**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1930**

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| In the Matter of<br><br>PUBLIC UTILITY COMMISSION OF OREGON,<br><br>Community Solar Implementation. | COMMENTS OF THE RENEWABLE ENERGY COALITION ON UTILITY DRAFT POWER PURCHASE AGREEMENTS |

## I. INTRODUCTION

The Renewable Energy Coalition (the "Coalition") submits these comments regarding PacifiCorp's, Portland General Electric Company's ("PGE"), and Idaho Power Company's ("Idaho Power") (collectively, the "Utilities") draft community solar program ("CSP") contracts ("CSP Contracts"). The Coalition's members include small scale solar developers that are participating in the community solar program. Despite an interest in the outcome of this proceeding, the Coalition has not been actively involved in the community solar implementation, except for on interconnection matters, and instead has relied upon the effective and capable advocacy of individual companies and other organizations like Oregon Solar Energy Industries Association and Coalition for Community Solar Access, and upon the excellent work of the Commission Staff. The Coalition has decided to submit comments now, however, because the Utilities' CSP Contracts could significantly harm the entire CSP as well as set negative precedent for the power purchase agreements ("PPAs") for other qualifying facilities ("QFs") under the Public Utility Regulatory Policies Act ("PURPA").

The Coalition's primary recommendation is that the CSP Contracts should be modeled on and use the language in the Oregon Public Utility Commission's (the "Commission" or "OPUC") standard PURPA contracts ("QF Standard Contracts"), with only revisions to account for the unique aspects of the CSP. Absent unanimous agreement between Staff, the Utilities and key stakeholders, there should be no provisions of the CSP Contracts that depart from the QF Standard Contracts. The Coalition specifically requests:

- The Commission should reject PacifiCorp and PGE's efforts to take 3% of the community solar project's net output, and instead should require full payment to the community solar project;
- Failure to comply with the Program Implementation Manual should not be a material breach of the CSP Contract;
- The Program Manager should not be required to follow all aspects of future versions of the Program Implementation Manual;
- All three Utilities propose new costly and burdensome insurance provisions that directly violate Commission insurance policies, and the Commission should reject the proposals;
- PacifiCorp and PGE propose vague curtailment provisions that violate PURPA, and the Commission should reject the proposals;
- Program Managers should be allowed to schedule outages and perform maintenance in the winter, which is the time of the lowest generation;
- Community solar projects should not have to waive their right to a jury trial to obtain a contract;
- The repeal of PURPA should not result in early contract termination;
- PGE proposes to keep and not pay for the project's unsubscribed energy, and the Commission should reject this proposal;
- PGE's and Idaho Power's CSP Contract term should start at commercial operations rather than contract execution to ensure that projects obtain twenty years of fixed prices;

- The Program Manager should not be required to release PGE and PacifiCorp from third party claims;
- PGE and PacifiCorp's new indemnity provisions are too broad and should not apply to the utilities' willful misconduct;
- PGE's rolling 7-day generation forecast should be rejected;
- Idaho Power's new 0.4% monthly interconnection operations and maintenance charge should be removed;
- Idaho Power's proposed definitions for "Standby Power" and "Supplementary Power" should be removed, because it is unclear what their purpose is as they are never used in Idaho Power's CSP Contract;
- PacifiCorp and Idaho Power's new compensation correction language should be rejected;
- Idaho Power's "Successors and Assigns" language should be clarified;
- PacifiCorp should use the "Generation Interconnection Agreement" definition from its current QF Standard Contract;
- The Project Manager definition and responsibilities should match the definition and responsibilities in the current version of the Program Implementation Manual;
- PGE and PacifiCorp's facility inspection rights should not be expanded beyond what exists in the QF Standard Contract;
- PGE and PacifiCorp's taxes section should be removed; and
- PacifiCorp's designated network resource restriction should be changed.

In the end, the Coalition and its members are frustrated and disappointed that the Utilities have attempted to include major changes in Commission policy into the CSP Contracts. Even small or seemingly innocuous changes in contract wording can be meaningful and devastating to QFs and other non-utility power producers. Here,

however, the Utilities proposed substantial re-writes of contractual provisions that make major changes in the contractual relationship between the Utilities and QFs. The Coalition is not aware of the Utilities making any effort to identify or point out these changes, let alone any effort to provide any justification or support. And, there is less than a month for the CSP stakeholders and Staff to review changes that upset years of policy that often was the result of years-long litigation. The Coalition hopes that the Commission not only rejects the Utilities' proposals but does so in the strongest possible language, and requires more transparency.

The proposed CSP Contracts could easily have resulted in years of litigation if these inappropriate contract terms had not been discovered, because there would be CSP standard form contracts with provisions radically inconsistent with established Commission policy and QF Standard Contracts. An example of the type of litigation that could have resulted is the UM 1805 and UM 1931 litigation over PGE's vague contract language regarding the start of the 15-year fixed price term in its QF Standard Contract that, for all practical purposes, resulted in PGE circumventing and changing the Commission's policy regarding 15-year fixed price contracts.[1] That litigation was initiated in December 2016, and both cases are still pending outcomes at the Oregon Court of Appeals. Then, as now, PGE made a compliance filing without identifying the change or providing any explanation.

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[1] *See generally Re Complaint of Northwest and Intermountain Power Producers Coalition, Community Renewable Energy Association, and Renewable Energy Coalition v. PGE*, Docket No. UM 1805, and *PGE v. Alfalfa Solar I, LLC et al.*, Docket No. UM 1931.

Utility unilateral efforts to change Commission policy through creative and unidentified contracting not only leads to litigation, but can seriously upset the institutional climate for project development. For example, the unexpected change in policy from 15 years to as little as 11 years of fixed prices has seriously upset PGE's QF market. QFs had reasonable expectations that they would be entitled to 15 years of fixed prices, and some of these are now unable to obtain financing or otherwise reach their commercial operation dates because of the reduced fixed price term length. Other QFs already invested considerable sums, started construction or are operating, and have suddenly found themselves with significantly lower potential revenues. Many of these investments would never have been made with the understanding that PGE's standard contract provided fewer than 15 years of fixed prices. With this bait and switch, investors are now reconsidering the wisdom of their past decisions, and will be more skittish about future investments in the Oregon market. This cautionary tale regarding just one contract provision should guide every decision regarding any contested contract provision in this CSP docket as well as future proceedings.

Finally, as the Coalition has only spent about a week reviewing the CSP Contracts, we reserve the right to raise additional issues prior to and at the Commission's public meeting to review and adopt standard contractual provisions for the CSP.

## II. COMMENTS

### 1. The Commission Should Not Impose More Onerous Terms or Otherwise Change Policies Regarding Standard Contracts in the Community Solar Implementation Proceeding

The CSP Contracts make a number of significant departures from years of Commission precedent related to standard contracts for small, renewable energy QFs in

Oregon. While this proceeding is focused on community solar projects, all of the facilities are QFs, and community solar projects should not have less protection than other QFs. Some of the proposed changes would significantly harm community solar projects, impose restrictions and obligations that should only apply to projects over 10 MWs, reduce the availability of and/or increase the costs of financing, and unnecessarily complicate what is supposed to be a simple program to expand solar access to retail customers in Oregon.

