

CHAPTER 111

Office of Regulatory Staff

(Statutory Authority: 1976 Code Sections 58–27–2620, 58–27–2630, 58–27–2640, and 58–27–2660)

ARTICLE 1

LESSORS OF RENEWABLE ENERGY FACILITIES

SUBARTICLE 1

GENERAL PROVISIONS

111–10. Authorization of Rules.

A. Section 58–27–2660, Code of Laws of South Carolina, 2019, provides:

1. “The Office of Regulatory Staff and the Department of Consumer Affairs are directed to develop consumer protection regulations regarding the sale or lease of renewable energy generation facilities pursuant to the distributed energy resource program in Chapter 40 of this title. These regulations shall provide for the appropriate disclosure provided by sellers and lessors. Sellers must comply with Title 37. Nothing herein alters existing protections afforded by Title 37.”; and
2. “The Office of Regulatory Staff is authorized to enforce any applicable consumer protection provision set forth in this title.”

B. In accordance with the above provisions, and pursuant to South Carolina Code Sections 58–27–2620, 58–27–2630, 58–27–2640, ORS has adopted the following rules and regulations.

HISTORY: Added by SCSR 45–5 Doc. No. 4992, eff May 28, 2021.

111–11. Application of Rules.

A. Jurisdiction. These rules shall apply to any person, firm, partnership, association, establishment or corporation (except any other exempt by South Carolina statutes), which is now or may hereafter become engaged as a Lessor of a renewable energy facility within the State of South Carolina pursuant to Title 58, Article 23 except where specifically exempt by statute.

B. Purpose. The rules are intended to define good practice. They are intended to insure adequate and reasonable consumer protections. The Lessor shall assist ORS in the implementation of these rules and regulations.

HISTORY: Added by SCSR 45–5 Doc. No. 4992, eff May 28, 2021.

111–12. Severability.

If any provision, or the application of any provision, of this Article is determined to be invalid, null, or void, such determination shall not affect or invalidate any other provision, or the application of any other provision, of this Article, and to this end, the provisions or the application of any of the provisions of this Article shall be deemed severable.

HISTORY: Added by SCSR 45–5 Doc. No. 4992, eff May 28, 2021.

111–13. Definitions.

The following words and terms, when used in these rules and regulations, shall have the meaning indicated below.

A. Customer. "Customer" means the person who is named on the retail electric provider's bill for the premises.

B. Lease Agreement. "Lease Agreement" means an agreement between a Customer and Lessor for the exclusive rights to use a renewable energy facility for a specified period of time in exchange for payment.

C. Lessee. "Lessee" means a customer subject to a Lease Agreement with a Lessor for the use of a renewable energy facility.

D. Lessor. "Lessor" means an entity that owns a renewable energy facility subject to any Lease Agreement.

E. Certificate. "Certificate" means the certificate of fit, willing, and able authorized to be issued under provisions of Title 58, Chapter 27, Article 23. Certificates shall be required of all entities operating as Lessors of renewable energy facilities within the State of South Carolina.

F. ORS. "ORS" means the South Carolina Office of Regulatory Staff.

G. Renewable energy facility. "Renewable energy facility" means any facility for the production of electrical energy that utilizes a renewable generation resource such as solar photovoltaic and solar thermal resources, wind resources, low-impact hydroelectric resources, geothermal resources, tidal and wave energy resources, recycling resources, hydrogen fuel derived from renewable resources, combined heat and power derived from renewable resources, and biomass resources.

H. Retail Electric Provider. "Retail Electric Provider" means an electrical utility as defined in Section 58-27-10 and also means other entities that provide retail electric service in South Carolina, but excluding electric cooperatives organized under the laws of a state other than South Carolina.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

SUBARTICLE 2

APPLICATION FOR CERTIFICATE

111-20. Application Required for Certificate.

Any person, entity, business, or corporation desiring to operate in this State as a Lessor first shall file an application for a Certificate with ORS on forms to be furnished by ORS. All required information on the application forms must be correctly completed before filing of such application will be accepted.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-21. Processing of Application.

Without good cause shown, any application for a Certificate submitted to ORS not in compliance with ORS's instructions, and any deficiencies thereof not corrected by the applicant within 90 days of submittal, may be rejected.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-22. Certificate.

Upon ORS approval of the application, a numbered Certificate will be issued to the Lessor.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

SUBARTICLE 3

OPERATIONS OF LESSORS

111-30. Authority to Operate.

A. A Lessor may not market, sell, construct, or otherwise conduct business in the State of South Carolina prior to receiving a Certificate issued by ORS.

