ITEM NO. RA3

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: June 1, 2021

REGULAR __X__ **CONSENT** ____ **EFFECTIVE DATE** __N/A__

DATE: May 24, 2021

TO: Public Utility Commission

FROM: Kacia Brockman

THROUGH: Bryan Conway, JP Batmale, and Sarah Hall **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket Nos. UM 1930 and ADV 1234/Advice No. 21-003)
Revisions to Utility Community Solar Program Power Purchase Agreements.

STAFF RECOMMENDATION:

Approve Portland General Electric's (PGE) filing in UM 1930 and PacifiCorp's (PAC) Advice No. 21-003 requesting revisions to their Community Solar Program (CSP or Program) Power Purchase Agreements, subject to modifications recommended by Staff.

DISCUSSION:

Issue

Whether the Commission should approve PGE's and PAC's request to revise their CSP Power Purchase Agreements, subject to modifications recommended by Staff, to clarify payment terms for unsubscribed energy received from a CSP project.[1]

Applicable Rule or Law

ORS 757.205(1) provides that "[e]very public utility shall file with the Public Utility Commission, within a time to be fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls and charges which it has established and which are in force at the time for any service performed by it within the state, or for

[1] Unsubscribed energy is energy generated and delivered to the utility but not allocated to a subscribing customer.

any service in connection therewith or performed by any public utility controlled or operated by it."

ORS 757.386(2)(a) directs the Commission to establish a program that provides electricity customers the opportunity to share the costs and benefits of electricity generated by a community solar energy system.

OAR 860-088-0140, utilities must enter into contracts for the procurement and purchase of energy from CSP projects.

OAR 860-088-0120(4) requires electric companies to obtain Commission approval of any applicable tariffs required by the CSP rules.

Analysis

Background
In April 2020, PGE, PAC, and Idaho Power Company (IPC) made compliance filings that established the contractual terms for the CSP Power Purchase Agreement (PPA).[2]

Throughout 2020, Staff and the CSP Program Administrator met regularly with PGE, PAC, and IPC to jointly implement the CSP. The meetings identified the need to make two revisions to the utility CSP PPAs, which will be explained in the next sections of this memo:

PPA Revision 1. Change the party to whom the utility makes payments for unsubscribed energy; and
PPA Revision 2. Establish terms under which the utility must purchase energy delivered from the project prior to commercial operation.

PGE filed its CSP PPA with these revisions in Docket No. UM 1930 on January 25, 2021. PAC filed its CSP PPA revisions in Advice No. 20-003, docketed in ADV 1234 and UM 1930, on January 27, 2021. Redlined versions of PGE's and PAC's CSP PPAs are included as Attachments A and B, respectively. IPC previously requested these two CSP PPA revisions and received Commission approval on December 29, 2020.[3]

[2] Order No. 20-122 in UM 1930 established the terms of the utility CSP Interconnection Agreements and PPAs. PGE filed Compliance Filing of Advice No. 20-04 on April 17, 2020, effective April 20, 2020, docketed in ADV 1095; PAC filed Supplemental Compliance Filing of Advice No. 20-003 on April 14, 2020, effective April 14, 2020, docketed in ADV 1093; IPC filed Supplement to Advice No. 20-01 on April 13, 2020, effective April 7, 2020, docketed in ADV 1094.
[3] See IPC's Advice No. 20-12, filed November 20, 2020, effective December 30, 2020, docketed in ADV 1205.

Staff planned to recommend Commission approval of the PGE and PAC filings at the February 23 Public Meeting. Staff's recommendation was published on February 17. On February 19, Renewable Energy Coalition (REC) submitted comments strongly opposing the second PPA revision related to the purchase of energy prior to commercial operation. To allow time for more dialogue with utilities and stakeholders, Staff's recommendation to approve the utilities' PPA filings was removed from the February 23 Public Meeting agenda and postponed to a later date.

On March 29, Staff held a public workshop to solicit input. The workshop was attended by REC, PGE, and PAC. No consensus was reached in the workshop. On May 5, Staff proposed additional revisions to the PPAs and requested written comments by May 17. Comments were submitted by PGE, REC, and Oregon Solar + Storage Industries Association (OSSIA). The comments and final Staff recommendation are described later in this memo.

At the request of Staff to allow for this additional review time, PGE and PAC have updated their filings three times to extend the PPA effective dates.

PPA Revision 1: Change Payee for Unsubscribed Energy
The first set of PPA revisions changes the payee for unsubscribed energy payments. Under the original CSP PPA, the utility paid the Project Manager. With the proposed revision, the utility will pay the Program Administrator, who will then pass the payment through to the Project Manager. This change streamlines the compensation process for both the utility and the Project Manager because the Program Administrator already facilitates the transfer of subscription fees from the utilities to the Project Managers after the utilities collect those fees from the participants. The Program Administrator reports that Project Managers prefer this payment method for unsubscribed energy, as well. The utilities also expressed their support for this approach. No stakeholders have opposed this revision.

