ORDER NO. 24-402

ENTERED Nov 1, 2024

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 2322

In the Matter of PILOT ROCK SOLAR 1, LLC, an Oregon limited liability company; PILOT ROCK SOLAR 2, LLC, an Oregon limited liability company; TUTUILLA SOLAR, LLC, an Oregon limited liability company; BUCKAROO SOLAR 1, LLC, an Oregon limited liability company; and BUCKAROO SOLAR 2, LLC; an Oregon limited liability company; Complainants, vs. PACIFICORP, dba PACIFIC POWER, an Oregon corporation, Defendant, Pursuant to ORS 756.500.	ORDER

DISPOSITION: COMPLAINT GRANTED IN PART AND DENIED IN PART.

I. BACKGROUND

Complainants are five limited liability corporations, each developing a community solar project that will interconnect with defendant PacifiCorp, dba Pacific Power. Complainants are each wholly owned by Sunthurst Energy, LLC.[1] The five projects are:

- Pilot Rock 1 (PRS 1), a 1.98 megawatt solar project;
- Pilot Rock Solar 2 (PRS 2) a 2.99 megawatt solar project;
- Tutuilla Solar, a 1.56 megawatt solar project;

[1] *See* Defendant First Amended Complaint at n 1 (Apr. 17, 2024).

- Buckaroo Solar 1, a 2.4 megawatt solar project; and
- Buckaroo Solar 2, a 2.99 megawatt solar project.

Each of these projects is a pre-certified community solar project. In addition to its solar capacity, Buckaroo 1 is proposing to install a battery energy storage system (BESS), designed to support the City of Pendleton's water treatment plant.[2]

Complainants have executed Interconnection Agreements (IAs) and Community Solar Power Purchase Agreements (CS PPAs). Since execution, the IAs have been amended numerous times—the current online date contained in the most recent amendments is September 30, 2025, for each project.[3] The IAs also contain progress payment schedules that complainants agreed to meet in order to fully fund the interconnection construction ahead of the commercial operation date.

While there are numerous issues in this complaint, part of the genesis of this complaint is the commercial online dates and the progress payments schedule. Complainants have not made the progress payments according to the schedule. As a result, defendant has declared them in breach of the IAs and seeks to terminate unless that breach is cured. Complainants, on the other hand, argue that the commercial online date contained in the IAs constitutes unreasonable delay on defendant's part and seek a 2024 commercial online date for PRS 1 and PRS 2 in its stead. They also seek to be allowed to make the progress payments after each project's commercial online date, stating that they have grant financing that will pay out after that point.

Complainants also contest other aspects of their interconnection agreements. First, they argue against the requirement that they install Direct Transfer Trip (DTT) at their interconnections. Second, they seek an order that they be allowed to install a BESS at Buckaroo 1. Finally, they seek an order that if retail customers are connected to the line extension to PRS 1 or PRS 2 in the next five years, that those retail customers will share in the cost of the line.

II. DISCUSSION

We rule on the specific issues in this complaint below. At the outset, however, we make some comments about the community solar program in general and this complaint specifically. We dismiss many of complainants' requests, including their request that we order a commercial operation date in 2024 and make progress payments due after the commercial operation date. But that does not mean that we have no concerns with the

[2] *See* PAC/102, Bremer/6
[3] See PAC/100, Bremer/35-36; Complainants/110, Hale/13.

status of defendant's implementation of Oregon's community solar program. We note that complainants' projects represent a significant portion of the community solar program available to defendant's customers. We also recognize that there is an imbalance of power between purchasing utilities and their interconnection customers that could, without safeguards, lead to those customers being compelled to sign contracts that are unjust and unreasonable. We do not see evidence on this record that defendant was motivated by animus against these complainants, but we are generally troubled by some of the actions by defendant in this case and by defendant's overall track record in interconnecting community solar projects.[4]

Accordingly, we announce here our intent to put defendant's community solar program under greater Commission scrutiny. We direct defendant to submit monthly progress reports detailing the status of their community solar project interconnections in docket UM 1930 to enhance Staff monitoring. These reports should include, at a minimum, the status of ongoing negotiations, work completed, any changes to the dates of milestones, and a narrative explanation of any delay anticipated to result in an online date more than two weeks after the COD. The company is directed to work with Staff regarding the form and content of the information to be provided in this report.[5] We direct Staff to review these reports and address the results of their review at a public meeting as appropriate.

