

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT**

PUBLIC MEETING DATE: September 7, 2021

REGULAR **CONSENT** **EFFECTIVE DATE** September 8, 2021

DATE: August 30, 2021

TO: Public Utility Commission

FROM: Joe Abraham

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

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. UM 1930)
Proposes approving Certification extensions for four Community Solar
Program Projects

STAFF RECOMMENDATION:

The Oregon Public Utility Commission (OPUC or Commission) should grant the Project amendments extending the timeline for Project Certification for the four Projects discussed below as follows:

1. Extend the Certification deadline for Goodling Annex to April 1, 2023, with a conditional interim deadline of June 1, 2022.
2. Extend the Certification deadline for Skyward to July 1, 2022, with a conditional interim deadline of March 11, 2022.
3. Extend the Certification deadlines for Pilot Rock 1 and Pilot Rock 2 until 18 months after the final ruling in Docket No. UM 2118, with a conditional interim deadline of 30 days of the Commission order resolving the complaint.

DISCUSSION:

Issue

Whether the Commission should accept the recommendation of Staff and the Program Administrator to grant the project amendment extending the period for compliance for pre-certified Community Solar Program Projects.

Applicable Rule or Law

Section 22 of Senate Bill (SB) 1547, effective March 8, 2016, and codified in Oregon Revised Statute (ORS) 757.386, directs the OPUC to establish a community solar program (hereinafter referred to as "Program", or "CSP").

On June 29, 2017, the Commission adopted formal rules for Oregon's Community Solar Program under Oregon Administrative Rules (OAR) Division 88 of Chapter 860.

OAR 860-088-0040(5) articulates that a project remains pre-certified for a period of 18 months, unless granted an extension by Commission order.

Section 4.7.1 of the CSP Program Implementation Manual (PIM) indicates a Project Manager's request for an extension of the Certification deadline must be approved by OPUC via a pre-certification amendment.

Analysis

Background

The Commission has pre-certified each of the projects listed below.¹

Project Name	Name of PM	Utility Territory	Project Size (kW-AC)	Status
Goodling Annex	Bonneville Environmental Foundation	PAC	1000	Pre-Certified 4/21/20
Skyward	Nautilus Solar Energy	PGE	2500	Pre-Certified 3/10/20
Pilot Rock 1	Pilot Rock Solar 1, LLC	PAC	1980	Pre-Certified 3/10/20
Pilot Rock 2	Pilot Rock Solar 2, LLC	PAC	2990	Pre-Certified 4/21/20

Extension of Timeline for Certification Compliance

Extending the timeline for project Certification is considered a project amendment pursuant to the Program Implementation Manual (PIM) and requires Project Managers to submit a written request that is reviewed by the Program Administrator (PA) and approved by the Commission.² Staff recommends granting these four Projects with an

¹ See UM 1930, Commission [Order No. 20-078 \("Community Solar Program Implementation"\)](#) March 10, 2020, and [Order No. 20-137 \("Requests to Pre-certify Community Solar Projects"\)](#), April 27, 2020.

² Cite to PIM p.66-68

extension of the timeline for completion of Certification conditions. Rationale for Staff recommendation for each Project is provided below.

i. Goodling Annex

The Project has requested an extension of its Certification deadline from October 21, 2021, until April 1, 2023, Attachment A. The CSP PA supports granting this extension with the inclusion of an intermediate milestone, based on the unique circumstances of the Project.

Goodling Annex is located in Northeast Portland in Pacific Power Service area. The Project qualifies for the Program's designated carve-out capacity as a non-profit-managed Project. The Project intends to work with Port of Portland as an anchor customer and with its partner Verde to primarily enroll low-income households from the Cully neighborhood of Northeast Portland. The Project was Pre-certified on April 21, 2020, and has an 18-month Certification deadline of October 21, 2021.

At the time of Pre-certification, the Project Manager and its partner Verde informed the PA their desire to offer discounted subscriptions to low-income households. This goal was dependent on the Project securing outside funding, and that they were pursuing funding through the Portland Clean Energy Fund (PCEF) program. The Project does not plan to pursue project development and enrollment activities until it secures adequate funding.

