



Program Administrator's Project Recommendation

June 8, 2022

Community Solar Program - Docket No. UM 1930

On January 11, 2022, in Order No. 22-007, the Commission permitted the delegation of Commission authority to the Community Solar Program Administrator (PA) to grant noncontroversial project pre-certifications, waivers, extensions, and amendments. Under the permitted delegation of authority, Staff will post the PA's project recommendation to UM 1930 with a comment period of two weeks. If no comments in opposition are received prior to the end of the comment period, the recommendation will go into effect. If comments in opposition are received prior to the end of the comment period, the recommendation will not go into effect and the matter will be referred to the Commission for a decision at the next available public meeting.

Staff posts the PA's recommendation to grant a one-year extension to achieve an interim milestone of a finalized site lease with Bureau of Indian Affairs (BIA) approval, and eighteen-months from the date of BIA approval to achieve certification for the following project:

PP-2020-81 (Tutuilla Solar)

The PA has reviewed the project certification deadline extension request for the project and has recommended granting the extension. The extension request is included at the bottom of this document. Staff finds the PA's recommendations to be noncontroversial and that granting pre-certification may be delegated to the PA. Stakeholders in opposition of the PA's recommendation should post comments to UM 1930 by June 22, 2022.

To Submit Public Comment:

Stakeholders can submit written comments on the PA's recommendation by email to puc.filingcenter@puc.oregon.gov. Please email puc.hearings@puc.oregon.gov to be added to the UM 1930 docket service list and receive notifications in the UM 1930 docket.



Project Amendment Review and Recommendation

The Oregon Community Solar Program Administrator (PA) has reviewed the amendment request of the project described below and recommends that the Certification deadline be extended by 18 months after the interim milestone of 05/17/23.

Project Information

Project ID: PP-2020-81

Project Name: Tutuilla Solar

Project Manager: Tutuilla Solar, LLC

Subscription Manager: Tutuilla Solar, LLC

Utility Service Area: Pacific Power

Project Site Address: Tutuilla Church Rd & Market Rd, Pendleton, OR 97801

Project Size (kW-AC): 1,560

Carveout-eligible: No

Current Program Status and Date Achieved: Pre-certified, 11/17/20

Project Description

Tutuilla Solar is a 1,560 kW-AC project located in Pendleton, Oregon in Umatilla County, on the Umatilla Indian Reservation. Tutuilla Solar, LLC will handle subscription management for this project.

Review Summary

Date Review Completed: 06/06/22

Nature of the Amendment Request: Extend Certification deadline

PA Recommendation: Approve

Review Notes

Current Certification Deadline: May 17, 2022

Recommended Certification Deadline: An interim milestone of May 17, 2023 to provide final lease approval by BIA, with a certification deadline 18 months after the interim milestone is met.

Tutuilla Solar was pre-certified on November 17, 2020. The project has requested an extension of its certification deadline due to unique challenges related to its location on the Umatilla Indian Reservation and the need to obtain site lease approval from the Bureau of Indian Affairs.

Tutuilla Solar is the only pre-certified project to date that is located on tribal land and is being pursued in partnership with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). The nature of project requires that the site lease held between the project and CTUIR must be approved by the Bureau of Indian Affairs (BIA). In April 2022, the Board of Trustees of the CTUIR unanimously approved an amended site lease and submitted it for BIA approval. The project developer, Sunthurst Energy, reports that prior to this, the parties had in 2021 submitted a draft lease to BIA but had not received feedback. Sunthurst anticipates that it is possible that BIA may request modifications to the site lease, which would then need to be re-negotiated with CTUIR. Sunthurst expects that the process of securing a final approved site lease may take up to a year.

Because the lease has not been secured, Sunthurst has been limited in its ability to complete subsequent project development steps and expects that project development may take 18 months from the date that it receives a completed site lease.

