



November 24, 2023

Via electronic mail:

Public Utility Commission of Oregon
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Attn: joseph.abraham@puc.oregon.gov

RE: UM 1930—Follow-up comments by Sunthurst Energy, LLC after November 14 Workshop

To the Public Utilities Commission of Oregon:

“Severely Delayed” may best describe the current status of Oregon’s Community Solar Program. Staff said, at the November 14 Workshop, that only 6 Community Solar Projects (CSPs) have come online to date, but that 30 more are expected next year. If other CSPs are like Sunthurst Energy, LLC’s (Sunthurst’s), the success or failure of the Community Solar Program may depend upon improved cooperation from PacifiCorp. PacifiCorp’s 28-month timeline for interconnecting three of Sunthurst’s five CSPs is unreasonable, and is harming the State’s ability to implement its Community Solar Program. This letter describes several instances where PacifiCorp has delayed Sunthurst’s projects, and discusses several potential remedies.

I. Background.

Sunthurst Energy, LLC (Sunthurst) is a small, family owned, business with long-standing ties to Umatilla County, and was one of the first developers to commit to building Community Solar Projects. We’re the only developer (PM)/builder in the program. Sunthurst has five pre-Certified CSPs with a total capacity of 11.92 MW, all in PacifiCorp territory.¹ Sunthurst is on the cusp of closing financing for three CSPs—Pilot Rock Solar 1 (PRS1), Pilot Rock Solar 2 (PRS2), and Tutuilla (together the “Three Projects”)--provided PacifiCorp agrees to build their interconnections in a timely fashion. The Three Projects embody the policy objectives of the Community Solar Program. Tutuilla is the only CSP sponsored by an Indian tribe (the Confederated Tribes of the Umatilla Indian Reservation, or “CTUIR”) and located on tribal land. PRS1 and PRS2 are sited in City of Pilot Rock, a recognized Economically Distressed Area. PRS1 received a substantial state RED grant, and Tutuilla received a large CREP grant. The projects are interdependent for financing, such that failure of one project will cause all three to fail. Sunthurst sent multiple urgent requests, starting October 18, to move forward the scheduled COD for the Three Projects, currently Scheduled for September 30, 2025. PacifiCorp waited 30 days to respond, manifesting indifference to CSP’s project timelines. Other instances of PacifiCorp delaying Sunthurst’s projects are detailed below.

¹ Pilot Rock Solar 1, LLC (PRS1, 1.98 MW, Q0666); Pilot Rock Solar 2, LLC (PRS2, 2.99 MW, Q1045); Tutuilla Solar, LLC (Tutuilla, 1.56 MW, OCS 024); Buckaroo 1 Solar, LLC (Buckaroo 1, 2.4 MW, OCS 062); Buckaroo 2 Solar, LLC (Buckaroo 2, 2.99 MW, OCS 063).



II. Instances of CSP delays caused by PacifiCorp.

A. PacifiCorp delayed Sunthurst’s timeline 14 months by proposing unreasonable costs for interconnection. PacifiCorp performed Facilities Studies for the PRS1, PRS2, and Tutuilla Projects in the second half of 2020, and Sunthurst was shocked at their high costs. Through the course of negotiation and a formal complaint with the Oregon PUC (UM 2118), PacifiCorp reduced its interconnection charges to what Sunthurst believed to be financeable levels. Compared to the costs published in their Facilities Studies, costs in the final interconnection agreements (IAs) were reduced by \$992,000 (more than \$152,000/MW).

Project	Facilities Study Cost Estimate	Interconnection Agreement Cost	Savings
PRS1	\$805k	\$572k	(\$233k)
PRS2	\$965k	\$287k	(\$678k)
Tutuilla	\$374k	\$293k	(\$81k)

Table 1. Cost reductions conceded by PacifiCorp upon threat of, or during, litigation.

Litigation of Interconnection costs was necessary to secure financeable interconnection costs, but delayed scheduled commercial operation by 12 to 14 months:

Project	Facilities Study Estimated COD:	Post-Complaint Agreement COD:	Delay
PRS1	12/31/2019	12/31/2022	14 months
PRS2	10/18/2021	12/31/2022	14 months
Tutuilla	12/31/2021	12/30/2022	12 months

Table 2. Delays in Project Commercial Operation Dates due to negotiation/litigation of IA costs.