The Project did not receive funding in the inaugural PCEF funding round, with awards issued in spring 2020. In that round, PCEF funds reflected a partial year of revenue collection, and as a result PCEF informed applicants that funding for large projects would be limited. The Project has informed the PA that it intends to apply for funding again in the current round of PCEF applications. Awards are expected in spring 2021, with a larger pool of funding available. The Project has requested extending its Certification deadline to April 1, 2023 to allow time to conduct customer enrollment and complete project development activities should the Project gain PCEF funding.

The PA considers project amendment requests on a case-by-case basis. In this case, the PA acknowledges that the Project is best able to achieve its intended outcomes with outside funding, and that PCEF is a suitable funding source. The PA does not believe that the Project's unsuccessful application in the first PCEF round indicates that it may not succeed in the subsequent round. The PA also notes there is still available program capacity and no waitlist for carve-out capacity in the program, and that no other projects would be impacted by granting an extension. For these reasons, the PA and Staff support granting a project extension.

However, Staff and the PA are concerned with the precedent this may set, and recommends the Commission make this extension conditional on an interim deadline. The PA recommends that the Project be required to provide evidence to the PA by June 1, 2022, that it has secured adequate funding from PCEF or another funding source, and intends to proceed with project enrollment and development. If the Project does not provide this evidence, the Certification extension would lapse and the Project would be canceled.

Staff recommends extending the deadline for compliance with Certification conditions to April 21, 2023, with a conditional interim deadline of June 1, 2022.

ii. Skyward

The Project has requested an extension of its Certification deadline from September 11, 2021, until September 11, 2022, Attachment B. The PA supports granting an extension until July 1, 2022, on a conditional basis subject to demonstrating it has accomplished certain project development milestones. The PA has discussed this revised timeline with the Project Manager, and the Project Manager has agreed to it.

Skyward Solar is located outside the City of Sandy in Clackamas County in the PGE service area. The Project was Pre-certified on March 11, 2020. The Project has not begun participant enrollment or construction. The Project Manager has cited challenges related to the COVID-19 pandemic as the primary reason for delay, creating challenges related to travel to the site, material procurement and shipping, and labor shortages. The Project Manager also explains that a shorter delay would require it to perform construction during the seasonal rainy season, increasing costs and making the Project financially infeasible.

The PA evaluates extension requests on a case-by-case basis based on the circumstance of the project, but also takes care to offer equitable treatment across projects. The PA has identified two situations in which it would generally support an extension request, both of which apply to Skyward Solar. First, the PA supports granting an extension of up to six months for any Project Manager that is able to credibly demonstrate challenges and market disruption delays due to COVID-19. Skyward has demonstrated this, which would warrant an extension until March 11, 2022. Second, if the Project timeline requires construction in the winter season, the PA supports granting additional time to construct in the spring, which would warrant the additional extension that Skyward has requested until July 1, 2022. The PA heard feedback from three Project Managers regarding the challenges and costs of winter construction, and agrees that this is additional extension would be appropriate to support project viability.

However, Staff and the PA have concerns regarding a nine-month extension for the Skyward Project due to several considerations. The PA notes that the Project has made less progress towards Certification than other general capacity projects in PGE service area, all of which were Pre-certified in winter or spring, 2020. All other Project Managers in the PGE service area have begun participant enrollment, and most have started project construction. Further this Project Manager submitted its required one-year progress update more than three months late, informed the PA that it intends to sell the Skyward Project to another party, and indicated that financing and landowner disputes contributed to delay.

The PA recommends granting an extension to the Project to ensure equal treatment with other projects that may request an extension due to COVID-19-related challenges. In light of these concerns, however, the PA recommends making this extension conditional on the Project adhering to its stated development timeline. Specifically, the PA recommends the Project be required to submit to the PA documentation that it has provided Notice to Proceed to the Project's EPC contractor to construct the Project by March 11, 2022. This would indicate that, but for the need to do project construction after the rainy season, the project would be ready to commence construction within the standard 6-month extension period provided for COVID-related delays. If the Project does not provide this information to the PA according to the above schedule, the Certification extension would lapse and the Project would be canceled.

Thus, Staff recommends extending the deadline for compliance with Certification conditions to June 1, 2022, with a conditional interim deadline of March 11, 2022.

iii. Pilot Rock 1 and Pilot Rock 2

Sunthurst Energy, the parent company of Pilot Rock 1 and Pilot Rock 2, has requested Certification deadline extensions for both Projects until 18 months after the date of the final ruling on UM 2118, Attachment C. The PA supports granting this extension request, on a conditional basis subject to interim milestones.