PPA Revision 2: Terms for Purchase of Energy Prior to Commercial Operation
The second set of PPA revisions establishes terms under which the utility must purchase energy delivered by a CSP project during facility start-up testing prior to commercial operation. Under the new terms, start-up test energy is treated as unsubscribed energy for which the utilities will pay the "as-available" rate. Compensating a project's start-up test energy is consistent with the utilities' standard PPAs for Qualifying Facilities (QF) of variable resources.[4] No stakeholders have

[4] See PGE's Standard In-System Variable Power Purchase Agreement, sections 2.2.1, 4.1, and 4.2 relating to delivery and purchase of Net Output. See also PAC's Non-Firm Power Purchase Agreement, Recital B and section 5.1 relating to delivery and purchase of Net Output.

disputed a project's ability to sell start-up test energy at the as-available rate prior to commercial operation.

The dispute among stakeholders relates to proposed limits placed on the purchase of start-up test energy. In their PPA filings, PGE and PAC propose to limit the utility's obligation to purchase start-up test energy to a period of 90 days. The utilities argue that, because CSP projects require the extra step of Program certification prior to commercial operation, which standard QFs do not, the utilities could be required to purchase start-up test energy indefinitely if a project fails to achieve CSP certification.

Party Positions on 90-day Limit to Purchase of Start-up Test Energy
REC argued in its February comments that a 90-day limit on the utility's purchase of start-up test energy violates the federal and state Public Utility Regulatory Policies Act (PURPA), which "mandate that utilities pay QFs for *all* generation."[5] REC noted that the CSP rules specify that the CSP PPA terms are subject to PURPA pursuant to OAR 860-088-0140(1)(a). REC further argued that the utilities are not harmed by paying the as-available rate and expressed concern that that the utility could delay the commercial operation date beyond the 90-day limit, causing harm to the Project Manager.

Staff agrees with the utilities that a time limit on start-up test energy is appropriate and finds that such a limit for CSP projects does not violate PURPA obligations, which are not triggered until a project is certified. OAR 860-088-0140 states:

> (1) *Upon project certification*, the project's remaining unsold and unsubscribed generation is eligible for sale subject to the following requirements: (a) Upon request, an electric company must enter into a 20-year power purchase agreement with a pre-certified project to purchase the project's unsold and unsubscribed generation on an "as available" basis subject to the requirements of the Public Utility Regulatory Policy Act (PURPA) and ORS 758.505, et. seq.[6]

Though REC accurately identifies that there is an obligation to purchase all unsubscribed generation at an as available rate, that obligation is not triggered until a Project is certified by the Commission. Thus, the obligation to comply with PURPA is not enforceable unless the project is certified, at which point that sale of test energy should no longer be time limited under the PPA.

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[5] Comments of the Renewable Energy Coalition on Proposed Revisions to Community Solar Power Purchase Agreements, February 19, 2021, p. 3.
[6] OAR 860-088-0140, emphasis added.

Staff sees a time limit on the test energy period as a legal and appropriate mechanism to prevent QFs from using the streamlined CSP interconnection and CSP PPA as pathway to sell energy indefinitely at as-available rates.

Staff considered alternative options to achieve the same result and found them to be more harmful to the CSP Project Manager. One option would be to require CSP projects to become certified prior to signing a CSP PPA, which would make it nearly impossible for projects to secure financing. Another option would be to allow the utility to terminate the PPA if the project fails to become certified, which would again create risk for project investors, financers, and participants.

Staff Proposal and Party Comments

In an effort to find a compromise between developers and utilities, Staff drafted a proposal that would limit test energy to 90 days only for projects not yet certified and remove the limit once a project becomes certified. The proposal was intended to address 1) the utilities' and Staff's concerns about an indefinite obligation to purchase start-up test energy; and 2) REC's concerns about compliance with PURPA and the utility delaying commercial operation date when a project is otherwise certified and ready to operate.

OSSIA, REC, and PGE submitted comments on Staff's proposal. OSSIA argues that the Program itself can cause delays in project certification that are out of the Project Manager's control, causing undue harm in lost revenue to the Project Manager. OSSIA provided two examples of such delays. First, to qualify for certification, the Program Implementation Manual (PIM) requires the Project Manager to provide the final as-built plan set for the project, which is not available until after the project is interconnected and operational, creating a "Catch-22." Second, the Program Administrator's project review and customer validation process and the Commission's approval at a public meeting may take longer than the timeframes outlined in the PIM. OSSIA notes that CSP projects have no option to sell power other than the CSP PPA, since the Program does not allow a project to have an executed QF PPA when it requests pre-certification. OSSIA further argues that the utilities are not harmed by purchasing power at the as-available rate.