The Coalition recognizes that the current Commission-approved standard PURPA contracts are not perfect, and supports the Commission's opening of the AR 631 rulemaking to address procedures, terms, and conditions associated with QF Standard Contracts. Key stakeholders are working to identify which QF Standard Contract provisions should be revised and which should be retained. Approving the CSP Contracts will cut short and prematurely resolve disputed issues by adopting non-conforming PPA provisions for QFs that happen to sell their power under the CSP.

The Commission recently rejected a far more transparent effort by PGE to obtain approval of changes to the standard contracts prior to the conclusion of AR 631. In UM 1987, PGE proposed new standard contracts and, while PGE proposed material changes to the Commission as "clarifications," PGE at least provided explanations for most of its changes, including 16 pages of explanation in 10-point font.[2] PGE later filed detailed

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[2] *Re PGE Request to Update its Schedule 201 and Standard Power Purchase Agreements*, Docket No. UM 1987, PGE's Request to Update Schedule 201 and Standard Power Purchase Agreements at Schedule 201 Explanatory Matrix.

redlines showing the proposed changes to its currently effective contracts.[3] In contrast, here none of the Utilities have even identified the changes from the standard contract in redline format let alone provided any sort of explanation for the reasonableness of the changes. The Commission should reach the same conclusion that it did in UM 1987, which is that it should not even consider adopting the standard contracting changes outside of AR 631, because "a possible myriad of unknown issues within the newly-proposed PGE Schedule 201 and PPAs would not best achieve our goal of uniformity for standard contracts across utilities as promptly as possible through docket AR 631."[4]

The Commission's current standard contracts were adopted in a robust process and have almost 15 years of history and interpretation. The initial standard contract forms were the result of over three years of litigation in UM 1129, in which there were multiple rounds of testimony and legal briefs, and most disputed issues were settled or informally resolved.[5] The Commission established the standard contract forms, as well as the rules, policies, and utility rate schedules, to facilitate and direct the process by which a QF and an Oregon electric utility enter into a contract.[6] The Commission has stated that standard contracts pre-establish "rates, terms and conditions that an eligible

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3 *Re PGE Request to Update its Schedule 201 and Standard Power Purchase Agreements*, Docket No. UM 1987, PGE's Response to ALJ Ruling of Nov. 14, 2019 (providing redlined versions of the revised Schedule 201 and revised Standard PPAs).

4 *Re PGE Request to Update its Schedule 201 and Standard Power Purchase Agreements*, Docket No. UM 1987, Ruling at 3 (Dec. 23, 2019).

5 *See generally Re Investigation Relating to Elec. Util. Purchases from QFs*, Docket No. UM 1129.

6 *See generally Re Investigation Relating to Elec. Util. Purchases from QFs*, Docket No. UM 1129, Order No. 05-584 at 6-12 (May 13, 2005).

QF can elect without any negotiation with the purchasing utility" and "eliminate negotiations."[7] There were numerous orders resolving disputed issues in UM 1129, which included one major 64-page order adopting fundamental Commission PURPA policies[8] and a second major 68-page order with 22 pages of attachments exhaustively reviewing and resolving specific disputed standard PPA terms and conditions.[9] After these orders, in early 2007, the Commission approved standard contract forms for each of the Utilities, but only after numerous supplemental filings were made by PGE and Idaho Power to correct the errors in the original filings identified by Staff.[10]

After being adopted in UM 1129, the Utilities' current standard contracts "have been extensively litigated" over the last thirteen years.[11] Some changes were the result of settlements between Staff, the Utilities and QFs,[12] and others came after open meetings[13] and adjudicatory proceedings.[14] In the end, the Commission, Staff, the Utilities, and the

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7 *Id.* at 12, 16.

8 *Id.* at 1-64.

9 Docket No. UM 1129, Order No. 06-538 (Sept. 9, 2006); *see also* Docket No. UM 1129, Order No. 06-586 (Oct. 19, 2006) (errata order attaching an additional 22 pages to Order No. 06-538).

10 Docket No. UM 1129, Order No. 07-065 at 1-2 (Feb. 27, 2007) (PGE); Docket No. UM 1129, Order No. 07-120 at 1-2 (Apr. 2, 2007) (PacifiCorp); Docket No. UM 1129, Order No. 07-197 at 1-2 (May 18, 2007) (Idaho Power).

11 Docket No. UM 1987, Ruling at 3 (Dec. 23, 2019).

12 *E.g.*, *Re Commission Investigation into QF Contracting and Pricing*, Docket No. UM 1610, Order No. 15-130 at 1-4 (April 16, 2015) (Commission adopted a stipulation regarding seven new contract provisions).

13 *E.g.*, Docket No. UM 1805, Order No. 17-373 at 1 (Sept. 28, 2017) (adopting PGE's compliance filing with a new contract provision regarding the start date for the 15-year fixed price term).

14 *E.g.*, *PGE v. Pacific Northwest Solar, LLC*, Docket No. UM 1894, Order No. 18-284 at 5-8 (Aug. 2, 2018) (addressing whether PGE's standard contract allows a QF to materially increase its nameplate capacity prior to commercial operations).

QF community at least have clarity and understanding regarding contract provisions which have been relied upon to finance and operate numerous QFs.

In addition, any unsubscribed generation from non-electric company projects must be sold via a PURPA sale. This requirement is clearly expressed in both the Commission's CSP rules and an opinion from the Department of Justice sought by Commission staff to guide the CSP.[15] Therefore, the QF Standard Contracts should be the starting point for the effort of developing the CSP Contracts. Doing otherwise would be inconsistent with existing policy as well as stakeholders' expectations.

While the Coalition is on the service list for this docket due to its previous participation on interconnection issues, the Utilities' CSP Contracts were not widely provided to the QF community outside of the CSP docket. As it was no longer an active participant in this proceeding, the Coalition was only made aware of the filing after impacted members raised concerns about the CSP Contracts. If the Commission approves non-conforming contract language here, there could be numerous other QFs that may be impacted without even being aware that major changes in policy could occur in this proceeding.

Even if the changes had been clearly identified and provided to the broader QF community, there is insufficient time to review and understand the Utilities' new contract language. The new contract forms were provided less than two weeks ago, and the Commission is planning on approving them at the March 3, 2020 public meeting.[16] Any

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15 OAR 860-088-0140; Order No. 19-392 at Appendix A, Attachment A (Nov. 8, 2019).

16 *See* Staff's Amended Schedule at 1 (January 24, 2020).

changes directed by the Commission would also need to be reviewed. The CSP should not be delayed to review and adjudicate disputed contractual provisions, but the Utilities should be directed to promptly make the changes identified in these comments.