Pilot Rock Solar 1 is a 1.98 MW Project managed by Pilot Rock Solar 1, LLC, which was Pre-certified on 3/11/2020 and has a Certification deadline of 9/11/2021. Pilot Rock Solar 2 is a 2.99 MW Project managed by Pilot Rock Solar 2, LLC, which was Pre-certified on 4/21/2020 and has a Certification deadline of 10/21/2021. Both Project Manager entities are located in the City of Pilot Rock in Umatilla County, in Pacific Power service area.

Sunthurst Energy is currently engaged in the interconnection complaint for both Projects, which is being administered under UM 2118. This complaint was initiated on September 29, 2020, and arguments were filed by Sunthurst and Pacific Power in

April 2021. The parties are currently awaiting final ruling. Due to the ongoing complaint and associated project uncertainty, the two Projects have not begun participant enrollment or project construction.

The PA recognizes the complexity of interconnection issues and the sensitivity of the ongoing complaint process, and believes it is reasonable to extend the Certification deadlines for projects that are engaged in an active complaint before the Commission. The PA also recognizes that if the complaint is resolved in a manner that leaves the Project technically and financially feasible, the Project would require up to 18 months after resolution to conduct enrollment and development activities and meet Certification requirements.

The PA recommends the Commission extend the Certification deadline for these two Projects until 18 months after the final ruling in Docket No. UM 2118, as requested by the Project Manager. However, the PA also recommends that this extension be conditional on the outcome of the complaint process, so that program capacity may be reallocated if the complaint is not resolved in a manner that permits the Project to remain technically and financially feasible. The PA recommends that, within 30 days of the Commission order resolving the complaint, the Project must confirm technical and financial feasibility and provide evidence to the PA. If the Project is not able to demonstrate that the Project remains feasible, the Certification extension would lapse and the Project would be canceled.

Conclusion

Staff agrees with the analysis of the Program Administrator and recommends the Commission approve Project Certification extensions for the four Projects discussed above.

PROPOSED COMMISSION MOTION:

Accept the recommendation of Staff to grant the amendments extending the timeline for Certification for the four Projects as follows:

1. Extend the Certification deadline for Goodling Annex to April 1, 2023, with a conditional interim deadline of June 1, 2022.
2. Extend the Certification deadline for Skyward to July 1, 2022, with a conditional interim deadline of March 11, 2022

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3. Extend the Certification deadlines for Pilot Rock 1 and Pilot Rock 2 until 18 months after the final ruling in Docket No. UM 2118, with a conditional interim deadline of 30 days of the Commission order resolving the complaint

UM 1930 – CA15 CSP Certification Extensions

28 April 2021

To whom it may concern,

I am writing to request an extension for the Goodling Annex community solar project. We at Bonneville Environmental Foundation (BEF) have been partnering with Verde to develop this project. Unfortunately, we were not awarded a grant from the Portland Clean Energy Fund (PCEF) in this first round, which limits our ability to move forward with project development. We plan to apply for funding in the next round of PCEF, which will likely open in October, but until then there is not much we can do in terms of project development.

Our project development timeline will likely thus be shifted back one year. Updated timeline:

Utility interconnection studies completed: 7/10/2020

All ministerial permits secured: 2/28/2023

Contract executed with a construction contractor: 2/1/2023

Construction-ready plan set completed: 2/18/2023

Interconnection agreement(s) executed: 7/10/2020

Utility Power Purchase Agreement executed: 4/1/2023

50% of Project's capacity subscribed: 4/1/2023

Recruitment of low-income participants completed: 4/1/2023

Project Certification requested: 4/1/2023

Commercial Operation: 5/30/2023

This extension is necessary to enable us to apply for PCEF funding in the fall of 2021. We will move forward with project development as soon as we secure funding. Please let us know if there is any additional information we can provide.

