

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1930

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Community Solar Implementation.

COMMENTS OF THE RENEWABLE
ENERGY COALITION ON PGE
APPLICATIONS FOR
PRE-CERTIFICATION

I. INTRODUCTION

The Renewable Energy Coalition (the “Coalition”) submits these comments regarding Portland General Electric Company’s (“PGE”) participation in the community solar program (“CSP”), specifically PGE’s applications for pre-certification (“CSP Applications”) of projects that are qualifying facilities (“QFs” generally and here “QF Projects”) under the Public Utility Regulatory Policies Act (“PURPA”) with which PGE holds standard power purchase agreements (“PPAs” generally and here “QF Standard Contracts”). The Coalition’s members include small scale solar developers that are participating in the CSP and are familiar with PGE’s QF Standard Contracts. The Coalition believes that PGE can serve as a CSP Project Manager for a QF Project, but that changes would need to be made to the QF Standard Contracts that have already been executed with each of those projects. PGE should not have submitted the CSP Applications at this time, and the Coalition understands and appreciates that PGE has withdrawn its CSP Applications for these QF Projects.

The Coalition submits these comments to suggest how PGE could properly serve as a CSP Project Manager for a QF Project in the future. The Coalition believes that

clarity on how each stakeholder can participate is critical to the CSP's success, and could result in PGE and individual developers working collaboratively to better ensure that the CSP is a success.

II. SUMMARY

As a general matter, the Coalition believes that PGE could serve as a CSP Project Manager for a QF Project. However, to do so, PGE would need more control over the QF Project than the QF Standard Contracts provide. For instance, in order to meet the requirements of the CSP as a CSP Project Manager for a QF Project, PGE would need to ensure subscribers, or PGE if the project was undersubscribed, would own all the Renewable Energy Certificates ("RECs") associated with the QF Project in all contract years, more control over the QF Project's operations and maintenance, and more control over the QF Project's eventual decommissioning. The QF Standard Contracts do not provide these rights, and there is no clear path for PGE to obtain them, short of negotiating directly with the QF.

As a broad recommendation, the Coalition suggests that any electric company interested in serving as a CSP Project Manager for a QF Project should pursue a negotiated agreement with the QF that reflects the specific requirements of the CSP. Ideally, the Coalition would prefer that the electric companies develop new QF Standard Contract forms specifically for this purpose. The existing QF Standard Contract forms could and should serve as a model, as the needed changes are significant but few and should not be difficult to make.

The Coalition reserves its right to raise additional issues about PGE’s submission of CSP Applications for QF Projects prior to and at the Oregon Public Utility Commission’s (“the Commission”) next public meeting(s).

Finally, the Coalition understands that at some point in the near future, the Commission will need to address the CSP eligibility of QFs submitting CSP Applications for QF Projects with associated QF Standard Contracts. The QFs have done so at this time, with the understanding that they could participate and, if pre-certified, terminate their QF Standard Contracts, as PGE has publicly stated that they are allowed to do. Many, if not all, of the CSP Applications for QF Projects have associated QF Standard Contracts, so allowing this QF Projects to move forward expediently is necessary for the CSP’s success. The Coalition provides initial comments here and plans to submit additional comments in the future on this issue. The Coalition expects that the Commission will consider this issue at the March 10, 2020 public meeting when considering the utilities’ compliance tariffs. Considering this issue will facilitate a robust discussion and Commission decision regarding how this issue should be addressed now and in the future.

