

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1930

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Community Solar Program Implementation.

ORDER

DISPOSITION: STAFF’S RECOMMENDATION ADOPTED

This order memorializes our decision, made and effective at our March 10, 2020 Regular Public Meeting, to adopt Staff’s recommendation in this matter and to direct the Administrative Hearings Division (AHD) to offer Alternative Dispute Resolution (ADR) resources to stakeholders, as they consider ways to cooperatively address issues associated with signed Power Purchase Agreements (PPAs). The Staff Report with the recommendation for Regular Agenda Item No. 2 is attached as Appendix A.

During the public meeting, Staff described a proposal and process for conditional pre-certification of projects as part of the Community Solar Program. Stakeholders, including the Oregon Solar Energy Industries Association, the Renewable Energy Coalition, and individual project developers expressed opposition to Portland General Electric Company’s stance against termination of Qualifying Facility (QF) PPAs for projects that intend to participate in the Community Solar Program. PGE responded, noting that the principles informing its position to date included protecting the sanctity of contracts and limiting costs to customers. PGE also expressed a commitment to work with stakeholders to see if a resolution to the PPA question could be reached. We value PGE’s stated willingness to work with QFs to address these issues and offer some observations to provide context for the parties’ discussions.

PGE has argued that customer costs will be increased if the projects in the Community Solar queue with Public Utility Regulatory Policies Act (PURPA) PPAs are permitted by PGE to terminate these contracts and transition to a Community Solar arrangement. Though PGE’s focus on cost containment is generally appreciated, we have already made a number of decisions that the costs associated with a functioning Community Solar Program represent a reasonable balance among the Commission’s competing statutory directives.¹ Those decisions determined the costs of the Community Solar Program and expressed our expectation that a functioning Community Solar Program is one that attracts sufficient participation to offer meaningful customer choices. While PGE may be within its contractual rights to refuse termination, PGE actions to prevent projects from entering the Community Solar Program, regardless of whether or not the projects were once QF-only projects or were

¹ See Order No. 19-392 (Nov 18, 2019) and Order No. 18-177 (May 23, 2018).

never QF projects, do not eliminate costs to ratepayers because customers will simply bear those costs later, when other projects enter the Community Solar Program. If a project with an existing PURPA PPA terminates that contract and moves into the Community Solar Program, it will not be able to sell power both under that PURPA contract and as a Community Solar Project, and so in our view, costs to customers will not be doubled.

We strongly encourage stakeholders to work to a negotiated resolution to these issues. As stakeholders work towards this end, we note that we would consider any resolution in which PGE agreed to terminate the PURPA contracts in question to be driven by a unique and extraordinary set of circumstances associated with the Community Solar Program. These unique circumstances arise, at least in part, because of a lack of clarity during the design phase of the program that projects expected to be able to move from a PURPA PPA into the Community Solar Program. Additionally, we would expect QF contracts going forward from this point to be entered in good faith, enforced, and performed by both parties.

We intend and expect that the Community Solar Program in Oregon will offer meaningful choices to customers, and will result in new project development. It is clear based upon Staff's analysis and the comments of the stakeholders at the public meeting that, in the near term in PGE's service territory, this will not occur without some sort of resolution regarding the previously signed PPAs in question. As a result, we encourage the stakeholders to work together to address these issues through a settlement-like framework prior to our April 7, 2020 Public Meeting. In this spirit, we direct the Administrative Hearings Division to offer an ADR option for the projects directly involved, PGE, and Staff to facilitate the development of an agreement or proposed resolution.

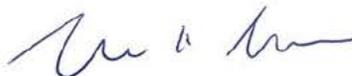
Made, entered, and effective Mar 12 2020.



