BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1930

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Community Solar Program Implementation.	RENEWABLE ENERGY COALITION COMMENTS ON UTILITY TARIFF FILINGS

I. INTRODUCTION

The Renewable Energy Coalition ("the Coalition") submits these comments for consideration by the Oregon Public Utility Commission ("Commission") in evaluating Portland General Electric Company's ("PGE's"), PacifiCorp's, and Idaho Power Company's ("Idaho Power's") Community Solar Program ("CSP") proposed compliance filings filed on February 18, 2020. At the public meeting on October 29, 2019, the Commission approved a CSP interconnection process memorialized in Order No. 19-392, and at the special public meeting on January 16, 2020, the Commission approved further refinements to the CSP interconnection solutions along with each of the utilities' implementation plans memorialized in Order No. 20-038. On February 18, 2020, the utilities filed their proposed tariffs governing the CSP power purchase agreement process and the details of how each will handle CSP interconnections.

The Coalition recommends: 1) limiting the changes each of the utilities may make to existing interconnection process and standard forms to only that which is required for CSP implementation; and 2) requiring a more detailed process for negotiating and

executing a CSP power purchase agreement. On February 19, 2020, the Coalition submitted comments on each of the utilities' draft CSP purchase agreements and does not address those again now.

First, the Commission should require that the utilities' proposed interconnection processes mirror the existing small generator interconnection rules, except in the specific delineated areas where changes are essential to implementing the CSP and the Commission's specifically approved CSP interconnection solutions. There will now be essentially three sets of possibly applicable interconnection rules and forms: 1) the rules in OAR 860-082 developed through a formal rulemaking process and the standard form agreements adopted following that process; 2) PGE's proposed CSP process and standard forms; and 3) PacifiCorp's proposed CSP process and standard forms.[1] PGE and PacifiCorp's proposed processes follow the same structure as the OARs but diverge in important respects detailed below. Most of the divergences do not move in the applicant's favor and instead remove many rights and protections for applicants, especially in PGE's proposed tariff. These divergences are likely to result in a CSP interconnection process that few reasonable developers will enter because they can obtain greater protections by simply being processed under the traditional small generator rules. Further, because the three sets of rules and forms largely mirror each other, a litigated dispute over one set of rules (for example, with fewer applicant protections) may inform potential disputes over the other sets, thereby eroding the rights of applicants universally.

---

[1] As described in Idaho Power's proposed tariff and implementation plan approved by the Commission in Order No. 20-038, Idaho Power will continue to use the traditional serial queue process outlined in OAR 860-082.

As such, it is important to minimize the differences between the tariffs and the OARs, and the utilities should explain how the remaining changes are required for CSP implementation and provide a detailed redline showing how their proposal differs from the existing rules and forms.

Second, the Commission should require that the utilities provide further detail in their CSP purchase agreement negotiating processes in order to ensure a more orderly and timely process. The tariffs are not detailed enough to provide adequate checks on a utility's incentive to delay processing an application. As compared to each of the utilities' Public Utility Regulatory Policies Act ("PURPA") qualifying facility ("QF") contracting processes, the CSP process is far less detailed and allows room for a utility to delay the process if it so desires. A CSP project should have certainty at each stage in the process. Therefore, the utilities should provide additional detail. In addition, as PGE at least has argued that it does not need to be reasonable or act in good faith, unless specifically required to under law, then the Commission should specifically require PGE to be reasonable and act in good faith by including such requirements in its tariff.

II. COMMENTS

A. Interconnection Process

1. Network Upgrades

The CSP process proposed by the utilities will ultimately likely only have limited value because CSP projects may still be required to pay for network upgrades associated with their projects. Staff's initial recommendation on CSP interconnection was to make energy resource interconnection service available to CSP projects. The current process, while designed to create a more streamlined process where a CSP project may be less

likely to trigger network upgrades, still allows for a CSP project to pay for such upgrades. All three utilities propose to seek Commission approval on a case-by-case basis should any network upgrades be triggered by a project. PacifiCorp, however, goes a step further and would also have the program administrator consider the network upgrades in determining whether to pre-certify a project. This additional requirement for pre-certification should not be approved.