III. COMMENTS

1. In Principle, PGE Can Serve as the CSP Project Manager for a QF

With the proper contractual relationship in place, PGE could serve as the CSP Project Manager for a QF. The law allows for electric companies such as PGE to submit

projects into the CSP.¹ In addition, the Commission’s Project Implementation Manual allows for a CSP Project Manager to be a different entity from the project’s owners.² Further, the Commission’s Project Implementation Manual clearly allows for a CSP Project Manager to subcontract the project’s development, maintenance, and operations.³ Finally, the Commission’s rules appear to provide the flexibility necessary for an electric company to serve as a CSP Project Manager for a QF. For example, the rules allow for a Project Manager to choose whether to offer both ownership interests and subscriptions or only one of those two.⁴ This choice is important, because a CSP Project Manager may not own the project and may not have the right to convey ownership interests. At least in principle, PGE could serve as the CSP Project Manager for a QF, if it had the correct contractual relationships in place. However, the QF Standard Contracts are insufficient to provide the necessary control over a QF Project to an electric company for purposes of serving as the CSP Project Manager. If an electric company would like to serve as a CSP Project Manager for a QF in the future, there are at least three major changes from the QF Standard Contract that would need to be negotiated. PGE has not negotiated for these changes, but it could seek to do so.

¹ ORS 757.386(1)(d); *see also* ORS 757.386(1)(b) (“‘Electric company’ has the meaning given that term in ORS 757.600.”); ORS 757.600(11) (“‘Electric company’ means an entity engaged in the business of distributing electricity to retail electricity consumers in this state, but does not include a consumer-owned utility.”).

² Or. Cmty. Solar Program, *Program Implementation Manual* at 12 (Dec. 23, 2019) (“The Project Manager . . . is not required to be the legal owner of the physical solar installation.”); *see also id.* at 12-14, 35.

³ *Id.* at 13.

⁴ *Id.* at 58.

2. PGE Would Need More Control over the QF Project’s RECs than the QF Standard Contract Provides

PGE would need more control over the Renewable Energy Certificates (“RECs”) associated with the QF Project. PGE’s QF Standard Contract for an on-system renewable project provides for PGE to acquire RECs only during Renewable Resource Deficiency Periods.⁵ Thus, PGE does not acquire RECs during Renewable Resource Sufficiency Periods. In short, PGE has not contracted for all RECs associated with the QF Project.

This is inconsistent with the statute, Commission rules, and Program Implementation Manual, which all require that RECs associated with a community solar project belong with the project participants, except to the extent that the project is undersubscribed.⁶ There is no valid option to substitute other RECs. The language is specific on the RECs associated with generation from the community solar project. Thus, PGE could not meet the requirements of the CSP with these specific QF Standard Contracts, nor could it make up the difference by going to the REC market. The only option would be to renegotiate the QF Standard Contracts and get something that PGE has no right to expect a QF to definitely agree to sell. In fact, it may be impossible for the QF to sell the RECs to PGE, because the RECs could already be promised to another buyer. It is unclear if PGE realized this problem at the time it submitted CSP

⁵ *E.g.*, PGE Standard On-System Variable Renewable Power Purchase Agreement (eff. February 1, 2019), Sections 1.32, 4.5.

⁶ ORS 757.386(8) (“Owners and subscribers own all renewable energy certificates established under ORS 469A.130 that are associated with the generation of electricity by a community solar project.”); *see also* OAR 860-088-0150; Or. Cmty. Solar Program, *Program Implementation Manual* at 35, 44.

Applications that it has now withdrawn, but if it did, PGE must have assumed it would be able to amend those QF Projects' QF Standard Contracts.

Any future agreement for PGE to serve as the CSP Project Manager needs to provide for all RECs associated with the QF Project to belong to the subscribers or, to the extent the QF Project is unsubscribed, with PGE for the benefit of low-income ratepayers. PGE is free to reach out to the owners of QFs to make this simple revision to the QF Standard Contract.

3. PGE Would Need More Control over the QF Project's Operations and Maintenance than the QF Standard Contract Provides

PGE would need more control over the QF Project's operations and maintenance than the QF Standard Contract currently provides. Under the CSP requirements, a CSP Project Manager is "ultimately responsible" for the project and its compliance with the CSP requirements.⁷ A CSP Project Manager's "core responsibilities include . . . maintaining the reliable performance of their Project(s)."⁸ Further, "Project Managers must commit to take all commercially reasonable steps necessary to construct, interconnect, maintain and repair the Project and associated equipment to ensure the Project produces electricity substantially as intended for the term of the agreement."⁹

Except in specific limited circumstances, the QF Standard Contracts do not provide step-in rights for an electric company. If, for certain reasons, a QF was unable to construct, maintain, or otherwise operate the QF Project, PGE's remedy would be to

⁷ Or. Cmty. Solar Program, *Program Implementation Manual* at 12.