A. Progress Payments

Our rules provide that an applicant may agree to make progress payments "on a schedule established by the applicant and the interconnecting public utility."[6] However, "[i]f an applicant does not agree to make progress payments, then the public utility may require the applicant to pay a deposit up to 100 percent of the estimated costs."[7] Here, complainants and defendant agreed to an amended schedule of progress payments in May 2023, which were contained in the executed amended interconnection agreements. In Fall 2023, complainants proposed to make a single partial payment of their estimated interconnection costs prior to commencement of construction; the remainder would be

[4] To date, only 7.3 MWs of community solar projects operate in defendant's territory compared to 32.6 MW in PGE territory. *See* UM 1930 Oregon Community Solar Program Financial Analysis, September 16, 2024, at https://edocs.puc.state.or.us/efdocs/HAH/um1930hah331404025.pdf. We take official notice of this document pursuant to OAR 860-001-0460(1)(d) which allows us to take official notice of "[d]ocuments and records in the files of the Commission that have been made a part of the files in the regular course of performing the Commission's duties." Parties may object to this notice taking within 15 days of this order.

[5] This reporting requirement should not be interpreted to replace the information that the company currently provides to the Program Administrator on a monthly basis.

[6] OAR 860-082-0035(5)(a).

[7] OAR 860-082-035(5)(b).

due after interconnection work is complete. Defendant rejected that offer and, in December 2023, proposed a new schedule, which complainants rejected.

Complainants now request that it be allowed to tender the remaining progress payments for PRS 1, PRS 2, Tutilla, and Buckaroo 1 after commercial operation. They state that this would enable complainants to draw on federal and state grant money that cannot be disbursed until after the projects achieve commercial operation.

We deny complainants' request. Allowing complainants to make progress payments after commercial operation would require waiver of our rules, which we do not think is warranted in this instance. This is particularly true given that complainants were able to obtain the much greater amount of funds necessary to finance the projects themselves;[8] it is not clear to us why the progress payments could not be made as part of those expenditures.

That said, complainants raise the issue that timelines in the May 2023 interconnection agreements are unreasonable because they require payment of final progress payments much earlier before the commercial operation date than do other IAs executed by defendant. We agree that defendant appears to have set earlier-than-normal, and perhaps earlier-than-reasonable, timelines for progress payments. Although we accept that a counterparty's past behavior, including demonstrated ability to make deadlines, can be relevant to setting payment timelines, we believe that payment dates many months ahead of expected work by the utility are likely to be unreasonable absent extenuating circumstances. We decline to state what the maximum allowable interval is between final progress payment and commercial operation date, understanding that it will vary to some extent based on the particular project. We note that defendant represents that their December 2023 offer aligned progress and final payments much more closely to the proposed online date. However, going forward, we will be applying scrutiny to this aspect of defendant's agreements through the reports that we expect it to submit to us.

B. Commercial Operation Date

Complainants argue that the commercial operation dates contained in the May 2023 IAs—as well as those offered to complainants by defendant on December 8, 2023—are unreasonably long and that reasonable commercial operation would be in 2024 for PRS 1 and 2. Complainants state that they have secured funding that is dependent on a 2024 commercial operation date. Complainants' request rests on a couple of pillars. First, they argue that defendant unreasonably delayed their PPAs by at least 90 days between May

[8] *See* PAC/102, Bremer/23.

and August of 2022, which disrupted their funding source and required them to obtain new financing. In particular, complainants cite to defendant's failure to check its community solar project email box, to which the request for PPAs had been sent, in May of 2022.

Prior to requesting CS PPAs, complainants had transferred the projects in question to project-specific LLCs owned by complainants. Upon requesting the CS PPAs and presenting the completed IAs to satisfy the program requirements, defendant required that complainants present interconnection agreements in the project-specific LLCs' names before offering them power purchase agreements. Complainants characterize this as contrary to PURPA law and policy and generally unreasonable. They point to this requirement as creating the second unnecessary delay in executing CS PPAs in 2022.

Additionally, complainants argue that when they negotiated the May 2023 amendments—and when defendant made its December 2023 offer—they were offered timelines substantially longer than similarly situated projects. Further, they argue that defendant disregarded critical construction milestones achieved by complainants to justify offering a delayed commercial operation date. Together, these delays, in complainants' views, justify that we order a 2024 commercial operation date.