Thank you,
Raphaela Hsu-Flanders

Renewables Program Manager

Bonneville Environmental Foundation



396 Springfield Ave., 2ND Floor
Summit, NJ 07901
NautilusSolar.com

July 15, 2021

Oregon Community Solar Program
c/o Program Administrator

Re: Request for an Extension of the Operational Certification Deadline for Skyward Solar LLC's Community Solar Project in Clackamas County

Ladies and Gentlemen:

Skyward Solar LLC ("Skyward"), an affiliate controlled by Nautilus Solar Energy, LLC, is developing a 2.5MW community solar project (the "Project") located near the town of Boring in Clackamas County (the "County"), which is in the Portland Gas & Electric ("PGE") service territory. This Project was originally granted pre-certification status in the Oregon Community Solar Program (the "Program") on March 11, 2020. This was three days after the Governor of Oregon issued the first of a lengthy series of Executive Orders to declare a State of Emergency and direct additional significant government actions which were absolutely necessary for safety and the benefit of the public good to combat the COVID-19 pandemic, but which materially delayed the Project's development and construction schedules.

I. Summary of Request

The current Certification deadline for the Project is September 11, 2021. Pursuant to OAR 860-088-0040(5) and Section 4.7.1 of the Program Implementation Manual, Skyward respectfully requests a 12-month extension of the Certification deadline, to September 11, 2022. Skyward is requesting this extension due to good cause as further detailed herein. This is a result of an extensive internal review process with the development, operations, project management, construction, legal and finance teams assessing the impact from the COVID-19 pandemic and necessary Project timeline.

First, at essentially the same time that the Project received its pre-certification for the Program, restrictions were imposed through a series of successive State of Emergency declarations (the "Executive Orders") enacted by the Governor of the State of Oregon during the period from March 8, 2020, to approximately June 30, 2021 (the "Emergency Period") which materially delayed the Project's development. These Executive Orders were a direct result of the spreading of the unprecedented global COVID-19 pandemic and were issued as a matter of safety and public policy. The Executive Orders and safety concerns prevented Skyward and its development teams from traveling to Oregon and the Project site during the Emergency Period. This had a significant impact on material development and operational activities required to secure the Project's building permits. As a result, several key activities were delayed by a period of almost fifteen (15) months.

Second, the state and market continue to feel the ramifications of the COVID-19 pandemic and its affects through the following:

- Material procurement and shipping delays on major equipment and commodities needed for the construction of the Project (in some cases currently in excess of 26 weeks),
- Extra construction time due to acute labor shortages which are occurring in the immediate region, and
- Ongoing uncertainty as to how the pandemic and variants will continue to affect or possibly shut down travel once again.

Finally, there are upcoming limitations for construction and building as a result of seasonal weather-related issues. Constructing this Project during the upcoming wet season is not economically feasible and therefore must be considered in evaluating a reasonable construction timeline.

Despite these unprecedented challenges, Skyward was able to move forward with several desktop studies and remote development activities for the Project. Nautilus and Skyward continued to invest both staff and financial resources on the Project to ensure that when the State of Emergency was lifted, the Project would be on a fast path to completion. The Project team continues to work on development activities. The section below outlines the history of the Project and progress to date.

II. History of the Project and Development Milestone Achieved to Date

The Project's Community Solar award was originally granted under Order 20-078 (the "Award") and entered in Docket UM 1930 on March 11, 2020. Under the terms of the Order, the Project was given 18 months to reach Commercial Operation, which implied a deadline around September 11, 2021. Under normal operating circumstances, this timeframe would have been sufficient and reasonable.

However, just three days before the Award was granted, the unprecedented global COVID-19 pandemic forced the Governor of Oregon to declare the Executive Orders, thereby discouraging and/or prohibiting residents and non-residents alike from conducting unnecessary travel and holding in-person meetings within the state. The Executive Orders further restricted travel to Oregon and forced the postponement of in-person meetings critical to the unencumbered development of the Project and required for Skyward to begin securing community solar subscriptions for the Project.

Notwithstanding the restrictions imposed by the Executive Orders, Skyward worked in good faith during the Emergency Period to reasonably and safely advance the Project's development. Primarily, Skyward continued desktop development activities (fully in compliance with the Executive Orders). Our efforts allowed the Project to achieve major pre-construction milestones including:

- Completing geotechnical studies

- Progressing through 30% and 60% design sets
- Developing a final set of construction plans
- Completing various requirements needed for final building permitting, and
- Signing an Interconnection Agreement with PGE.

