
November 29, 2023

VIA ELECTRONIC MAIL (Kristopher.Bremer@PacifiCorp.com)

Mr. Kristopher Bremer
Director, Generation Interconnection
PacifiCorp
825 NE Multnomah, Suite 1600
Portland OR 97232

Subject: **Docket UM 2177—Second Amended Notice of Intent to file Complaint of Enforcement**
Q0666--Sunthurst Energy, LLC--Pilot Rock Solar 1, LLC
Q1045--Sunthurst Energy, LLC--Pilot Rock Solar 2, LLC
OCS024--Sunthurst Energy, LLC--Tutuilla Solar, LLC

Dear Mr. Bremer,

As you know, Oregon’s Community Solar Program has grossly underperformed expectations. In the November 14 Docket UM 1930 Workshop, PacifiCorp reported that only 6 Community Solar Projects (CSPs), totaling 2.464 MW out of its 65 MW Initial Program Capacity, have reached operation. Failure to realize the Initial Program Capacity would be a broken promise to its many subscribers, a disaster to developers who answered the State’s call for community solar, and a black mark on state policymakers. Sunthurst Energy, LLC (Sunthurst), a small, family owned, business, was one of the first developers to commit to building Community Solar Projects and has spent hundreds of thousands of dollars on its CSPs. Sunthurst’s five pre-Certified CSPs¹, all located in PacifiCorp territory, embody the policy objectives of the Community Solar Program. The projects are subscribed by PacifiCorp’s low-income customers and state agencies seeking to lower their carbon footprint. Tutuilla Solar, LLC (Tutuilla) is the only CSP sponsored by an Indian tribe (the Confederated Tribes of the Umatilla Indian Reservation, or “CTUIR”) and located on tribal land. Pilot Rock Solar 1, LLC (Pilot Rock 1) and Pilot Rock Solar 2, LLC (Pilot Rock 2) are sited in City of Pilot Rock, a recognized Economically Distressed Area. Pilot Rock 1 received a substantial state RED grant, and Tutuilla received a large CREP grant. **For the good of the Oregon Community Solar Program and its stakeholders, these Projects must not fail.**

To develop its CSPs, Sunthurst has overcome numerous obstacles. In 2020, PacifiCorp’s overpriced interconnection costs necessitated litigation which delayed Sunthurst’s timeline 14 months.² In 2022, PacifiCorp wrongly refused to process Sunthurst’s PPA requests until Sunthurst completed its interconnection agreements.³ This delay, which occurred while interest rates were rising rapidly,

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

² See Docket UM 2118 (PacifiCorp interconnection charges for PRS1, PRS2 and Tutuilla were reduced, from \$2.14M in the initial Facilities Studies to \$1.15M in the Interconnection Agreements).

³ The Commission banned this practice in 2007, when it ordered PacifiCorp to remove from its Schedule 38 the requirement of a completed interconnection study. Order 07-360, p. 8, ORE PUC LEXIS 279, *16 (August 20, 2007). Conditioning a PURPA PPA on a final interconnection agreement likely violates PURPA (*See FLS Energy, Inc.* 157 F.E.R.C. P61,211, 61730, 2016 FERC LEXIS 2167, *17-18 (F.E.R.C. December 15, 2016) (“requiring a QF to tender an executed interconnection agreement [to have a legally enforceable obligation] is equally inconsistent with PURPA and our regulations”). It also fell short of this Commission’s order, in *Dalreed Solar, LLC v.*

prevented Sunthurst from closing on financing for 13 months. Had PacifiCorp not withheld the PPAs, the three Sunthurst Projects would already be built. When Sunthurst asked for a 13-month extension in the CODs due to delays in financing, PacifiCorp extended the CODs by 28 months instead, and required Sunthurst to prepay all construction costs 455 days prior to Commercial Operation. Most recently, on October 18, October 31, November 7 and November 17, when Sunthurst informed PacifiCorp of its urgent need to accelerate Project completion dates in the Interconnection Agreements for the Three Projects, PacifiCorp waited 30 days before providing a hurriedly prepared response, requiring minimal effort, which could have been provided weeks prior.

PacifiCorp's slow, vague response has jeopardized Sunthurst's RED grant, which has a looming sunset, and also its current private construction financing package. PacifiCorp's denial of PPAs violated federal law and state policy. PacifiCorp's long completion times and excessive pre-payment requirements are unreasonable and discriminatory, and its interconnection costs are excessive. PacifiCorp's actions have financially damaged Sunthurst. Together, the pattern of behavior above is strong evidence of animus towards Community Solar Projects, and the competition to PacifiCorp's monopoly they represent.

