

ORDER NO. 16 245

ENTERED JUL 05 2016

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1538

In the Matter of

PGPV, LLC,ⁱ

Request for Waiver of the 12-month Solar
Photovoltaic System Installation Requirement
under OAR 860-084-0210(1).

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on July 5, 2016, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:




Kristi Collins
Commission Secretary

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ⁱ This order corrects footnote 5 in Staff's report and clarifies that the waiver applies to the following projects: Tracking Nos. JFS101; JFSC80; JFSS94; JFSS97; JFSS98; JFSS99.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: July 5, 2016**

REGULAR _____ CONSENT X EFFECTIVE DATE July 5, 2016

DATE: June 28, 2016

TO: Public Utility Commission

FROM: Michael Breish^{MB}

THROUGH: Jason Eisdorfer and Michael Dougherty

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF: (Docket No. UM 1538) Request by PGPV, LLC for a waiver of the 12-month solar photovoltaic system installation requirement pursuant to OAR 860-084-0210(1).

STAFF RECOMMENDATION

Staff recommends the Commission grant the request by PGPV, LLC (PGPV) to waive the 12-month deadline to install six solar photovoltaic (SPV) systems under Portland General Electric's (PGE) Solar Photovoltaic Pilot Program by an additional seven months, to December 23, 2016.

DISCUSSION:

Issue

Whether PGPV established good cause to support its request for a waiver of the OAR 860-084-0210(1) requirement that a SPV system be installed within 12 months of the capacity reservation start date.

Applicable Law

Each SPV project that receives a capacity reservation retains that reservation for a period of 12 months following the reservation start date, so long as a preliminary interconnection application is filed within two months of the reservation start date; the deposit fees are paid; and the system is installed within 12 months of the reservation start date.¹

In other words, "[a] capacity reservation expires ... if the system has not been installed within twelve months of the reservation start date, unless a waiver is granted under

¹ See OAR 860-084-0195(5) and OAR 860-084-0210(1).

Docket No. UM 1538 (Solar VIR Waiver)
June 28, 2016
Page 2

OAR 860-084-0000.”² Further, once a capacity reservation expires, the customer must re-apply for a reservation and is not given preferential treatment.³ However, a waiver to extend the installation deadline may be granted by the Commission upon “good cause shown” by the waiver applicant.⁴

Discussion and Analysis

On May 23, 2016, the Commission received applications from PGPV, the project developer, requesting installation deadline extensions for SPV systems (projects) that it is installing in Clackamas County. This Staff report addresses five 100 kW SPV projects and one 46.85 SPV project that were allocated capacity reservations in May 2015.⁵

In its request for a waiver, PGPV explained that Clackamas County notified PGPV in December 2015 that it would need to secure a “conditional use permit” (CUP) for each SPV project due to the county’s understanding that energy production from a system could exceed site consumption. Although PGPV had successfully installed SPV projects in Clackamas County without a CUP, Clackamas County is now requiring CUP permits for all SPV systems that generate more power than is consumed.⁶

Based on advice from its legal counsel, PGPV concluded it would be more cost-effective and faster to comply with Clackamas County’s requirement, rather than challenge the county. As a result, PGPV began the CUP process in early January 2016, which included filing all necessary applications, site plans, responses, and attending mandatory “Pre-App CUP meetings.”⁷ PGPV’s CUP hearing date is set for June 23, 2016. Based on conversations with Clackamas County, PGPV states that it

² *Id.*

³ OAR 860-084-0210(2).

⁴ OAR 860-084-0210(1); 860-084-0000(3).

⁵ On May 23, 2016, PGPV submitted twelve separate requests for waiver of the 12 month installation deadline for twelve separate SPV projects. For convenience, Staff grouped the waiver requests together based on the project’s capacity reservation date of either May 2015 or September 2015, resulting in two separate public meeting memos. This particular memo addresses the following six SVP projects: PGE Tracking No. JFS101; JFSC80; JFSS88; JFSS97; JFSS98; JFSS99.

⁶ According to PGPV, a Clackamas County Senior Planner involved in PGPV’s permitting process concluded, after review of OAR 660-033-0130(38), ORS 757.300 and 757.365, OAR 860-039 and 860-084, that PGPV must secure a CUP because “the ‘use’ is considered a ‘power generation facility’” See *Request by PGPV, LLC for a waiver of the 12-month solar photovoltaic system installation requirement pursuant to OAR 860-084-0210(1)*, Docket No. UM 1538, filing at page 2 (May 23, 2016). Staff notes that its recommendation that the Commission grant PGPV’s request for a waiver of the installation deadline does not imply any position on the part of Staff as to the validity of Clackamas County’s interpretation that CUPs are required for the projects at issue.

⁷ *Request by PGPV, LLC for a waiver of the 12-month solar photovoltaic system installation requirement pursuant to OAR 860-084-0210(1)*, Docket No. UM 1538, filing at page 2 (May 23, 2016).

Docket No. UM 1538 (Solar VIR Waiver)
June 28, 2016
Page 3

expects to receive the CUPs for the SPV projects 30 days after the hearing, and will immediately commence construction thereafter.

Staff communicated with PGPV to further understand the situation and ask questions about the permitting process. Staff also confirmed with PGE that PGPV successfully filed all permits and paid the necessary fees related to the six SPV projects. PGPV asserts that all SPV hardware is secure and it anticipates resuming installation immediately upon securing the CUPs from Clackamas County.

In analyzing for "good cause," Staff considered PGPV's SPV hardware procurement, engagement with the Clackamas County permitting process, history of successful SPV installation in other Oregon counties, and thorough account of the project status and obstacles encountered.

Conclusion

Based on this analysis, Staff recommends the waiver request be granted.

PROPOSED COMMISSION MOTION:

Grant PGPV's request for waiver of the 12-month installation requirement in order to maintain capacity reservations for the six SPV systems under PGE's Solar Photovoltaic Pilot Program, and extend the installation deadline to December 23, 2016.

Ca15-UM 1538 PGPV VIR waiver request