

**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 WITH  
MODIFICATIONS**

This order memorializes our decision, made and effective at our April 7, 2020 Regular Public Meeting, to adopt Staff's recommendation in this matter regarding utility Community Solar Program (CSP) Interconnection and Power Purchase Agreements (PPAs), with one change and one addition to the Staff-proposed PPA modifications contained within Staff's recommendation, and an observation with regard to the Conditional Designated Network Resource (DNR) notice provisions and process. The Staff Report with the recommendation is attached as Appendix A.

The change is related to Staff-proposed PPA modifications three and four. Staff recommended striking language in PacifiCorp, dba Pacific Power's and Portland General Electric Company's proposed CSP Purchase Agreements regarding what constitutes a material breach and the subsequent ability to terminate a contract. During the meeting, stakeholders discussed and we approved adding language to the CSP Purchase Agreements stating that the utility may terminate a contract upon the express direction by the Commission or the Program Administrator following a finding that a project is not in compliance with CSP rules or is no longer a certified community solar project.

The addition to Staff's proposed PPA modification is to adopt a recommendation by the Renewable Energy Coalition to direct PacifiCorp to conform its language regarding an applicant's ability to hire third parties, upon agreement with the utility, to conduct interconnection studies, currently absent from their CSP Purchase Agreement, with that of PGE and Idaho Power Company in order to foster consistency across the CSP and with the existing small generator interconnection rules.

Finally, we approve the PGE and PacifiCorp Conditional DNR notice provisions, and adopt Staff's eighth recommendation to direct Idaho Power to include this provision. We recognize that the CSP and associated interconnection process have been developed to mitigate the risk that unanticipated deliverability related network upgrade costs will

appear late in the process, following a transmission service request. We approve the Conditional DNR notice provisions as a reasonable method for the Commission to continue to achieve transparency and a balance of costs and risks in the program. However, we do so without prejudice to any stakeholder recommending future improvements to the CSP interconnection process to improve the participant and project manager experience while balancing costs and risks to ratepayers.

IT IS ORDERED that PacifiCorp, dba Pacific Power, Portland General Electric Company, and Idaho Power Company refile their Community Solar Program Purchase Agreements with revisions consistent with Staff's recommendations and the modifications as described above.

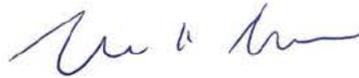
Made, entered, and effective Apr 09 2020.



**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: April 7, 2020**

REGULAR  X  CONSENT \_\_\_\_\_ EFFECTIVE DATE \_\_\_\_\_ N/A \_\_\_\_\_

**DATE:** March 30, 2020

**TO:** Public Utility Commission

**FROM:** Jill Goatcher

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

**SUBJECT:** OREGON PUBLIC UTILITY COMMISSION STAFF:  
(Docket No. UM 1930)  
Community Solar Program Combined Tariff Filings on Program  
Interconnection Process and Power Purchase Agreements.

**STAFF RECOMMENDATION:**

Approve Idaho Power Company (IDP) Advice No. 20-02, Schedule 100 Community Solar Program Interconnection and Power Purchase Agreement; PacifiCorp (PAC) Advice No. 20-003 Schedule 126 Community Solar Program – Interconnection and Power Purchase; Portland General Electric Co. (PGE) Second Supplemental Advice No. 20-04 Community Solar Program Interconnection and Power Purchase Schedule, subject to Staff-proposed modifications.

**DISCUSSION:**

Issue

Whether the Commission should approve the utilities' Advice Filings, including pro forma interconnection agreements and Community Solar Program Purchase Agreements, subject to modifications proposed by Staff.

Applicable Rule or Law

ORS 757.386(2)(a) directs the Commission to establish a program that provides electric customers with the opportunity to share the costs and benefits of solar generation. Section (2)(b) directs the Commission to adopt rules that, at minimum:

- (A) Incentivize consumers of electricity to be owners or subscribers;

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- (B) Minimize the shifting of costs from the program to ratepayers who do not own or subscribe to a community solar project;
- (C) Where an electric company is the project manager, protect owners and subscribers from undue financial hardship; and
- (D) Protect the public interest.

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

On October 29, 2019, the Commission adopted Staff's recommendation to implement a stream-lined interconnection process for CSP projects, which had been proposed by the utilities.

On January 16, 2020, the Commission adopted Staff's recommendation to approve the interconnection implementation plans the Utilities developed to open the CSP interconnection queue. The Commission also directed the utilities to file a tariff formalizing their CSP interconnection process, including a pro forma Interconnection Agreement.

## Analysis

### *Background*

The Commission adopted the final policy decisions for the initial implementation of the CSP in October of 2019.<sup>1</sup> This memo seeks to finalize two processes and agreements that will govern the interaction between projects and the utilities. These processes and documents cover two different aspects of CSP: project interconnection and, the governing contracts that, among other things, direct the utilities to purchase the unsubscribed power from the projects.

Staff has been working with the utilities on the implementation of the interconnection process and associated documents, as well as the draft purchase agreements, over the course of the last six months. The Combined Tariffs that the utilities filed with the Commission are the result of hard work from the utilities, Staff, and stakeholder engagement to ensure that the CSP is successful. Staff thanks all parties for their diligent work and engagement. Staff recommends approval of the utilities' filings subject to the modifications discussed in this public meeting memorandum.

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<sup>1</sup> Docket No. UM 1930, Order No. 19-392.

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### *CSP Pro Forma Documents*

#### **Interconnection Process Development Timeline**

The CSP Interconnection Process is a new approach to ensure that CSP interconnections are fair and functional. The documents that govern how appropriately sized and sited projects interconnect to the grid form one “half” of the utilities’ filed CSP tariffs. The timeline below encapsulates the CSP Interconnection process development:

- October 29, 2019: The Commission adopted Staff’s six recommendations to facilitate a fair and functional interconnection process for the CSP after extensive stakeholder and utility engagement.<sup>2</sup>
- November 2019 – January 2020: Staff worked collaboratively with utilities on the implementation of the Commission-approved CSP interconnection process.
- January 16, 2020: The Commission adopted the utilities’ CSP Interconnection Implementation Plans, which allowed the utilities to launch their CSP queues to align closely with the launch of project pre-certification. The Commission directed the utilities to formalize their CSP Interconnection Implementation Plans in tariff form.<sup>3</sup>
- February 18, 2020: The utilities filed their Combined Tariffs that included CSP Interconnection and the associated pro forma documents.<sup>4</sup>
- March 10 and 11, 2020: Stakeholders engaged on the Interconnection portion of the Combined Tariffs via written comments on the UM 1930 docket, raising significant concerns with some provisions.<sup>5</sup>
- March 13, 2020: Staff called for a workshop on the Interconnection portions of the Combined Tariffs to expediently and efficiently resolve Staff and stakeholder concerns.<sup>6</sup>

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<sup>2</sup> Docket No. UM 1930, Order No. 19-392.

<sup>3</sup> Docket No. UM 1930, Order No. 20-038.

<sup>4</sup> See Docket No. UM 1930, PacifiCorp’s Advice No. 20-003 – Schedule 126- Community Solar Program – Interconnection and Power Purchase Tariff, Application, Procedures and Standard Agreements, in compliance with Order No. 20-038; *see also* Docket No. UM 1930, Idaho Power Company’s Tariff Advice Filing – Advice No. 20-01, New Schedule 100, Community Solar Program Interconnection and Power Agreement, filed in compliance with Order No. 20-038; *see also* PGE Advice No. 20-04, Community Solar Program Interconnection, in compliance with Order No. 20-038.

<sup>5</sup> See Docket No. UM 1930, Renewable Energy Coalition’s Comments on Utility Tariff Filings, March 10, 2020; *see also* OSEIA’s Comments on Utility Tariff Filing, March 11, 2020.

<sup>6</sup> See Docket No. UM 1930, Staff’s Workshop Announcement, March 13, 2020.

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- March 19, 2020: Staff, stakeholders, and utilities engaged in a productive and collaborative three and a half hour workshop on the Interconnection components of the Combined Tariffs.
- March 23, 2020: PGE re-filed the Interconnection component of the Combined Tariffs.<sup>7</sup>
- March 26, 2020: IDP and PAC re-filed the Interconnection components of the Combined Tariffs.<sup>8</sup>

### **Staff Recommendation on CSP Interconnection Filings**

Staff has been working collaboratively with the utilities on the implementation of the process since October 2019. Staff has maintained its position that the documents required to implement CSP interconnection should closely mirror the Small Generator Interconnection Procedures (SGIP) in OAR Division 82 and the compliance filings associated with the SGIP docket.<sup>9</sup> The SGIP were the result of a collaborative effort that took over two years of development between Staff, stakeholders, and the utilities. The related compliance filings to this docket, which included the standard interconnection agreements and system impact study agreements filed by each utility, were reviewed by Staff and enjoyed public and lengthy debate between the utilities and stakeholders. This process created a framework that project developers and utilities are now very familiar with. For these reasons, Staff felt it was necessary for the CSP interconnection process to mirror the successful process that the Commission had previously adopted under OAR Division 82.

The initial Combined Tariffs that the utilities filed contained several departures from the existing OAR Division 82 rules that were not necessary for the implementation of the CSP. Staff called for a workshop to engage all parties in conforming these documents to the Division 82 language and standard documents. That productive and collaborative discussion led to the utilities re-filing the interconnection portion of their Combined Tariff filings, changing the language that Staff had identified as a departure from the Division 82 and associated document language that was not necessary for the implementation of the CSP.

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<sup>7</sup> See Docket No. UM 1930, PGE Second Supplemental Filing of Advice No. 20-04, Community Solar Program Interconnection in response to comments from Staff and Stakeholders.

<sup>8</sup> See Docket No. UM 1930, Idaho Power's Revised tariff and pro forma power purchase agreement; see also Docket No. UM 1930, PacifiCorp's Advice No. 20-003 – First Supplemental Filing.

<sup>9</sup> See *generally* Docket No. AR 521 for the development of the Oregon SGIP and the associated compliance filings.

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Staff has reviewed the re-filed tariff language and concludes that the documents contain variations from the SGIP that are necessary for the implementation of the CSP. These changes include the components of the CSP interconnection process that the utilities were directed to formalize in tariff form following the approval of the Implementation Plans. The utilities incorporated redline changes that Staff and the stakeholders suggested during the workshop, and Staff has no outstanding issues with the documents. Staff is appreciative to both the utilities and the stakeholders for their responsiveness and collaboration in this process.