By this letter, Sunthurst gives notice of its intent to file a Complaint with the Public Utility Commission of Oregon ("Commission") pursuant to OAR 860-082-0085⁴ ten days from the date above, arising from PacifiCorp's unreasonable terms of its interconnection agreement for Pilot Rock Solar 1, Pilot Rock Solar 2, and Tutuilla Solar projects; PacifiCorp's wrongful refusal to negotiate Power Purchase Agreements; PacifiCorp's failure to timely respond to Sunthurst communications; and PacifiCorp's anti-competitive conduct. Sunthurst may seek penalties, injunctive relief, declaratory relief, and monetary damages before the Commission and/or state court.

The alleged violations are very serious. Nevertheless, they may be resolved without litigation provided PacifiCorp engages cooperatively in developing workable timelines and construction payment terms. At a workshop held November 14 in Docket UM 1930, PacifiCorp assured the Commission that it would work with developers to meet their scheduling needs. Sunthurst is receptive to such cooperation.

Issues Requiring Resolution. The following issues require urgent attention:

1. The September 30, 2025 Commercial Operation Date in the current IAs is unreasonably long.

PacifiCorp interconnection timelines have steadily increased since the advent of the Community Solar Program. In early 2022, PacifiCorp committed to build the Pilot Rock Solar 1 and 2 interconnections in 60 days. Later that year, PacifiCorp increased the construction window to 90 days. But in 2023, PacifiCorp revised the timeline for the same scope of work, to 240 days. Similar enlargements occurred at Sunthurst's Tutuilla Solar Project:

Pilot Rock Solar 1 and 2 IA Amendment Date:	<u>3/17/22</u>	<u>8/15/22</u>	<u>5/22/23</u>
Scheduled Construction Duration:	60 days	90 days	240 days
Scheduled COD:	12/31/22	5/25/23	9/30/25

Table 1. How PacifiCorp construction timelines have increased over time.

A reasonable construction duration for both Pilot Rock Projects (as shown by the previous IA schedule) is 90 days. Longer duration schedules increase costs and delay completion without good cause. By reverting to the 90-day construction window in its previous IA, Pilot Rock Solar 1 and 2 could be accelerated by

PacifiCorp, Docket UM 2125, Order 21-097, p. 7 ("Accordingly, we expect PacifiCorp to continue with its new policy of offering draft PPAs prior to the completion of interconnection studies for non-standard contracts.").

⁴ Sunthurst may also use the contested case process, OAR 860-001-0000, et seq, per OAR 860-088-0110(b).

150 days, or five months. The Pilot Rock 1 schedule also assumes a November 11, 2024 final engineering design milestone. In fact, PacifiCorp largely completed final engineering prior to 2020. This milestone could be accelerated to early 2024 because the amount of remaining work is small. Pilot Rock Solar 2 engineering could also be shortened, because its scope is much smaller than the scope for Pilot Rock Solar 1. By reverting the construction schedule, shortening the engineering timeline, and removing several months of scheduled float time, the commercial operation date for Pilot Rock Solar 1 and 2 can be moved well inside of 2024. Sunthurst requests the earliest possible 2024 COD for Pilot Rock Solar 1 and 2, with Tutuilla COD occurring 60 days thereafter.

2. Sunthurst is not preventing PacifiCorp from revising the construction timelines.

In your November 17 e-mail, you requested more information so that PacifiCorp can substantively respond to Sunthurst’s requested schedule revision. Sunthurst previously submitted the requested information to PacifiCorp, as explained below:

Bremer Request #1: “Sunthurst will need to call PacifiCorp's customer service group and request a new retail service at the location of the Pilot Rock and Tutuilla sites.”

Sunthurst Response: Sunthurst submitted retail service requests for Pilot Rock 1, Pilot Rock Solar 2 and Tutuilla Community Solar Projects, on March 17, 2022, and notified PacifiCorp Transmission through its attorney, Nate Larsen, the same day. Sunthurst has already complied with this request. A copy of the retail service request is attached.

Bremer Request #2: “Sunthurst will need to provide it's initial, proposed layout of the three solar facilities, perform a site visit with PacifiCorp personnel and confirm inverter selections.”

Sunthurst Response: Sunthurst submitted its initial, proposed layout for Pilot Rock 1, Pilot Rock Solar 2 and Tutuilla Community Solar Projects, on March 17, 2022 through PacifiCorp Transmission attorney, Nate Larsen. On November 17, 2023, Sunthurst supplemented the March 17, 2022 submittals with stamped one-line drawings of the three Projects. Further, PacifiCorp’s local estimator, Doug Triebelhorn, visited the Pilot Rock 1 and 2 sites in spring 2022.