We decline to act on complainants' request. The delays directly attributable to defendant—its failure to check the email box and even its insistence on the IAs being in the legal name of the company—appear relatively minor compared to complainants' own starts and stops in the course of developing these projects.[9] To the extent that the timing of those delays was such that it led to the withdrawal of complainants' financing offer, something defendant casts doubt on,[10] that is unfortunate but a matter of bad timing rather than egregious delays by defendant. Nor are we persuaded that defendant acted out of animus in the timelines it offered complainants which appear to be based on its own experience of complainants' past delays, as well as the need for constructing equipment in defendant's substations.[11]

Further, complainants executed the May 2023 amendments and then failed to make the progress payments laid out in those agreements.[12] We understand that there are power dynamics at play and complainants may not have seen any choice other than executing those agreements. This is one of the reasons we are placing defendant's actions with regards to the community solar program under greater scrutiny. However, the

[9] *See* Complainants Brief at 3 (detailing a delay of 90 days).
[10] *See* Defendant Brief at 32 (citing PAC/300, Johnson/17-18).
[11] PAC/102, Bremer/39.
[12] *See* chart in Defendant Brief at 8 (citing PAC/100, Bremer/11, Complainants/105, Hale/2).

complainants' assertion that they signed the May 2023 amendments assuming the commercial online dates could be reset to an earlier timeframe disregards the contractual nature of an IA, which is binding on both parties. Additionally, if complainants were dissatisfied with the May 2023 dates but felt they had no choice but to accept them, we would expect the issue to be raised with us at that time. Regardless, we cannot say that in this specific case defendant acted unreasonably in failing to offer more expedited dates when complainants were in breach of the interconnection agreements that they signed.

Nor do we find that defendant violated PURPA or our rules or policy in requiring that the names on the IAs matched the entity with legal ownership; we find that to be a reasonable requirement that ensures that the responsible entity takes on the legal obligations necessary for interconnection.

C. Direct Transfer Trip

Direct transfer trip (DTT) is a communications-based method for disconnecting a generator from the distribution and transmission system when an upstream fault occurs. Defendant seeks to require DTT on each of complainants' projects, arguing that it is necessary to minimize outage duration and avoid unintentional islanding. It also states that DTT mitigates fire risk.

Conversely, complainants argue that three of the circuits in question—PRS 1 and 2 and Buckaroo 1—have been operating fine without high-speed reclosing at all.[13] As a result, maintaining rapid reclosure functionality at those circuits is not a basis for requiring DTT. They also argue that the risk of damage due to unintentional islanding is "miniscule" and that there is no evidence that advanced photovoltaic inverters can cause unintentional islanding.[14]

On the record presented to us, we do not believe that defendant has demonstrated the need for DTT at the complainants' projects and therefore we grant the complaint on this point. The risks cited by defendant appear based on the testimony in this case to be either theoretical or minimal and we do not believe that is sufficient to require installation of an expensive system that constitutes a substantial burden to interconnection of community solar projects.[15]

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[13] PAC/200, Heffernan/4.
[14] Complainants Brief at 41-42.
[15] *See, e.g,* PAC/200, Heffernan/10-17 (discussing how inverter-based generation could lead to unintentional islanding and other issues on a circuit with high-speed reclosing.); Complainants/400, Beanland/9-11 (discussing why DTT does not mitigate.).

That said, the risks established by the record may be theoretical and minimal, but we are not cavalier about the possibility of increased fire risk on defendant's system. We expect defendant to work with complainants to develop a cost-effective solution to any risks that might exist.

We will not grant complainants' request it not be required to pay for the microprocessor relay-related updates on circuits 5W406 and 5W403. We credit defendant's testimony that the microprocessor relays need to be updated for reasons other than installation of DTT.[16] We note that the IA for PRS 1 specifies that a relay will be installed that "will monitor the voltage magnitude and frequency," and suggests that a SEL 351 type relay be installed.[17] We expect defendant not to require a microprocessor relay that exceeds the standard that it requires at other interconnections for similarly situated customers.

We also will not at this time require defendant to inform customers about the availability of low-side DTT. We encourage Staff to convene a working group to address DTT as well as other technical interconnection issues, recognizing that addressing these issues through the working group format will facilitate stakeholder input.

D. Line Extension Costs

The site for the PRS 1 and 2 projects does not currently have electric service. To connect the projects to defendant's system, a 12.5 kV line extension will need to be built. At the request of the City of Pilot Rock, and pursuant to the IAs for the projects, the line extension will be built within an 80-foot right-of-way. That right-of-way is adjacent to an industrial park where the City of Pilot Rock expects new development; its preference is that new industrial customers take service from the same 12.5 kV line extension in order to avoid having duplicate electric lines.

Complainants will pay to construct the line extension. They ask in their complaint that the Commission clarify that if any new customers are served by the line within five years, that a portion of complainants' costs be reimbursed by those newcomers.