Staff notes that the PAC and PGE did not include in their revised filings all the modifications recommended by the Renewable Energy Coalition (REC). Staff has reviewed the proposed changes suggested by REC that were not adopted and concludes REC's proposals are not necessarily consistent with the streamlined processes needed for the CSP.

Finally, with respect to the CSP interconnection agreements, it is Staff's operating assumption that CSP projects with existing interconnection agreements and executed CSP Purchase Agreements will not have their existing interconnection agreement cancelled if their existing PURPA PPA is terminated at the formation of a CSP Purchase Agreement. Staff expects the utilities to honor a project's interconnection agreement as that project moves from the traditional serial queue and whatever PPA they had executed as a QF to the CSP queue.

### *CSP Purchase Agreements*

#### **CSP Purchase Agreement Development Timeline**

The CSP Purchase Agreements will govern how the utilities will purchase unsubscribed energy from a CSP project and form the other "half" of these filed CSP tariffs. Contained below is the timeline of how and when these PPAs were developed:

- September 16, 2019: Staff counsel sent a draft CSP Purchase Agreements that was a streamlined version of the pro forma PPA that utilities use in contracting with Qualifying Facilities (QFs) under the Public Utility Regulatory Policies Act (PURPA), with specific provisions added or changed for the implementation of CSP.
- November 2019 - January 2020: Utilities submitted redline drafts of their CSP Purchase Agreements for Staff review, which involved multiple rounds of phone calls and discussions. Staff and the utilities disagreed on certain provisions, and reached the agreement that these discussions would need to be resolved through stakeholder comments and Commission decision.

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- February 7, 2019: Utilities' draft CSP Purchase Agreements posted to the docket in advance of the Tariff filings to allow for longer stakeholder review and engagement.<sup>10</sup>
- February 19 and 24, 2020: Stakeholders engaged in comment on the Draft CSP Purchase Agreements, sharing broad concern that the utilities were incorporating unnecessary and novel provisions in the CSP Purchase Agreements that were not included in the pro forma PPAs under PURPA.<sup>11</sup>
- February 24, 2020: Staff distributed an Issues List to the utilities that incorporated parts of the CSP Purchase Agreements stakeholders were also concerned about.
- February 25, 2020: Staff and the utilities engaged in a discussion about the Issues List that resulted in the utilities agreeing to re-file some components of their CSP Interconnection and Power Purchase Schedule incorporating changes, but also leaving some outstanding issues for the Commission to decide.
- February 28, 2020: Staff files a communication on the UM 1930 docket announcing that it will be bringing the CSP Tariff filings to the April 7, 2020, Public Meeting rather than the March 10, 2020, Public Meeting to allow for additional investigation into the Combined Tariffs.<sup>12</sup>
- March 10, 2020: The Commission adopts Staff's recommendation that the Combined Tariff filings be suspended for additional investigation.<sup>13</sup>
- March 10, 2020: PAC and IDP file response comments to Stakeholder comments on the CSP Purchase Agreement, as well as updated purchase agreement language.<sup>14</sup>

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<sup>10</sup> See Docket No. UM 1930, Staff's updated agenda along with draft Power Purchase Agreements (PPAs) from PacifiCorp, Portland General Electric, and Idaho Power Company for the Community Solar Program, February 7, 2020.

<sup>11</sup> See Docket No. UM 1930, The Renewable Energy Coalition comments on Utilities draft power purchase agreements, February 19, 2020; *see also* OSEIA-CCSA's Comments, February 24, 2020.

<sup>12</sup> See Docket No. UM 1930, Staff's Request for Comments, February 28, 2020.

<sup>13</sup> See Docket No. UM 1930, Order No. 20-080, Order No. 20-081, and Order No. 20-082.

<sup>14</sup> See Docket No. UM 1930, PacifiCorp's Reply to Stakeholder Comments on PacifiCorp's Proposed Form of Community Solar Program Purchase Agreement; *see also* Docket No. UM 1930, Idaho Power's Reply Comments.

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- March 11, 2020: PGE files response comments to Stakeholder comments on the draft CSP Purchase Agreements, as well as updated purchase agreement language.<sup>15</sup>

The extensive engagement on the docket in both conversation and comment filings have informed Staff's recommendation on the CSP Purchase Agreement filings. The utilities were responsive to Staff and stakeholder feedback, and the re-filed CSP Purchase Agreements are substantially revised to closely reflect the pro forma PPA under PURPA. Despite this, Staff has identified seven outstanding issues in the filings by PAC and PGE and one for Idaho Power. Staff's recommendation is for the Commission to direct the three utilities to re-file in the manner and for the reasons described below.

### **Staff Recommendation on CSP PPA Filings**

IDP re-filed its Combined Tariff and incorporated all changes that Staff identified in its Issue List.<sup>16</sup> Staff finds that the re-filed tariff contains only the changes necessary to implement the CSP. As explained below, the one change that Staff requests the Commission direct IDP to incorporate is the Conditional Designation of Network Resource (DNR) provision that PGE and PAC include in their CSP Purchase Agreements.

At Staff's suggestion, PAC and PGE aligned the language of their CSP Purchase Agreements when they re-filed in response to Staff's Issue List. As such, all outstanding issues in the CSP Purchase Agreements are identical between the two utilities. Staff's recommended changes for the Commission to direct PAC and PGE to include in re-filed CSP Purchase Agreements are included in Attachment A and B. Staff acknowledges that its recommended changes to the Commission are not an exhaustive list of all concerns held by stakeholders, but believes that the issues discussed below are the key changes required to ensure a stable start to the program.

### *Outstanding Issues in the Utilities' CSP Purchase Agreements*

#### Issue 1: Three Percent Withholding for Contingency Reserves

PAC and PGE include the following definition of Net Output in their CSP Purchase Agreements:

Net Output means all energy produced by the Facility, less Station Use and Losses, if any. For purposes of calculating payment under this

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<sup>15</sup> See Docket No. UM 1930, PGE's Reply to Stakeholder Comments on PGE's Proposed Form of Community Solar Program Purchase Agreement.

<sup>16</sup> See *generally* Docket No. UM 1930, Idaho Power's Revised tariff and pro forma power purchase agreement, March 26, 2020.

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Agreement, Net Output shall be the amount of energy flowing through the Point of Delivery less three percent (3%) for contingency reserves.

Staff and stakeholders do not support PAC's and PGE's proposal to take three percent of the energy a CSP project produces, without compensation, to satisfy the utilities' contingency reserve requirements. PAC and PGE argue that this language is appropriately included in the CSP PPA because the NERC/WECC Reliability Standard BAL-002-WECC-2 places the obligation on them to maintain a three percent load and generation contingency reserve in their balancing authority areas. The two utilities contend that it is appropriate for this reserve requirement to fall on the Project Manager, because the utilities are required to maintain that percentage associated with the resource. Staff disagrees that the resource should bear this obligation.

First, the Commission has not approved PGE's and PAC's proposed methodology in any other context, i.e., for a PURPA PPA. In fact, this proposal is inconsistent with the Commission's previous order allowing the utility to impose a solar integration charge only after the utility has completed a solar integration study. Idaho Power has completed such a study and the Commission has approved a solar integration charge,<sup>17</sup> which is included in the Idaho Power CSP Purchase Agreement. PGE and PAC have not yet completed solar integration studies and are not authorized to impose a solar integration charge on solar generators. PAC and PGE should not be allowed to impose the equivalent of a solar integration by decrementing CSP Projects' net output.

Second, PAC and PGE's proposal raises serious concerns around overpayment by voluntary customers of something amounting to a de facto transition charge. Fully subscribed CSP in PAC and PGE territory would represent approximately three percent of the respective utilities' peak loads. However, the CSP project subscribers remain Cost of Service customers that have both paid and continue to pay their share of system charges, including operating reserves that could cover any one project outage.

#### Issue 2: Curtailment Provisions

PAC and PGE include language in their draft CSP Purchase Agreements that changes the curtailment provision included in PGE's and PAC's Standard PURPA PPAs. The pertinent language included in PGE's Standard PURPA PPA is as follows:

Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, and Prudent Electrical Practices. PGE shall have no obligation to purchase Net Output

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<sup>17</sup> *In the Matter of Idaho Power Company, Application for Approval of Solar Integration Charge* (UM 1793), Order No. 17-075.

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from the Facility to the extent the interconnection of the Facility to PGE's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's noncompliance with the Generation Interconnection Agreement.<sup>18</sup>

PAC and PGE include the following provision regarding curtailment in the CSP Purchase Agreements:

PGE is not obligated to purchase, receive, pay for, or pay any damages associated with, energy from the Facility not delivered to the Point of Delivery due to any of the following: (a) the Facility's interconnection is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generation Interconnection Agreement; (b) the general, nondiscriminatory curtailment, reduction, or redispatch of generation in the area for any reason, even if such curtailment or redispatch directive is carried out by PGE (but excluding curtailment of purchases for solely economic reasons unilaterally directed by PGE); (c) the Facility's lack of integration or synchronization to the transmission system; or (d) a force majeure event.<sup>19</sup>

Staff believes the curtailment provision in the utilities' Standard PURPA PPAs is the appropriate benchmark for curtailments for the CSP Purchase Agreements. The curtailment provision included in the CSP Purchase Agreement is much broader and its potential impact to CSP Projects is unknown.

### Issue 3: Requirements of the CSP

PAC and PGE include a provision that states if either party fails to comply with the requirements of the CSP, that failure will be a material breach of the CSP Purchase Agreement. Material breaches are subject to default and termination.<sup>20</sup> Staff believes that the responsibility to determine whether a utility or a project is complying with the requirements of the CSP falls upon the Program Administrator and the Commission, not on the two parties to the CSP Purchase Agreement. Staff believes it is inappropriate to authorize utilities to police CSP Projects' compliance with CSP requirements and to eject CSP Projects from the CSP Program by terminating the CSP Purchase Agreement.

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<sup>18</sup> PGE Standard In-System Variable Power Purchase Agreement, Section 5.1. The language in PAC's Standard PURPA PPA is very similar. See PAC Schedule 201 Standard In-System Variable Power Purchase Agreement, Section 6.3.

<sup>19</sup> PGE and PAC CSP Purchase Agreements, Section 3.3.

<sup>20</sup> PGE and PAC CSP Purchase Agreements, Section 5.1.

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#### Issue 4: CSP Project Certification

PAC and PGE include a provision that states a Project Manager's failure to maintain the facility as a Certified Project will be a material breach of the PPA. Material breaches are subject default and termination.<sup>21</sup> Staff believes that the responsibility to determine whether a project remains certified as a Community Solar Project falls upon the Program Administrator and the Commission, not on the utility. For the reasons noted above, Staff believes it is inappropriate to grant the utility such authority in this provision.