2. Portland General Electric

PGE's proposed CSP interconnection tariff and standard forms are the most problematic. As proposed, it is unlikely that even a few, if any, knowledgeable developers will choose the CSP interconnection path rather than the normal small generator queue given the rights that they will forfeit. In its proposed Schedule 204, PGE should make it clear that a CSP project may interconnect via the regular small generator queue and is not required to interconnect via the new CSP interconnection process.[2]

Additionally, in its attachments to Schedule 204, PGE revises the currently effective small generator process and approved standard forms in a manner that goes beyond what is necessary to implement the Commission-approved CSP process and that actually removes rights and protections for applicants and interconnection customers. PGE's changes are extensive. PGE should provide a redline showing how its proposal differs from the existing small generator rules and standard forms, and how each of those modifications will further the Commission's goal to create a better process for CSP projects. The majority appear to be completely unrelated to the CSP and are simply

---

[2] *See* PGE Proposed Schedule 204-4, Part 1§(B)(3).

designed to erode the (few) rights that interconnection customers have under the current rules. Here is a non-exhaustive list showing a number of changes PGE made that are not required for CSP implementation or otherwise contemplated by PGE's implementation plan.

Changes to Rules and Process:

As compared to the rules contained in OAR 860-082, PGE modified its proposed Schedule 204 Exhibit A in the following ways:

- PGE removes reference to the 2003 and 2005 versions of IEEE 1547 and 1547.1 and instead gives itself discretion to adopt a particular version of the standard.[3] The utilities should use the most up-to-date version, and it should not be contingent upon a utility's decision to adopt or not adopt the particular version. In addition, PGE leaves in numerous references to specific sections within the standard such as in the definition of "area network." The reference to particular sections may not hold true with newer versions of the standard and those should be modified to be more general. As a comparison, PacifiCorp retains the current language requiring use of the outdated 2003 and 2005 versions, and this should be remedied as well.

- PGE removed the requirement that PGE designate an employee or office from which relevant information may be obtained and the requirement to post the contact information on its website.[4]

- PGE removed the right of an interconnection customer to renew an existing interconnection by applying at least 60 business days before the expiration of its previous interconnection agreement, the process under which a renewal will occur including expedited review, and the right to have the prior agreement remain in effect if PGE has not completed its review upon its expiration.[5]

---

3 *Compare* OAR 860-082-0015(11), (12) *with* PGE Proposed Schedule 204, Exhibit A at § 3(13), (14) (Note that PGE's Exhibit A contains two section 3s. This is referring to the section 3 beginning on page 1).

4 *Compare* OAR 860-082-0020(1) *with* PGE Proposed Schedule 204, Exhibit A at § 3(1) (Note that PGE's Exhibit A contains two section 3s. This is referring to the section 3 on page 6).

5 *Compare* OAR 860-082-0025(1)(b) *with* PGE Proposed Schedule 204, Exhibit A at § 4(1).

- PGE removed the option for an interconnection customer to elect to maintain a separate point of interconnection if PGE decides to interconnect multiple facilities at the same point of interconnection to minimize costs. Rather PGE in Attachment A requires the interconnection customer to maintain a separate point of interconnection.[6]

- PGE removed the option for the interconnection customer to request to negotiate a non-standard interconnection agreement.[7]

- PGE removed the exceptions for very small facilities to the construction, operation, maintenance and testing of projects.[8]

- PGE removed the provision that would otherwise prohibit PGE from requiring liability insurance for an interconnection customer whose facility has a nameplate capacity of 200 kilowatts ("kW") or less.[9]

- PGE removed the ability for PGE and the applicant to waive any of the studies.[10]

- PGE removed the requirement that PGE design any required interconnection facilities or system upgrades as part of the facilities study.[11]

- PGE removed the exemption for projects smaller than 3 megawatts ("MW") from being required to pay for data acquisition and telemetry equipment. PGE arbitrarily changed this to 2 MW.[12]

Changes to Study Agreements:

---

6 *Compare* OAR 860-082-0025(6) *with* PGE Proposed Schedule 204, Exhibit A at § 4(6).

7 *Compare* OAR 860-082-0025(7)(e) *with* PGE Proposed Schedule 204, Exhibit A at § 4(7)(e).

