

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: May 5, 2020**

REGULAR X CONSENT _____ EFFECTIVE DATE _____ N/A _____

DATE: April 27, 2020

TO: Public Utility Commission

FROM: Natascha Smith

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

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

STAFF RECOMMENDATION:

The Oregon Public Utility Commission (OPUC or Commission) should accept the recommendation of the Program Administrator (PA) of the Community Solar Program (CSP or Program) to conditionally pre-certify the Williams Acres, Dunn Road, and Mt. Hope Solar Projects.

DISCUSSION:

Issue

Whether the Commission should accept the recommendation of the Program Administrator to grant a waiver and conditional pre-certification to the proposed Community Solar Projects.

Applicable Rule or Law

Section 22 of Senate Bill (SB) 1547, effective March 8, 2016, and codified in ORS 757.386, directs the Commission to establish a community solar program.

On June 29, 2017, the Commission adopted formal rules for Oregon's CSP under OAR Division 88 of Chapter 860. OAR 860-088-0040 details the requirements for Project pre-certification. The CSP Program Implementation Manual (PIM) provides that the Program Administrator may recommend a waiver of any PIM provision on a case-by-case basis as part of the Commission's decision on pre-certification, certification,

major project amendment, or other decision reserved to the Commission. Any recommended waiver is subject to approval by the Oregon Public Utility Commission at the time of Project pre-certification or certification.¹

Analysis

Background

On January 21, 2020, the CSP platform began accepting applications for Project pre-certification. As required by OAR 860-088-0040(e), the CSP Program Administrator has reviewed the following applications and recommended the Commission grant conditional pre-certification to these Projects.

Projects

Project Name	Name of PM	Utility Territory	Project Size (kW-AC)	Recommendation	Attachment
Williams Acres	Neighborhood Power OR, LLC	PGE	2502	Conditionally Pre-certify	Attachment A
Dunn Rd	Neighborhood Power OR, LLC	PGE	1848	Conditionally Pre-certify	Attachment B
Mt Hope Solar	Neighborhood Power OR, LLC	PGE	2502	Conditionally Pre-certify	Attachment C

Program Administrator Reasoning

The Program Administrator recommends that the Commission pre-certify the Projects. These Projects have requested a waiver from the requirement in the PIM that Projects not begin construction on generating equipment prior to Pre-certification. The PA recommends that the Commission grant this waiver, and that it Pre-certify this Project subject to several conditions, specified below.

Waiver for Project Construction Start Date

Neighborhood Power has submitted Pre-certification applications for four Projects totaling 8.7 MW, all in PGE service area. Of these, three Projects totaling 6.9 MW were allocated capacity in the lottery and the fourth was placed on the waitlist.

With each Pre-certification application, Neighborhood Power submitted a request for a

¹ Program Implementation Manual, p. 54 (updated December 20, 2019).

waiver on the construction start date. The Program Implementation Manual notes “Existing solar electric projects are not eligible for the Oregon Community Solar Program. Projects must be new. Construction on the generation equipment may not begin prior to Pre-certification.”² In their waiver request and in previous comments before the Commission, Neighborhood Power describes that they have long intended their Projects to participate in the Community Solar Program, and that they have begun construction activities prior to Pre-certification to stay on track with project development timelines and as they were not aware of Program rules.

The PA Team recommends granting this waiver as it is consistent with the scenario envisioned by the Commission when the waiver process was developed, and because we do not believe that granting a waiver would harm the Program or Participants.

When the Commission established a general waiver process at its December 17, 2019, public meeting in response to Neighborhood Power’s comments, Commissioners shared verbal guidance that the Program Administrator should consider the specific merits of a Project when considering whether to recommend a waiver.³ Commissioners indicated support of a waiver in the specific circumstances posed by Neighborhood Power given the uncertainty that program delays have introduced for developers, but Commissioners also expressed caution regarding this specific situation as it was unknown at the time if it would apply to a large or small number of Projects.

The PA Team notes the following in support of our recommendation to grant this waiver request:

- The PA notes that the requirement regarding construction start dates was intended primarily to ensure that Projects participating in the Program would add new renewable capacity to the grid and spur new development and construction of solar. We consider Neighborhood Power’s Projects to face the same broad financial barriers to achieving operational status in the absence of the Community Solar Program as other Projects that have applied to the Program in PGE service area, and Neighborhood Power’s comments indicate that their investments have been made with participation in the Community Solar Program in mind. While we believe that beginning on-site construction of a Project that

² *Id.*, at 33.