The PA acknowledges the unique situation of the Tutuilla Solar project as the program's only pre-certified project to date that is located on tribal lands and believes that flexibility is warranted in light the additional federal approvals that the project must. This is similar to other cases where the PA has recommended that certification timelines be extended to permit other government bodies to complete decision-making processes that may be necessary for a pre-certified project to move forward.

The PA recommends that the project be granted a one-year extension to provide an interim milestone of a finalized site lease with CTUIR with BIA approval. Because the project has been unable to complete many critical development steps until it secures a BIA-approved site lease, the PA recommends that the project be given 18 months from the date that BIA approves the site lease to achieve certification.

Attachments Included

None.

May 9, 2022

VIA ELECTRONIC MAIL (Administrator@oregoncsp.org)

Project Administrator
Oregon Community Solar Program

RE: Oregon Community Solar Program--Request for Amendment of Certification Deadline
Project PP-2020-081 (Tutuilla Solar, LLC, or OCSP 024)

To the Project Administrator:

Sunthurst Energy, LLC, owns Tutuilla Solar, LLC (Tutuilla Solar Project), and plans to certify it as an Oregon Community Solar Projects (OCSP). The Public Utility Commission pre-certified Tutuilla Solar Project on November 19, 2020 (Order No. 20-439). For the reasons below, Sunthurst requests that the current Certification deadline of May 17, 2022 be postponed to November 18, 2023.

Applicable Legal Standard

Under the Oregon Community Solar Program's Program Implementation Manual (Version 20210112) or "PIM", an extension of a Certification Deadline is a Major Revision. PIM §4.7.1. Major Revisions must be requested in writing, setting forth (a) the Project's progress; (b) the reasons for the requested change; and (c) in the case of extension requests, a realistic timeline for the completion of Certification requirements and achievement of commercial operation. PIM §4.7.4. The Program Administrator will review the request and recommend a potential course of action to the Commission, taking into account the Project Manager's compliance with Program rules and the Code of Conduct, progress updates, Project Participant enrollment levels and mix, and circumstances that may have delayed Project development or enrollment. *Id.* The Program Administrator will submit a summary of the requested revisions to the Commission, along with a recommendation on the amendment. At the next available public meeting, the Commission, at its sole discretion will consider amending the Project's Pre-certification. *Id.*

Factual Basis for an Extension of the Certification Deadline

A. Project's progress. Tutuilla Solar Project was pre-certified by the Commission in the second half of 2020. Pre-certification signifies that the project met early indicia of viability, including: site control, schematic layout and design, legal entity status, marketing plan, project cost estimate, procurement of non-discretionary permits, completed PacifiCorp interconnection study, development timeline, and other project details set forth in PIM, §4.4. Tutuilla Solar paid the Oregon Community Solar Program a \$7,800 application fee, and paid PacifiCorp a \$11,030 interconnection study fee.

Since pre-Certification, Sunthurst and PacifiCorp executed an interconnection agreement for Tutuilla Solar Project on December 28, 2021, and Sunthurst has made partial payments under that agreement of \$10,000 on December 20, 2021 and \$15,000 on January 19, 2022. Sunthurst recently exercised its site option for the Tutuilla Solar Project site, and is negotiating the long-term site lease.

B. Reasons for requested change. Projects must be certified within 18 months of pre-certification. (PIM, Figure 1). May 17, 2022 will mark 18 months since Tutuilla Solar achieved pre-certification. Certification is granted after a project is fully developed and has passed all

required inspections, and has enrolled sufficient participants to meet program requirements. (PIM, p. 72). Tutuilla Solar will not be fully developed by May 17, 2022 and therefore may be defaulted if the requested change is not granted.