Finally, the Coalition notes that it is not proposing any changes from the Commission's currently approved standard contracts. The Coalition disagrees with many of the Commission's rulings regarding PUPRA policies and its interpretation of the standard contacts; however, the Coalition is raising those concerns and making recommendations in AR 631. The Utilities should do the same.

**2. Community Solar Projects Should Be Paid Their Full Net Output**

PacifiCorp and PGE, but not Idaho Power, propose to pay community solar projects for 97% rather than 100% of their net output. For purposes of calculating payments, PacifiCorp proposes that: "Net Output shall be the amount of energy flowing through the Point of Delivery less three percent (3%) for contingency reserves,"[17] and PGE similarly proposes that: "Net Output shall be the amount of energy flowing through the Point of Delivery less three percent (3%) for contingency reserves."[18] Idaho Power appears to appropriately pay the community solar project for their full net output and states that "Net Output shall be the amount of energy flowing through the Point of Delivery."[19]

PGE and PacifiCorp have not provided any explanation for this unusual effort to take 3% of the community solar project's net output. Without any foreseeable

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17 PacifiCorp CSP Contract, § 1: Definitions (Net Output).
18 PGE CSP Contract, § 1: Definitions (Net Output).
19 Idaho Power CSP Contract, § 1: Definitions (Net Output).

justification, the Coalition is unable to guess as to why PGE and PacifiCorp believe it is appropriate to take the first 3% of the power, and the Coalition is unaware of any basis for why a community solar project or any other on-system QF should be responsible for paying an extra charge for contingency reserves. It is important to note that PGE and PacifiCorp taking 3% of all projects' net output will have a harmful impact on all subscribers, including low income subscribers. This will provide a disincentive to customer to be owners or subscribers and undermine the ability of projects to become financially viable. The Commission should simply reject this arbitrary reduction in payments to the projects.

### 3. Any Failure to Comply with the Program Implementation Manual Should Not Be a Material Breach

PGE and PacifiCorp propose language to the effect that failure to comply with the requirements of the Program Implementation Manual requirements shall be a material breach.[20] It should not be a material breach of the CSP Contract if the Project Manager violates the Program Implementation Manual in a minor, trivial or other immaterial manner. For example, the Program Implementation Manual states that a Program Manager must change its project details in a certain manner, with one approved option being "by emailing administrator@oregoncsp.org."[21] It should not be a material violation of the contract if the Program Manager does not follow this provision of the Program

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[20] PacifiCorp CSP Contract, § 5.1 (Operation and Control: Program Implementation Manual); PGE CSP Contract, § 5 (Operation and Control: Program Implementation Manual).

[21] OR. CMTY. SOLAR PROGRAM, PROGRAM IMPLEMENTATION MANUAL at 16 (Dec. 23, 2019).

Implementation Manual and updates its information by sending an email to a different email address. There are numerous similar examples in which a Project Manager's lack of compliance with the strict terms of the Program Implementation Manual should not reject in a breach, let alone a material breach, of the CSP Contract.

**4. The Program Manager Should Not Be Required to Follow All Aspects of Future Versions of the Program Implementation Manual**

PacifiCorp and PGE, but not Idaho Power, require the Program Manager to follow the Program Implementation Manual and define the Program Implementation Manual as "the manual of requirements applicable to the Project Manager, [the utility] and Participants for the Community Solar Program adopted by the Oregon Public Utility Commission, *as may be amended from time to time*."[22] The Program Implementation Manual has many provisions and obligations that would ordinarily be included in a contract. By effectively incorporating the Program Implementation Manual as a part of the contract, the Commission would be retaining the authority to alter key contractual provisions at any time.

This provision should be revised so that a Program Manager should be required to follow the version of the Program Implementation Manual in effect at the time of contracting, but not future versions which could have significantly different and harmful provisions. The Program Manager should have assurance that its contract will not be materially revised by administrative order.

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22 PacifiCorp CSP Contract, § 1 (Definitions: Program Implementation Manual); PGE CSP Contract, § 1 (Definitions: Program Implementation Manual).

The Program Implementation Manual includes numerous substantive and critically important provisions, including requirements regarding siting (located within a utility service territory, project co-location and size restrictions), installation, decommissioning (responsibility for costs), permits, interconnection, contracts, partners, affiliates, termination, etc. These will change over time, and those future changes should not apply to projects with executed contracts. There are numerous material examples, but the Coalition only identifies two below.

One example is that the current Program Implementation Manual has requirements regarding co-location and states that:

> Co-location of Projects with the characteristics of a single development is not permitted within a five-mile radius unless:
> - The total capacity is 3 MW-AC or less, or
> - The projects are all sited within a single municipality or urban area, as defined below.[23]

If sometime in the next 20 years the Commission changes the co-location requirements to a three-mile radius or changes the total capacity to a different number, currently operating projects would be found to violate the manual and thus, under the Utilities' proposed terms, be in material breach of their CSP Contracts. This is not a fanciful or unrealistic speculation, as the Commission has changed it co-location requirements and size eligibility for QFs eligible standard contracts multiple times over the last fifteen years from when it first adopted the five-mile rule.[24] Each of those changes applied to projects

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[23] OR. CMTY. SOLAR PROGRAM, PROGRAM IMPLEMENTATION MANUAL at 31-32.

[24] Docket No. UM 1129, Order No. 05-584 at 40-41 (May 13, 2005); Docket No. UM 1129, Order No. 06-538 at 10-11 and at Appendix B, Exhibit A (Sept. 20, 2006); Docket No. UM 1610, Order No. 14-058 at 26-27 (Feb. 24, 2014); Docket No. UM 1610, Order No. 15-130 at 3-4 and at Appendix A, Exhibit A (Apr. 16,

entering into contracts in the future, but none required projects that already had contracts to change their contracts.

Another example is the Program Implementation Manual's decommissioning provision, which states that the "Project Manager must include the cost of responsibly decommissioning the project at the end of its useful life in the project's financial planning."[25] Should a future Commission impose a different and more onerous strict liability obligation on the Program Manager for decommissioning costs, then the Program Manager may become responsible for a significant increase in the costs associated with decommissioning, which would radically alter the reasonable expectations of the contracting parties.

The Program Implementation Manual has already been changed, in potentially meaningful ways. The revised Program Implementation Manual includes new definitions for avoided costs and renewable energy certificates, rules governing changes in ownership, interconnection requirements, a new section on waivers, total project capacity, and the value of bill credits.[26] While these changes were described as and likely

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2015); *Re Idaho Power Application to Lower Standard Contract Eligibility Cap and to Reduce the Standard Contract Term, for Approval of Solar Integration Charge, and for Change in Resource Sufficiency Determination*, Docket No. UM 1725, Order No. 16-129 at 4-6 (Mar. 29, 2016); *Re PacifiCorp Application to Reduce the Qualifying Facility Contract Term and Lower the Qualifying Facility Standard Contract Eligibility Cap*, Docket No. UM 1734, Order No. 16-130 at 4-5 (Mar. 29, 2016); *Re PGE Application to Lower the Standard Price and Standard Contract Eligibility Cap for Solar QFs*, Docket No. UM 1854, Order No. 19-016 at 4-5 (Jan. 18, 2019) (making final the interim relief granted).