8 *Compare* OAR 860-082-0030(4)(b) *with* PGE Proposed Schedule 204, Exhibit A at § 5(4)(b).

9 *Compare* OAR 860-082-0040 *with* PGE Proposed Schedule 204, Exhibit A at § 7.

10 *Compare* OAR 860-082-0060(4) *with* PGE Proposed Schedule 204, Exhibit A at § 9(4).

11 *Compare* OAR 860-082-0060(8)(e) *with* PGE Proposed Schedule 204, Exhibit A at § 9(7)(e).

12 *Compare* OAR 860-082-0070(3)(a) *with* PGE Proposed Schedule 204, Exhibit A at § 12(5)(a).

As compared to PGE's approved standard study agreements approved by the Commission in Docket No. AR 521, PGE modified its proposed Schedule 204 Exhibits C and D in the following ways:

- PGE modified the language in its System Impacts Study ("SIS") Agreement regarding what occurs in the event of a modification of the point of interconnection, the application, or the technical information provided. Rather than simply extending the time required to perform the study, PGE would "depending on the modification" require that the applicant submit a new application. It is not clear what types of modifications would require a new application.[13]

- PGE removed PGE's obligation to, as part of the SIS, provide detailed technical information including identifying the circuit breaker short circuit capability limits exceeded, any thermal overload or voltage limits violations, and any instability or inadequately damped response to system disturbances as a result of the interconnection.[14]

- PGE removed PGE's obligation to provide a good faith non-binding cost estimate of facilities required from the language of the SIS study agreement, and included this in its Attachment B to the SIS Agreement.[15] Historically, PGE has had complete discretion to fill-in the scope, schedule, and budget information in the attachment (the attachment was blank) and therefore, it should be clarified that PGE is not permitted to modify the information contained in this Attachment B, aside from the blank that needs to be filled-in with the study costs.

- PGE removed the standard language requiring that the SIS be complete and results transmitted within 30 calendar days unless agreed to otherwise, but rather PGE now states that it will need *at least* 60 business days.[16]

---

13 *Compare Small Generator Interconnection Rulemaking*, Docket No. AR 521, PGE Final Forms and Agreements, Form 4 at § 4 (Aug. 21, 2009) (hereafter "PGE AR 521 SIS Agreement") *with* PGE Proposed Schedule 204, Exhibit B at § 4.

14 *Compare* PGE AR 521 SIS Agreement at § 5 *with* PGE Proposed Schedule 204, Exhibit B.

15 *Compare* PGE AR 521 SIS Agreement at § 5.4 *with* PGE Proposed Schedule 204, Exhibit B at Attachment B § A.

16 *Compare* PGE AR 521 SIS Agreement at § 6 *with* PGE Proposed Schedule 204, Exhibit B at Attachment B § C.

- The time by which the applicant is required to submit a SIS deposit is changed from "prior to the start date of the study" to within 5 calendar days of signing the agreement.[17]

- PGE removed the requirement that SIS costs be based on "actual costs," but rather PGE would have its study costs be based on "reasonable costs" with no reconciliation following completion of the study.[18]

- PGE removed the requirement that PGE actually invoice its SIS costs and that the applicant has 30 days to pay, but rather payments must be paid "without prior notice or demand" or within 15 calendar days of PGE's request following delivery of the study and if applicant fails to pay within 7 calendar days of a notice of default by PGE, PGE will remove them from the queue.[19]

- PGE removed the ability to set the assumptions in the attachment to the Facilities Study agreement and instead required that it be based on the same assumptions as the SIS agreement.[20]

- PGE removed PGE's obligation to provide a description, estimated cost, and schedule for required upgrades from the language of the agreement, and included this in its Attachment B to the Facilities Study Agreement.[21] As with the SIS agreement, historically, PGE has had complete discretion to fill-in the scope, schedule, and budget information in the attachment (the attachment was blank) and therefore, it should be clarified that PGE is not permitted to modify the information contained in this Attachment B, aside from the blank that needs to be filled-in with the study costs.

---

17 *Compare* PGE AR 521 SIS Agreement at § 8 *with* PGE Proposed Schedule 204, Exhibit B at § 6.

18 *Compare* PGE AR 521 SIS Agreement at §§ 8.2-3 *with* PGE Proposed Schedule 204, Exhibit B at § 6.

