such as filing a request for a power purchase or net metering agreement.

(7) The department may require a legal sufficiency review of a performance agreement by the Oregon Department of Justice prior to execution.

(8) If a project fails to begin or complete construction within the time frame specified in the performance agreement, the grantee must notify the department in writing. The notification must describe the cause of the delay, measures taken by the grantee 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.

#### **Amendments to Performance Agreements**

**Commented [A15]:** Rule summary: 330-250-0150 describes the process for a grantee to request an amendment to a performance agreement, including when the grantee wishes to make changes to the community renewable energy project compared to the description of the project that was in the grantee's application. ODOE may reduce the amount of the grant or deny the amendment request if the proposed change would have affected the outcome of the competitive review.

(1) If a grantee wishes to amend a performance agreement 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 will remain in operation for at least five years. The grantee has the responsibility to provide complete technical documentation supporting any amendment requests. 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 pro-rating the award amount, based on energy generated or project cost, or denial of the amendment request.

(6) Amendment requests shall not be approved if the amendment would result in an increased award amount.

(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.

### [330-250-0160](#)

#### **Compliance**

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

**Commented [A16]:** Rule summary: 330-250-0160 reserves the right for ODOE to conduct physical inspections of projects and to audit documentation for projects where ODOE and a grantee have entered into a performance agreement.

[330-250-0170](#)  
**Equity Metrics**

**Commented [A17]:** Rule summary: ODOE intends to include language in 330-250-0170 about the equity metrics that applicants may use to demonstrate the involvement and leadership by disadvantaged communities (listed in HB 2021) in developing the renewable energy project. HB 2021 directs ODOE to develop these equity metrics in coordination with the Environmental Justice Task Force.

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