#### Issue 5: Qualifying Facility

PAC and PGE added a provision that states a Project Manager must maintain a facility as a Qualifying Facility, and to failure to do so is a material breach of the PPA subject to the default and termination provisions.<sup>22</sup> Staff believes that a failure to maintain a project as a QF should not be a material breach that is subject to termination of the PPA. Instead, Staff believes the failure to maintain certification as a Qualifying Facility could be a non-material breach. The appropriate penalty would be to allow the utility to not compensate the project for unsubscribed energy the utility is required to purchase from the project.

#### Issue 6: Telecommunications Equipment

PAC and PGE include the following language in Section 6.1(a) of the CSP Purchase Agreement regarding metering and communications:

Metering equipment will be designed, furnished, installed, owned, inspected, tested, maintained and replaced pursuant to the terms of the Generation Interconnection Agreement. To the extent not otherwise provided in the Generation Interconnection Agreement, Project Manager will bear all costs (including PGE's costs) relating to all metering and communication equipment installed to accommodate the Facility.<sup>23</sup>

However, SGIP Rule OAR 860-082-0070(2) provides that a "public utility may not require an applicant or interconnection customer with a small generator with a nameplate capacity of less than three megawatts to provide for or pay for the data acquisition or telemetry equipment necessary to allow the public utility to remotely monitor the small generator facility's electric output." It is not clear to Staff whether section 6.1(a) in the CSP Purchase Agreement would essentially nullify the cost allocation provision in the

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<sup>21</sup> PGE and PAC CSP Purchase Agreements, Section 5.2.

<sup>22</sup> PGE and PAC CSP Purchase Agreements, Section 5.3.

<sup>23</sup> PGE and PAC CSP Purchase Agreements, Section 6.1(a).

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SGIP. Staff recommends the Commission require PGE and PAC to modify section 6.1(a) to clarify this section does not override the cost allocation provisions in the SGIP.

#### Issue 7: Insurance Requirements

Staff takes issue with two provisions included in section 7 (Insurance) of the CSP Purchase Agreements. First, the utilities do not include an exemption from the insurance requirement that is found in the SGIP for generator facilities under 200 kW. The utilities have included this exemption for 200 kW and under facilities in their pro forma interconnection agreements. This exemption should be incorporated in the CSP Purchase Agreement as well.<sup>24</sup>

Second, the two utilities include a requirement for insurance companies eligible to provide insurance to CSP Projects that is more stringent than what is included in the standard PURPA PPAs. In the PURPA PPAs, the QF must secure insurance from a company or companies rated not lower than “B+” by the A.M. Best Company.” PAC’s and PGE’s draft CSP Purchase Agreement requires that eligible insurance companies have a rating not lower than “A-/VII.”<sup>25</sup> The standard PURPA PPAs have had a benchmark rating of B+ for many years, and this rating requirement is currently under investigation in Docket No. AR 631. Staff believes that docket is the appropriate venue to litigate that issue, not this one, and recommends the Commission require that the rating be changed to B+ for the CSP Purchase Agreement.

#### Issue 8: Conditional Designation of Network Resource (DNR) Notice Provision

PAC and PGE include a provision in their CSP Purchase Agreements that allows for additional negotiations between the Project and utility and process before the PA and Commission in the event the utility’s transmission service request (TSR) for the CSP Project’s output shows Transmission Service-related Network Upgrades are required. The provisions are identical, except for the name of the utility, and provide:

3.1 Designation of Network Resource. Within five (5) business days following the Effective Date, PGE will submit an application to the Transmission Provider requesting designation of the Facility as a network resource, thereby authorizing network transmission service under PGE’s Network Integration Transmission Service Agreement with the Transmission Provider. PGE will request an effective date for commencement of network transmission service for the Facility that is

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<sup>24</sup> PAC’s and PGE’s standard PURPA PPAs exempt QFs 200 kW and smaller from the requirement to carry insurance.

<sup>25</sup> PGE and PAC CSP Purchase Agreements, Section 7.2.

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ninety (90) days prior to the Scheduled Commercial Operation Date. PGE will inform Project Manager of Transmission Provider's response to the application described above in this paragraph within five (5) days of PGE's receipt of such response from the Transmission Provider. If PGE is notified in writing by the Transmission Provider that designation of the Facility as a network resource requires the construction of transmission system network upgrades or otherwise requires potential re-dispatch of other network resources of PGE (a "Conditional DNR Notice"), PGE and Project Manager will promptly meet to determine how such conditions to the Facility's network resource designation will be addressed in this Agreement. If, within sixty (60) days following the date of PGE's receipt of the Conditional DNR 4 UM 1930 PGE's Updated CSP Purchase Agreement Attachment B Page 5 Notice, PGE and Project Manager are unable to reach agreement regarding how to designate the Facility as a network resource in light of the Conditional DNR Notice, PGE will submit the matter to the Commission for a determination on whether, as a result of the Conditional DNR Notice, this Agreement should be terminated or amended. PGE will submit such filing to the Commission within ninety (90) days following the date of PGE's receipt of the Conditional DNR Notice. In the event of such a filing to the Commission under this Section, the Parties' obligations under this Agreement will be suspended until such time that the Commission issues a final decision. In the event of a Conditional DNR Notice, Project Manager will have the right to terminate this Agreement upon written notice to PGE and such termination by Project Manager will not be an event of default and no damages will be owed by Project Manager to PGE related to the termination of this Agreement except to the extent PGE has incurred costs at Project Manager's request in furtherance of addressing the matters covered under this Section.

PAC and PGE include this provision to address the risk that ratepayers may have to bear costs of expensive Network Upgrades to accommodate the interconnection of a CSP Project. Staff agrees with the utilities that it is appropriate to include the Conditional DNR provisions to protect ratepayers.

The CSP Interconnection Process is designed to minimize the risk that ratepayers will bear the expense of Network Upgrades to transmit CSP Project energy. However, some risk remains because a CSP Project and the utility must execute a CSP Purchase Agreement before the utility's Merchant Function can submit a TSR to its Transmission Function. And, in some circumstances, it is only when the utility's Merchant Function

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submits a TSR that the utility can determine whether Network Upgrades are needed to transmit the CSP Project's output to load.

At the time a CSP Project executes the Interconnection Agreement, the only information about deliverability-driven upgrades are those that may be identified in the information-only Network Resource Integration Service (NR) study that the utility will perform. The costs identified by NR study for interconnection service are subject to change. Additionally, in some circumstances, costs that might be identified in the TSR that are not identified in the NR study.

The Conditional DNR Notice provision that PAC and PGE include in their CSP Purchase Agreements is a reasonable approach to creating a procedural "safety valve" if a project triggers significant deliverability-driven Network Upgrades.

First, the Conditional DNR Notice provision allows a Commission to decide how Network Upgrade costs triggered by a TSR should be allocated.

Second, the Conditional DNR Notice provision gives Project Managers the option to terminate a CSP Purchase Agreement if the Commission decides significant upgrade costs should not be borne by ratepayers. Importantly, the Conditional DNR Notice provision sets a clear timeline for communicating TSR results to the Project Manager. This timeline gives CSP projects a clear time frame of how long the risk of deliverability-driven upgrades identified in the TSR will exist for their project. If a TSR indicates that no Network Upgrades are necessary, the possibility the CSP project could be allocated costs for Network Upgrades is eliminated.

To facilitate the Commission's review Network Upgrade costs identified by the TSR, Staff believes that the Program Administration team should conditionally pre-certify projects that have significant upgrade costs identified in the information-only NR study. The procedural mechanism embodied by the conditional pre-certification would allow the Commission to revoke pre-certification within a specific timeframe of when the TSR results are known by all parties.<sup>26</sup> This mechanism would allow the Commission to set other processes to protect program participants, which could include limiting the project's ability to enter into contracts with customers and be listed on the CSP clearinghouse website as an available project to sign up with.<sup>27</sup>

Staff notes that IDP has taken a different approach to how identified network upgrades are brought before the Commission. IDP included a provision in the interconnection section of its tariff, rather than in its PPA, that if deliverability-driven upgrades are

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<sup>26</sup> See generally Commission Order No. 20-076.

<sup>27</sup> *Id.*

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identified in the information-only NR study, the Company will make a filing with the Commission to determine how those costs are allocated.<sup>28</sup> Staff believes that the Commission reserves the right to withhold a determination until the TSR is submitted and the costs are known and certain. For the reasons stated above, Staff believes that IDP should revise its PPA accordingly to include a Conditional DNR Notice.

Stakeholders, the Renewable Energy Coalition (REC), the Oregon Solar Energy Industries Association (OSEIA), and the Coalition for Community Solar Access (CCSA) raised concerns with a conditional pre-certification and including the Conditional DNR provision in the PPA. While Staff understands and appreciates these concerns for project viability, Staff also believes that the risk of network upgrades have been mitigated to the furthest extent possible in the balanced design of the Program.

REC states that PAC is requiring the PA to consider Network Upgrades in the pre-certification process, and that it does not like this idea. However, REC does not give any reason that it thinks this idea is flawed.<sup>29</sup> For the reasons stated above, Staff believes that a conditional pre-certification process would actually help mitigate the risk to program participants and Project Managers by flagging network upgrade costs early and publicly and allowing a project to take risk mitigation measures accordingly, as it would do with any risk associated with project development.

Second, OSEIA argues that it is risky to allow a project to get to a stage where they have a signed PPA, only to then have significant upgrade costs identified in a TSR and have the Commission decide that ratepayers will not appropriately bear these costs.<sup>30</sup> Staff believes that the risks of deliverability-driven upgrades are as mitigated as they possibly can be through the eligibility requirements for the CSP Interconnection Process. Further, the risk of Network Upgrade costs identified at the TSR stage is part of the balance of allowing projects to interconnect in a streamlined way as ER-only. OSEIA also argues that the Conditional DNR approach will result in projects reaching late stages of development that includes signing up subscribers. Staff believes that the conditional pre-certification approach will allow mitigate this risk by allowing Commission to set conditions on what the Project Manager can do before the deliverability-driven upgrade costs identified in an information-only NR are confirmed in the TSR.

Additionally, Staff reiterates that the CSP Interconnection Process is a pilot program, and one that requires flexibility and adaptation as learnings become clear. Staff worked with stakeholders and utilities to design the eligibility criteria for the Interconnection Process

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<sup>28</sup> See Docket No. UM 1930, Idaho Power's Revised Tariff and pro forma power purchase agreement, March 26, 2020 at P 4.