B. PacifiCorp delayed PPA processing 100 days by requiring completed interconnection agreements. Sunthurst requested power purchase agreements (PPAs) from PacifiCorp for PRS1, PRS2, and Tutuilla on May 5, 2022. PacifiCorp refused to process the applications while Sunthurst’s interconnection agreements were finalized. Sunthurst’s detailed protests to PacifiCorp holding its PPAs hostage went unanswered. Sunthurst protested this improper practice at the August 23, 2022 OPUC Public Meeting², after which PacifiCorp resumed processing the PPAs. PacifiCorp executed PPAs for PRS1 and PRS2 on September 27, which is 4 months, 22 days after Sunthurst applied. Allowing 45 days for a routine PPA negotiation, PacifiCorp’s wrongful tying of the PPAs to the IAs delayed execution by 100 days:

² This Commission banned this practice in 2007, when it ordered PacifiCorp to remove from its Schedule 38 the requirement of a completed interconnection study. Order 07-360, p. 8, ORE PUC LEXIS 279, *16 (August 20, 2007). Conditioning a PURPA PPA on a final interconnection agreement likely violates PURPA (See *FLS Energy, Inc.* 157 F.E.R.C. P61,211, 61730, 2016 FERC LEXIS 2167, *17-18 (F.E.R.C. December 15, 2016)) (“requiring a QF to tender an executed interconnection agreement [to have a legally enforceable obligation] is equally inconsistent with PURPA and our regulations”). It also fell short of this Commission’s order, in *Dalreed Solar, LLC v. PacifiCorp*, Docket UM 2125, Order 21-097, p. 7 (“Accordingly, we expect PacifiCorp to continue with its new policy of offering draft PPAs prior to the completion of interconnection studies for non-standard contracts.”).



Project	Date PPA request submitted:	Date PPA executed:	Duration	Delay (beyond 45 days)
PRS1	5/5/22	9/27/22	4 mo, 22 days	100 days
PRS2	5/5/22	9/27/22	4 mo, 22 days	100 days
Tutuilla	5/5/22	9/1/22	3 mo, 25 days	74 days

Table 3. Delays in execution of PPAs caused by PacifiCorp wrongfully requiring completed IAs.

During that 100-day delay, the Prime Rate was rising rapidly, and Sunthurst’s financing costs increased by at least 1.5%. The sharp rise in interest rates during PacifiCorp’s delay closed the window on Sunthurst’s financing. Thirteen months would elapse before Sunthurst obtained suitable replacement financing.

Date	Rate on Date of Application	Rate 45 Days after Application	Rate on Date of Execution	Rate Increase during delay
Prime Rate: ³	4% (5/5/22)	4.75% (6/19/22)	6.25% (9/27/22)	+1.5%

Table 4. Change in the Prime Rate during PacifiCorp’s wrongful delay in PPA processing.

C. PacifiCorp extended scheduled commercial operation dates 16 months without cause. On February 6, 2023, PacifiCorp threatened to default Sunthurst’s interconnection agreements, for late milestone payments—payments which Sunthurst could not pay because PacifiCorp caused it to miss its financing window. Sunthurst requested PacifiCorp postpone milestone payment dates approximately 13 months—the time it took to find new financing. PacifiCorp counter-proposed extending the payment milestones by 16 months, and also proposed extending the scheduled CODs 15 months beyond Sunthurst’s request. Fearing being defaulted, Sunthurst signed the extensions, on May 22, 2023. PacifiCorp did not tell Sunthurst it was, at that time, failing to meet its construction timelines in other CSP IAs. In retrospect, it appears PacifiCorp would not have been able to meet its construction timeline obligations, and took advantage of Sunthurst’s request for a short delay to move Sunthurst’s projects back 16 months.

Project	Scheduled COD as of March 2022:	COD Requested on March 29:	New COD offered by PacifiCorp:	PacifiCorp added delay:
PRS1	5/25/23	6/30/24 ⁴	9/30/25	15 mo
PRS2	5/25/23	6/30/24	9/30/25	15 mo
Tutuilla	5/25/23	6/30/24	9/30/25	15 mo

Table 5. Delay in COD imposed by PacifiCorp in May 22, 2023 IA amendments.