[25] OR. CMTY. SOLAR PROGRAM, PROGRAM IMPLEMENTATION MANUAL at 33.

[26] Staff's Revisions to the Program Implementation Manual at 1-5 (Dec. 23, 2019).

were just "language clarification,"[27] they demonstrate that the Commission is reserving the right to change fundamental aspects of the contracts, including the prices paid and the ownership and use of renewable energy certificates. These items need to be fixed at the time of contracting and not changed over the twenty-year contract term.

In the end, the Commission should retain the discretion to change the Program Implementation Manual in the future, but any changes that impact contractual provisions in the CSP Contracts should only apply to those contracts that are executed after the effective date of the new Program Implementation Manual.

### 5. Insurance Provisions Are Costly and Burdensome, and Violate Commission Policy

All three Utilities propose materially harmful and more onerous insurance provisions than exist in the QF Standard Contracts. The Commission rejected similar and harmful provisions in UM 1129, and should do so again here. Even if the QF Standard Contracts warrant revisions, there is insufficient time for the Coalition and other stakeholders to understand and evaluate much of the Utilities' new language.

All the Utilities propose that all Project Managers have insurance with companies that are rated not lower than "A-/VII" by the A.M. Best Company.[28] The QF Standard Contracts require the seller to carry insurance with an insurance company or companies rated not lower than "B+" by the A.M. Best Company.[29] The difference between A- and B+ is two notches, as the rankings go from "A-" to "B++" and then down to "B+." There

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27 *Id.*

28 PacifiCorp CSP Contract, §7, PGE CSP Contract, § 7; *see* Idaho Power CSP Contract § 13.

29 Docket No. UM 1129, Order No. 06-538 at 41-42.

is insufficient time to fully understand the difference in the ability to obtain, and the costs associated with obtaining, insurance with these difference ratings.

In UM 1129, the Commission previously rejected PacifiCorp and Idaho Power's proposal to require QFs to have insurance rated no lower than "A-" and PGE's proposal to require QFs to have insurance rated no lower than "A."[30] Based on detailed and exhaustive analysis in the testimony from the Utilities and Staff, the Commission held that:

> [W]e conclude that the utilities are correct to be concerned about *some* risk regarding the financial security of insurers. Consequently, we deem it reasonable to require that any insurer providing general liability insurance to a QF be assessed as financially "secure" pursuant to industry standards. Consequently, we conclude that it is reasonable for the filed standard contracts to require that a QF obtain general liability insurance from an insurer with a rating of "B+," or higher, from the A. M. Best Company. We direct each utility to revise its filed standard contract to so provide.[31]

The Commission was even more lenient for projects 200 kW and lower. The Commission required only "QFs with a design capacity above 200 kW to carry a reasonable amount of general liability insurance."[32] In its UM 1129 Phase I order, the Commission recognized that exempting 200 kW projects from the need to obtain insurance placed some risk on the utilities, but "[n]o party presented any evidence, however, regarding the potential scope of such risk."[33] The Commission invited the utilities to present evidence of the potential harm and risks associated with these very

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30 *Id.* at 40-42.

31 *Id.* at 41-42.

32 Docket No. UM 1129, Order No. 05-584 at 3; *see also id.* at 50-51 ("We must conclude, therefore, that it is inappropriate to require QFs that have a design capacity of 200 kW or less to be required to obtain general liability insurance.").

33 *Id.* at 51.

small projects and stated that the utilities could "further raise this issue, however, in the second phase of this proceeding."[34] However the utilities did not do so in Phase II of UM 1129.[35] The Utilities also had an opportunity to revisit this issue in the most recent PURPA investigation in UM 1610, but elected not to do so. Instead, the Utilities, without informing the Commission that they were seeking a major policy change, simply proposed new contract terms.

**6. The Curtailment Provisions Are Unclear and Violate PURPA**

PacifiCorp and PGE propose different curtailment provisions, none of which are in the QF Standard Contracts. In addition, these provisions appear to violate PURPA's limitation on an electric company's ability to curtail QFs. These curtailment provisions will have the practical impact of reducing the amount of energy available to all subscribers, including low income subscribers. As it is unclear when curtailments would occur, this could be an unpredictable reduction that Project Managers and subscribers will have no ability to forecast or avoid. They should be removed.

PacifiCorp includes an entirely new "Curtailment" sub-section,[36] and PGE inserts curtailment rights into a section on "Delivery of Power and Compensation."[37] The Coalition notes that the current QF Standard Contracts already allow PGE and PacifiCorp to curtail projects when "generation curtailment is required as a result of Seller's

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34 *Id.*

35 Docket No. UM 1129, Order No. 06-538 at 41.

36 PacifiCorp CSP Contract, § 3.3 (Delivery of Power and Compensation: Curtailment).

37 PGE CSP Contract, § 3 (Delivery of Power and Compensation).

noncompliance with the Generation Interconnection Agreement"[38] and the Coalition does not object to including these provisions. However, all other new curtailment provisions should be removed.

PGE and PacifiCorp have added new grounds for curtailment, which are not fully understood. PacifiCorp proposes to curtail "lack of integration or synchronization to the transmission system."[39] The Coalition simply does not know what this means, and there is no time to spend the resources to understand and opine upon it. Thus, it should be rejected.

One new curtailment right appears to be inconsistent with PURPA. PacifiCorp and PGE propose to have the right to curtail due to:

> the general, non-discriminatory curtailment, reduction, or redispatch of generation in the area for any reason, even if such curtailment or redispatch directive is carried out by [the utility] (but excluding curtailment of purchases for solely economic reasons unilaterally directed by [the utility])[.][40]

Two FERC administrative rule provisions are at issue here. First, Section 292.304(f) of the Code of Federal Regulations ("CFR") states that a utility may curtail purchases from a QF, which due to operational circumstances, would result in costs greater than those the utility would incur if it instead generated an equivalent amount of energy itself.[41] Second, CFR Section 292.307(b) states that a utility may curtail

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38 PGE QF Standard Contract, § 5 (Operation and Control); *see* PacifiCorp QF Standard Contract, § 6.3 (Operation and Control).

39 PacifiCorp CSP Contract, § 3.3 (Delivery of Power and Compensation: Curtailment).

40 PGE CSP Contract, § 3; PacifiCorp CSP Contract, § 3.3 (Delivery of Power and Compensation: Curtailment).

41 18 CFR 292.304(f).

purchases from a QF, if such purchases would contribute to an emergency.[42] Although both provisions seem to provide utilities authority to curtail purchases from QFs, FERC policy has placed significant limits on the ability to curtail for economic reasons during low load situations.