³ Commission Order No. 19-438, *Staff Recommendation for Community Solar Program Adopted*, UM 1930 (2019). “Our intention in providing a process for waiver is not to undermine the requirements of the PIM and the balance that Staff and the PA have achieved. Rather, the PA should limit waiver recommendations to relatively isolated instances in which strict adherence to the PIM requirements would undermine program goals and raise significant equity or policy concerns.”

lacked any indication of Program approval was a rash decision by Neighborhood Power, in this specific circumstance we do not believe that this presents a significant point of distinction from other proposed Projects in terms of the additionality of the Projects contemplated.

- The language reflecting the explicit Program requirement that construction not begin prior to Pre-certification was added in a later draft of the PIM, though the earlier public draft of the PIM did describe a process for reviewing draft plan sets as part of a technical verification process and did include brief mention that construction should begin after Pre-certification. We acknowledge that the iterative public process of drafting the PIM may have created opportunities for miscommunication regarding Program requirements with organizations that intended to serve as Project Managers, particularly for those who were not closely involved in the stakeholder process related to Program design.
- Per the Commission's concern for the magnitude of this decision, we consider the impacts of granting this waiver request to be relatively limited in scale. If all four Neighborhood Power Projects (including the waitlisted Project) were granted a waiver and ultimately become operational, their total capacity would amount to roughly 5 percent of the total initial Program capacity allocation of 161 MW.
- The PA consider the merits of the specific Projects proposed by Neighborhood Power to be strong, and we note in particular that they have proposed to reserve 20 percent of Project capacity for low-income residents, rather than the minimum 10 percent.
- The PA does not believe that granting this waiver will have any negative impacts on program implementation or for Participants.

Based on the reasoning above, we recommend granting Neighborhood Power's waiver request for each of the three affected Projects recommended for Pre-certification today, and we note that we would intend to make the same waiver recommendation for Neighborhood Power's waitlisted Project should it be granted capacity in the future. This recommendation is based on the particular circumstances posed by the Neighborhood Power Projects and related to the phasing of activities around Program start-up, and the PA does not intend for this recommendation to set a precedent for future waivers of the Program's new construction requirement.

Conditional Pre-Certification

The Program Administrator recommends that the Commission Pre-certify these Projects subject to several conditions, specified below.

We recommend a conditional Pre-certification in this case as these Projects have met all Pre-certification requirements outlined in the PIM (except for the issue addressed in the waiver request above), but are subject to existing Qualifying Facility Power Purchase Agreements with Portland General Electric, which raises practical barriers to being able to operate as a Community Solar Projects. We believe that these conditions on Pre-certification are necessary for consumer protection reasons and to ensure that practical concerns are addressed in a timely manner.

The PA recommends that these Projects be Pre-certified with three conditions below:

1. Within six weeks of the Commission conditionally approving the Projects for Pre-certification, the Projects must terminate their existing Power Purchase Agreement with Portland General Electric. This period refers only to termination, not to the settlement of any damages stemming from early termination or breach of contract.
2. Until the PA has confirmed receipt of documentation that the Project has terminated its PPA with PGE, the Project Manager may not enter into Participant contracts for subscription or ownership.
3. Until the PA has confirmed receipt of documentation that the Project has terminated its PPA with PGE, the Project will not be listed as Pre-certified on the Oregon Community Solar Program website and will not be included in the website's Project Finder.

If a Project is able to comply with these conditions and present documentation of PPA termination to the PA, the Project will be permitted to enroll Participants following the termination of its existing PPA and carry on as normal towards Certification. The Program Administrator will provide the Commission with documentation of the Projects' compliance with these conditions at the time of Certification recommendation.

After the six-week period, if any Project is not able to comply with these conditions, the Program Administrator would provide the Commission with a new recommendation to reject the Project's Pre-certification application or to take other appropriate action.

We also recommend adjusting the Projects' Certification timelines so that they must achieve Certification within eighteen months of the date that the PA confirms receipt of documentation that Pre-certification conditions have been met, as opposed to eighteen months from the date that the Projects are conditionally Pre-certified by the Commission. We believe this adjustment is warranted as the eighteen-month timeline

was established to give Projects adequate time to conduct project development and Participant recruitment, both of which are impacted by the conditional nature of the Projects' Pre-certification.

Staff Assessment

The above listed Projects seek both a waiver and conditional pre-certification. In respect to the waiver, Staff supports the PA's recommendation. These waiver requests are supported by the specific circumstances impacting Neighborhood Power's Projects and are unlikely to occur in the future. Additionally, granting these waivers will not harm the Program or Participants

In respect to the requested conditional pre-certification, Staff supports the PA's recommendation. In Order No. 20-076, the Commission adopted the process for conditional pre-certification. The above listed Projects meet all the requirements for pre-certification in statute, administrative rule, and in the PIM, however their executed PPAs with PGE practically bar them from Program participation. Conditional pre-certification would provide sufficient certainty for these Projects to terminate their contracts with the utility.