19 *Compare* PGE AR 521 SIS Agreement at § 8.3 *with* PGE Proposed Schedule 204, Exhibit B at §§ 6.b-c and Attachment B § B.

20 *Compare Small Generator Interconnection Rulemaking*, Docket No. AR 521, PGE Final Forms and Agreements, Form 5 at § 3 (Aug. 21, 2009) (hereafter "PGE AR 521 FAS Agreement") *with* PGE Proposed Schedule 204, Exhibit C at § 3.

21 *Compare* PGE AR 521 FAS Agreement at § 6 *with* PGE Proposed Schedule 204, Exhibit C at Attachment B § A.

- PGE removed PGE's obligation to address the issues identified in the SIS within the Facilities Study.[22]

- PGE removed the standard language from the Facilities Study agreement requiring that the study be complete and results transmitted within 30 calendar days if there are not system upgrades or facilities required, but rather PGE now states that it will need *at least* 60 business days.[23]

- PGE retains the requirement that the Facilities Study cost be based on actual Facilities Study costs, but does not allow for any reconciliation following completion of the study.[24]

- PGE removed the requirement that PGE actually invoice its Facilities Study costs and that the applicant has 30 days to pay, but rather payments must be paid "without prior notice or demand" or within 15 calendar days of PGE's request following delivery of the study and if applicant fails to pay within 7 calendar days of a notice of default by PGE, PGE will remove them from the queue.[25]

- PGE adds extensive disclaimers to the SIS and Facilities Study Agreements, many of which are completely unreasonable. Most notable is the disclaimer in section 9, which PGE included in boldface font and which would absolve PGE of any "liabil[ity] for monetary damages associated with any delay in delivery or *for the non-performance or delay in performance of PGE's obligation under [the] Agreement*."[26] PGE's FERC-jurisdictional small generator SIS and Facilities Study Agreements do not contain such egregious disclaimers.[27]

- PGE inconsistently uses the terms "Schedule" or "Tariff." PGE uses the word Tariff frequently in the agreements but does not define that term. In Attachment A to Schedule 204, PGE frequently uses the term "Schedule" which it defines as

---

22 *Compare* PGE AR 521 FAS Agreement at § 4 *with* PGE Proposed Schedule 204, Exhibit C.

23 *Compare* PGE AR 521 FAS Agreement at § 6 *with* PGE Proposed Schedule 204 at Exhibit C at Attachment B § C.

24 *Compare* PGE AR 521 FAS Agreement at § 7 *with* PGE Proposed Schedule 204 Exhibit C at § 6.

25 *Compare* PGE AR 521 FAS Agreement at §§ 7.2-3 *with* PGE Proposed Schedule 204 Exhibit C at § 6.b and Attachment B § B.

26 *Compare* PGE AR 521 SIS Agreement *with* PGE Proposed Schedule 204, Exhibit B at §§ 7-20 (emphasis added); *Compare also* PGE AR 521 FAS Agreement *with* PGE Proposed Schedule 204 Exhibit C at §§ 7-20.

27 Attachment A (PGE Open Access Transmission Tariff Attachment M, Attachments 7-8, Small Generator Interconnection System Impact Study Agreement and Facilities Study Agreement).

"PGE's Community Solar Program Interconnection and Power Purchase Schedule, including these Standards, and including all exhibits attached thereto or incorporated by reference." PGE should pick a term, define it, and use it consistently.

Changes to Interconnection Agreement:

As compared to PGE's approved standard interconnection agreement approved by the Commission in Docket No. AR 521, PGE modified its proposed Schedule 204 Exhibit E in the following ways[28]:

- PGE added section 1.4.4 requiring that the CSP project be responsible for any modifications PGE identifies over the course of the agreement.
- PGE changed sections 1.4.5-7 regarding parallel operation and maintenance obligations.
- PGE changed section 2.1 to remove the requirement that PGE cover its own expense to participate in optional interim testing, and instead require that the project reimburse PGE for all costs of testing.
- PGE added more stringent termination provisions in section 3.2 including that it will terminate the agreement if the customer is prevented from performing due to a Force Majeure for four consecutive months.
- PGE added additional language in section 3.4 regarding its ability to suspend or disconnect the CSP project.
- PGE significantly revised Article 4 regarding cost responsibility including in section 4.6.1 where it appears to suggest that the parties must agree to progress payments or PGE will otherwise require that the customer pay 100% of the estimated cost for all facilities and upgrades as an upfront deposit or in section 4.6.5 that at least 20 days business days prior to the commencement of the design, procurement, installation, or construction, that the applicant must provide security equal to the estimated costs.