<sup>29</sup> See Docket No. UM 1930, Coalition's Comments on Utility Tariff, March 10, 2020 at P 4.

<sup>30</sup> See Docket No. UM 1930, OSEIA's Comments on Utility Tariff Filing, March 11, 2020 at P 3.

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to mitigate the risk of significant deliverability-driven upgrades, but this will not be tested until the projects begin to complete the Program's full certification process.

To summarize Staff's analysis of Issue 8:

- Staff supports PAC and PGE's inclusion of the Conditional DNR in their Community Solar Purchase Agreements.
- While Staff appreciates IDP's inclusion of a process to bring network upgrades identified in the information-only NR study to the Commission, the process should be included as a Conditional DNR Notice in their Community Solar Purchase Agreement, not in the Interconnection Agreement, and IDP should re-file accordingly.
- Despite stakeholder's objections, ratepayers and CSP subscribers can be best protected if the Conditional DNR is in the PPA process, as it allows the Commission to make a decision when costs are certain and known, and allows the Commission leverage the Conditional Pre-Certification process if potential costs are identified in the information-only NR study.
- Staff will continue to report to the Commission on how this Process is working, and will be keeping a keen eye on how the Conditional Pre-Certification and Conditional DNR provision of the PPAs, if adopted by the Commission, are affecting project development and viability.

### Conclusion

The successful implementation of the CSP requires clear and familiar contracts to ensure that projects have certainty in the legal obligations they are entering into with utilities. This clarity is balanced with the novel approach that the CSP interconnection and power purchasing requires of utilities. Staff believes that through the extensive engagement on the docket and collaboration from both utilities and stakeholders, these Combined Tariff filings, including the CSP Purchase Agreements once the utilities re-file incorporating Staff's recommended changes, will result in a successful start to the program. Staff notes that this program is going to have continued learnings, and asks that the Commission maintain its flexible approach to these program elements as these learnings become clearer over time.

In summary, Staff recommends that the Commission direct the utilities to make the following eight changes to their Community Solar Purchase Agreements and re-file with the Commission:

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1. PAC and PGE: Strike language in the definition of Net Output that allows the utilities to withhold three percent of a project's net output for contingency reserves.
2. PAC and PGE: Strike language that alters the curtailment provision from the language that is in the Standard PURPA PPAs.
3. PAC and PGE: Strike language that states if either party fails to comply with the requirements of the CSP, that failure results in a material breach.
4. PAC and PGE: Strike language that states a Project Manager's failure to maintain a facility as a Certified Project in the CSP results in a material breach.
5. PAC and PGE: Alter language to state that a Project Manager's failure to maintain a facility as a Qualifying Facility is a non-material breach.
6. PAC and PGE: Modify language to clarify that the telecommunications language in the Community Solar Purchase Agreement does not override the cost allocation provisions in the SGIP.
7. PAC and PGE: Add language that exempts generator facilities under 200 kW from the insurance requirement, and modify language that requires a A-/VII insurance company rating to language that requires a B+ insurance company rating instead.
8. IDP: Strike language from Interconnection Agreement that sets forth a process for bringing Network Upgrades to the Commission and include the Conditional DNR Notice language PAC and PGE include in their Community Solar Purchase Agreement in its Community Solar Purchase Agreement.

**PROPOSED COMMISSION MOTION:**

The Commission should approve Idaho Power Company Advice No. 20-02, Schedule 100 Community Solar Program Interconnection and Power Purchase Agreement; PacifiCorp Advice No. 20-003 Schedule 126 Community Solar Program – Interconnection and Power Purchase; Portland General Electric Co. Second Supplemental Advice No. 20-04 Community Solar Program Interconnection and Power Purchase Schedule, subject to the direction to re-file the portions of the PPAs by April 17, 2020, that incorporate Staff-proposed modifications.

UM 1930

**COMMUNITY SOLAR PROGRAM PURCHASE AGREEMENT**

THIS COMMUNITY SOLAR PROGRAM PURCHASE AGREEMENT (the “Agreement”) entered into this [ ] day of [ ], 20[ ] (the “Effective Date”), is between [ ], a [ ] (“Project Manager”), and PacifiCorp, an Oregon corporation acting in its regulated utility capacity (“PacifiCorp”). Project Manager and PacifiCorp are referred to individually in this Agreement as a “Party” and collectively as the “Parties.”

**RECITALS**

A. Project Manager intends to operate a solar photovoltaic facility for the generation of electric power, including interconnection facilities, located in [ ] with a facility capacity rating of [ ] kilowatts (kW) as further described in Exhibit A and Exhibit B (“Facility”); and

B. Project Manager intends to commence delivery of Net Output under this Agreement, for the purpose of start-up testing, on [ ], 20[ ]; and

C. Project Manager intends to operate the Facility as a Community Solar Program Project, commencing commercial operations on [ ], 20[ ] (“Scheduled Commercial Operation Date”).

D. Project Manager estimates that the average annual Net Output to be delivered by the Facility to PacifiCorp is [ ] kilowatt-hours (kWh); and

E. This Agreement is a Community Solar Program Purchase Agreement under the Oregon Community Solar Program implemented by the Oregon Public Utility Commission pursuant to ORS 757.386(2).

**AGREEMENT**

NOW, THEREFORE, the Parties mutually agree as follows:

**SECTION 1: DEFINITIONS**

When used in this Agreement, the following terms shall have the following meanings:

**Agreement** means this Community Solar Program Purchase Agreement.

**As-Available Rate** is the rate at which PacifiCorp will purchase a Project’s Unsubscribed Energy. The As-Available Rate will be calculated using the Non-Firm Market Price Index.

**Average Annual Generation** has the meaning stated in Section 5.7.

**Certified Project** is a Community Solar Program Project that has been certified by the Oregon Public Utility Commission under OAR 860-088-0050 and in accordance with the Program Implementation Manual.

**Commercial Operation Date** means the date that the Facility is deemed by PacifiCorp to be fully operational and reliable, which requires, among other things, that all of the following events have occurred:

1. Seller provides evidence that the Facility is a Certified Project.
2. PacifiCorp has received a certificate addressed to PacifiCorp from a Licensed Professional Engineer stating (a) the facility capacity rating of the Facility at the anticipated Commercial Operation Date; (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement; (c) the Facility has completed start-up testing and commissioning; and (d) in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed, and the Facility is physically interconnected with PacifiCorp's electric system;
3. PacifiCorp has received a certificate addressed to PacifiCorp from an officer of Project Manager stating that Project Manager has obtained all Required Project Documents and, if requested by PacifiCorp in writing, has provided copies of any or all such requested Required Project Documents; and
4. PacifiCorp has received an executed copy of Exhibit E—Project Manager's Authorization to Release Generation Data to PacifiCorp.

**Community Solar Program** is the program established for the procurement of electricity from community solar projects pursuant to ORS 757.386(2), the Commission's implementing regulations, and the Program Implementation Manual.

**Community Solar Program Project** is one or more solar photovoltaic energy systems used to generate electric energy on behalf of Community Solar Program owners and subscribers and for which owners and subscribers receive credit on their electric bills.

**Conditional DNR Notice** has the meaning provided in Section 3.1.

**Contract Interest Rate** means the lesser of (a) the highest rate permitted under applicable law or (b) 200 basis points per annum plus the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. as its "prime rate." If a Citibank, N.A. prime rate is not available, the applicable prime rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest is being paid.

**Contract Year** means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time (PPT) on January 1 and ending on 24:00 hours PPT on December 31; provided, however, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the date of termination or expiration of this Agreement.

**Effective Date** means the date stated in the first sentence of this Agreement.

**Energy Delivery Schedule** has the meaning provided in Section 5.7.

**Facility** has the meaning provided in the Recitals.

**Generation Interconnection Agreement** means the generation interconnection agreement between Project Manager and Transmission Provider providing for the construction, operation, and maintenance of the interconnection facilities required to accommodate deliveries of the Facility's Net Output.

**Licensed Professional Engineer** means a person acceptable to PacifiCorp in its reasonable judgment who is licensed to practice engineering in the state of Oregon and is not an employee of Project Manager. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

**Losses** are the loss of electric energy occurring as a result of the transformation and transmission of electric energy from the Facility to the Point of Delivery.

**Net Output** means all energy produced by the Facility, less Station Use and Losses, if any. ~~For purposes of calculating payment under this Agreement, Net Output shall be the amount of energy flowing through the Point of Delivery less three percent (3%) for contingency reserves.~~

**Non-Firm Market Price Index** means ninety three percent (93%) of the hourly value calculated based on the average prices reported for a blending of Intercontinental Exchange, Inc. ("ICE") Day Ahead Power Price Report at market hubs for firm index prices for a given day, weighted by the count of hours for each ICE index on such day, multiplied by the then-current hourly energy scalars for a given day calculated under the methodology approved in the Resource Value of Solar docket (UM 1910) or a successor proceeding. If applicable, the resulting value will be reduced by the integration costs specified in the then-current standard avoided cost rate schedule as applicable to the Facility. The market blending and scalar matrices are available upon request. If any index is not available for a given period, the Non-Firm Market Price Index will be the average price derived from days in which all published data is available, for the same number of days immediately preceding and immediately succeeding the period in which an index was not available, regardless of which days of the week are used for this purpose. The Non-Firm Market Price Index will remain in effect until a replacement Non-Firm Market Price Index is approved by the Oregon Public Utility Commission.

**Participant** means a customer of PacifiCorp that is either a subscriber or owner of the Facility.

**Point of Delivery** is the location where PacifiCorp's and Facility's electrical facilities are interconnected.

**Program Administrator** means the third-party directed by the Oregon Public Utility Commission to administer the Community Solar Program.

**Program Implementation Manual** means the manual of requirements applicable to the Project Manager, PacifiCorp and Participants for the Community Solar Program adopted by the Oregon Public Utility Commission. In the event there are revisions to the Program Implementation Manual during the term of this Agreement, such revisions will only apply to performance by Project Manager and PacifiCorp after the effective date of such revisions.

**Project Manager** is the entity having responsibility for managing the operation of the Facility and for

**Project Manager** is the entity having responsibility for managing the operation of the Facility and for maintaining contact with PacifiCorp, as stated in the first sentence of this Agreement.

**Prudent Electrical Practices** means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the Western Electric Coordinating Council that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all applicable law. Prudent Electrical Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediately preceding sentence.

**PURPA** means the Public Utility Regulatory Policies Act of 1978.

**Qualifying Facility** is a solar photovoltaic facility that meets the PURPA criteria for qualification set forth in Subpart B of Part 292, Subchapter K, Chapter I, Title 18, of the Code of Federal Regulations.