Furthermore, despite not being able to travel to the Project site during the entirety of the 15-month Emergency Period, Skyward still invested over \$200,000 of significant development capital into the Project. This shows and continues to show Skyward's commitment to completing the Project and supporting Oregon's program initiatives.

III. Legal Standard and Program/Policy Benefits of the Extension

OAR 860-088-0040 governs the Commercial Operation deadline for community solar projects under the Program:

(5) A project remains pre-certified for a period of 18 months, unless granted an extension by Commission order. * * *

Granting this extension request will allow Skyward to complete the last of the development work required for the Project to secure building permits, commence and complete construction, and begin acquiring qualified community solar subscribers.

As of the date of this request, based on our information, there are only 6MW of operational community solar projects which received capacity allocations in the initial tranche of the Program. The success of the Program depends upon a steady stream of new projects coming online to serve the customers who are waiting for community solar subscriptions. Approving this amendment will ensure the program stays on track and continues to show steady progress. In addition, granting this request upholds the good faith established between the developers and the Program thus erasing any perception that developers will be penalized for abiding by the Executive Orders during the Emergency Period and for unforeseen project delays that are out of their control.

IV. Good Cause Extension For 12 Months

For good cause, as described herein, Skyward respectfully requests a 12-month deadline extension, to September 11, 2022. This would provide the necessary time for the Project to reach Commercial Operation and complete the final Program Certification.

The purpose of an operational deadline is to hold developers accountable to a timely and reasonable development schedule, and reserve program capacity for later program years in the event a developer does not make reasonable progress under an existing program allocation. However, OAR 860-088-0040 also recognizes that there are certain situations that are out of a developer's control and seeks to avoid penalizing such developers by allowing them reasonable additional time in the Program to offset these unexpected delays.

The restrictions caused by the COVID-19 pandemic during the Emergency Period were unprecedented and unforeseeable. Despite the restrictions enacted by the Executive Orders, Skyward still made significant investments into the Project and achieved reasonable and important development milestones. COVID-19 disruptions resulted in engineering deliverable timelines that were six months longer than normal as the market established and set up remote working arrangements. Presently, the Project has few remaining steps to commence construction. This primarily includes issuance of building and electrical permits.

The Project's construction timeline was further complicated by COVID-19 related worldwide shipping delays and supply disruptions for commodities and raw materials. For example, the Project designs had to be revised on several occasions in order to accommodate different solar panels as the availability of panels changed throughout the pandemic. Even today, solar panel suppliers are quoting shipping times that are extending deliveries into Q4 2021 at the earliest. This presents an extended delay of twenty (20) weeks as a result of the pandemic. Similar issues are also being seen with racking and design. Further demonstrating the ongoing effects of COVID-19, the current day global steel shortages are resulting in racking procurements delivery timelines extending beyond twenty-six (26) weeks of extra lead time.

In addition to procurement and shipment delays, and the time needed for issuance of building permits, the updated Project timeline will also need to account for the annual wet season in Oregon. The annual wet season (October to late March/early April) in the Project's local area prevents much on-site construction and requires the use of additional soil treatments and construction methods to prevent damage and erosion. The Project cannot feasibly absorb these additional costs.

V. Projected Timeline

The Project will be ready for construction once pre-construction visits related to the stormwater pollution prevention plan have been conducted, building permits are issued, and construction contracts are finalized. We expect these last development and permitting milestones to be finalized before the end of 2021, with construction breaking ground on the Project immediately after the wet season (projected to be April 2022). Assuming this timeline for construction start, we expect construction and final interconnection to take six months and for the Project to reach Commercial Operation by September 2022.

VI. Conclusion

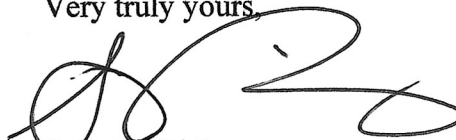
During a 15-month Emergency Period, where the Project faced extenuating circumstances, it has still continued to achieve significant development milestones. In addition, Skyward continues to make substantial investments in the Project showing a consistent and reasonable progress (under the circumstances) toward completion. Despite the continued uncertainty and market ramifications caused by the COVID-19 pandemic, Skyward believes the Project will succeed and reach Commercial Operational with the granting of the extension.

