

Oregon Public Utility Commission
Main Hearing Room
550 Capitol Street NE
Salem, Oregon 97308
Sent via Electronic Mail

December 23rd, 2016
To: PUC
From: Peter Greenberg
P.O. Box 765
Salem, OR 97308
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Subject: Extension of Time
(Docket No. UM 1538)

Request by PGPV, LLC for a waiver of the 12-month solar photovoltaic system installation requirement pursuant to OAR 860-084-0210 (1)

To Whom it May Concern,

We would like to request an extension for the following project:

PGE Tracking #: CLCD81
Size: 100 KW
Original Deadline: 9/30/2016
Extension Deadline: 12/23/16
New Extension Deadline Requested: 5/31/2017

Previous Extension Request Granted:

In September of 2015 we were awarded a 100 KW slot in the VIR Pilot Program for this project. We found a single-axis horizontal tracker to be the most cost-effective racking option for this installation. This being a 100KW system, it took a significant amount of time and effort to find a suitable tracking system, as most tracker manufacturers aren't interested in installations less than 1MW in size. Eventually we were able to find a reputable racking company that was in the process of adding a single-axis tracker to their product line. Since we were the first customer to use their tracker, they were willing to accept our smaller system sizes in return for using our sites as a training ground and showcase for their product. As the installations progressed, areas for improvement were identified and components were modified to increase reliability and efficiency. We now have all the updated tracker components and solar modules on hand to complete the installation.

We are currently waiting on receiving a Conditional Use Permit (CUP) from Clackamas County for this project. We have taken the required steps and submitted the necessary paperwork (attended CUP Pre-Application meeting and submitted the Cup Pre-Application, Site Plan, CUP Application, CUP Responses, etc.). Our CUP hearing date is scheduled for June 23rd, 2016. Based on our discussions with Clackamas County, we anticipate no issues in receiving this CUP and will be able to begin construction 30 days after our hearing date.

We have already installed (4) 100 kilowatt solar projects under the VIR Program on roofs in

Clackamas County. These projects were also awarded slots in the VIR Pilot Program under the May, 2015 reservation window. When we initiated the permitting process for these 4 projects, it was our first time applying for permits in Clackamas County. Due to the various solar projects we've installed on farms in other Oregon counties under the VIR Pilot Program, we didn't anticipate any issues with the permitting process. OAR 660-033-0130(38) states requirements for solar facilities on agricultural land in Oregon and specifically excludes net metering and Feed-In-Tariff projects from adhering to these requirements. On top of this, Clackamas County Zoning and Development Ordinance defines solar facilities and states that they are subject to OAR 660-033-0130(38). In all the other counties where we've applied for permits for projects under the VIR Pilot Program, they were satisfied by OAR 660-033-0130(38) that our projects, as with net metering solar projects, are not required to obtain a CUP. Upon applying for permits with Clackamas County for the (4) 100 kilowatt projects mentioned above, we were told that we would be required to obtain a letter from the utility stating the annual kWh usage at the site, and if our projected solar kWh production was less than the energy consumption at the site, we would not have to apply for conditional use permits. As all of our solar sites in Clackamas County, except (2) 100 KW projects (awarded in September, 2015), have greater kWh consumption than production, we viewed this as an inconvenience, but not a roadblock. Upon requesting such a letter from PGE, we were told that this was the first request of its kind. PGE was eventually able to provide us with said letter and upon submitting it to Clackamas County, the project was cleared by their planning department and we went on to obtain the required permits and complete the installation. We then took the initiative to obtain similar letters from PGE for our other solar sites in Clackamas County. Upon applying for permits for our next VIR project in Clackamas County were told we would need to apply for a CUP. After further discussion, on 12/01/15 we were emailed the following opinion from a County Sr. Planner that was handling our applications:

After review of OAR 660-033-0130(38) and ORS 757.300, OAR chapter 860, division 39, ORS 757.365 and OAR chapter 860, division 84 ,we find that the proposed use, a Photovoltaic Solar Power Generation Facility, by your company will require a Conditional Use Pre-Application Conference and ultimately a Conditional Use Land Use Application. We have discussed your claim of exemption with the Oregon Public Utility Commission and find that nothing within the guidelines of their authority speaks to land use and the physical siting of such facilities. We did find that if the power generation were entirely for use on the farm with the intent to lower energy costs for the farm within the guidelines of the ORS, an exemption may be realized. However, since power is being sold to the local utility company who sells it to the public, and since there is no objective to lower the overall power use of the farm or to lower energy costs for the farm, the 'use' is considered a 'power generation facility' as provided in Section 401, Table 401-1 under Utilities.

We will be unable to sign off on the above building permits until such time the use has been approved as a Conditional Use on each parcel. Might I suggest, as a precautionary move, that you also include the 400 KW roof mounted site currently under construction at the 327th Avenue site. This will bring the entire project up to date as to land use review and approval requirements.

At this point we sought the advice of an Oregon attorney that specializes in energy related issues and came highly recommended. His opinion was that based on the OARs and Clackamas

County's own Zoning and Development Ordinance, CUPs should not be required for these VIR projects. After meeting with and communicating his thoughts to Clackamas County and gaining no headway, he advised us on Jan 5th, 2016 that it would be cheaper and faster to obtain the CUPs rather than fighting them on the issue. We then began the process of completing the required CUP paperwork. The required applications, site plans, responses and mandatory Pre-App CUP meetings have been completed and our hearing date is set for June 23rd.

In conclusion, we have purchased all the required tracker components and modules, which we have on hand. We will be able to start construction immediately upon receiving the Conditional Use Permit (CUP), which should be 30 days after our hearing date of June 23rd, 2016. We request that our VIR Pilot Program deadline be extended to December 23rd, 2016. This will allow us sufficient time to finish our total 1,146 KW of VIR projects in Clackamas County.