B. An entity that owns a renewable energy facility subject to any Lease Agreement entered into outside of Title 58, Chapter 27, Article 23 and these regulations shall be considered an "electrical utility" under Section 58-27-10 and therefore subject to applicable federal and state laws and regulations, and the rules and regulations of the Public Service Commission of South Carolina.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111–31. Operations of Lessors.

A. Lessors must conduct business in compliance with all applicable rules and regulations regarding installations, safety, interconnection, licensure, bonding, and insurance.

B. Lessors must require all personnel performing installation of renewable energy facilities to maintain bonding, liability insurance and worker's compensation insurance that meets applicable federal and state laws.

C. Lessors must require renewable energy facilities to meet the specifications of county and municipal permits.

D. Lessor Prohibitions.

1. Customer payments to a Lessor under a Lease Agreement shall be for the lease of a renewable energy facility only.

a. Lease payments must not be calculated upon metered output.

b. Energy generated by the Lessee's renewable energy facility must not be sold by the Lessee or Lessor to any customer of any retail electric provider.

2. Renewable energy facilities shall serve only one premises or residence and shall not serve multiple Lessees or multiple premises or residences.

HISTORY: Added by SCSR 45–5 Doc. No. 4992, eff May 28, 2021.

111–32. Requirements for Lease Agreements.

A. Lease Agreements must contain provisions as required by Title 37 and applicable regulations, Title 58, Chapter 27, Article 23 and these regulations.

B. In addition to the requirements contained in Title 37 and applicable regulations, the Lease Agreements and appropriate disclosures shall include the following provisions:

1. Lease Agreements shall include:

a. Prominent display of the Certificate number issued by ORS.

b. ORS phone number and e-mail address for Consumer Complaints including the statement in bold 12-point font 'If you are unable to resolve your complaint with the Lessor, you have the right to contact the South Carolina Office of Regulatory Staff.'

c. A copy of any warranties for renewable energy facilities.

2. Appropriate disclosures as required by Title 37 and applicable regulations, shall include the following additional provisions:

a. ORS phone number and e-mail address for Customer Complaints including the statement in bold 12-point font 'If you are unable to resolve your complaint with the Lessor, you have the right to contact the South Carolina Office of Regulatory Staff.'

b. A description of the renewable energy facility, including the make and model of the renewable energy facility's major component(s).

c. A guarantee concerning the energy production output that the renewable energy facility will provide, and the impact of such guarantee on monthly payments as set forth in the Lease Agreement. A production guarantee that meets these requirements does not violate Section 111–31(D)(1)(a).

d. A description of any warranties to include, but not limited to:

i. A disclosure notifying the Lessee of the transferability of the obligations under the warranty to a subsequent Lessee.

ii. A disclosure describing any warranty for the repair of any damage to the roof of the premises in connection with the installation or removal of renewable energy facilities.

iii. A disclosure regarding whether the warranty or maintenance obligations related to renewable energy facilities may be sold or transferred to a third party.

e. An explanation of any interest, installation fees, document preparation fees, service fees, escalation rates, cancellation fees, roof repair costs or other costs to be paid by the Customer.

f. In the event that a Lessor causes a financing statement to be filed pursuant to the Uniform Commercial Code-Secured Transactions, the Lessor, or any successor in interest to the Lessor, shall provide to the Lessee a copy of the filed financing statement within thirty calendar days of the filing.

g. A disclosure describing the transferability of the Lease Agreement and any conditions on transferring the Lease Agreement in connection with the Lessee selling his or her premises.

h. A description of any restrictions the Lease Agreement imposes on the modification or transfer of the premises to which the renewable energy facility serves.

i. The total number of payments, including the interest, the payment frequency, the estimated amount of the payment expressed in dollars, and the payment due date over the leased term.

j. The estimated amount of the total payments due under the Lease Agreement, including, without limitation, any incentives that are included in the estimated lease payments.

k. A description of any state or federal tax incentives that are included in the calculation of Lease payments.

l. A description of the billing and payment procedures.

m. A statement in bold 12-point font with substantially the following same form and content: "Utility rates, structures and estimated savings are subject to change, and incentives may change or be terminated by executive, legislative or regulatory action."

n. A statement in bold 12-point font with substantially the following form and content: "All provisions contained in the Lease Agreement and disclosures are considered agreed to by the Lessee upon signature. NO employee or representative of [name of Lessor] is authorized to make any promise to you that is not contained in the Lease Agreement or disclosures concerning the cost savings, tax benefits, or government or utility incentives. You should not rely upon any promise or estimate received verbally or in writing which is not clearly contained in this Lease Agreement or disclosures."

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-33. Requirements for Consumer Protection and Education.