Megan W. Decker
Chair



Letha Tawney
Commissioner



Mark R. Thompson
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 Circuit Court for Marion County in compliance with ORS 183.484.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: MARCH 10, 2020**

REGULAR X CONSENT _____ EFFECTIVE DATE _____

DATE: March 2, 2020

TO: Public Utility Commission

FROM: Natascha Smith

THROUGH: Michael Dougherty and JP Batmale **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. UM 1930)
Community Solar Conditional Pre-Certification Process

STAFF RECOMMENDATION:

The Oregon Public Utility Commission (OPUC or Commission) should approve OPUC Staff's (Staff) proposals on the process for conditional pre-certification of Community Solar Program (CSP or Program) Projects.

DISCUSSION:

Issue

Whether the Commission should adopt Staff's proposed process for conditional pre-certification of CSP Projects.

Applicable Law

ORS 757.386(2)(a) directs the Commission to establish a Community Solar Program that provides electric customers with the opportunity to share the costs and benefits of solar generation.

The Commission adopted formal rules for Oregon's Community Solar Program under OAR Division 88 of Chapter 860.

In December 2019, the Commission approved the Program Implementation Manual (PIM), which provides guidelines on implementing the CSP.

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Analysis

While the Program includes a process to seek a waiver from PIM requirements, there is not currently a mechanism to address foundational issues that bar participation stemming from issues beyond these requirements. Having the contractual authority to sell a Project's power is one such foundational issue, because once a Project is pre-certified it is able to enroll Participants and sign contracts.

To appropriately balance the interests of Projects, subscribers, ratepayers, and the utilities, Staff proposes the use of a conditional pre-certification process. In essence, a conditional pre-certification would allow the Commission, at the time of pre-certification, to require Projects meet additional criteria before certification, or within a specified period.

Background

On January 21, 2020, the Program began accepting solar Project applications for pre-certification. The CSP received applications from 33 projects. In Portland General Electric's (PGE) service territory, there are currently 53.4 MW of proposed capacity in the CSP Project pre-certification queue.

Table 1: CSP Project Application Queue

	Applied for CSP ¹		Allotted Capacity		On Waitlist	
	Projects	MW	Projects	MW	Projects	MW
PGE	28	62.2	15	34.0	9	19.4
PAC	4	6.2	4	6.2	0	0
IPC	1	2.9	1	2.9	0	0
Total	33	71.3	20	43.1	13	28.3

Twenty-one Projects who have applied for the CSP, totaling 47.4 MW, have also signed Power Purchase Agreements (PPAs) with PGE. The Program has always maintained that Qualifying Facilities who met all Program requirements would be eligible to participate in the CSP.² To ensure additionality, the QF Projects could not have already been under construction or built.

¹ Four projects who initially applied for the CSP, proposed by PGE, withdrew their applications.

² This is a basic premise of the CSP since the Commission's authority to regulate the Program stems from PURPA. Consideration of QFs in the traditional interconnection queue was central to the discussion on CSP interconnection and there was even a process to allow QFs to transfer from the traditional interconnection queue to the newly formed CSP interconnection queue.

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While the design of the CSP contemplated QFs participating, Staff was surprised to see the majority of Projects entering the CSP pre-certification queue in PGE's service territory had executed PPA contracts with the Utility. In effect, signing a PPA means that the developer has contractually agreed to sell their Project's power to the Utility, and the Utility can thereby rely upon that power. Upon realizing that a majority of the Projects in PGE's service territory had signed PPAs, the PA team reached out to the developers to understand why they would enter a PPA when they intended to participate in the CSP. The developers stated that signing a PPA was the least-risk way to protect the economic viability of the Project in case it did not receive capacity in the CSP or it was not pre-certified by the Commission.³ While their current contracts would preclude them from enrolling subscribers, these Projects were under the impression that they would be able to terminate their contracts with the utility and participate fully in the CSP if selected.

While these Projects and Project Managers technically meet all the requirements for pre-certification in statute, administrative rule, and in the PIM, their executed PPAs would practically bar them from Program participation. Thus, the CSP must determine whether Projects who have entered into a binding PPAs with PGE are eligible for participation in the Program and can be pre-certified to be a CSP Project, and if so how to proceed.