FERC has explained:

> PURPA regulations permit a purchasing utility to curtail a QF's output in two circumstances: (1) in system emergencies, pursuant to section 292.307(b) of the Commission's regulations; or (2) in light load periods, pursuant to section 292.304(f) of the Commission's regulations, but only if the QF is selling its output on an 'as available' basis.[43]

So, the Utilities have the right to curtail during a "system emergency," which is specifically defined as "a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property."[44] A simple comparison of the FERC regulation and PGE and PacifiCorp's definition shows that the new language is broader. There is no time to understand how much or what broader rights PGE and PacifiCorp are seeking in their CSP Contract, and therefore the new language should be rejected.

**7. Project Maintenance Should Not Be Limited to Certain Months**

PacifiCorp and PGE propose to require that the Program Manager "must use commercially reasonable efforts to not plan outages during the months of December,

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42 18 CFR 292.307(b).

43 *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at P. 36 (Dec. 16, 2013) (internal citations omitted).

44 18 CFR 292.101(b)(4).

January, February, July, August and September."[45] While PGE may have peak load in the winter months, it is unclear why this is necessary, or why the scheduled outages should not be performed in the middle of the winter when the sun does not shine as strongly.

PGE's proposal will have a harmful impact on all subscribers, including low income subscribers. This is because there will be less energy available to subscribe to as Project Managers will need to schedule maintenance during months with higher generation output. This provision would require the Program Manager to schedule maintenance during periods of high expected generation, which will be costly. The Commission should instead incent community solar projects to schedule maintenance during time periods of the lowest generation. Thus, instead of being barred, outages should be done in the winter, as solar generation in December can be one-fifth the generation in the summer months.

**8. Community Solar Projects Should Not Waive Their Right to a Jury Trial**

PacifiCorp proposes language that would require a community solar QF to waive its right to a jury trial.[46] This is language that PacifiCorp has wanted to insert in its QF Standard Contracts for years, but has never sought Commission approval to do so, which is sufficient reason to reject it here. There are many legal and public policy reasons why PacifiCorp's proposal should be rejected, only two of which shall be touched upon here:

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45 PacifiCorp CSP Contract, § 5.8 (Operation and Control: Scheduled Outages); PGE CSP Contract,§ 5 (Operation and Control: Scheduled Outages).

46 PacifiCorp CSP Contract, § 14.4 (General Provisions: Waiver of Jury Trial).

1) a mandatory jury trial waiver is unconstitutional; and 2) jury trials are an important deterrent, especially when contracting with monopoly utility providers.

Contracting parties in Oregon have a right to a jury trial in Oregon. Article VII, Section 3 of the Oregon Constitution provides that "[i]n actions at law, where the value in controversy shall exceed $750, the right of trial by jury shall be preserved."[47] Further, Article I, Section 17 provides that "[i]n all civil cases the right of Trial by Jury shall remain inviolate."[48] Reading these provisions together, Article I, Section 17 provides a jury trial right in common-law claims and defenses that were customarily tried by a jury when Oregon adopted its constitution, and those claims and defenses of like nature.[49] An action for declaratory judgment requesting the construction of contracts is an action at law.[50] Therefore, in an action for declaratory judgment on the construction of contracts there is a right to a trial by jury. Additionally, juries have traditionally determined whether a breach of a contract has occurred and the amount of damages.[51]

Juries have proven to be particularly effective when policing PacifiCorp's actions in regards to independent power producers, and many QFs prefer this protection. An egregious example was PacifiCorp's willful and malicious misappropriation of trade secrets that it used to build the Currant Creek gas plant.[52] The Supreme Court of Utah

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47 Or Const. Art. VII § 3.
48 Or Const. Art. I § 17.
49 *McDowell Welding & Pipefitting, Inc. v. U.S. Gypsum Co.*, 345 Or 272, 279 (2008).
50 *See C & B Livestock, Inc. v. Johns*, 273 Or 6, 10(1975).
51 *Molodyh v. Truck Ins. Exch.*, 304 Or 290, 296 (1987).
52 Steven Oberbeck, *Texas Company wins $134M from utility owner PacifiCorp*, SALT LAKE TRIB. (May 23, 2012),

affirmed a jury award of more than $133 million to compensate a developer because PacifiCorp willfully and maliciously misappropriated designs and plans the developer had bid into a PacifiCorp's RFP process, which resulted in PacifiCorp awarding itself the winning bid and building the power plant without the developer that originally proposed the project.[53] In May 2012, the Utah jury specifically found that PacifiCorp "willfully and maliciously misappropriated a trade secret from USA Power."[54] While this is an extreme example, it provides reason for certain developers to be concerned with giving up their rights to jury trials when contracting with PacifiCorp.

**9. The Repeal of PURPA Should Not Result in Early PPA Termination**

PacifiCorp and PGE propose that "[t]he repeal of PURPA shall result in the early termination of this Agreement."[55] Even if PacifiCorp's parent company was not actively seeking to repeal or significantly revise PURPA or if President Trump's appointees to FERC were not attempting to administratively repeal PURPA, this provision could make it very difficult to obtain financing.

The current QF Standard Contracts include language with the opposite result. For example, PGE's QF Standard Contract states: "In the event the Public Utility Regulatory Policies Act (PURPA) is repealed, this Agreement shall *not* terminate prior to the

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http://archive.sltrib.com/story.php?ref=/sltrib/money/54163321-79/pacificorp-usa-power-jury.html.csp.

53 *USA Power, LLC v. PacifiCorp*, 372 P.3d 629, 643, 655-656, 679 (Utah 2016).

54 *Id.* at 643.

55 PacifiCorp CSP, § 14.6 (General Provisions: Effect of PURPA Repeal); PGE CSP, § 14 (General Obligations: Effect of PURPA Repeal).

Termination Date, unless such termination is mandated by state or federal law."[56] This language was adopted in UM 1129 after the Commission rejected PacifiCorp's attempt to insert similar language that would result in the QF Standard Contract terminating in the event of a PURPA repeal. The Commission previously explained why such a provision should be rejected:

> We agree that existing QF contracts should not terminate upon the repeal of PURPA, but should continue in effect with utilities able to recover contract costs under normal regulatory principles and procedures. We cannot, however, predict the provisions of future legislation, although the repeal of PURPA on a retroactive basis might be legally barred. We direct utilities to insert a clause in any QF contract that specifies that QF contracts do not terminate upon the repeal of PURPA, unless such termination is mandated by federal or state law. We believe this provision provides all the protection that is available under the law, but should not have any adverse effect on financing as it imposes no additional risk on QFs.[57]

**10. PGE Does Not Include a Rate for the Project's Unsubscribed Energy**

PGE's CSP Contract states that the Unsubscribed Energy shall be paid "at the As-Available Rate."[58] PGE states that the "As-Available Rate" is the rate "set forth in the Company's Schedule 201."[59] The term "As-Available" does not exist in PGE's Schedule 201. Therefore, PGE has effectively proposed that PGE Project Managers will not be paid for an Unsubscribed Energy, which means that PGE gets to keep it at no cost.