**Renewable Energy Credits** means green tags, green certificates, renewable energy credits (RECs) and tradable renewable certificates, as those terms are commonly used in the regional electric utility industry, directly associated with the production of energy from the Facility.

**Required Project Documents** means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement and Qualifying Facility certification or self-certification, necessary for construction, operation, and maintenance of the Facility consistent with the terms of this Agreement, including without limitation those listed in Exhibit C.

**Scheduled Commercial Operation Date** has the meaning provided in the Recitals.

**Station Use** is electric energy used to operate the Facility that is auxiliary to or directly related to the generation of electricity and which, but for the contemporaneous generation of electricity, would not be consumed by the Facility.

**Subscribed Energy** means that portion of the Net Output for which the Project Manager has obtained a Participant and for which PacifiCorp must credit the Participant's electric bills consistent with the Community Solar Program.

**Transmission Provider** means PacifiCorp, acting in its transmission provider capacity.

**Unsubscribed Energy** means that portion of the Net Output for which the Project Manager has no Participant and that is purchased by PacifiCorp at the As-Available Rate consistent with the Community Solar Program.

## SECTION 2: TERM

2.1 Term. Except as otherwise provided herein, this Agreement shall terminate at midnight (Pacific prevailing time) on the date that is the twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date.

**SECTION 3: DELIVERY OF POWER AND COMPENSATION**

3.1 Designation of Network Resource. Within five (5) business days following the Effective Date, PacifiCorp will submit an application to the Transmission Provider requesting designation of the Facility as a network resource, thereby authorizing network transmission service under PacifiCorp's Network Integration Transmission Service Agreement with the Transmission Provider. PacifiCorp will request an effective date for commencement of network transmission service for the Facility that is ninety (90) days prior to the Scheduled Commercial Operation Date. PacifiCorp will inform Project Manager of Transmission Provider's response to the application described above in this paragraph within five (5) days of PacifiCorp's receipt of such response from the Transmission Provider. If PacifiCorp is notified in writing by the Transmission Provider that designation of the Facility as a network resource requires the construction of transmission system network upgrades or otherwise requires potential re-dispatch of other network resources of PacifiCorp (a "Conditional DNR Notice"), PacifiCorp and Project Manager will promptly meet to determine how such conditions to the Facility's network resource designation will be addressed in this Agreement. If, within sixty (60) days following the date of PacifiCorp's receipt of the Conditional DNR Notice, PacifiCorp and Project Manager are unable to reach agreement regarding how to designate the Facility as a network resource in light of the Conditional DNR Notice, PacifiCorp will submit the matter to the Commission for a determination on whether, as a result of the Conditional DNR Notice, this Agreement should be terminated or amended. PacifiCorp will submit such filing to the Commission within ninety (90) days following the date of PacifiCorp's receipt of the Conditional DNR Notice. In the event of such a filing to the Commission under this Section, the Parties' obligations under this Agreement will be suspended until such time that the Commission issues a final decision. In the event of a Conditional DNR Notice, Project Manager will have the right to terminate this Agreement upon written notice to PacifiCorp and such termination by Project Manager will not be an event of default and no damages will be owed by Project Manager to PacifiCorp related to the termination of this Agreement except to the extent PacifiCorp has incurred costs at Project Manager's request in furtherance of addressing the matters covered under this Section.

3.2 Delivery and Purchase of Net Output. Subject to Section 3.1 above and unless otherwise provided in this Agreement, commencing on the Commercial Operation Date, Project Manager will transmit to PacifiCorp all Net Output and PacifiCorp will accept all Net Output delivered to the Point of Delivery. PacifiCorp will accept Net Output delivered to the Point of Delivery as early as ninety (90) days prior to the Scheduled Commercial Operation Date. If Seller desires to begin transmitting Net Output to PacifiCorp at a date earlier than ninety (90) days prior to the Scheduled Commercial Operation Date, PacifiCorp will only be obligated to purchase such Net Output if PacifiCorp is able to modify its network resource designation for the Facility such that the output could be delivered using network transmission service as described in Section 3.1 above at no additional cost or other economic impact to PacifiCorp.

3.3 Curtailment. PacifiCorp is not obligated to purchase, receive, pay for, or pay any damages associated with, energy from the Facility not delivered to the Point of Delivery ~~because the due to any of the following: (a) the Facility's interconnection is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generation Interconnection Agreement.; (b) in system emergencies pursuant to 18 C.F.R. section 292.307(b) the general, non-discriminatory curtailment, reduction, or redispatch of generation in the area for any reason, even if such curtailment or redispatch directive is carried out by PacifiCorp (but excluding curtailment of purchases for solely economic reasons unilaterally directed by PacifiCorp); or (c) the Facility's lack of integration or synchronization to the transmission system; or (c)(d) a force majeure event.~~

3.4 Compensation. PacifiCorp will compensate the Project Manager for Unsubscribed Energy and the Participants for Subscribed Energy on a monthly basis as provided in the Community Solar Program.

(a) For the portion of the monthly Net Output that is Subscribed Energy, PacifiCorp will credit the electric bills of Participants to account for their proportionate share of the Net Output in accordance with the requirements of the Community Solar Program and data provided by the Program Administrator.

(b) For the portion of the monthly Net Output that is Unsubscribed Energy that is delivered to PacifiCorp by Project Manager from the Facility at the Point of Delivery, PacifiCorp will pay the Project Manager the As-Available Rate consistent with the Community Solar Program.

#### SECTION 4: RENEWABLE ENERGY CREDITS

4.1 No Claim to Renewable Energy Certificates. PacifiCorp waives any claim to ownership of any Renewable Energy Certificates that are issued by the Western Renewable Energy Generation Information System associated with the Facility's Net Output.

#### SECTION 5: OPERATION AND CONTROL

~~5.1 — Community Solar Program. Both Parties shall comply with the requirements of the Community Solar Program. Failure to comply with the Community Solar Program shall be considered a material breach of this Agreement.~~

~~5.2 — Certification. Project Manager shall maintain the Facility as a Certified Project at all times during the term of this Agreement. Failure to maintain the Facility as a Certified Project shall be considered a material breach of this Agreement.~~

5.1 Qualifying Facility. Project Manager shall maintain the Facility as a Qualifying Facility at all times during the term of this Agreement. ~~Failure to maintain the Facility as a Qualifying Facility shall be considered a non-material breach of this Agreement.~~

5.2 As-Built Supplement. Upon completion of initial construction of the Facility, and upon any subsequent material modification of the Facility, Project Manager shall provide PacifiCorp an as-built supplement to specify the actual Facility as built.

5.3 Facility Operation. Project Manager must operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PacifiCorp has no obligation to purchase Net Output from the Project Manager to the extent the interconnection between the Facility and PacifiCorp's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement.

5.4 Facility Inspection. Project Manager is solely responsible for the operation and maintenance of the Facility. PacifiCorp has the right, upon reasonable prior notice to Project Manager, to inspect the Facility to confirm that the Project Manager is operating the Facility in accordance with

the provisions of this Agreement, provided that PacifiCorp is not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assuming any responsibility for any liability or occurrence arising from the operation and maintenance by Project Manager of the Facility.

5.5 Average Generation and Energy Delivery Schedules. Project Manager estimates that the Facility will generate, on average, [ ] kWh per Contract Year (“Average Annual Generation”). Project Manager may, upon at least six (6) months prior written notice, modify the Average Annual Generation every other Contract Year. Project Manager’s initial monthly schedule of expected Net Output from the Facility is attached as Exhibit D (the “Energy Delivery Schedule”). Project Manager must update and provide to PacifiCorp a revised Energy Delivery Schedule within thirty (30) days following the end of each Contract Year.

5.6 Scheduled Outages. Project Manager may cease operation of the entire Facility or individual units for maintenance or other purposes. Project Manager must exercise reasonable efforts to notify PacifiCorp of planned outages at least ninety (90) days prior to the planned outage. Additionally, Project Manager must use commercially reasonable efforts to not plan outages during the months of December and July.

5.7 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the facility capacity rating expected to last more than 48 hours, Project Manager must promptly notify PacifiCorp of the unscheduled outage or curtailment, the time when such occurred or will occur, and the anticipated duration.

5.8 Adjustments to Scheduled Commercial Operation Date. Project Manager must promptly notify PacifiCorp in writing of any adjustments (earlier or later) to the Scheduled Commercial Operation Date. Project Manager must also inform PacifiCorp in writing no later than ten (10) business days prior to the Scheduled Commercial Operation Date of the anticipated Commercial Operation Date, provided such notice to PacifiCorp may not be provided earlier than twenty (20) business days prior to the anticipated Commercial Operation Date.

## SECTION 6: METERING AND COMMUNICATIONS

### 6.1 Metering and Communications.

(a) Metering equipment will be designed, furnished, installed, owned, inspected, tested, maintained and replaced pursuant to the terms of the Generation Interconnection Agreement. ~~To the extent not otherwise provided in the Generation Interconnection Agreement, Project Manager will bear all costs (including PacifiCorp’s costs) relating to all metering and communication equipment installed to accommodate the Facility.~~

(b) Metering shall be performed at the location and in a manner consistent with this Agreement, the Generation Interconnection Agreement, and the requirements of the Community Solar Program. All quantities of energy purchased under this Agreement will be adjusted to account for electrical losses, if any, between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PacifiCorp’s system at the Point of Delivery.

(c) If any of the inspections or tests of the metering equipment discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, will be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction will be made to the measurements taken during the time the metering equipment was in service since the last test in which the metering equipment was found to be accurate, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records will be made in the next payment rendered following the repair of the meter.

## SECTION 7: INSURANCE

7.1 Certificates. Prior to connection of the Facility to PacifiCorp's electric system, Project Manager of any Facility with Nameplate Capacity exceeding 200 kilowatts shall secure and continuously carry insurance in compliance with the requirements of this Section. Project Manager shall provide PacifiCorp insurance certificate(s) confirming Project Manager's compliance with the insurance requirements hereunder. If requested by PacifiCorp, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PacifiCorp.

7.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Project Manager under this Agreement, Project Manager shall secure and continuously carry with an insurance company or companies rated not lower than "B+A-VII" by the A.M. Best Company commercial general liability insurance to include premises and operations, contractual liability, with a minimum single limit of \$1,000,000 each occurrence to protect against and from loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

7.3 The commercial general liability policy required herein shall include (a) provisions or endorsements naming PacifiCorp, its board of directors, officers and employees as additional insureds, and (b) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured. In addition, unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against PacifiCorp.