Defendant objects to this request, stating that this would require defendant to build and own the line extension in question, in violation of Commission rules and PURPA's customer indifference policy. This, it argues, would shift maintenance and upkeep costs from complainants to defendant and thus be covered by defendant retail customers.

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[16] *See* Transcript at 124:1-11 (stating that "ever since the initial study, we would be replacing relaying on that circuit at Buckaroo. There are several features that we require for interconnection, in addition to DTT, which would require a newer modern relay at that substation.").
[17] Complainants/104, Hale/28.

We agree with defendant that requiring it to own the line at this stage could shift O&M costs onto retail customers. Additionally, it is not typical for ratepayers to fund a prospective line extension when there is no customer requesting service, as appears to be the case in the industrial park. That said, we do not view this as an insurmountable obstacle—defendant and complainants could agree to "cost of ownership" charges, for instance, where operation and maintenance costs are reimbursed by complainants despite defendant's ownership of the line. We will not order that at this junction. But we do find that if and when new retail customers seek to connect to the line, that defendant needs to evaluate whether taking ownership of the line is the right approach and what compensation is due if so.

E. BESS at Buckaroo 1

Complainants seek to install a battery energy storage system (BESS) at Buckaroo 1. Complainants argue that defendant has imposed a variety of delays on their attempts to install a BESS and ask that defendant be required to tender a CS PPA contract with BESS at Buckaroo 1. It also asks that we require defendant to compensate Buckaroo 1 above the standard CS PPA rate "should the amended PPA give defendant the right to benefit from the BESS system by firming schedules, shifting output, or otherwise."[18]

The Renewable Energy Coalition takes no position on how storage should be compensated under a CS PPA but argues that "legal and public policy considerations suggest that co-located storage is appropriate under the Community Solar Program."[19]

Defendant states that it is willing to restudy Buckaroo 1 for a BESS once complainants are no longer in breach of their IA. It opposes higher avoided cost prices, which it states are "inconsistent with the representations [Sunthurst] made to the state to obtain a grant and the representations it made to the CSP [Program Administrator] to maintain Buckaroo 1's pre-certification."[20] As to the first, defendant cites to a press release that states that the BESS is intended "to provide solar powered microgrid with battery storage to power the Pendleton water treatment plant in the event of grid outages."[21] As to the second, Sunthurst informed the CSP Program Administrator that the BESS "will not have an impact on project generation or billing and the battery backup is to provide critical service in the event of an outage only."[22] Defendant also states that it cannot implement the microgrid described in the press release because it "goes far beyond what would be

[18] Complainants Brief at 34.
[19] REC Brief at 22.
[20] Defendant Brief at 50.
[21] *See* PAC/102, Bremer/6.
[22] *See* PAC/302, Johnson/10-11.

required to simply interconnect a BESS as part of Buckaroo 1 and would require significant operational and potentially technical modifications to the distribution system that could compromise the safety and reliability of the system."[23]

We clarify that there is no legal impediment to installing a BESS at a community solar site. However, we do not order particular terms or a higher avoided cost price. Deciding how to compensate storage at a community solar site would take a longer proceeding with evidence focused specifically on that issue. We will not undertake that proceeding at this time.

Defendant should follow its standard IA procedures to restudy Buckaroo 1, at the complainant's request. However, the complainant must be clear about the configuration they are requesting and should be cautious about signing an IA that does not align with existing commercial agreements.

F. Defendant's Counterclaim

Defendant asks the Commission to grant its counterclaim and find that complainants have breached each of their IAs and, unless cured, the IAs should be terminated. We decline to grant defendant's counterclaim at this point. This order provides several points on which complainants and defendant should confer and we believe complainants may be able to work out a path forward with defendant. However, we are not ready to dismiss defendant's counterclaim either—we note complainants' history of delays and missing progress payments. There may come a point where we believe that they have incurably breached their IAs and that those agreements should be terminated. In the interim, we expect the parties to negotiate in good faith and we will monitor their progress via defendant's regular CSP progress reports. Accordingly, we retain jurisdiction over defendant's counterclaim.

III. ORDER

1. Complainants' complaint is granted in part and denied in part as addressed in this order.

2. Defendant's counterclaim is neither granted nor denied and we retain jurisdiction over it.

[23] Defendant Brief at 51.

3. Defendant is to submit community solar program progress reports on a monthly basis until further notice.

Made, entered, and effective Nov 01 2024.

Megan W. Decker
Chair

Letha Tawney
Commissioner

Les Perkins
Commissioner

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 Court of Appeals in compliance with ORS 183.480 through 183.484.