---

[28] *See Small Generator Interconnection Rulemaking*, Docket No. AR 521, PGE Final Forms and Agreements, Form 8 (Aug. 21, 2009) and PGE Proposed Schedule 204, Exhibit E.

- PGE added additional limitations on its liability under the agreement in Article 5 including that PGE does not guarantee any of its work will be timely.

- PGE shortened the time periods in Article 5 by which a party will have to cure a default from 60 days and 6 months for defaults not capable of cure within 60 days to 45 days and 3 months, respectively.

- PGE removed the language at the beginning of Article 6 that would make a party liable for losses related to or arising from any act or omission in its performance.

- PGE removed the language in section 7.1 referring to the dispute resolution process already set forth by the commission's rules (and incorporated by PGE in its Schedule Exhibit A) and adds language that would require the parties to agree that the Commission has jurisdiction and waive any objections to the Commission having jurisdiction.

- PGE added to the notice provisions.

This above list, while extensive, is not exhaustive of all the changes, and the Coalition reserves the right to raise additional issues. These modifications to the Commission's small generator rules and PGE's approved standard forms are not required to implement the CSP interconnection process and actually cut against the interests of an interconnection applicant, thereby undermining the Commission's goal to create a better, more streamlined interconnection process for CSP. The Commission should reject these modifications and require PGE to use the language from the OARs or its pre-existing approved and vetted agreements. The Commission should also require that PGE re-submit its proposal showing a redline from the currently effective process along with an explanation of how each of its changes implement the Commission's CSP interconnection program or further the goals underlying the program.

3. PacifiCorp

As with PGE, PacifiCorp's proposed CSP interconnection tariff and standard forms require some modifications to make the CSP interconnection process appropriate

for CSP projects, including the removal of some differences between the OARs and currently approved small generator forms that are not necessary to implement the Commission-approved CSP process and that actually remove rights and protections for applicants and interconnection customers. Change that should be made include:

- PacifiCorp should either make its standard CSP interconnection forms and agreements attachments to its proposed Schedule 126 or otherwise the Commission should clarify that they cannot be modified without Commission approval.

- PacifiCorp should make it clear that a CSP project may interconnect via the regular small generator queue and is not required to interconnect via the new CSP interconnection process.[29]

PacifiCorp's changes to the small generator interconnection rules and its currently effective standard forms and agreements are less extensive than those proposed by PGE, but there are still some changes that should be removed.

Changes to Rules and Process:

As compared to the rules contained in OAR 860-082, PacifiCorp modified its proposed Exhibit 3 in the following ways:

- PacifiCorp removed the ability for applicants to submit multiple projects at a single point and have them studied together.[30]

- PacifiCorp adds additional vague "reliability requirements" it may consider in evaluating the requirements for interconnection.[31]

- PacifiCorp removed language estimating the hourly rate for engineering costs.[32]

---

29 *See* PacifiCorp Proposed Schedule 126 at 3 and Exhibit 3 Section A(5).

30 *Compare* OAR 860-082-0025(4) *with* PacifiCorp proposed Exhibit 3 at §D.

31 *Compare* OAR 860-082-0025(7)(d) *with* PacifiCorp proposed Exhibit 3 at § D(5)d; *Compare also* OAR 860-082-0030(6) *with* PacifiCorp proposed Exhibit 3 at § E(6).

32 *Compare* OAR 860-082-0035(1) *with* PacifiCorp proposed Exhibit 3 at § F(1).

- PacifiCorp removed the restrictions on whether it can require the applicant to obtain liability insurance found in OAR 860-082-0040.

- PacifiCorp removed the requirement that PGE design any required interconnection facilities or system upgrades as part of the Facilities Study found in OAR 860-082-0060(8)(e).