- C. Project Manager's compliance with Program rules and Code of Conduct.** Sunthurst Energy, LLC has no history of non-compliance with Program rules or the Code of Conduct.
- D. Progress updates.** Sunthurst has submitted progress updates when requested. Sunthurst first notified the Program Manager (PM) of its need for an extension, due to its delay in obtaining CTUIR lease approval, on April 11, 2022.
- E. Project Participant enrollment.** To date, Sunthurst has subscribed 70% of the Tutuilla Solar Project capacity.
- F. Circumstances affecting development or enrollment.** The Tutuilla Solar Project has progressed as far as it reasonably can without Bureau of Indian Affairs (BIA) review and approval of its site lease. Tutuilla Solar Project cannot finalize project financing necessary for construction until its lease with the CTUIR is negotiated, executed, and approved by the Bureau of Indian Affairs (BIA).

Discussion

Earliest participation in Oregon CSP implementation. Sunthurst Energy, LLC has been involved in Oregon's CSP since inception. Indeed, Sunthurst may be the only small, for-profit, developer to provide continuing input as the Commission developed the Community Solar Program. Sunthurst is a local, family-owned company seeking to enjoy benefits from Oregon's investment in renewable energy and also to share such benefits with low-income Oregonians through customer subscriptions to its projects. Sunthurst's size and mission fall squarely within the class of intended beneficiaries of the Oregon CSP.

Involvement of the CTUIR. The Tutuilla Solar Project may be the only Oregon CSP to be sited on Tribal Land in collaboration with a recognized Indian tribe. CTUIR, in addition to earning rent and collecting taxes on the Tutuilla Solar Project, intends to learn from the Project and develop its own solar PV project to help power Tribal buildings. Development of Tutuilla Solar Project on Tribal land furthers State and Commission policies promoting social equity and development of renewable resources.

Diligent prosecution. At all times Sunthurst has diligently pursued development of the Tutuilla Solar Project. Unfortunately, the Lease on Tribal Trust land is not final and enforceable until approved by the BIA. Sunthurst diligently negotiated with the CTUIR, reaching tentative final terms on the Site Lease in May 2021. In accordance with BIA rules governing energy leases on Tribal Trust property, CTUIR submitted the proposed final draft of the lease to the BIA for 60-day review on or around June 2021. The purpose of pre-execution review is to ensure that the BIA is satisfied that the lease meets all applicable federal requirements. Because BIA did not sign off on the draft Site Lease, CTUIR resubmitted the partially executed Site Lease to the BIA for approval on April 17. CTUIR expects BIA to review the Site Lease in 60 days, but unless BIA makes no changes, the executed Lease will have to be amended, approved by the CTUIR again, and resubmitted to the BIA for final approval. Based on its experience to date, Sunthurst estimates this process will take 12 months. An 18-month extension assumes a 12-month period to obtain a final, BIA-approved Site Lease, and 6 months thereafter to finalize financing and complete the project.

Mr. Ryan Cook
May 9, 2022
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Sunthurst does not control the timetable of the BIA. Where possible it has sought to speed the process. Specifically, at Sunthurst's request CTUIR submitted a proposed final lease in draft form to the BIA 11 months ago, but BIA has not yet reviewed. The delays in obtaining required federal approval of a Tribal Energy Lease are beyond Sunthurst's reasonable control, could not be mitigated in spite of Sunthurst's diligence in seeking early review and pre-approval, and have made it impracticable for Sunthurst to build the Tutuilla Solar Project in accordance with its original pre-Certification timeline.

Reasonable justification. If the Commission does not grant Sunthurst additional time to achieve Certification, it will, in effect, deny Sunthurst any meaningful recourse. Because Sunthurst has followed the rules, spent more than \$125,716 towards developing the Tutuilla Solar Project, made substantial progress towards development, and experienced delays beyond its reasonable contemplation or control, an extension is just and reasonable.

Relief Sought

For all the reasons set forth herein, Sunthurst requests until November 18, 2023 to achieve Certification of the Tutuilla Solar Project (PP-2020-081).

Sincerely,

A handwritten signature in cursive script, appearing to read "Ken Kaufmann".

Ken Kaufmann, Attorney at Law
Attorney for Sunthurst Energy, LLC