REC maintains its position that the 90-day limit on the purchase of test energy from projects not yet certified still unlawfully prohibits a CSP project from selling power under PURPA. REC supports OSSIA's concern about delays in project certification that are out of the Project Manager's control and adds that the timing of a utility's interconnection upgrades can also delay project certification.

PGE supports Staff's proposal and recommends some clarifying edits.

Staff Final Position

Staff maintains that limiting the project's ability to sell power prior to project certification is consistent with PURPA and the CSP rules, and serves as the most reasonable mechanism to prevent a non-CSP project from operating under a CSP PPA. Staff notes that the Program Administrator has acknowledged the "catch-22" identified by OSSIA and has agreed that Project Managers may provide the as-built plan set *after* commercial operation and not as a condition for project certification for all projects going forward. The Program Administrator will recommend a PIM revision to clarify this. Staff acknowledges OSSIA's concerns about Program-caused delays during the certification review and approval process. For the first project certified in the program, 33 days elapsed between certification application by the Project Manager and certification approval by the Commission. Staff also acknowledges REC's concern that the utility may delay commercial operation but notes that, while interconnection upgrades could delay the project's ability to begin start-up testing, they would not delay a Project's ability to become certified.

To allow more time for potential delays in the Program's review and approval of a project's certification application, Staff recommends extending the time period that pre-certified projects may sell start-up test energy to 120 days. Staff supports using the clarifying language suggested by PGE in its comments on Staff's proposal.

Staff notes that the CSP PPA contains another reference to 90 days that is not being reconsidered at this time. Under the existing CSP PPA, the utility will request network transmission service for the project to commence 90 days prior to the scheduled commercial operation date. Therefore, the PPA states that projects may not begin delivering start-up test energy until 90 days prior to the scheduled commercial operation date, provided that network transmission service for the project has commenced.

Recommended Modification to PPA

Staff recommends that PGE's and PAC's CSP PPA filings be revised to limit the purchase of start-up test energy to a period of 120 days only for projects that are not yet certified, using the following bold text language, or its equivalent.

> [PGE/PAC] will accept Start-up Test Energy delivered to the Point of Delivery as early as ninety (90) days prior to the Scheduled Commercial Operation Date, as long as [PGE/PAC] has commenced transmission service for the Facility; provided that, in such case, **[PGE/PAC's] obligation to purchase Start-up Test Energy from a Project that is not at such time a Certified Project will not exceed a maximum period of one hundred twenty (120) days**. If Project Manager desires to begin transmitting Start-up Test Energy to PacifiCorp at a date earlier than ninety (90) days prior to the Scheduled Commercial Operation

> Date, PacifiCorp will only be obligated to purchase such Net Output (i) if PacifiCorp is able to modify its network resource designation for the Facility such that the output could be delivered using network transmission service as described in Section 3.1 above at no additional cost or other economic impact to PacifiCorp**; and (ii) for any Project that is not at such time a Certified Project**.

Staff Review of Filing
Staff confirms that the revised CSP PPAs filed by PGE and PAC include the expected revisions to change the payee for unsubscribed energy and to specify that unsubscribed energy is paid at the as-available rate.

The provision added by the utilities to limit the purchase of start-up test energy to 90 days should be changed according to the recommended modification described above.

Additional minor revisions to PGE's PPA include improving consistency in terminology, correcting section references, and clarifying the application of degradation factor to expected annual energy output.

Additional minor revisions to PAC's PPA include improving consistency in terminology and adding contact information for notices.

Conclusion

Staff finds that the PPA revisions requested by PGE and PAC achieve needed clarity around the treatment of unsubscribed energy. Staff also finds it necessary and appropriate to place a limit on the time that a CSP project not yet certified the Program may sell energy prior to its commercial operation date. Staff suggests that 120 days is reasonable amount of time to account for delays by the utility and the Program in reviewing and approving the project. Staff recommends the Commission approve the CSP PPAs filed by PGE and PAC subject to the recommended modifications described in this memo.

Staff appreciates the utilities' collaboration with Staff and the Program Administrator through the development and implementation of the Program. Staff also appreciates the insight provided by stakeholders in their comments.

PROPOSED COMMISSION MOTION:

Approve PGE's filing in UM 1930 and PAC's Advice No. 21-003 requesting revisions to their Community Solar Program Power Purchase Agreements, subject to the direction to re-file the portions of the PPAs by June 18, 2021, that incorporate modifications recommended by Staff.