7.4 The commercial general liability policy required herein shall include provisions that such insurance is primary insurance with respect to the interests of PacifiCorp and that any other insurance maintained by PacifiCorp is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be canceled or their limits of liability reduced without (a) ten (10) days prior written notice to PacifiCorp if canceled for nonpayment of premium, or (b) thirty (30) days prior written notice to PacifiCorp if canceled for any other reason.

7.5 Commercial general liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate, and Project Manager shall be maintained by Project Manager for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

## SECTION 8: COMPUTATIONS

8.1 Net Output Data. No later than the second business day of each month, PacifiCorp will transfer to the Program Administrator the data related to the amount of Net Output delivered to PacifiCorp from the Facility for the month, measured in kWh.

## SECTION 9: COMPENSATION

9.1 Payment for Unsubscribed Energy. No later than the 20<sup>th</sup> day of the month or ten (10) days after receiving kWh data from Program Administrator regarding the prior month’s Subscribed Energy amount and Unsubscribed Energy amount, whichever occurs later, PacifiCorp will send to Program Administrator payment for Project Manager deliveries of Unsubscribed Energy to PacifiCorp, together with computations supporting such payment. PacifiCorp may offset any such payment to reflect amounts owing from Project Manager to PacifiCorp pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PacifiCorp may adjust any payment made under this Agreement for Unsubscribed Energy or Subscribed Energy up to eighteen (18) months following the date of original payment.

9.3 Interest. Any amounts owing after the due date thereof will bear interest at the Contract Interest Rate.

9.4 Payment for Subscribed Energy. PacifiCorp will credit the electric bills of Participants for their proportionate shares of Subscribed Energy in accordance with the Program Implementation Manual and data provided by Program Administrator.

9.5 Offset. PacifiCorp may offset any payment due to the Project Manager by amounts owing from the Project Manager pursuant to this Agreement and any other agreement between the Parties related to the Facility.

**SECTION 10: SUCCESSORS AND ASSIGNS**

Neither Party may assign this Agreement without the consent of the other Party and the Oregon Public Utility Commission, which shall not be unreasonably withheld. This Agreement and all of the terms shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties.

**SECTION 11: NOTICES**

All notices except as otherwise provided in this Agreement shall be in writing addressed to the addresses set forth below and shall be considered if delivered in person or when deposited in the U.S. Mail, postage prepared by certified or registered mail and return receipt requested.

If to PacifiCorp:

[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_]

If to Project Manager:

[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_]

**SECTION 12: INDEMNIFICATION AND LIABILITY**

12.1 Project Manager’s Indemnity. Project Manager agrees to defend, indemnify and hold harmless PacifiCorp, its directors, officers, employees, agents, and representatives against and from any and all claims resulting from, or arising out of or in any way connected with (i) Project Manager’s performance hereunder, including the delivery of energy to and at the Point of Delivery; (ii) Project

Manager's development, construction, ownership, operation, maintenance, or decommissioning of the Facility; (iii) the violation of any law, rule, order or regulation by Project Manager or any of its affiliates, or their respective employees, contractors or agents in connection with this Agreement; (iv) Project Manager's failure to perform any of Project Manager's obligations under this Agreement or the Required Facility Documents; (v) Project Manager's breach of any representation or warranty set forth in this Agreement; or (vi) Project Manager's negligence or willful misconduct in connection with this Agreement, except to the extent such claim is caused by breach of this Agreement or by the negligence or willful misconduct of PacifiCorp, its directors, officers, employees, agents or representatives.

12.2 PacifiCorp's Indemnity. PacifiCorp agrees to defend, indemnify and hold harmless Project Manager, its directors, officers, agents, and representatives against and from any and all claims resulting from, or arising out of or in any way connected with (i) PacifiCorp's receipt of Net Output under this Agreement after its delivery at the Point of Delivery; (ii) the violation of any law, rule, order or regulation by PacifiCorp, or their respective employees, or agents in connection with this Agreement; (iii) PacifiCorp's failure to perform any of PacifiCorp's obligations under this Agreement; (iv) PacifiCorp's breach of any representation or warranty set forth in this Agreement; or (v) PacifiCorp's negligence or willful misconduct in connection with this Agreement, except to the extent such claim is caused by Project Manager's breach of this Agreement or by the negligence or willful misconduct of Project Manager, its directors, officers, employees, agents or representatives.

12.3 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PacifiCorp as an independent public utility corporation or Project Manager as an independent person.

**12.4 Disclaimer of Consequential Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.**

### SECTION 13: TERMINATION

13.1 Termination. A Party may terminate this Agreement in the event of a failure of the other Party to perform any material covenant or obligation set forth in this Agreement, if (i) notice of intent to terminate the Agreement is submitted to the Program Administrator at least thirty (30) days prior to termination; and (ii) the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default; provided that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within a sixty (60) day cure period, the defaulting Party will have such additional time (not exceeding an additional thirty (30) days) as is reasonably necessary to cure, if, prior to the end of the thirty (30) day cure period the defaulting Party provides the non-defaulting Party a remediation plan and the defaulting Party promptly commences and diligently pursues the remediation plan.

### SECTION 14: GENERAL PROVISIONS

14.1 Relationship of the Parties. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Project Manager includes two or more parties, each such Party shall be jointly and severally liable for Project Manager's obligations under this Agreement.

14.2 No Third Party Beneficiaries. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement), it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

14.3 Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. This Agreement is subject to the jurisdiction of those governmental agencies and courts having control over either Party or this Agreement. Each Party hereby acknowledges that this Agreement and any dispute that arises under this Agreement is subject to the jurisdiction of the Oregon Public Utility Commission. If a dispute related to this Agreement arises between the Parties, the Parties' representatives shall first attempt to resolve the dispute informally through negotiation and consultation. If the Parties are unable to resolve their differences through such negotiation and consultation, any complaint, claim or action to resolve such dispute may be brought in a court or governmental agency with jurisdiction over the dispute.

14.4 Severability. If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of this Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations, and seek guidance from the Program Administrator and Oregon Public Utility Commission as necessary, concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law, the intent of the Parties, and the Community Solar Program.

14.5 Effect of PURPA Repeal. The repeal of PURPA shall not result in the early termination of this Agreement unless such termination is mandated by state or federal law.

14.6 Waiver. Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

14.7 Survival. Notwithstanding termination of this Agreement, PacifiCorp and Project Manager shall continue to be bound by the provisions of this Agreement which by their terms or by their nature shall survive such completion or termination.

14.8 Entire Agreement; Amendments; Order of Precedence. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PacifiCorp's purchase of energy from the Facility. No amendment or modification of this Agreement shall be effective unless it is in writing and signed by both Parties. If there is a conflict between the terms of this Agreement and the Community Solar Program the Community Solar Program shall apply and prevail.

14.9 Project Release. By executing this Agreement, Project Manager releases PacifiCorp from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.

14.10 Rights and Remedies Cumulative. Except as expressly set forth in this Agreement, the rights and remedies of the Parties provided in this Agreement and otherwise available at law or in equity are cumulative, such that the exercise of one or more rights or remedies shall not constitute a waiver of any other rights or remedies.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the Effective Date.

**PacifiCorp**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Project Manager**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**COMMUNITY SOLAR PROGRAM PURCHASE AGREEMENT**

THIS COMMUNITY SOLAR PROGRAM PURCHASE AGREEMENT (the "Agreement") entered into this LJ day of - - - - - ' 20LJ (the "Effective Date"), is between - - - - - ' a [ [ ] ("Project Manager"), and Portland General Electric Company, an Oregon corporation acting in its regulated utility capacity ("PGE"). Project Manager and PGE are referred to individually in this Agreement as a "Party" and collectively as the "Parties."

**RECITALS**

- A. Project Manager intends to operate a solar photovoltaic facility for the generation of electric power, including interconnection facilities, located in -----with a facility capacity rating of [ ] kilowatts (kW) as further described in Exhibit A and Exhibit B ("Facility"); and
- B. Project Manager intends to commence delivery of Net Output under this Agreement, for the purpose of strut-up testing, on----- 20[ ]; and
- C. Project Manager intends to operate the Facility as a Community Solar Program Project, commencing commercial operations on - - - - - ' 20[ ] ("Scheduled Commercial Operation Date").
- D. Project Manager estimates that the average annual Net Output to be delivered by the Facility to PGE is [ ] kilowatt-hours (kWh); and
- E. This Agreement is a Community Solar Program Purchase Agreement under the Oregon Community Solar Program implemented by the Oregon Public Utility Commission pursuant to ORS 757.386(2).

**AGREEMENT**

NOW, THEREFORE, the Parties mutually agree as follows:

**SECTION 1: DEFINITIONS**

When used in this Agreement, the following terms shall have the following meanings:

**Agreement** means this Community Solar Program Purchase Agreement.

**As-Available Rate** is the rate at which PGE will purchase a Project's Unsubscribed Energy and is set forth in PGE's Schedule 201.

**Average Annual Generation** has the meaning stated in Section 5.7.

**Certified Project** is a Community Solar Program Project that has been certified by the Oregon Public Utility Commission under OAR 860-088-0050 and in accordance with the Program Implementation Manual.

**Commercial Operation Date** means the date that the Facility is deemed by PGE to be fully operational and reliable, which requires, among other things, that all of the following events have occurred:

1. Seller provides evidence that the Facility is a Certified Project.
2. PGE has received a certificate addressed to PGE from a Licensed Professional Engineer stating (a) the facility capacity rating of the Facility at the anticipated Commercial Operation Date; (b) that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement; (c) the Facility has completed start-up testing and commissioning ; and (d) in accordance with the Generation Interconnection Agreement , all required interconnection facilities have been constructed, all required interconnection tests have been completed, and the Facility is physically interconnected with PGE's electric system;
3. PGE has received a certificate addressed to PGE from an officer of Project Manager stating that Project Manager has obtained all Required Project Documents and, if requested by PGE in writing, has provided copies of any or all such requested Required Project Documents; and
4. PGE has received an executed copy of Exhibit E-Project Manager 's Authorization to Release Generation Data to PGE.

**Community Solar Program** is the program established for the procurement of electricity from community solar projects pursuant to ORS 757.386(2), the Commission's implementing regulations, and the Program Implementation Manual.

**Community Solar Program Project** is one or more solar photovoltaic energy systems used to generate electric energy on behalf of Community Solar Program owners and subscribers and for which owners and subscribers receive credit on their electric bills.