Finally, Skyward looks to work in cooperation with the Program and the Commission to successfully implement the goals of the Program. Granting this extension will enable 2.5 MW of

community solar capacity to be available sooner to PGE customers. If the Project loses its capacity allocation, there will be a significant delay to Oregon electricity customers' ability to participate in the Program because the capacity would have to be re-allocated or the capacity to be made available in subsequent year allocations. Both alternatives would further delay the delivery of community solar capacity to Oregon customers, which would impede the success of the Program and access to clean energy for Oregon communities.

We appreciate your consideration of our important request. Please do not hesitate to contact me if you have any other questions or concerns regarding this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Scott K. Risley". The signature is fluid and cursive, with a large loop at the end.

Scott K. Risley
Director, Development

Appendix A – Oregon Covid-Related Executive Order Chronology

1/31/2020 - Secretary of the U.S. Department of Health and Human Services declared a public health emergency for the United States

3/8/2020 – Executive Order 20-03 – Declaration of Statewide State of Emergency [**Extended – E.O. 20-24, 5/1/2020**]; [**Extended – E.O. 20-30, 6/30/2020**]; [**Extended – E.O. 20-38, 9/1/2020**]; [**Extended – E.O. 20-59, 10/27/2020**]; [**Extended – E.O. 21-05, 2/25/2021**]; [**Extended through December 31, 2021 per E.O. 21-15**]

3/12/2020 – Executive Order 20-05 – Prohibited large social gatherings

3/17/2020 – Executive Order 20-06 – “ORS 401.965(5) empowers the Governor to declare an abnormal disruption of the market when any emergency prevents ready availability of essential consumer goods and services... Having found that the COVID-19 outbreak is an emergency that prevents ready availability of essential consumer goods and services, I hereby declare that that an abnormal disruption of the market commenced at 12:00 a.m. on January 30, 2020, in all Oregon counties.” [Emphasis added] [**Extended – E.O. 20-15, 4/7/2020**]; [**Extended – E.O. 20-30, 6/30/2020**]; [**Extended – E.O. 20-38, 9/1/2020**]; [**Extended – E.O. 20-59, 10/27/2020**]; [**Extended – E.O. 20-67, 12/17/2020**]; [**Extended – E.O. 21-05, 2/25/2021**] (Appears to have expired on May 20, 2021 due to no Order extending it).

3/17/2020 – Executive Order 20-07 – Prohibits dine-in restaurants [**Extended indefinitely – E.O. 20-14, 4/7/2020**]

3/17/2020 – Executive Order 20-08 – Schools closed

3/19/2020 – Executive Order 20-09 – Colleges closed to in-person classes [**Extended through June 30, 2020 - E.O. 20-17, 4/17/2020**][**Extended indefinitely – 6/30/2020**]

3/19/2020 – Executive Order 20-10 – Orders “immediate action...to conserve PPE”

3/22/2020 – Executive Order 20-11 – Eviction moratorium [**Extended and expanded – E.O. 20-13, 4/1/2020**]; [**Replaced by legislation – E.O. 20-30, 6/30/2020**]

3/23/2020 – Executive Order 20-12 – Due to ongoing state of emergency “to the maximum extent possible, individuals [must] stay at home or at their place of residence...” The Order prohibits social gatherings, closed public gathering places like indoor and outdoor malls, imposed social distancing rules and closed certain government buildings and childcare facilities. The Order also directed businesses to use work-from-home procedures whenever possible.
Travel restrictions:

Individuals are directed to minimize travel, other than essential travel to or from a home, residence, or workplace; for obtaining or providing food, shelter, essential consumer

needs, education, health care, or emergency services; for essential business and government services; for the care of family members, household members, elderly persons, minors, dependents, persons with disabilities, or other vulnerable persons, pets or livestock; travel as directed by government officials, law enforcement, or courts; and other essential travel consistent with the directives of my Executive Orders and guidance from the Oregon Health Authority.