New Extension Request:

We attended our Clackamas County Conditional Use Permit (CUP) hearings on June 23rd, 2016. We were advised that the hearings had two probable outcomes, either they would rule that we were required to obtain CUPs and approve our CUP applications, or rule that we don't need CUPs and our permit applications would be approved. The latter would result in us being able to possibly get some of our CUP permit fees refunded, but either way we would be able to start construction in roughly 30 days from our hearing date. Our attorney presented evidence before the hearings officer in support of our contention that OAR 660-033-0130(38) exempts solar projects operating under the VIR Pilot Program from the need to obtain CUPs. The hearing officer sided with us in his July 18th decision and ruled that our projects do not require CUPs and are a permitted use.

This ruling should have paved the way for us to obtain permits immediately; however, Clackamas County's Sr. Planner presented one last roadblock. We were told that due to the presence of possible wetlands on the properties, we were required to obtain letters from the Department of State Lands stating that State removal-fill permits were not required. This affected 946 kW of our 1146 kW extension in Clackamas County. This was despite the fact that the Department of State Lands Removal-Fill Permit Brochure states that a permit is not required for less than 50 cubic yards of removal-fill in wetlands or waterways other than essential salmon habitat, and within ¼ mile of a state scenic waterway. Our sites were neither essential salmon habitat or located within ¼ mile of a state scenic waterway. In addition, we spoke with the Department of State Lands Aquatic Resource Coordinator and were told that a State removal-fill permit was not required for less than 50 cubic yards of removal-fill as long as our site was not essential salmon habitat or within ¼ mile of a state scenic waterway. The amount of removal-fill at our largest site was less than 2 cubic yards. We presented our findings to the County's Sr. Planner, but were told again that without a letter from the Department of State Lands stating that a removal-fill permit was not required for our specific sites, our permit applications would not be approved. We contacted the Department of State Lands and explained our situation. We were told that we could obtain a formal letter from them stating that our projects do not require a removal-fill permit, but we would need to submit a wetland fill-permit application for each site. We underwent the process of completing the applications and obtaining the required County and landowner signatures. On October 10th we received a formal letter from the Department of State Lands stating the following:

Based on the information provided in your application, it appears that your project does not require a State removal-fill permit because it involves:

- *Less than 50 cubic yards or removal and/or fill in waters of this state that are not designated as Essential Salmonid Habitat or a State Scenic Waterway.*

We submitted this letter to the Clackamas County Planning Department and on October 17th, we were notified that the planning department had signed off on our permits. We started construction immediately; however, this was three months later than our planned start date.

On October 31st, we were notified by the manufacturer that 400 kW of solar panels purchased for these projects generate electromagnetic interference (EMI). This is due to a malfunctioning internal component embedded within each panel. They became aware of the issue after the owner of a solar installation was notified that their modules were interfering with a nearby airport's air traffic communication. Subsequently they were forced to replace all the offending panels in their array. Since this initial notice, there has been an ongoing back-and-forth dialogue between the panel manufacturer, the internal component manufacturer and us. As each tracker configuration was pre-designed for a specific number of panels, we couldn't simply swap out the affected panels with our lower wattage panels without decreasing the total kW of our systems. We were initially led to believe the panels could easily be retrofitted in the field and our schedule wouldn't be severely impacted; however, we later learned that this was not the case and the affected modules would need to be replaced in their entirety. As of 12/22/16, a resolution has been reached concerning the 400 kW of affected panels that will allow us to continue our installation of panels immediately.

Progress:

Lone Elder (#JFSS94): Installation complete.

Canby 446 (#JFS101, #JFSC80, #JFSC84, #JFSS99, #JFSS88): inverters/panels/tracker purchased, permits acquired, tracker foundations installed, tracker racking installed, inverters installed, panels partially installed, paid \$36,000 for PGE transformer upgrade. Remaining: install remaining panels, misc. electrical work, PGE transformer upgrade.

Greenhouse (#JFSS98): inverters/panels/tracker purchased, permits acquired, tracker foundations installed, tracker racking installed, panels installed, inverters installed. Remaining: 2 hours of boring, electrical interconnection.

Crystal Springs (#JFSS97): inverters/panels/tracker purchased, permits acquired. Remaining: install system.

Cloud Cap (#CLCD81, #CLCD82, #CLCD83, #CLCD84): inverters/panels/tracker purchased, permits acquired. Remaining: install systems, PGE transformer upgrade.

Summary:

In summation, our prior deadline of 12/23/2016 was not met due to unforeseen additional permitting issues and a solar panel component malfunction. As we purchased the materials for these projects many months ago, we have had several hundred thousand dollars tied up in a high-interest construction loan. This has cost us a substantial amount of money. Now that our permits have been acquired and the solar panel issue has been resolved, our installations are moving along at a steady pace and we are very eager to finish. We originally requested an extension of our project deadline to

4/30/2017. However, to be on the safe side we would like to amend this requested deadline to 5/31/17, which will give us a greater safety buffer in our timeline to finish.

Energy Wise Lighting, Inc. and their sister company PGPV, LLC are the largest owners of solar PV systems on K-12 schools, Boys and Girls Clubs and other non-profits in the State. We've installed over 125 solar PV systems under the VIR program in Oregon, ranging in size from 5 to 500 KW, for a total installed capacity of over 5 MW. Over the next 15 years, our systems will inject millions of dollars back into Oregon schools, nonprofits and farmers in the form of host fees.

Sincerely,

/s/ Peter Greenberg
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