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56 PGE QF Standard Contract, § 15 (Partial Invalidity and PURPA Repeal) (emphasis added); *see also* PacifiCorp QF Standard Contract, § 20 (Repeal of PURPA) ("This Agreement shall not terminate upon the repeal of the PURPA, unless such termination is mandated by federal or state law.").

57 Docket No. UM 1129, Order No. 05-584 at 57.

58 PGE CSP Contract, § 1 (Definitions: Unsubscribed Energy).

59 *Id.* (Definitions: As-Available Rate).

## 11. PGE's and Idaho Power's CSP Contract Should Specify 20 Year Terms

PGE's CSP Contract is vague on the fixed price term and states that: "Except as otherwise provided herein, this Agreement shall terminate on _____."[60] Idaho Power's contract has the same language as PGE.[61] In contrast, PacifiCorp's CSP Contract states clearly: "Except as otherwise provided herein, this Agreement shall terminate at midnight (Pacific prevailing time) on the date that is the twentieth (20th) anniversary of the Commercial Operation Date."[62] Given the heightened sensitivity on the issue of fixed price contract terms, especially in regards to PGE, the Coalition recommends that all three utilities use PacifiCorp's language.

## 12. The Program Manager Should Not Be Required to Release PGE and PacifiCorp from Third Party Claims

PacifiCorp and PGE propose a major change in Commission policy and require the Project Manager to release all third party liability against them. Specifically, they propose a new provision that is not in the QF Standard Contract that requires a Project Manager:

> By executing this Agreement, Project Manager releases [utility] from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.[63]

The Coalition in unaware of any reason that the CSP's success is dependent on Program Managers giving up third party claims. This is not just a hypothetical risk, as it is reasonable to assume that there are third party claims associated with interconnection

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60 PGE CSP Contract, § 2 (Term).
61 Idaho Power CSP Contract, § 2 (Term).
62 PacifiCorp CSP Contract, § 2 (Term).
63 PacifiCorp CSP Contract, § 14.10 (General Provisions: Project Release); PGE CSP Contract, § 14 (General Provisions: Project Release).

and PPA disputes related to the projects that will participate in the CSP. For example, a community solar project may use development rights, assets or interconnection facilities developed by a third party. No one should have to give up legitimate legal rights or assume liability simply to obtain a community solar contract.

**13. The New Indemnity Provisions Are Too Broad**

PGE's and PacifiCorp's CSP Contract proposes new indemnification provisions. The provision is completely revised, and it is not possible at this time to understand all the ways in which it could change the rights and obligations of the Project Manager and PGE/PacifiCorp. The Coalition, however, noted one material change in which PGE/PacifiCorp's new indemnification provisions require the Project Manager to defend, indemnify and hold PGE/PacifiCorp harmless from PGE/PacifiCorp's "negligence or *willful misconduct.*"[64] PGE's current indemnification provision requires the Seller to defend, indemnify and hold PGE harmless from all claims except those due to PGE's "negligence,"[65] and PacifiCorp's requires the Seller to defend, indemnify and hold PacifiCorp harmless from all claims except those due to PacifiCorp's "fault or gross negligence."[66] In principle, the Coalition believes the entire indemnification provision should be removed for any negligent conduct; however, the Coalition will make that argument in AR 631. PGE and PacifiCorp should also wait to change this important

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64 PGE CSP Contract, § 12 (Indemnification and Liability) (emphasis added); PacifiCorp CSP Contract, § 12 (Indemnification and Liability) (emphasis added).

65 *Compare* PGE CSP Contract, § 12 (Indemnification and Liability), *with* PGE QF Standard Contract, § 10 (Indemnification and Liability).

66 *Compare* PacifiCorp CSP Contract, § 12 (Indemnification and Liability), *with* PGE QF Standard Contract, § 12 (Indemnification and Liability).

contract provision, and the Commission should not bother to parse and fully understand this complex new provision, but should simply use the indemnification provisions in PGE/PacifiCorp's current QF Standard Contracts.

**14. PGE's Rolling 7-Day Generation Forecast Should Be Rejected**

PGE has proposed a new provision that would require that "commencing on the Commercial Operation Date, Project Manager shall use commercially reasonable efforts to provide Company with a rolling seven-day generation forecast during the term of this Agreement."[67] This provision is not in PGE's QF Standard Contract nor in PacifiCorp or Idaho Power's QF Standard or CSP Contracts. The Coalition does not know why this obligation would be necessary or how it could be considered beneficial to either PGE or the Project Manager. What is clear is that this provision will add cost and time burdens upon the Project Manager. Once again, the Commission should not bother to fully understand this new provision or give PGE an opportunity to justify it at this time, but simply reject it.

**15. Idaho Power's Monthly Operations and Maintenance Charge Should Be Removed**

Idaho Power has proposed a new interconnection charge in this power sales contract.[68] Idaho Power first includes a general provision requiring the Project Manager to pay for interconnection charges approved in Idaho Power's Oregon tariffs.[69] Then, Idaho Power proposes that the:

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67 PGE CSP Contract, § 3 (Delivery of Power and Compensation).

68 Idaho Power CSP Contract, § 14 (Other Charges).

69 Idaho Power refers to a Schedule XX. Idaho Power CSP Contract, § 14 (Other Charges). The Coalition is not certain what "Schedule XX" refers to. Idaho

> Project shall pay the Company the monthly Operation & Maintenance Charge of 0.4% on the investment by the Company in Interconnection Facilities. As such investment changes, the monthly Operation & Maintenance Charge will be adjusted to correspond the revised investment.[70]

A 0.4% charge on Idaho Power's investment in interconnection facilities is not a small charge. If Idaho Power makes a $100 investment in interconnection facilities, then a monthly 0.4% charge would result in the QF paying $96 in operations and maintenance charges over the 20-year term, which could rebuild the entire interconnection facilities.

Idaho Power should not propose any new charges in a CSP proceeding, but should make separate filing justifying why such charges are necessary, whether 0.4% is the correct number or why the QF should not be provided the option to pay for actual operations and maintenance costs. Even if this operations and maintenance charge was reasonable, then it should be part of a generator interconnection agreement and not a PPA. The Coalition is not opposed, in principle, to Idaho Power and other utilities properly recovering their operations and maintenance costs, but the Commission should not bother to fully understand this new provision or give Idaho Power an opportunity to justify it at this CSP proceeding, but should simply reject it as being outside the scope of issues in this proceeding.

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Power has a Schedule 72 for interconnection tariffs in Idaho, but does not appear to have a similar tariff in Oregon. *See PURPA QF Interconnections*, ID. POWER, https://www.idahopower.com/about-us/doing-business-with-us/generator-interconnection/purpa-qf-interconnections/ There is no time to investigate and understand this reference to a tariff which may or may not exist.

[70] Idaho Power CSP Contract, § 14 (Other Charges).