Staff, the affected developers, and PGE became aware of this specific issue in January. Since then, the Program in PGE's territory has been in limbo, with most Projects unable to move forward. Staff is aware that six weeks is a relatively short period, but notes that six weeks from now it will be June. Staff believes that if a solution is not reached by June, that reassessment of the situation is warranted.

Conclusion

Based on the reasoning of the Program Administrator and a review of CSP requirements, Staff ultimately recommends that the Commission grant the requested waivers and conditionally pre-certify these Projects.

PROPOSED COMMISSION MOTION:

Accept the recommendation of the Program Administrator to grant a waiver and conditionally pre-certify the Williams Acres, Dunn Road, and Mt. Hope Solar Projects in the Community Solar Program.



Community Solar Pre-Certification Recommendation

Public Meeting Date: May 5, 2020

Project Overview

Project ID:	PGE-2020-48								
Project Name:	Williams Acres								
Project Manager:	Neighborhood Power OR, LLC								
Site Address:	15018 Union School Rd NE Woodburn								
Utility Territory:	PGE								
Project Size (kW-AC):	2502								
Applicable Designations :	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Low Income</td> <td style="text-align: center;">No</td> </tr> <tr> <td>Workforce Diversity</td> <td style="text-align: center;">No</td> </tr> <tr> <td>Brownfield</td> <td style="text-align: center;">No</td> </tr> <tr> <td>Dual-Use Ag</td> <td style="text-align: center;">No</td> </tr> </table>	Low Income	No	Workforce Diversity	No	Brownfield	No	Dual-Use Ag	No
Low Income	No								
Workforce Diversity	No								
Brownfield	No								
Dual-Use Ag	No								
Development Entity Type:	LLC								
Projected COD:	null								
Project Description:	Williams Acres is a ground mounted single axis tracking system using bifacial solar modules, that plans to incorporate farming around the solar generating equipment.								

Participation and Billing Structure

Low Income Recruitment Method:	PA is Recruiting
Low-Income Participation:	20 %
Residential & Small Business:	30 %
Large Commercial, Agricultural, & Industrial:	50 %

Requirements Checklist (OAR 820-088-0040)

Project manager has registered with the CSP:	Yes
Meets all insurance project requirements:	Yes
Submitted a detailed description of the project:	Yes
Has obtained all non-ministerial permits:	Yes
Has complied with interconnection requirements:	Yes
Submitted participant acquisition approach:	Yes
Submitted plan for meeting low-income requirements:	Yes
Submitted estimated project cost information:	Yes
Submitted development timeline:	Yes

PA Recommendation:

Recommendation: With_Reservations
 Recommendation Date: 1/0/1900

This Project has requested a waiver from the requirement in the Program Implementation Manual regarding the manner in which savings to low-income Participants are delivered. The Program Administrator recommends that the Commission grant this waiver and Pre-certify the Project with the addition of a new requirement regarding annual reporting.

The Program Implementation Manual specifies that each Project allocate a minimum of ten percent of its capacity to low-income Participants, and that subscription fees for low-income Participants must reflect at least a twenty percent discount under the Participant's bill credit rate.

The Project Manager for this Project has long been in conversation with the Program Administrator regarding the customers they intend to serve with their Projects. These Projects would subscribe low-income customers living in a certain category of federally subsidized housing through a partnership with an affordable housing provider. Residents in this category of housing are required to pay a set monthly amount for rent and utilities combined, in a manner such that any increase or decrease in a resident's utility costs are automatically offset by a corresponding change in a resident's monthly rent. Therefore, if a low-income resident in this housing situation were to receive a discounted community solar subscription through the Community Solar Program, they would not truly experience any net overall benefits due to the resulting automatic rent increase.

The Project Manager and Program Administration team (including the Program's Low-Income Facilitator) have discussed this issue and come to a workable solution. The subscription fee rate for low-income Participants would be set at the bill credit rate, resulting in no net on-bill financial impact for low-income customers. In lieu of direct on-bill savings, the Project Manager would provide benefits to low-income Participants in the form of an off-bill grant payment that is equal to the amount of the on-bill benefit that low-income Participants would otherwise receive (i.e. twenty percent of the subscription fees collected by the Project Manager).