Sunthurst believes PacifiCorp has all the information it needs to move forward with design and procurement. If PacifiCorp reasonably requires additional information, Sunthurst will provide.

3. PacifiCorp’s prepayment requirements in the IA are unreasonable.

PacifiCorp’s May 22, 2023 amended IAs contain accelerated new prepayment requirements, which, combined with current high interest rates, create another high obstacle for CSP developers. Under the original Interconnection Agreements, PacifiCorp required full payment 85 days prior to the COD. Under the May 22 amendments, PacifiCorp required full payment 455 days prior to the COD—a 370-day acceleration compared to the prior interconnection agreements. This is 180 days before PacifiCorp plans to commence construction.

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

Table 2. Pre-payment deadlines PacifiCorp added to May 22, 2023 IA amendments.

PacifiCorp's practice of requiring payment in full six months before start of construction is onerous to the Project, a windfall to PacifiCorp, and dis-incentivizes PacifiCorp to timely complete construction. The hardship caused by PacifiCorp's prepayment requirements is aggravated by another factor: Oregon's various renewable energy grants (RED grant, CREP grant) withhold substantial payment of grant funds to developer until a Project has been completed. Accordingly, developers must find a way to make the prepayments without access to state grant money.

A. Sunthurst requests PacifiCorp accept Sunthurst's penultimate deposits prior to commencement of construction, and final payment upon Commercial Operation. Such terms would approximate payment schedules typical of large construction projects, and would allow Sunthurst to use the state grant money released upon Commercial Operation to pay the final installment.⁵ Such payment terms are authorized by existing Commission rule.⁶

B. Alternatively, Sunthurst requests PacifiCorp pay for or delete unnecessary upgrades. The OARs and the interconnection agreements only require the interconnection customer to pay for reasonable costs that are necessary to safely interconnect the small generator. Recently, several of PacifiCorp's interconnection practices were called into question, in Docket AR 659:

i. *DC, not AC, capacity.* Historically, PacifiCorp conducted facilities studies for distributed solar generators using DC, not AC, capacity ratings for the new solar and existing generators in the study.⁷ According to recent AR 659 testimony by the Interstate Renewable Energy Council (IREC), using DC capacity overcounts the impact of each resource, potentially affecting project economics in several ways

There are many ways that failing to update existing DERs' nameplate ratings will overstate impacts on the distribution system. First, using the DC nameplate rating instead of the AC nameplate rating for existing DERs likely causes the utilities to prematurely designate a feeder as a "limited generation," which prevents additional DER from interconnecting without an expensive and time-consuming study process. Second, using the DC nameplate rating instead of the AC nameplate rating for existing DERs means that utilities are likely requiring upgrades that are not necessary. Or if the upgrades would have eventually been required by a later queued DER anyway, utilities may wrongly assign the cost of the upgrade to an earlier-queued DER. Third, having databases that accurately show the size of existing DERs is a key input to a hosting capacity analyses. IREC strongly opposes utilities spending any time or resources to perform a hosting capacity analyses unless the Commission and stakeholders have confirmed that appropriate data, including AC nameplate ratings and measured load data, is input into the model. These are just three examples of why it is important for utility databases to include appropriate data, and there are surely many others. **Therefore, it is unreasonable to allow utilities to use inappropriate data in distribution system operations, distribution system planning, and the interconnection evaluation process in perpetuity.**⁸

⁵ By way of illustration, suppose an interconnection costs \$600,000, and the project is due to receive \$250,000 from ODOE after the project is certified as completed. Instead of requiring \$600,000 payment six months before construction, PacifiCorp would bill the final installment upon certifying the Project for commercial operation, and Sunthurst would direct ODOE to pay PacifiCorp from grant funds, upon completion of the Project.

⁶ OAR 860-029-0060 (2) provides the project shall "reimburse" (not prepay) the utility for all reasonable utility costs of interconnection. Further, OAR 860-029-0060(2) authorizes utilities to finance interconnection construction costs, and to recoup the money from the qualifying facility.

⁷ See, OPUC Docket No. AR 659, *Joint Utilities' Opening Comments Regarding Proposed Division 39 and Division 82 Rules*, p. 5 (October 13, 2023).

⁸ OPUC Docket No. AR 659, *Comments of the Interstate Renewable Energy Council on Proposed Revisions to the Small Generator Interconnection and Net Metering Rules*, p. 8 (November 7, 2023)(emphasis added).