[Expanded to include closure of childcare facilities – E.O. 20-19, 4/23/2020]; [Extended – E.O. 20-30, 6/30/2020]; [Extended – E.O. 20-38, 9/1/2020]; [Extended – E.O. 20-59, 10/27/2020]; [Rescinded – E.O. 21-15, 6/25/2021]

4/15/2020- Executive Order 20-16 – Government operations restrictions such as video meetings, teleconferences **[Replaced by legislation – E.O. 20-38, 9/1/2020]**

5/14/2020 – Executive Order 20-25 – Consolidates previous Orders and lays out phased reopening plan based on Covid prevalence and other health-related factors. **[Expanded as “A Safe and Strong Oregon (Phase II)” – E.O. 20-27, 6/5/2020]; [Extended – E.O. 20-59, 10/27/2020]; [Rescinded – E.O. 20-66, 12/2/2020]**

9/28/2020 – Executive Order 20-56 – Eviction moratorium extension and special provisions for Labor Day wildfire events:

In addition to the significant challenges arising from the spread of COVID-19, shortly after the start of the school year massive and unprecedented wildfires erupted across Oregon. In response, I declared a statewide wildfires state of emergency under ORS 401.165 et. seq. and invoked the Emergency Conflagration Act statewide. Despite the heroic efforts of our firefighters and first responders, these fires have resulted in evacuations, damage and destruction to critical infrastructure, including homes, as well as other structures, and injury and loss of life. The effects of these fires will be felt long after the fires themselves are out... Following the Labor Day holiday, and the significant displacement associated with the wildfire evacuations, cases of COVID 19 have again begun to rise sharply in Oregon.

[Extended – E.O. 20-59, 10/27/2020]; [Extended – E.O. 20-67, 12/17/2020]; [Rescinded – E.O. 21-15, 6/25/2021]

11/17/2020 – Executive Order 20-65 – Expanded restrictions (“temporary freeze”) imposed due to a “surge” in Covid-19 cases in Oregon, effective through 12/2/2020. Mandatory work-from-home requirement and travel restrictions. **[Rescinded – E.O. 20-66, 12/2/2020]**

12/2/2020 – Executive Order 20-66 – Delegates to health agency the power to develop rules and procedures for phased reopening on a county-by-county basis depending upon Covid infection rates and hospital capacity in individual counties. **[Extended – E.O. 20-67, 12/17/2020]; [Extended – E.O. 21-05, 2/25/2021]; [Rescinded – E.O. 21-15, 6/25/2021]**

12/17/2020 – Executive Order 20-67 – Notes a “winter surge” in Covid cases in Oregon.

6/25/2021 - Executive Order 21-15- Rescinds all previous Covid-related Executive Orders, except the Declaration of Emergency (E.O. 20-03) which remains in effect through December 31, 2021.

KENNETH KAUFMANN ATTORNEY AT LAW

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August 20, 2021

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-2020-13 (Pilot Rock Solar 1, LLC, or PRS1)
Project PP-2020-71 (Pilot Rock Solar 2, LLC, or PRS2)

To the Project Administrator:

Sunthurst Energy, LLC, owns PRS1 and PRS2, and plans to certify both facilities as Oregon Community Solar Projects (CSPs). The Public Utility Commission pre-certified PRS1 on March 17, 2020 (Order No. 20-078), and pre certified PRS2 on April 21, 2020 (Order No. 20-137). For the reasons below, Sunthurst now requests that the 18-month Certification deadline be postponed until 18 months after the Commission issues a final ruling in Docket No. UM 2118.¹

Applicable Legal Standard

Under the Oregon Community Solar Program's Program Installation 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. Projects' progress. Both PRS1 and PRS2 were pre-certified by the Commission in the first half of 2020. Pre-certification signifies that the projects 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. Each project paid CSP a \$14,950 application fee, in addition to interconnection study fees paid to PacifiCorp.

Sunthurst and PacifiCorp have not yet executed an interconnection agreement for PRS2, and disputes prevent either party's performance under the interconnection agreement for PRS1. Without an agreed-upon scope and cost of interconnection, Sunthurst cannot obtain project financing, proceed with construction, nor obligate itself to Community Solar subscribers.

¹ Sunthurst Energy, LLC v. PacifiCorp (<https://apps.puc.state.or.us/edockets/docket.asp?DocketID=22592>).

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Sunthurst has, however, maintained its site control, permits, and other components essential to development of PRS1 and PRS2.