In addition to the requirements contained in Title 37 and applicable regulations, all Lessor marketing materials for use in the state of South Carolina, regardless of medium or channel such as printed, mailed, emailed, accessible via social media or website, and which promote specific leasing products or payment plans shall include:

- A. The Certificate number issued by ORS;
- B. The State Energy Office's solar consumer information website address; and
- C. ORS telephone number and e-mail address for Customer Complaints.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-34. Transfer or Sale of Certificate Prohibited.

Transfer or sale of a Certificate to another entity is prohibited.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

SUBARTICLE 4 RECORDS AND REPORTS

111-40. Retention of Records.

In addition to the recordkeeping requirements of Title 37 and applicable regulations, Lessor shall maintain the following records:

A. All documents provided to a potential customer prior to execution of a Lease Agreement, including but not limited to, marketing materials, diagrams of proposed renewable energy facility design, estimates of potential savings and benefits, information pertinent to the interconnecting utility, and estimates of cost and Lease Agreement payments.

B. All documents provided to, obtained from, or executed on behalf of Lessee including, but not limited to:

1. Affirmative acknowledgement and consent to receive documents electronically, and tracking information of paper or electronic transmittal of Lease Agreements to Lessees;
 2. Change orders to existing Lease Agreements, transfers of Lease Agreements, and any other documents relating to Lessor business transactions with Lessee regarding the Lease Agreement; and
 3. Records of retail electric provider interconnection applications, approvals, and communications to and from the retail electric provider on behalf of the Lessee to construct and safely interconnect the renewable energy facility.
- C. All documentation and records of all customer complaints as will enable Lessor to review and analyze its procedures and actions, to include, but not limited to:
1. Name and address of the complainant, the date and character of the complaint;
 2. All contact to and from the customer regarding the complaint; and
 3. The adjustment or disposal made by Lessor to resolve the complaint.
- D. Documentation and records of investigations by ORS including, but not limited to:
1. ORS investigation documents and Lessor responses;
 2. Lessor or ORS actions as a result of any investigation; and
 3. Name of Lessor representative(s) assisting ORS with the investigation.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-41. Data to be Filed with ORS.

- A. Lessors must file with ORS a Monthly Report of installed leased facility equipment as required by Title 58, Chapter 27, Article 23.
- B. The Lessor shall annually, on or before April 1, on a form provided by ORS, file the name, title, address, and telephone number of the person who should be contacted in connection with:
1. General management duties;
 2. Customer relations;
 3. Engineering operations; and
 4. Emergencies during non-office hours.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-42. Inspections and Tests.

When requested by ORS, Lessor or representative of Lessor, shall be present to test or confirm energy production by the renewable energy facility.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

SUBARTICLE 5 INVESTIGATION OF ALLEGED VIOLATIONS

111-50. Violations.

A. Violations. It shall be considered a violation of law for an entity to engage in any practice or action in marketing, or leasing renewable energy facilities contrary to the requirements set forth in Title 37 and applicable regulations, Title 58, Chapter 27 and applicable regulations, Title 58, Chapter 40, and these regulations.

B. ORS is authorized to enforce against any entity that owns a renewable energy facility installed on a customer's premise, for the customer's use, and leased to the customer, the requirements of Title 37 and applicable regulations, Title 58, Chapter 27, Article 23, Title 58, Chapter 40 as applicable, and these regulations.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-51. Customer Complaints.

A. Complaints concerning the charges, practices, renewable energy facilities or service of a Lessor shall be investigated promptly, thoroughly, and professionally by Lessor.

B. If the customer is not satisfied with the Lessor's actions to remedy the complaint, the customer may request an investigation of the matter by ORS. The Lessor shall notify the Customer of their right to file a request for investigation at ORS.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-52. Investigation of Alleged Violations.

A. ORS may investigate an alleged violation or refer the customer to the appropriate state agency to resolve the customer's complaint. ORS may notify the customer of its decision to investigate or refer the customer to the appropriate state agency.

B. ORS may request information and documents during the course of an investigation.

C. ORS will notify the Lessor at the commencement of an investigation. The Lessor must provide the following:

1. Acknowledgement of receipt of the complaint in writing within one (1) business day.

2. A response to ORS no less than seven (7) business days from date of notification of the complaint.

D. Lessor must grant ORS access with reasonable notice to properties and areas, objects, and records during the course of the investigation.

E. An investigation will be deemed closed when ORS issues a Final Decision.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-53. Notice of Violation.

ORS may issue a Notice of Violation. Such notice may present the results of ORS's investigation and any recommendations to remedy deficiencies and/or establish fines.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-54. Response to Notice of Violation.