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If Sunthurst's Projects have been saddled with upgrade requirements due to PacifiCorp using DC ratings in its models and studies, this should be corrected prior to final design and final construction. Sunthurst asks that PacifiCorp determine if Sunthurst was harmed by PacifiCorp using DC ratings, and make appropriate adjustment to redress such harm.

ii. *Direct Transfer Trip*. Another issue of concern is PacifiCorp's insistence on Direct Transfer Trip. According to IREC's November 7, 2023 testimony in Docket AR 659,

the presence of an inverter with UL 1741 certification ensures protection against adverse distribution system conditions according to industry standards. For example, any certified inverter is equipped with appropriate anti-islanding and voltage protection. Adding an export-limiting relay does not remove or disengage the inverter's anti-islanding or voltage protection functionality. The required voltage protection will cause the inverter to trip within 0.16 seconds of detecting adverse system conditions. In the vast majority of DERs, IREC expects a certified inverter to serve as the protection against adverse system conditions, so the relay would only serve to prevent export and not provide other protection functions. **The Commission should require utilities to trust that certified inverters will perform according to their design and certification standard.**

Page 12 (footnotes omitted, emphasis in original). IREC says, above, that UL 1741 certified inverters provide anti-islanding and voltage protection within 0.16 seconds, and that utilities should trust certified inverters to perform as certified. Furthermore, the Cherry Creek Solar, LLC, CSP, which installed PacifiCorp's DTT scheme, is experiencing a high level of nuisance trips, causing repeated uncompensated loss of generation and labor costs.⁹ If PacifiCorp's current interconnection scheme still contains equipment not required by good utility practice, which is interfering with operations of a CSP, DTT should be eliminated, or paid for by PacifiCorp, to reduce cost and/or accelerate construction of interconnection facilities.

Conclusion. Notwithstanding the aforementioned obstacles, Sunthurst is on the cusp of closing financing for three CSPs—Pilot Rock 1, Pilot Rock Solar 2, and Tutuilla. These projects are interdependent for financing, such that failure of one project will cause all three to fail. Resolution of a workable construction and milestone payment timeline would obviate Sunthurst's need to pursue litigation. If there is room for discussion, please contact Sunthurst at your soonest convenience--in any event within 10 days, with PacifiCorp's response.

Sincerely,



Kenneth Kaufmann
Attorney for Sunthurst Energy, LLC

Enclosure: March 17, 2022 letter to PacifiCorp requesting Retail Service

⁹ See OPUC Docket No. UM 2298, July 18, 2023 *Notice of Intent to File Complaint of Enforcement*.

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Copy:

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Sunthurst Energy, LLC

PacifiCorp Work Order Request Numbers

March 17, 2022

RE: PacifiCorp Work Order Numbers
PacifiCorp Service Center No.- 800-469-3981
Agent: Christian; ee #36734

Sunthurst Energy LLC (OR) Base Acct No. **77325300 005 5**

POI Work Order No.

Circle Rd / Pilot Rock Hoeft Rd intersection. N. 1650LF to site.

POI Meter Work Request No. – 8181629; noted this meter paid by Company per UM2118

PP2020-13 (aka Q0666 / Pilot Rock Solar 1)-

Pilot Rock Solar 1 **Meter Work Request No. - 8181636**

PP2020-71 (aka Q1045 / Pilot Rock Solar 2)-

Pilot Rock Solar 2 **Meter Work Request No. - 8181646**

PP2020-81 (aka OCS024 / Tutuilla Solar)-

NW Crnr of S. Market Rd & Tutuilla Church intersection. N. 1650LF to site.

Tutuilla Solar **Meter Work Request No. - 8181678**

CERTIFICATE OF SERVICE

In accordance with ORCP 9 and OAR 860-082-0085(2), I hereby certify that on November 29, 2023, I caused to be served a full and exact copy of the foregoing Notice of Intent to file Complaint of Enforcement via email to the following parties:

<p>Mr. Kristopher Bremer Director, Generation Interconnection PacifiCorp 825 NE Multnomah, Suite 1600 Portland OR 97232 Kristopher.Bremer@pacificorp.com</p> <p>(service via email only)</p>	<p>Filing Center (e-mail) Public Utility Commission of Oregon PO Box 1088 Salem, OR 97308-1088 PUC.FilingCenter@state.or.us</p> <p>(service via email only)</p>
<p>Matthew Loftus Senior Transmission Counsel PacifiCorp 825 NE Multnomah St, Suite 1600 Portland, OR 97232 Matthew.Loftus@pacifiCorp.com</p> <p>(service via email only)</p>	<p>Sunthurst Energy, LLC Attn: Dan Hale PO Box 549 Stanfield, OR 97875 Daniel@sunthurstenergy.com</p> <p>(service via email only)</p>

Dated: November 29, 2023

/s/ Kenneth Kaufmann
Attorney for Sunthurst Energy, LLC
OSB No. 982672