- PacifiCorp removed the option for the utility and an applicant to agree in writing to allow the applicant to hire a third-party consultant to complete the interconnection facilities and system upgrades, subject to public utility oversight and approval, found in OAR 860-082-0060(8)(f).

- PacifiCorp removed the option for the utility and an applicant to agree in writing to allow the applicant to hire a third-party consultant to perform any of the studies found in OAR 860-082-0060(9).

- PacifiCorp removed recordkeeping and reporting requirements found at OAR 860-082-0065.

Changes to Interconnection Agreement:

As compared to PacifiCorp's approved standard interconnection agreement approved by the Commission in Docket No. AR 521, PacifiCorp modified its proposed Exhibit 8 in the following ways[33]:

- PacifiCorp added section 3.3.3 which allows immediate termination if an applicant loses CSP certification.

- PacifiCorp added section 5.1.4 which would make any assignment of the agreement not approved by the project manager or program administrator void.

- PacifiCorp removed general insurance exemption for small generators 200 kW or less from section 6.1.

- PacifiCorp added sections regarding "Metering and Telemetry Equipment," "Property Requirements," and "Relay and Control Settings" to Attachment 4.

---

[33] *See Small Generator Interconnection Rulemaking*, Docket No. AR 521, PacifiCorp Final Forms and Agreements, Form 8 (Aug. 24, 2009) and PacifiCorp Proposed Exhibit 8.

- PacifiCorp removed references to "transmission" system and limited this agreement to only interconnections with the distribution system.

As with PGE's proposed revisions, there may be other issues the Coalition reserves the right to raise in the future. Here too, these modifications are not required to implement the CSP interconnection process and may actually undermine the Commission's goal to create a better, more streamlined interconnection process for CSP. The Commission should also reject these modifications and require PacifiCorp to use the language from the OARs or its pre-existing approved and vetted agreements including by re-submitting the proposal showing a redline from the currently effective process along with an explanation of how each of its changes implement the Commission's CSP interconnection program or further the goals underlying the program.

4. Idaho Power

There is only one major issue with Idaho Power's filing. Idaho Power plans to use the existing small generator rules and its approved forms for its CSP interconnection. This eliminates the concerns raised above with PGE and PacifiCorp regarding the divergences between the CSP process and the normal interconnection process. The one concern with Idaho Power's proposed schedule on interconnection issues is its proposed 0.4% operations and maintenance charge.[34] The Coalition discussed concerns over this charge in its February 19, 2020 filing regarding Idaho Power's draft CSP purchase agreement. Essentially this charge could result in the CSP project repaying the entire cost of the interconnection over the life of the interconnection agreement regardless of

[34] *See* Idaho Power proposed Schedule 100-5.

whether there is any required maintenance. Idaho Power should at a minimum give the project an option to choose to pay actual operations and maintenance costs as they arise rather than a set price.

B. Purchase Agreement Process

The proposed schedules provide far too little detail on the process for negotiating and executing a CSP purchase agreement. For example, PGE proposes to have a CSP project provide certain minimum information, in response to which PGE will provide a draft agreement, and once parties are agreed, it will forward a final executable draft within 15 business days.[35] Each of the utilities should provide a more detailed schedule, more similar to their PURPA QF contracting processes which mandate that the utility provide a draft agreement within 15 business days of receiving the application and required information, and obligating the utility to provide interim drafts within 15 business days if the CSP project requests a change. This will ensure that CSP projects know when the utility is expected to respond and can plan accordingly.

Further, the tariffs should also include good faith and reasonable language. The following language should be included in each of the tariffs:

> The Company shall take reasonable and timely actions when processing all requests for CSP Purchase Agreements and will respond in good faith to any written amendment to a draft CSP Purchase Agreement that are proposed by the Project Manager. The Company will meet with the Project Manager if the Project Manager requests a meeting to discuss issues related to the draft CSP Purchase Agreement.

---

[35] PGE proposed Schedule 204-6.