D. PacifiCorp demands prepayment in full 6 months before starting construction: PacifiCorp’s May 22, 2023 amended IAs also contained onerous new prepayment requirements, which, combined with current high financing costs, created another high obstacle for CSP developers. Under the original Interconnection Agreements, PacifiCorp required full payment 85 days prior to the COD. Under the May 22 amendments, PacifiCorp required full payment 455 days prior to the COD—a 370-day acceleration

³ <https://fred.stlouisfed.org/series/PRIME>

⁴ 13 months after the COD in the then-current interconnection agreements.

compared to the prior interconnection agreements. This is 180 days before PacifiCorp plans to commence construction.

Project	Scheduled COD, Current PPA:	Date of final prepayment, Current PPA:	# of Days payment due before COD, current IA:	# of Days payment due before COD, prior IA:	Prepayment acceleration:
PRS1	9/30/25	7/2/24	455 days	85 days	370 days
PRS2	9/30/25	7/2/24	455 days	85 days	370 days
Tutuilla	9/30/25	7/2/24	455 days	85 days	370 days

Table 6. Pre-payment deadlines PacifiCorp added to May 22, 2023 IA amendments.

III. Remedies.

As detailed above, PacifiCorp delayed the COD of three Sunthurst CSPs, using several means, by more than 42 months. Without changes, the promise of Oregon’s Community Solar Program will remain unfulfilled. Such needed changes include:

1. Shorten interconnection timelines. PacifiCorp interconnection timelines have steadily increased since the advent of the Community Solar Program. In early 2022, PacifiCorp committed to build the PRS1 interconnection in 60 days. Later that year, PacifiCorp increased the construction window to 90 days. But in 2023, PacifiCorp revised the timeline for the same scope of work, to 240 days! Similar enlargements occurred at Sunthurst’s other projects.

	PRS1 IA Amendment Date		
	3/17/22	8/15/22	5/22/23
Construction Duration:	60 days	90 days	240 days
Scheduled COD:	12/31/22	5/25/23	9/30/25

Table 7. How PacifiCorp construction timelines have increased over time.

These extreme delays suggest PacifiCorp is understaffed, or giving preferential treatment to serving non-CSP customers. If PacifiCorp cannot construct its interconnections in accordance with reasonable expectations, CSPs should be given the option to hire approved builders to construct the facilities, and turn them over to PacifiCorp when completed. Sunthurst is aware of multiple, qualified, contractors capable of doing the work. In any event, 240 days is simply not a reasonable time, given the scope of work. The Commission should demand to know why PacifiCorp is taking so long, and should demand PacifiCorp work with CSP developers who wish to proceed more quickly to shorten interconnection timelines.

2. Remove DTT Reclosures Schemes and Uphold existing OAR and PURPA “Only Necessary” Costs. Based on failed past performance, delays (item 1), and CS Program’s unacceptable 2.7mW of interconnected projects since SB 1547, it ripe, no, it is long overdue the PUC finally recognize



PacifiCorp's forced DTT (high speed reclosing scheme) is detrimental to 's CS Programs execution. This "package" adds long equipment procurement time and is when built in early CS projects, already has proven problematic, causing nuisance reclosure tripping taking CS projects offline until manually closed⁵, "*Cherry Creek Solar investigated the issue and determined Cherry Creek Solar's recloser is being tripped offline because PacifiCorp's grid is operating at voltages outside their own power quality standards in PacifiCorp's Engineering Handbook and PacifiCorp's 2022 Electric Service Requirements Manual.*" Per IREC AR 659 Recommendations, strongly this position, stating, "In the vast majority of DERs, IREC expects a certified inverter to serve as the protection against adverse system conditions, so the relay would only serve to prevent export and not provide other protection functions. **The Commission should require utilities to trust that certified inverters will perform according to their design and certification standard.**"⁶ Page 13 identifies California, Hawaii, Illinois, and New Mexico (among others) for accepting IEEE 1547's inverter non-export function capability. The undeniable truth is IREC IS a national authority on the matter, OAR 860-082-0025(1)(e) (C) and PURPA *only* allow charges necessary for generator to comply with small generator interconnection rules or IEEE 1547 or 1547.1. The DTT "package costs" PacifiCorp demands of CS projects involve high-speed reclosures (programming), isolation GOAB's (cheaper cutout would suffice but they insist on this more expensive equipment), fiber line (oversized) back to the substations, controls at the substation and communication to their control center), All in, the cost burden is \$100,000 to \$200,000 and not \$3,000 as MRG stated unscrupulously in ar659hac144947. Our reputable engineer also offered a 'low-side relay' option, effectively used and often allowed to meet PacifiCorp' "contractual" high-speed protection concern redundant to IEEE 1547 grid interactive inverters. But, they rejected that. This DTT scheme was not required in early, smaller SGIP generators (per OASIS Studies), nor on Company-owned generators (UM 2118). Often, the concerns would be mute if PacifiCorp upgraded substations equipment every 50yrs or less as ratepayers pay and expect. IREC also warns that adding complicated DDT sensing equipment for smart-grid inverters on limited circuits could lead DER reliability issues later.