⁸ *Id.* at 11.

⁹ *Id.* at 45-46.

terminate the QF Standard Contract, not to invade the QF's property. Any future agreement for PGE to serve as the CSP Project Manager needs to provide for PGE to have step-in rights to the extent they are necessitated by the CSP requirements.

4. PGE Would Need More Control over the QF Project's Decommissioning than the QF Standard Contract Provides

PGE would need control over the QF Project's decommissioning. The CSP requires that CSP Project Managers play an active role in planning for responsible decommissioning. Specifically, the Program Implementation Manual requires that CSP Project Managers incorporate the costs of responsibly decommissioning a CSP Project in the CSP Project's "financial planning."¹⁰ Further, the Project Manager must attest that they have done so.¹¹

The QF Standard Contract does not provide PGE any control over what happens after the expiration of the QF Standard Contract. Nor does it provide PGE any control over the financial planning that occurs for decommissioning purposes. QFs may already be engaged in responsible decommissioning, and the Coalition is not aware of any QF owners that have not fulfilled their decommissioning obligations. However, PGE is not involved in the planning or execution of responsible decommissioning for any QF.

¹⁰ *Id.* at 33.

¹¹ *Id.*; see also OAR 860-088-0040(2) (requiring an application for project pre-certification to include "A detailed description of the project including location, nameplate capacity, performance characteristics, and *plan for project end of useful life*" (emphasis added)).

Any future agreement for PGE to serve as the CSP Project Manager needs to provide for the QF Project to be responsibly decommissioned and for the costs of that to be included upfront in the financial planning.

5. PGE and Other Electric Companies Should Work with QFs to Avoid These and Other Possible Issues

The Coalition recommends that any electric company interested in serving as a CSP Project Manager for a QF Project pursue a negotiated agreement with the QF that reflects the specific requirements of the CSP. Ideally, the Coalition would prefer that the electric companies develop new QF Standard Contract forms specifically for QFs intending to participate in the CSP with the electric company as the CSP Project Manager. The Coalition believes the existing QF Standard Contracts would serve as an appropriate model for this purpose, and only a few changes would be needed.

The most important item is that the electric company and the QF speak with one another. The QFs are concerned that some of what a CSP Project Manager needs, even simply for the CSP Applications themselves, may be information that an electric company does not have and may not know it needs to obtain. For example, an electric company may not be aware of all of a QF's contractors, as that information is entirely unnecessary and not typically provided in a QF Standard Contract.¹² Similarly, an electric company may not know to ask about a QF's community outreach partner;¹³ not

¹² *Id.* at 14, 35 (requiring CSP Project Managers to disclose business names of construction contractors, design/engineering contractors, operation and maintenance providers, financing partners, community outreach partners, and potentially others).

¹³ *Id.*

all QFs have community outreach partners but some may. The CSP requires more information than electric companies have previously needed to obtain from QFs, and the best way to ensure both parties are well-informed is through meaningful discussions, ideally ones that result in a new CSP QF Standard Contract form.

6. QFs Should Be Allowed to Submit CSP Applications for QF Projects with Associated QF Standard Contracts and Terminate those QF Standard Contracts

At some point in the near future, the Commission will need to address whether QFs may submit CSP Applications while maintaining an executed QF Standard Contract with PGE.¹⁴ The Coalition will raise this issue at the March 10, 2020 public meeting, but is providing an overview of some of the arguments it plans to make in later comments.

A pre-certified QF Project that executed agreements with subscribers should have its executed QF Standard Contract terminated or amended. The Coalition is not aware of what PGE's position is on whether QFs are allowed to terminate their QF Standard Contracts if and when they become pre-certified for the CSP, and it is concerned that PGE may oppose amendment or termination of executed QF Standard Contracts that wish to participate in the CSP.