Adding this reasonableness language will help ensure that the utility cannot take an unreasonably extreme position and will help ensure that CSP project managers are treated fairly. The Commission has a statutory obligation to represent the customers of a public utility (including interconnection customers) and protect those customers from unjust and unreasonable exactions and practices, and also must establish fair and reasonable rates.[36] Further, the public utility is required by statute to not give unreasonable preference to any person or to unreasonably prejudice any person.[37] In addition, the Commission, in *Sandy River v. PGE*, found that PGE did not have an obligation to act reasonably in response to an interconnection customer's request to have a third-party construct the interconnection facilities.[38] The rule there states that PGE and the applicant *may* agree to have a third-party construct the upgrades, but the Commission concluded that rule did not "require[e] that PGE reasonably exercise its discretion to agree."[39] Further, PGE has argued that strict compliance with the minimum requirements of a schedule is sufficient to absolve it from any liability.[40] From this, the Coalition is concerned that PGE will take the position that it can act unreasonably, because there is no specific provision in the applicable schedules or rules that specifically require it to act reasonably. As such, the Commission should explicitly require that the utilities act reasonably by including the above language in their tariffs.

---

36 ORS 756.040.
37 ORS 757.325.
38 Docket No. 1967, Order No. 19-218 at 25 (Jun. 24, 2019).
39 *Id*.
40 *See Bottlenose Solar, LLC et. al. v. PGE*, Docket Nos. UM 1877 et. al., PGE Motion for Summary Judgment (Jan. 24, 2018).

Two other specific concerns with the utilities' CSP purchase agreement proposals include:

- All three utilities define "qualifying facility" as only a "solar" facility. This is somewhat confusing because a qualifying facility as defined under PURPA and Oregon law can use a variety of different resource types. A CSP project must meet both the requirements to be a qualifying facility and the eligibility rules under the CSP program, therefore, there is no need to add this additional limitation to the definition of qualifying facility. The definition should simply refer to applicable state and federal law for clarity and consistency.

- Under PGE's proposed schedule, a CSP project cannot sell to PGE if it has an existing power purchase agreement ("PPA").[41] The Coalition addressed this issue in separate comments filed on March 6, 2020 regarding the pre-certification process, and will address this issue again in future comments explaining that this restriction is illegal. However, it is also unclear whether PGE's restriction applies only if the project has a current PPA or whether it also applies to a project that has previously had a PPA but currently is not under any contract to sell. At a minimum, the language should be revised to clarify that projects who previously had executed PPAs, but are not currently under contract, are eligible.

- A separate but related issue is how PGE's restriction on projects with existing PPAs would be applied to a project that has a PPA with a different utility. Even if PGE can object to QFs already selling to it, this provision may be overbroad in that it could preclude QFs with existing PPAs with Idaho Power or PacifiCorp from investigating the possibility of selling to PGE under the CSP, which is not in and of itself a violation of an existing PPA. The restriction should be that PGE won't execute a PPA that contradicts an existing purchase agreement, which would allow for investigation of the draft PPA under the CSP and then a chance to concurrently amend or terminate the existing PPA and execute the new CSP purchase agreement; or to otherwise have the CSP purchase agreement supersede the prior PPA. Note that neither of the other two utilities put this restriction in their tariff.

- Under PacifiCorp's proposed process, it appears to only allow a 20-year PPA.[42] However, both PGE and Idaho Power provide for an "up to 20-year PPA." This implementation is more appropriate, and PacifiCorp should revise its schedule accordingly.

---

41 PGE proposed Schedule 204-5.

42 PacifiCorp proposed Schedule 126 at 6 ("The Term of a CSP Purchase Agreement is twenty (20) years").

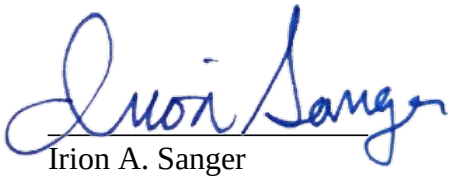
III. CONCLUSION

For the reasons articulated above, the Commission should direct each of the utilities to re-file their compliance filings: 1) removing the areas where the tariffs diverge from the existing small generator interconnection rules and forms, except for in the areas necessary for CSP implementation which should be indicated by redlining; and 2) providing further detail in their CSP purchase agreement processes for each step.

Dated this 10th day of March 2020.

Respectfully submitted,

Sanger Law, PC



Irion A. Sanger
Marie P. Barlow
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 Renewable Energy Coalition