Authority for Conditional Pre-certification

The requirements for Certification outlined in the Administrative Rules, specify that the Commission will certify Projects that meet the specified criteria, including *any other conditions identified by the Commission at the time of pre-certification*.⁴ The PIM allows the Program Administrator wide latitude in making pre-certification recommendations and specifies that Commission will pre-certify Projects at its sole discretion.⁵ Staff does not view conditional pre-certification as a new or additional process to those specified in the rules and PIM, but rather an exercise of the authority granted to the Program Administrator to make recommendations to the Commission, and of the Commission to ensure compliance with these conditions before certifying a Project

³ Staff spoke with OSEIA and developers about CSP projects who have PPAs with PGE on February 20, 2020.

⁴ OAR 860-088-0050(3).

⁵ Program Implementation Manual, p. 64 (updated Dec. 20, 2019).

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Staff's Proposed Process

Staff proposes that process for conditional pre-certification operate similarly to the waiver process laid out in the PIM, as outlined below.⁶

- Program Administration team, at their discretion, makes recommendations to the Commission that a Project be granted conditional pre-certification. In doing so, the PA will recommend the criteria to be met and the time frame for doing so.
- Staff will present all Projects with conditional pre-certification recommendations to the Commission as regular agenda items at a public meeting.
- The Commission will approve, alter, or reject the recommendations made by the Program Administrator.
- Assuming the Commission grants the conditional pre-certification, the Project Manager must submit documentation of compliance with the conditions of pre-certification to the Program Administrator in the time provided, or seek an extension with the Commission.
 - When a Project demonstrates compliance with the pre-certification condition to the satisfaction of the PA, the Project may act as any other pre-certified Project building toward final Project certification.
 - If the Project is unable to meet the conditional criteria for pre-certification the Program Administrator will recommend the Project be rejected by the Commission and Staff will present this recommendation as a regular agenda item at a public meeting.
- The documentation demonstrating compliance with the conditions of pre-certification will be provided to the Commission when the Project is presented for certification.

Implication for Projects with executed PPAs

Staff assessed a variety of options and determined that conditional pre-certification provides the best mechanism for allowing Projects with existing contracts to participate in the CSP. For these Projects, the Program Administrator would recommend that conditional pre-certification include the following conditions:

1. Projects be granted six weeks in which to terminate their contract with the utility.
 - a. Notably this time frame is for termination only, not the settlement of any damages stemming from early termination or breach of contract.
2. Projects are not able to enter into contracts with customers until the Program Administrator has confirmed receipt of documentation confirming that the Project has terminated its contract with the utility.
3. The Project will not be listed on the CSP clearinghouse, where customers can sign up for Projects, until the Program Administrator has received documentation confirming that the Project has terminated its contract with the utility.

⁶ *Id.*, p. 54.

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For the majority of CSP Projects in PGE's service territory, conditional pre-certification gives them a chance to secure a position in the Program prior to exiting their contract with the utility. At the same time, the conditional pre-certification will protect customers.

Staff is cognizant that the conditional pre-certification by itself is insufficient to resolve the issue of exiting an existing PPA. The Commission could consider additional steps to help bring this outstanding issue to a quick resolution. Such steps could include directing Staff to act as a facilitator, host discussions between parties, monitor progress and provide regular, public updates to the Commission.

Conclusion

The Commission has the authority to set additional conditions at the time of pre-certification of CSP Projects. In exercising this authority the Commission will protect the viability of the Program in PGE's territory where the vast majority of Projects have existing Power Purchase Agreements.

PROPOSED COMMISSION MOTION:

The Commission should adopt Staff's proposed process for conditional pre-certification as a valid exercise of its authority under the Community Solar Program.

UM 1930- Conditional Pre-Certification Process