The Program Administrator endorses this proposal as a creative solution that allows residents in this particular housing situation to participate in and receive benefits through the Oregon Community Solar Program. We note that our support for providing benefits to low-income Participants in the form of off-bill grants is limited to this specific scenario where true net customer benefits are not feasible under the normal process, and we do not propose to waive the on-bill discount requirements for Projects in general.

We recommend that the Commission grant this waiver request and Pre-certify the Project with the addition of the following requirement: On an annual basis during the Project's operational period, the Project Manager must provide documentation to the Program Administrator that off-bill benefits have been distributed to low-income Participants in the Project, and that the amount of annual benefits must be at least equal to the on-bill savings that low-income Participants would have received if their subscription fees reflected the discounted rate required by the Program. We suggest that this reporting be due annually at the end of June, to be in line with the regular cycle of required annual reporting from Project Managers regarding REC compliance and customer complaints. The Program Administrator would verify that the appropriate amount of benefit has been provided to Project Participants, and compliance with this requirement would be covered by normal Program disciplinary procedures.



Community Solar Pre-Certification Recommendation

Public Meeting Date:

May 5, 2020

Project Overview

Project ID:	PGE-2020-51									
Project Name:	Dunn Rd									
Project Manager:	Neighborhood Power OR, LLC									
Site Address:	36673 SE Dunn Rd	Sandy								
Utility Territory:	PGE									
Project Size (kW-AC):	1848									
Applicable Designations :	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Low Income</td> <td style="width: 30%;">No</td> </tr> <tr> <td>Workforce Diversity</td> <td>No</td> </tr> <tr> <td>Brownfield</td> <td>No</td> </tr> <tr> <td>Dual-Use Ag</td> <td>No</td> </tr> </table>		Low Income	No	Workforce Diversity	No	Brownfield	No	Dual-Use Ag	No
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Workforce Diversity	No									
Brownfield	No									
Dual-Use Ag	No									
Development Entity Type:	LLC									
Projected COD:	null									
Project Description:	Dunn Rd is a ground mounted single axis tracking system using bifacial solar modules, that plans to incorporate farming around the solar generating equipment.									

Participation and Billing Structure

Low Income Recruitment Method:	PA is Recruiting	
Low-Income Participation:	20	%
Residential & Small Business:	30	%
Large Commercial, Agricultural, & Industrial:	50	%

Requirements Checklist (OAR 820-088-0040)

Project manager has registered with the CSP:	Yes
Meets all insurance project requirements:	Yes
Submitted a detailed description of the project:	Yes
Has obtained all non-ministerial permits:	Yes
Has complied with interconnection requirements:	Yes
Submitted participant acquisition approach:	Yes
Submitted plan for meeting low-income requirements:	Yes
Submitted estimated project cost information:	Yes
Submitted development timeline:	Yes

PA Recommendation:

Recommendation: With_Reservations
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Community Solar Pre-Certification Recommendation

Public Meeting Date: May 5, 2020

Project Overview

Project ID:	PGE-2020-52										
Project Name:	Mt Hope Solar										
Project Manager:	Neighborhood Power OR, LLC										
Site Address:	32998 OR HWY 213	Molalla	97038								
Utility Territory:	PGE										
Project Size (kW-AC):	2502										
Applicable Designations :	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Low Income</td> <td style="width: 30%;">No</td> </tr> <tr> <td>Workforce Diversity</td> <td>No</td> </tr> <tr> <td>Brownfield</td> <td>No</td> </tr> <tr> <td>Dual-Use Ag</td> <td>No</td> </tr> </table>			Low Income	No	Workforce Diversity	No	Brownfield	No	Dual-Use Ag	No
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Brownfield	No										
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Development Entity Type:	LLC										
Projected COD:	null										
Project Description:	Mt Hope Solar is a ground mounted single axis tracking system using bifacial solar modules, that plans to incorporate farming around the solar generating equipment.										

Participation and Billing Structure

Low Income Recruitment Method:	PA is Recruiting	
Low-Income Participation:	20	%
Residential & Small Business:	30	%
Large Commercial, Agricultural, & Industrial:	50	%

Requirements Checklist (OAR 820-088-0040)

Project manager has registered with the CSP:	Yes	12/4/2019
Meets all insurance project requirements:	Yes	
Submitted a detailed description of the project:	Yes	
Has obtained all non-ministerial permits:	Yes	
Has complied with interconnection requirements:	Yes	
Submitted participant acquisition approach:	Yes	
Submitted plan for meeting low-income requirements:	Yes	
Submitted estimated project cost information:	Yes	
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PA Recommendation:

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