- B. Reasons for requested change.** Projects must be certified within 18 months of pre-certification. (PIM, Figure 1). September 17, 2021 will mark 18 months since PRS1 achieved pre-certification. October 21, 2021 will mark 18 months since PRS2 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). Neither PRS1 nor PRS2 will be eligible for certification within 18 months of pre-certification and therefore may be defaulted if the requested change is not granted.
- C. Realistic Timeline for Certification.** Both PRS1 and PRS2 cannot proceed until after Sunthurst's legal dispute with PacifiCorp regarding PacifiCorp's proposed terms and conditions of interconnection of PRS1 and PRS2 is resolved. Upon resolution, Sunthurst expects to complete and certify both projects within 18 months.
- D. 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.
- E. 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 legal dispute with PacifiCorp, on January 14, 2021.
- F. Project Participant enrollment.** Sunthurst has not enrolled CSP participants for PRS1 and PRS2 at this time. Sunthurst submitted its proposed Subscriber Agreement and received feedback from the PM in February 2021.
- G. Circumstances affecting development or enrollment.** The PRS1 and PRS2 projects have progressed as far as they reasonably can without resolution of their interconnection dispute with PacifiCorp. Sunthurst diligently negotiated with PacifiCorp. When negotiation was unsuccessful, Sunthurst filed a Complaint with the Commission, on September 29, 2020. The dispute has been ripe for the Commission's decision since briefing concluded April 13, 2021.

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.

Diligent prosecution. At all times Sunthurst has diligently pursued development of the PRS1 and PRS2 projects. Unfortunately, Sunthurst does not control the timetable in litigation before the Commission. Where possible it has sought to speed the process, by requesting expedited review, waiving hearing, and seeking accelerated briefing.

Litigation Involves Material Issues. The disputes at issue in Sunthurst's complaint before the Commission are material to the viability of PRS1 and PRS2. If they resolve in Sunthurst's favor, Sunthurst will very likely achieve commercial operation of both projects shortly thereafter. If they

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do not resolve in Sunthurst's favor, Sunthurst likely will not develop PRS1 and PRS2 as Community Solar Projects.

Issues in Litigation are of General Concern to Oregon CSP. Sunthurst's Complaint against PacifiCorp raises several issues of first impression including: (a) whether a utility may impose conditions on the interconnection that have not previously been filed with the Commission; (b) whether "Customer Indifference" means that the utility can require a small generator to pay to mitigate any impact, no matter how small, with any remedy, no matter how large; (c) whether the utility should pay the incremental cost between cheapest reasonable interconnection option and the alternative it chooses; (d) whether a utility should allow low-side metering of CSP projects where it uses low-side metering on its own similar projects; (e) whether PacifiCorp's 8% Capital Surcharge on small generator interconnections is reasonable when during the same time its windmill repowering projects paid only a 0.109% Capital Surcharge; and (f) whether conclusions stated in interconnection studies must be supported by documented facts and calculations.

The above issues pertain to how rules governing small generator interconnection are construed and implemented. By pressing its dispute to a written decision, Sunthurst will bring about substantial refinements in the law of Oregon small interconnections. Sunthurst is lowering the cost of all future small interconnections by (a) challenging unreasonable costs and risks imposed by PacifiCorp; and (b) providing an opportunity for the Commission to resolve ambiguities in the interconnection rules that affect all stakeholders and give rise to recurring disputes.

Refusal to grant extension would deny Sunthurst a remedy. If the Commission does not grant Sunthurst reasonable additional time to achieve Certification, it will, in effect, deny Sunthurst any meaningful remedy for its pending Complaint. Put another way, there is no point in having a complaint process if parties can't avail themselves of it without being defaulted from the CSP program due to resulting delays. Such a practice would incentivize utilities to draw out litigation and would deny interconnection customers due process.

Reasonable justification. For all the reasons above, reasonable justification exists to amend the Certification deadline in Sunthurst Projects PP-2020-13 (PRS1) and PP-2020-71 (PRS2).

Relief Sought

For all the reasons set forth herein, Sunthurst requests up to 18 months² to achieve Certification of Sunthurst Projects PP-2020-13 (PRS1) and PP-2020-71 (PRS2), commencing on the day the Commission issues its final order in Docket No. UM 2118.

Sincerely,



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

² 18 months preserves the *status quo* while litigation ensues, thereby ensuring applicant is not deprived of procedural due process. Depending on when the Commission decides UM 2118, compared to cyclical events including tax equity funding windows, less than 18 months might not be reasonable for Certification.