The Coalition is surprised that this may be a disputed issue. Most, if not all, of the QF Projects currently seeking pre-certification currently hold executed QF Standard Contracts. None of them expected termination to be a barrier. Holding an executed QF Standard Contract is not a barrier to pre-certification in the CSP statute, rules, or Program Implementation Manual. Nor was there any indication that the Commission would

¹⁴ PGE Compliance Filing at Exhibit A, Sheet No. 204-5 (PGE Schedule 204).

consider it inappropriate for CSP Projects to have previously executed QF Standard Contracts. On the contrary, earlier in this proceeding, the Oregon Solar Energy Industry Association (“OSEIA”) and the Coalition for Community Solar Access (“CCSA”) provided comments specifically supporting the participation of QF Projects with QF Standard Contracts. OSEIA and CCSA noted that these existing projects are “a key element to the program’s success.”¹⁵ They recommended that “QF projects with existing PPAs with a utility be able to maintain that PPA until moving forward with a new PPA associated with unsubscribed generation (i.e., as part of the project’s ‘certification’).”¹⁶ Maintaining the QF Standard Contracts has helped the QFs to maintain their interconnection queue position and also to avoid market risk and exposure while the CSP developed.¹⁷ Thus, it was expected and understood that QF Projects seeking to participate in the CSP had QF Standard Contracts and would maintain them until they had certainty that they could serve as CSP Projects. While the QFs understood that they will need to terminate or amend their QF Standard Contracts prior to execution of any CSP contract with subscribers, they anticipated no barriers to doing so. PGE has previously made statements that QFs may terminate QF Standard Contracts at any time and that PGE welcomes such terminations. In addition, PGE has previously allowed QFs to terminate. Discriminating against these QFs by denying termination would violate PGE’s obligations under PURPA. The QFs relied on PGE’s statements and past practices. Now, there is uncertainty whether PGE will allow QFs to terminate.

¹⁵ Joint Comments of OSEIA and CCSA at 8 (Oct. 15, 2019).

¹⁶ *Id.*

¹⁷ *Id.*

If PGE is allowed to refuse termination or amendment to QF Projects when the QF seeks to be the CSP Project Manager, then PGE will enjoy an unfair advantage. The majority of the submitted CSP Projects require termination or amendment of associated QF Standard Contracts, regardless of whether PGE or the QF is the CSP Project Manager. As discussed above, PGE could seek to negotiate a new contractual arrangement with a QF so that PGE can serve as the CSP Project Manager. If PGE can do so while also denying the same QF amendment or termination, a QF interested in participating in the CSP will have no real choice but to forego participation in the CSP altogether or to surrender control to PGE as the CSP Project Manager.

There are two issues here. One is whether PGE can deny termination or amendment to QFs. The second is whether the possibility of that denial should delay the CSP. The answer to both is a simple no.

At this time, it is neither necessary nor appropriate for the Program Administrator to take actions, or delay taking actions, on the basis of a potential contractual dispute. At worst, this dispute could make it difficult for the QFs to qualify for certification, because they may delay marketing to subscribers until their QF Standard Contracts are terminated. However, that outcome has no bearing on pre-certification and should not delay the CSP Applications for pre-certification. The Coalition will be providing more complete comments to the Program Administrator to this effect.

The Commission may face a policy decision of what to do in the future. The Coalition does not believe that any change is required and that a change could be harmful to the certainty for developers. However, if the Commission wishes to change its policy and begin discouraging QFs interested in the CSP from executing a QF Standard Contract

with an electric company like PGE, it should do so only on a prospective basis. The Coalition welcomes further discussion on this issue and hopes the Commission will provide clarity at a public meeting in the near future.

IV. CONCLUSION

For the foregoing reasons, the Commission should direct the electric companies to develop new QF Standard Contracts for the situation where an electric company serves as the CSP Project Manager. In addition, the Commission should provide guidance on a QF's eligibility for the CSP after executing a QF Standard Contract at a future public meeting.

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Respectfully submitted,



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