Lessor has twenty (20) days to respond to ORS Notice of Violation. The Response shall contain the Lessor's response to each finding presented in the Notice of Violation. It shall also contain the Lessor's response to ORS's recommendations for remediation or penalty. Such response must be provided under oath.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-55. Decision.

A. ORS shall issue a decision on the Notice of Violation and Lessor's response in a timely manner. ORS may request additional information from the Lessor as necessary to render a decision.

B. ORS will provide a copy of the decision to the affected customer, the Lessor, and any other state agency or party involved in the investigation or remedy of the alleged violation. The decision will be considered the Final Decision after twenty-five (25) days from the date the decision is rendered by ORS, unless a timely Request for Review of Decision is filed pursuant to 111-56.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-56. Request for Review of Decision.

A. Effect of Filing a Review. Filing a Request for Review of Decision shall not excuse or delay the Lessor's compliance with a Decision issued by ORS, unless specifically provided by ORS.

B. Submit Request. A Lessor may submit a Request for Review of Decision to ORS within twenty-five (25) days after the issuance of ORS's Decision.

C. Timeframe for Final Decision tolled. The timeline provided in 111-56 (B) will be tolled upon the filing of a Request for Review of Decision.

D. Review. During the Review of Decision, ORS may request additional information from the Lessor. ORS will issue its Final Decision on the matter in a timely manner.

E. Unless otherwise provided by law, no cause of action shall accrue in any court of competent jurisdiction to vacate or set aside any decision of ORS, either in whole or in part, unless a Request for Review of Decision and proof of service are filed with ORS, and a Final Decision has been issued disposing of the matter.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-57. Appeal of Agency Action.

A Lessor may appeal an ORS Final Decision with the Administrative Law Court.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-58. Cooperation with Other Agencies.

In addition to the powers and responsibilities relating to consumer protection, ORS will cooperate with and assist all federal, state, and local agencies performing consumer protection functions in carrying out their legal enforcement responsibilities for the protection of consumers.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

SUBARTICLE 6 PENALTIES AND FINES

111-60. Penalty.

Subsequent to the conclusion of an investigation by ORS and upon being found non-compliant with applicable regulations and statute, ORS may issue a penalty according to the provisions in these regulations.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-61. Violations of Time Requirements.

ORS may specify the time within which a violation is required to be corrected. When a specific time is designated for correction, each day such violation exists after expiration of the time established by ORS shall be considered a subsequent violation.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-62. Voiding of Lease Agreement.

ORS may void a Lease Agreement between a Lessor and Lessee when:

- A. The Lease Agreement executed does not meet the requirements for Lessor certification in these regulations.
- B. The Lessor fails to provide a copy of an executed Lease Agreement to the Lessee within the timeframes and methods as described in these Regulations.
- C. The Lessor fails to cancel a Lease Agreement upon written request of a Lessee that occurs within the right of rescission period.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-63. Monetary Fines and Penalties.

A. Administrative Fine. An entity may be assessed an administrative fine. The administrative fine may not exceed two thousand five hundred dollars per violation.

B. Civil Penalty levied against Lessors. An entity that is subject to S.C. Code Ann. § 58-27-2620(A) may be fined a civil penalty of not more than ten thousand dollars per occurrence of the following violations:

- 1. Operating without Certificate. An entity that solicits business as a Lessor of renewable energy facilities without a valid certificate issued by ORS, or that otherwise violates the terms of Chapter 58, Article 23;
- 2. Unfair or Deceptive Marketing Practices. A Lessor that engages in unfair or deceptive marketing practices in the leasing of renewable energy facilities.

C. Determination of Monetary Fine or Penalty. In determining the appropriate monetary Administrative Fine or Civil Penalty to be levied, ORS shall consider the following:

1. Timely response to an ORS request in accordance with applicable regulations and law; and
2. The number of violations, including repeat violations; specific conditions and their impact or potential impact on health and safety of persons as a result of the lease of the renewable energy generation facility; efforts to correct cited violations; behavior that would reflect negatively on an entity's character, such as illegal or illicit activities; history of compliance; any other pertinent conditions that may be applicable to statutes and regulations.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-64. Suspension of Operations.

ORS may suspend the certificate and require the Lessor to immediately cease and desist from engaging in business as a Lessor in this State until the violation is resolved.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-65. Revocation of Certificate.

ORS may petition the Administrative Law Court to revoke a Certificate issued pursuant to S.C. Code Ann. 58-27-2600 *et seq.*

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.

111-66. Cumulative Regulation.

The provisions of Subarticle 6 of this regulation are cumulative of and in addition to any other action at law and any other action taken by ORS pursuant to Title 58.

HISTORY: Added by SCSR 45-5 Doc. No. 4992, eff May 28, 2021.