3. Reduce prepayments, allow reimbursement upon project completion. Typically, construction contracts include a substantial final payment, due upon substantial completion. Such an arrangement gives the builder incentive to meet its scheduled completion, and avoids making the owner pay for services and/or goods it has not yet received. PacifiCorp's practice of requiring payment in full six months start of construction demonstrates the need for regulatory oversight over a monopoly service. Such terms, which could not persist in a competitive market, are onerous to the Project, a windfall to PacifiCorp, and dis-incent PacifiCorp to timely complete construction.

The hardship caused by PacifiCorp's prepayment requirements is aggravated by another factor: Oregon's various renewable energy grants (RED grant, CREP grant) withhold substantial payment of grant funds to developers until a Project has been completed. Accordingly, developers must find a way to make the prepayments without access to state grant money.

⁵ See, UM 2298, Cherry Creek Solar Notice of Intent to File Complaint of Enforcement

⁶ See ar659hac11822, pg 12.



The Commission should demand utilities operate like any other construction company, and collect their final interconnection construction payment *after* commercial operation. This is arguably required by existing rule OAR 860-029-0060 (2), which says that the project shall “reimburse” (not prepay) the utility for all reasonable utility costs of interconnection. Further, OAR 860-029-0060(2) authorizes utilities to finance interconnection construction costs, and to recoup the money from the QF over the subsequent year. Allowing CSPs 60 additional days (with interest) for final payment—the time it takes for ODOE funding to arrive in the Project's bank after the utility finishes interconnection facility construction and certifies the project as complete--would be a substantial additional help to CSPs.⁷

Requiring the utility to accept final payment after the Project receives its final grant funds (up to 60 days) is sound state policy because it leverages the benefits of the ODOE grant funding, and has no adverse impact on the utility or its ratepayers. Staff should ask PacifiCorp to accommodate CSPs in this fashion to further the State’s Community Solar goals.

4. Direct PacifiCorp to offer reasonable construction and payment schedules. Where PacifiCorp has executed interconnection agreements with unreasonable construction and payment timelines, the Commission should encourage utilities to work out reasonable terms with Projects, where the utility has not demonstrated a willingness to do so. The rapid increase in PacifiCorp’s required time to construct interconnection facilities, from 60 days to 240 days, between 2022 and 2023 requires justification and correction. (Although perhaps such delays will self-correct if PacifiCorp is required to collect final payment *after* completing construction).

IV. **Conclusion.**

The Community Solar Program, which was intended to benefit ratepayers who lacked access to renewable energy, non-profit organizations, and small developers, which was supported by the Legislature twice amending state tax codes to put community solar taxation on an equal footing with taxation of net metering, which is liberally supported by State grants under the RED and C-REP programs, is close to becoming a farce. Many projects that have sought delays face financial demise, largely due to the high costs and long timelines of interconnection. These projects were undertaken in good faith that the State would see that the Community Solar Program succeeded. Will the Commission take heed of their cry for help, and take action to see that the program goals are attained? Our remedies will bring meaningful aid and especially benefit small PM’s and carve-out CS Projects. Maintaining status quo is the greatest threat to this program.

Sincerely,

Daniel Hale, Managing Member

⁷ By way of illustration, suppose an interconnection costs \$600,000, and the project is due to receive \$250,000 from ODOE after the project is certified as completed. Instead of requiring \$600,000 payment six months before construction, the utility would bill the final installment, up to \$250,000, upon certifying the Project for commercial operation, and would allow the Project 30 days to pay, plus an additional 60 days (with interest added) if the Project requests such time to facilitate funding from state or federal grants.