### 16. Idaho Power's Proposed Definitions for Standby Power and Supplementary Power Should Be Removed

Idaho Power proposes two new definitions for "Standby Power" and "Supplementary Power."[71] These terms are not used again in Idaho Power's CSP Contract. The Commission should not bother to understand why Idaho Power believes it is appropriate to add two entirely new definitions that are not used in its contract or give Idaho Power an opportunity to justify them at this time, but simply require Idaho Power to remove the definitions.

### 17. PacifiCorp and Idaho Power's New Compensation Correction Language Should Be Rejected

PGE and Idaho Power propose new language regarding corrections to invoices, which adopt a new 18 month period rather than the QF Standard Contracts which use the actual period, or (for PGE) if the period cannot be ascertained, three months.[72] The time for correction may also be limited by common law, statute and/or Commission administrative rules. The Coalition is unsure why the current policy needs to be changed, and at this time does not take a position on what the appropriate time period should be. However, once again, now is not the time to revisit this issue, and the Commission should not provide PGE or Idaho Power an opportunity to justify any changes at this time, and

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71 Idaho Power CSP Contract, § 1 (Definitions: Standby Power and Supplemental Power).

72 *Compare* PGE CSP Contract, § 9 (Compensation: Corrections), *with* PGE QF Standard Contract, § 7.3 (Metering); *see also* Idaho Power CSP Contract, § 8 (Compensation: Corrections). The Coalition is not entirely certain what Idaho Power's language means, but assumes that Idaho Power meant to adopt a new 18 month period.

the Commission should simply require PGE and Idaho Power to use the current QF Standard Contract language.

**18. Idaho Power's "Successors and Assigns" Language Should Be Clarified**

Idaho Power proposed successors and assigns language which is confusing and may be interpreted by the Commission as not even allowing assignment. Idaho Power's QF Standard Contract makes it clear that assignment can occur and consent to assignment "shall not be unreasonably withheld."[73] Idaho Power's new language states: "No assignment shall be either Party shall become effective without written notice to the other Party."[74] The sentence appears to have a grammatical error of some sort and its meaning is unclear, but it may be intending to not allow assignment at all or (more likely) to not allow assignment without consent. The Coalition favors broad assignment rights, but at this time the Coalition recommends that the language in the current QF Standard Contract be retained rather than new confusing language.[75]

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73 Idaho Power QF Standard Contract, § 20.1 (Successors and Assigns).

74 Idaho Power CSP Contract, § 9 (Successors and Assigns).

75 The Coalition's concerns regarding potentially vague language regarding consent are justified. In *PGE v. Pacific Northwest Solar*, the Commission interpreted language allowing significant changes in nameplate capacity only upon "prior written notice to PGE" as actually not allowing any material changes due to the language in other provisions of PGE's contract. *PGE v. Pac. Nw. Solar, LLC*, Docket No. UM 1894, Order No. UM 18-284 at 4-8 (Aug. 2, 2018). The Coalition is sensitive to ensuring that rights tied to notice provisions need to be more clearly drafted in utility standard contracts.

### 19. PacifiCorp's "Generation Interconnection Agreement" Definition Should Not Be Changed from the Current QF Standard Contract's Definition

The PacifiCorp proposes a new and slightly revised definition of "Generation Interconnection Agreement."[76] The Coalition is unclear of the purpose or meaning of the changes, which removes the word "PacifiCorp" and could potentially be read to expand its coverage beyond "PacifiCorp's interconnection facilities."[77] Given the lack of explanation for the change, the Coalition recommends that the current definition be retained.

### 20. The Project Manager Definition and Responsibilities Should Match the Current Version in the Program Implementation Manual

The Utilities proposed definition and descriptions of "Project Manager" do not match the current version of the Program Implementation Manual. The Coalition is unaware of any reason why there should be any differences, does not understand the practical impact of the Utilities' definitions and characterizations, and recommends that the Commission simply require the CSP Contracts to include essentially the same definition in the Program Implementation Manual.

Between themselves, each of the Utilities have slightly different definitions and/or descriptions of the "Project Manager" in their Recitals, none of which are the same as the definition in the current version of the Program Implementation Manual.[78] There is

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76 PacifiCorp CSP Contract, § 1 (Definitions: Generation Interconnection Agreement).

77 *Compare id., with* PacifiCorp QF Standard Contract, § 1.17 (Definitions: Generation Interconnection Agreement).

78 *See* PacifiCorp CSP Contract, Recitals; PGE CSP Contract, Recitals; Idaho Power CSP Contract, Recitals; OR. CMTY. SOLAR PROGRAM, PROGRAM IMPLEMENTATION MANUAL at 9, 11.

insufficient time to inquire or understand whether even some of these slight differences are meaningful. The Program Implementation Manual has a simple and easy to understand definition, which is also the same definition as in the community solar statute:

> The entity identified as having responsibility for managing the operation of a community solar project and, if applicable, for maintaining contact with the electric company that procures electricity from the community solar project. A project manager may be an electric company or an independent third party.[79]

The Coalition believes that, for purposes of defining the term in the CSP Contracts, it is appropriate to remove the part which states that the project manager may be "an electric company" from the CSP PPAs, because the CSP Contract is between an electric company and independent third party. Otherwise, the definitions should be the same.

The Utilities' reference to the Project Manager includes a potentially material and substantial difference from the Program Implementation Manual and community solar statute. The Recitals of all the Utilities' CSP PPAs refers to the Project Manager as intending "to construct, own, operate and maintain" a community solar facility, including the interconnection facilities.[80] The Project Manager may not intend to do all of these items, and likely will not. Standard solar industry practices often have the owner contracting with a third party to perform at least part of the construction, operation or maintenance of the both the facility and the interconnection facilities. For example, the

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79 OR. CMTY. SOLAR PROGRAM, PROGRAM IMPLEMENTATION MANUAL at 9, 11; ORS 757.386(1)(d).

80 *See* PacifiCorp CSP Contract, Recitals; PGE CSP Contract, Recitals; Idaho Power CSP Contract, Recitals.

owner may also intend to construct the facility, but sell the facility prior to commercial operations or at some point during the 20-year contract term to a third party or a utility.

The Coalition recognizes that the Recitals in the CSP Contracts is the same as in the Commission QF Standard Contracts. However, it is appropriate for the CSP contracts include a number of changes from the QF Standard Contracts in the limited circumstance when such changes are needed to conform to the unique aspects of the community solar statute and program. Given that the community solar statute includes a specific definition, it should be used. Also, the Program Implementation Manual specifically allows for the Project Manager to not own the project.[81] So, language in the CSP Contract (which is incorrectly based on the QF Standard Contract) must be changed to at least state the Project Manager does not need to own the community solar project. The Commission order should also clarify and confirm that the Definitions and Recitals do not intend to limit a Project Manager from hiring third parties to construct, operate or maintain the facility or interconnections, or intending to sell the project prior to or after commercial operations.