**Conditional DNR Notice** has the meaning provided in Section 3.1.

**Contract Interest Rate** means the lesser of (a) the highest rate permitted under applicable law or (b) 200 basis points per annum plus the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. as its "prime rate." If a Citibank, N.A. prime rate is not available, the applicable prime rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest is being paid.

**Contract Year** means a twelve (12) month period commencing at 00:00 hours Pacific Prevailing Time (**PPT**) on January 1 and ending on 24:00 hours **PPT** on December 31; provided, however, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the date of termination or expiration of this Agreement.

**Effective Date** means the date stated in the first sentence of this Agreement.

**Energy Delivery Schedule** has the meaning provided in Section 5.7.

**Facility** has the meaning provided in the Recitals.

**Generation Interconnection Agreement** means the generation interconnection agreement between Project Manager and Transmission Provider providing for the construction, operation, and maintenance of the interconnection facilities required to accommodate deliveries of the Facility's Net Output.

**Licensed Professional Engineer** means a person acceptable to PGE in its reasonable judgment who is licensed to practice engineering in the state of Oregon and is not an employee of Project Manager. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made.

**Losses** are the loss of electric energy occurring as a result of the transformation and transmission of electric energy from the Facility to the Point of Delivery.

**Net Output** means all energy produced by the Facility, less Station Use and Losses, if any. ~~For purposes of calculating payment under this Agreement, Net Output shall be the amount of energy flowing through the Point of Delivery less three percent (3%) for contingency reserves.~~

**Participant** means a customer of PGE that is either a subscriber or owner of the Facility.

**Point of Delivery** is the location where PGE's and Facility's electrical facilities are interconnected.

**Program Administrator** means the third-party directed by the Oregon Public Utility Commission to administer the Community Solar Program.

**Program Implementation Manual** means the manual of requirements applicable to the Project Manager, PGE and Participants for the Community Solar Program adopted by the Oregon Public Utility Commission. In the event there are revisions to the Program Implementation Manual during the term of this Agreement, such revisions will only apply to performance by Project Manager and PGE after the effective date of such revisions.

**Project Manager** is the entity having responsibility for managing the operation of the Facility and for maintaining contact with PGE, as stated in the first sentence of this Agreement.

**Prudent Electrical Practices** means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the Western Electric Coordinating Council that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all applicable law. Prudent Electrical Practices are not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediately preceding sentence.

**PURPA** means the Public Utility Regulatory Policies Act of 1978.

**Qualifying Facility** is a solar photovoltaic facility that meets the PURPA criteria for qualification set forth in Subpart B of Part 292, Subchapter K, Chapter I, Title 18, of the Code of Federal Regulations.

**Renewable Energy Credits** means green tags, green certificates, renewable energy credits (RECs) and tradable renewable certificates, as those terms are commonly used in the regional electric utility industry, directly associated with the production of energy from the Facility.

**Required Project Documents** means all licenses, permits, authorizations, and agreements, including a Generation Interconnection Agreement and Qualifying Facility certification or self-certification, necessary for construction, operation, and maintenance of the Facility consistent with the terms of this Agreement, including without limitation those listed in Exhibit C.

**Scheduled Commercial Operation Date** has the meaning provided in the Recitals.

**Station Use** is electric energy used to operate the Facility that is auxiliary to or directly related to the generation of electricity and which, but for the contemporaneous generation of electricity, would not be consumed by the Facility.

**Subscribed Energy** means that portion of the Net Output for which the Project Manager has obtained a Participant and for which PGE must credit the Participant's electric bills consistent with the Community Solar Program.

**Transmission Provider** means PGE, acting in its transmission provider capacity.

**Unsubscribed Energy** means that portion of the Net Output for which the Project Manager has no Participant and that is purchased by PGE at the As-Available Rate consistent with the Community Solar Program.

## SECTION 2: TERM

2.1 **Term.** Except as otherwise provided herein, this Agreement shall terminate at midnight (Pacific prevailing time) on the date that is the twentieth (20th) anniversary of the Commercial Operation Date.

## SECTION 3: DELIVERY OF POWER AND COMPENSATION

3.1 **Designation of Network Resource.** Within five (5) business days following the Effective Date, PGE will submit an application to the Transmission Provider requesting designation of the Facility as a network resource, thereby authorizing network transmission service under PGE's Network Integration Transmission Service Agreement with the Transmission Provider. PGE will request an effective date for commencement of network transmission service for the Facility that is ninety (90) days prior to the Scheduled Commercial Operation Date. PGE will inform Project Manager of Transmission Provider's response to the application described above in this paragraph within five (5) days of PGE's receipt of such response from the Transmission Provider. If PGE is notified in writing by the Transmission Provider that designation of the Facility as a network resource requires the construction of transmission system network upgrades or otherwise requires potential re-dispatch of other network resources of PGE (a "Conditional DNR Notice"), PGE and Project Manager will promptly meet to determine how such conditions to the Facility's network resource designation will be addressed in this Agreement. If, within sixty (60) days following the date of PGE's receipt of the Conditional DNR

Notice, PGE and Project Manager are unable to reach agreement regarding how to designate the Facility as a network resource in light of the Conditional DNR Notice, PGE will submit the matter to the Commission for a determination on whether, as a result of the Conditional DNR Notice, this Agreement should be terminated or amended. PGE will submit such filing to the Commission within ninety (90) days following the date of PGE's receipt of the Conditional DNR Notice. In the event of such a filing to the Commission under this Section, the Parties' obligations under this Agreement will be suspended until such time that the Commission issues a final decision. In the event of a Conditional DNR Notice, Project Manager will have the right to terminate this Agreement upon written notice to PGE and such termination by Project Manager will not be an event of default and no damages will be owed by Project Manager to PGE related to the termination of this Agreement except to the extent PGE has incurred costs at Project Manager's request in furtherance of addressing the matters covered under this Section.

3.2 Delivery and Purchase of Net Output. Subject to Section 3.1 above and unless otherwise provided in this Agreement, commencing on the Commercial Operation Date, Project Manager will transmit to PGE all Net Output and PGE will accept all Net Output delivered to the Point of Delivery. PGE will accept Net Output delivered to the Point of Delivery as early as ninety (90) days prior to the Scheduled Commercial Operation Date. If Seller desires to begin transmitting Net Output to PGE at a date earlier than ninety (90) days prior to the Scheduled Commercial Operation Date, PGE will only be obligated to purchase such Net Output if PGE is able to modify its network resource designation for the Facility such that the output could be delivered using network transmission service as described in Section 3.1 above at no additional cost or other economic impact to PGE.

3.1 Curtailment. PacifiCorp is not obligated to purchase, receive, pay for, or pay any damages associated with, energy from the Facility not delivered to the Point of Delivery ~~because the due to any of the following: (a) the Facility's interconnection is disconnected, suspended or interrupted, in whole or in part, consistent with the terms of the Generation Interconnection Agreement.; (b) in system emergencies pursuant to 18 C.F.R. section 292.307(b) the general, non-discriminatory curtailment, reduction, or redispatch of generation in the area for any reason, even if such curtailment or redispatch directive is carried out by PacifiCorp (but excluding curtailment of purchases for solely economic reasons unilaterally directed by PacifiCorp); or (c) the Facility's lack of integration or synchronization to the transmission system; or (c(d) a force majeure event.~~

3.3 Compensation. PGE will compensate the Project Manager for Unsubscribed Energy and the Participants for Subscribed Energy on a monthly basis as provided in the Community Solar Program.

(a) For the portion of the monthly Net Output that is Subscribed Energy, PGE will credit the electric bills of Participants to account for their proportionate share of the Net Output in accordance with the requirements of the Community Solar Program and data provided by the Program Administrator.

(b) For the portion of the monthly Net Output that is Unsubscribed Energy that is delivered to PGE by Project Manager from the Facility at the Point of Delivery, PGE will pay the Project Manager the As-Available Rate consistent with the Community Solar Program.

#### SECTION 4: RENEW ABLE ENERGY CREDITS

4.1 No Claim to Renewable Energy Certificates. PGE waives any claim to ownership of any Renewable Energy Certificates that are issued by the Western Renewable Energy Generation Information System associated with the Facility's Net Output.

## SECTION 5: OPERATION AND CONTROL

~~5.1 — Community Solar Program. Both Parties shall comply with the requirements of the Community Solar Program. Failure to comply with the Community Solar Program shall be considered a material breach of this Agreement.~~

~~5.2 — Certification. Project Manager shall maintain the Facility as a Certified Project at all times during the term of this Agreement. Failure to maintain the Facility as a Certified Project shall be considered a material breach of this Agreement.~~

5.1 Qualifying Facility. Project Manager shall maintain the Facility as a Qualifying Facility at all times during the term of this Agreement. ~~Failure to maintain the Facility as a Qualifying Facility shall be considered a non-material breach of this Agreement.~~

5.2 As-Built Supplement. Upon completion of initial construction of the Facility, and upon any subsequent material modification of the Facility, Project Manager shall provide PGE an as-built supplement to specify the actual Facility as built.

5.3 Facility Operation. Project Manager must operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, Prudent Electrical Practices and in accordance with the requirements of all applicable federal, state and local laws and the National Electric Safety Code as such laws and code may be amended from time to time. PGE has no obligation to purchase Net Output from the Project Manager to the extent the interconnection between the Facility and PGE's electric system is disconnected, suspended or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement.

5.4 Facility Inspection. Project Manager is solely responsible for the operation and maintenance of the Facility. PGE has the right, upon reasonable prior notice to Project Manager, to inspect the Facility to confirm that the Project Manager is operating the Facility in accordance with the provisions of this Agreement, provided that PGE is not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assuming any responsibility for any liability or occurrence arising from the operation and maintenance by Project Manager of the Facility.

5.5 Average Generation and Energy Delivery Schedules. Project Manager estimates that the Facility will generate, on average, \_\_\_\_\_ kWh per Contract Year ("Average Annual Generation"). Project Manager may, upon at least six (6) months prior written notice, modify the Average Annual Generation every other Contract Year. Project Manager's initial monthly schedule of expected Net Output from the Facility is attached as Exhibit D (the "Energy Delivery Schedule"). Project Manager must update and provide to PGE a revised Energy Delivery Schedule within thirty (30) days following the end of each Contract Year.

5.6 Scheduled Outages. Project Manager may cease operation of the entire Facility or individual units for maintenance or other purposes. Project Manager must exercise reasonable efforts to notify PGE of planned outages at least ninety (90) days prior to the planned outage. Additionally, Project Manager must use commercially reasonable efforts to not plan outages during the months of December, ~~January, February~~ and July, ~~August, September~~.

5.7 Unplanned Outages. In the event of an unscheduled outage or curtailment exceeding twenty-five (25) percent of the facility capacity rating expected to last more than 48 hours, Project Manager must promptly notify PGE of the unscheduled outage or curtailment, the time when such occurred or will occur, and the anticipated duration.

5.8 Adjustments to Scheduled Commercial Operation Date. Project Manager must promptly notify PGE in writing of any adjustments (earlier or later) to the Scheduled Commercial Operation Date. Project Manager must also inform PGE in writing no later than ten (10) business days prior to the Scheduled Commercial Operation Date of the anticipated Commercial Operation Date, provided such notice to PGE may not be provided earlier than twenty (20) business days prior to the anticipated Commercial Operation Date.

## SECTION 6: METERING AND COMMUNICATIONS

### 6.1 Metering and Communications.

(a) Metering equipment will be designed, furnished, installed, owned, inspected, tested, maintained and replaced pursuant to the terms of the Generation Interconnection Agreement. To the extent not otherwise provided in the Generation Interconnection Agreement, ~~Project Manager will bear all costs (including PGE's costs) relating to all metering and communication equipment installed to accommodate the Facility.~~

(b) Metering shall be performed at the location and in a manner consistent with this Agreement, the Generation Interconnection Agreement, and the requirements of the Community Solar Program. All quantities of energy purchased under this Agreement will be adjusted to account for electrical losses, if any, between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of energy flowing into PGE's system at the Point of Delivery.

(c) If any of the inspections or tests of the metering equipment discloses an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, will be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction will be made to the measurements taken during the time the metering equipment was in service since the last test in which the metering equipment was found to be accurate, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records will be made in the next payment rendered following the repair of the meter.

## SECTION 7: INSURANCE

7.1 Certificates. Prior to connection of the Facility to PGE's electric system, Project Managers with a Project with a Nameplate Capacity greater than 200 kW shall secure and continuously carry insurance in compliance with the requirements of this Section. Project Manager shall provide PGE insurance certificate(s) confirming Project Manager's compliance with the insurance requirements hereunder. If requested by PGE, a copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, shall be furnished to PGE.

7.2 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Project Manager under this Agreement, Project Manager shall secure and continuously carry with an insurance company or companies rated not lower than "B+A-VII" by the A.M. Best Company commercial general liability insurance to include premises and operations, contractual liability, with a minimum single limit of \$1,000,000 each occurrence to protect against and from loss by reason of injury to persons or damage to property based upon and arising out of the activity under this Agreement.

7.3 The commercial general liability policy required herein shall include (a) provisions or endorsements naming PGE, its board of directors, officers and employees as additional insureds, and (b) cross liability coverage so that the insurance applies separately to each insured against whom claim is made or suit is brought, even in instances where one insured claims against or sues another insured. In addition, unless prohibited by applicable law, all required insurance policies shall contain provisions that the insurer will have no right of recovery or subrogation against PGE.

7.4 The commercial general liability policy required herein shall include provisions that such insurance is primary insurance with respect to the interests of PGE and that any other insurance maintained by PGE is excess and not contributory insurance with the insurance required hereunder, and provisions that such policies shall not be canceled or their limits of liability reduced without (a) ten (10) days prior written notice to PGE if canceled for nonpayment of premium, or (b) thirty (30) days prior written notice to PGE if canceled for any other reason.

7.5 Commercial general liability coverage written on a "claims-made" basis, if any, shall be specifically identified on the certificate, and Project Manager shall be maintained by Project Manager for a minimum period of five (5) years after the completion of this Agreement and for such other length of time necessary to cover liabilities arising out of the activities under this Agreement.

#### SECTION 8: COMPUTATIONS

8.1 Net Output Data. No later than the second business day of each month, PGE will transfer to the Program Administrator the data related to the amount of Net Output delivered to PGE from the Facility for the month, measured in kWh.

#### SECTION 9: COMPENSATION

9.1 Payment for Unsubscribed Energy. No later than the 20<sup>th</sup> day of the month or ten (10) days after receiving kWh data from Program Administrator regarding the prior month's Subscribed Energy amount and Unsubscribed Energy amount, whichever occurs later, PGE will send to Program Administrator payment for Project Manager deliveries of Unsubscribed Energy to PGE, together with computations supporting such payment. PGE may offset any such payment to reflect amounts owing from Project Manager to PGE pursuant to this Agreement, the Generation Interconnection Agreement, or any other agreement between the Parties.

9.2 Corrections. PGE may adjust any payment made under this Agreement for Unsubscribed Energy or Subscribed Energy up to eighteen (18) months following the date of original payment.

9.3 Interest. Any amounts owing after the due date thereof will bear interest at the Contract Interest Rate.

9.4 Payment for Subscribed Energy. PGE will credit the electric bills of Participants for their proportionate shares of Subscribed Energy in accordance with the Program Implementation Manual and data provided by Program Administrator.

9.5 Offset. PGE may offset any payment due to the Project Manager by amounts owing from the Project Manager pursuant to this Agreement and any other agreement between the Parties related to the Facility.

**SECTION 10: SUCCESSORS AND ASSIGNS**

Neither Party may assign this Agreement without the consent of the other Party and the Oregon Public Utility Commission, which shall not be unreasonably withheld. This Agreement and all of the terms shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties.

**SECTION 11: NOTICES**

All notices except as otherwise provided in this Agreement shall be in writing addressed to the addresses set forth below and shall be considered if delivered in person or when deposited in the U.S. Mail, postage prepared by certified or registered mail and return receipt requested .

If to PGE:

[  
[  
[  
[

If to Project Manager:

[  
[  
[  
[

**SECTION 12: INDEMNIFICATION AND LIABILITY**

12.1 Project Manager's Indemnity. Project Manager agrees to defend, indemnify and hold harmless PGE, its directors , officers, employees, agents, and representatives against and from any and all claims resulting from, or arising out of or in any way connected with (i) Project Manager' s performance hereunder, including the delivery of energy to and at the Point of Delivery; (ii) Project Manager' s development , construction, ownership, operation, maintenance , or decommissioning of the Facility; (iii) the violation of any law, rule, order or regulation by Project Manager or any of its affiliates, or their respective employees, contractors or agents in connection with this Agreement; (iv) Project Manager's failure to perform any of Project Manager' s obligations under this Agreement or the Required Facility Documents; (v) Project Manager's breach of any representation or warranty set forth in this Agreement; or (vi) Project Manager's negligence or willful misconduct in connection with this Agreement, except to the extent such claim is caused by breach of this Agreement or by the negligence or willful misconduct of PGE, its directors, officers, employees , agents or representatives.

12.2 PGE's Indemnity. PGE agrees to defend, indemnify and hold harmless Project Manager, its directors, officers, agents, and representatives against and from any and all claims resulting from, or arising out of or in any way connected with (i) PGE's receipt of Net Output under this Agreement after its delivery at the Point of Delivery; (ii) the violation of any law, rule, order or regulation by PGE, or their respective employees, or agents in connection with this Agreement; (iii) PGE's failure to perform any of PGE's obligations under this Agreement; (iv) PGE's breach of any representation or warranty set forth in this Agreement; or (v) PGE's negligence or willful misconduct in connection with this Agreement, except

to the extent such claim is caused by Project Manager's breach of this Agreement or by the negligence or willful misconduct of Project Manager, its directors, officers, employees, agents or representatives.

12.3 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PGE as an independent public utility corporation or Project Manager as an independent person.

12.4 Disclaimer of Consequential Damages. **NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES UNDER OR IN RESPECT OF THIS AGREEMENT, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.**

### SECTION 13: TERMINATION

13.1 Termination. A Party may terminate this Agreement in the event of a failure of the other Party to perform any material covenant or obligation set forth in this Agreement, if (i) notice of intent to terminate the Agreement is submitted to the Program Administrator at least thirty (30) days prior to termination; and (ii) the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default; provided that if such default is not reasonably capable of being cured within the thirty (30) day cure period but is reasonably capable of being cured within a sixty (60) day cure period, the defaulting Party will have such additional time (not exceeding an additional thirty (30) days) as is reasonably necessary to cure, if, prior to the end of the thirty (30) day cure period the defaulting Party provides the non-defaulting Party a remediation plan and the defaulting Party promptly commences and diligently pursues the remediation plan.

### SECTION 14: GENERAL PROVISIONS

14.1 Relationship of the Parties. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Project Manager includes two or more parties, each such Party shall be jointly and severally liable for Project Manager's obligations under this Agreement.

14.2 No Third Party Beneficiaries. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement), it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

14.3 Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. This Agreement is subject to the jurisdiction of those governmental agencies and courts having control over either Party or this Agreement. Each Party hereby acknowledges that this Agreement and any dispute that arises under this Agreement is subject to the jurisdiction of the Oregon Public Utility Commission. If a dispute related to this Agreement arises between the Parties, the Parties' representatives shall first attempt to resolve the dispute informally through negotiation and consultation. If the Parties are unable to resolve their differences through such negotiation and consultation, any complaint, claim or action to resolve such dispute may be brought in a court or governmental agency with jurisdiction over the dispute.

14.4 Severability. If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of this Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations, and seek guidance from the Program Administrator and Oregon Public Utility Commission as necessary, concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law, the intent of the Parties, and the Community Solar Program.

14.5 Effect of PURPA Repeal. The repeal of PURPA shall not result in the early termination of this Agreement unless such termination is mandated by state or federal law.

14.6 Waiver. Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

14.7 Survival. Notwithstanding termination of this Agreement, PGE and Project Manager shall continue to be bound by the provisions of this Agreement which by their terms or by their nature shall survive such completion or termination.

14.8 Entire Agreement; Amendments; Order of Precedence. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding PGE's purchase of energy from the Facility. No amendment or modification of this Agreement shall be effective unless it is in writing and signed by both Parties. If there is a conflict between the terms of this Agreement and the Community Solar Program the Community Solar Program shall apply and prevail.

14.9 Project Release. By executing this Agreement, Project Manager releases PGE from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.

14.10 Rights and Remedies Cumulative. Except as expressly set forth in this Agreement, the rights and remedies of the Parties provided in this Agreement and otherwise available at law or in equity are cumulative, such that the exercise of one or more rights or remedies shall not constitute a waiver of any other rights or remedies.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the Effective Date.

**Portland General Electric Company**

**By**-----

Name:.....

Title:.....

Date: .....

**Project Manager**

By:\_\_\_\_\_

Name:.....

Title:.....

Date: \_\_\_\_\_