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81 OR. CMTY. SOLAR PROGRAM, PROGRAM IMPLEMENTATION MANUAL at 11 (The Project Manager is ultimately responsible for the operation of the Community Solar Project and entering into agreements to uphold the Program requirements, such as the conditions of Project Manager registration, *but is not required to be the legal owner of the physical solar installation.*") (emphasis added). Responsibility for operation of the project also does not require the Project Manager to actually construct or operate the project.

**21. PGE and PacifiCorp's Facility Inspection Rights Should Be Limited**

PGE and PacifiCorp have proposed new rights for "Facility Inspection."[82] The QF Standard Contract discusses what happens if there are generation facility inspections, but it is unclear whether the utilities have a unilateral right to inspect the generation facility. In contrast, the QF Standard Contracts provides specific detailed rights regarding inspections of interconnection equipment.[83] The Coalition does not at this time have a position on the merits of PGE and PacifiCorp's proposals, and has had insufficient time to discuss the issue with its members or other QF trade associations. At this time, the Coalition recommends that the Utilities simply use the current QF Standard Contract language so that the Commission does not inadvertently change either the QFs or the Utilities' legal rights under current policy and law.

**22. The Taxes Sections Should Be Removed**

PacifiCorp and PGE have proposed new broad sections regarding the Program Manager being responsible for paying for the respective utility's taxes.[84] This provision does not exist in the QF Standard Contracts, and it is unclear whether there is something different about the CSP that requires it. The fact that Idaho Power does not include a similar section indicates that it is not necessary for the CSP, but is instead another attempt by PGE and PacifiCorp to change Commission policies. Since no justification was

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82 PacifiCorp CSP Contract, § 5 (Operation and Control: Facility Inspection); PGE CSP Contract, § 5 (Operation and Control: Facility Inspection).

83 PacifiCorp QF Standard Contract, § 6.3 (Operation and Control); PGE QF Standard Contract, §§ 5 (Operation and Control), 7.3 (Metering).

84 PacifiCorp CSP Contract, § 9.5 (Compensation: Taxes); PGE CSP Contract, § 9 (Compensation: Taxes).

provided and there is no time to properly review a section on "taxes," the provision should simply be removed.

**23. PacifiCorp's Designated Network Resource Restriction Should Be Changed**

PacifiCorp proposed language regarding the designation of the community solar project as a network resource, and a process in which the Commission will resolve a dispute regarding whether the project can be a designated network resource ("DNR").[85] The Coalition has a number of concerns with this provision, and requests that it be completely removed. If it is not removed, the Commission should make two changes at this time: 1) allow the community solar project to terminate the contract if the Commission resolves any dispute against the project and in favor of PacifiCorp; and 2) require PacifiCorp to first attempt to use its Bonneville Power Administration ("BPA") transmission.

The Coalition assumes that this provision is related to PacifiCorp's "load pocket" situation in which PacifiCorp has been allowed by the Commission to assign third party transmission costs on QFs in areas in which PacifiCorp claims that generation exceeds local load.[86]

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85 PacifiCorp CSP Contract, § 3.1 (Delivery of Power and Compensation: Designation of Network Resource).

86 Here, PacifiCorp does not propose to acquire third party transmission, but instead states that the remedy to the load pocket situation for community solar projects would be to "require[] the construction of transmission system network upgrades or otherwise require[] potential re-dispatch of other network resources of PacifiCorp …" PacifiCorp CSP Contract, § 3.1 (Delivery of Power and Compensation: Designation of Network Resource). The Coalition does not understand why PacifiCorp has removed the possibility of using third party transmission.

The Commission should remove this provision. The Commission already determined that community solar projects, unlike other QFs, only need to interconnect with Energy Resource Interconnection Service ("ERIS") rather than Network Resource Interconnection Service ("NRIS").[87] The Utilities are not supposed to "consider deliverability-related transmission upgrades when identifying interconnection upgrades for QFs."[88] PacifiCorp claimed that it remained concerned that this could shift transmission upgrade costs to ratepayers, and PacifiCorp "plans to include an information-only section in the CSP interconnection study that identifies whether deliverability-related transmission upgrades would have been identified under traditional QF interconnection practices (NRIS interconnection)."[89]

PacifiCorp has not proposed an "informational-only" provision, but seeks to re-litigate this resolved issue with a contract provision that allows it to dispute a community solar project's ability to deliver its net output and de facto require the project to obtain NRIS. A community solar project should not be subject to the uncertainty associated with PacifiCorp attempting to force the project to obtain NRIS, and should instead remove this section of the CSP Contract.

In the event that the Commission decides to depart from earlier conclusions on allowing community solar projects to only take ERIS, then the Project Manager should be allowed to terminate their contract at the time the Commission decides to require NRIS

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87 Order No. 19-392 at 5 ("We adopt Staff's recommendations covering the CSP interconnection process.") and Appendix A at 51 ("Staff's Proposal: CSP generator interconnect as ERIS").

88 Order No. 20-038, Appendix A at 7.

89 *Id.*

interconnection service. PacifiCorp provides the Project Manager a right to terminate the contract when PacifiCorp provides "a Conditional DNR Notice."[90] The Coalition agrees with PacifiCorp that the Project Manager should have the ability to walk away from the contract, if they are required to pay for network transmission costs. However, the Conditional DNR Notice is the first stage in a potential dispute between the Project Manager and PacifiCorp, which can then trigger PacifiCorp submitting the dispute to the Commission within 90 days and the Commission then issuing a final decision. The Commission resolution could come well after the Conditional DNR Notice, and the Project Manager should be allowed to terminate the contract after the Commission issues a final unappealable ruling on the dispute.

Finally, if the Commission is going to allow PacifiCorp to impose network interconnection costs on community solar projects, then this should occur only after PacifiCorp attempts to designate the community solar project as a network resource under either of PacifiCorp ESM's network service agreements, including its BPA Network Integration Transmission Service Agreement ("NITSA"). The Coalition recognizes that this issue is currently being litigated in PacifiCorp's UM 1610 compliance filing.[91] The Coalition is not seeking a different resolution in UM 1930; however, if the Commission adopts the recommendations of the Coalition and the Community Renewable Energy

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90 PacifiCorp CSP Contract, § 3.1 (Delivery of Power and Compensation: Designation of Network Resource).

91 *See* Feb. 25, 2020 Public Meeting Agenda, RA 2. Pacific Power: Docket No. UM 1610 – Public Hearing and Commissioner Work Session PacifiCorp's Third Amended Application for Approval of Compliance Filing.

Association in UM 1610, then that resolution should apply to community solar projects as well as other QFs.

## III. CONCLUSION

For the foregoing reasons, the Commission should reject many of the Utilities' newly proposed CSP Contract provisions that are inconsistent with established Commission policy and the current QF Standard Contracts.

Dated this 19th day of February 2020.

Respectfully submitted,

Irion A. Sanger
Sanger Law, PC
1041 SE 58th Place
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for the Renewable Energy Coalition