

**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:

4/21/2020

This Project has requested a waiver from the requirement in the Program Implementation Manual that Projects not begin construction on generating equipment prior to Pre-certification. The Program Administrator recommends that the Commission grant this waiver, and that it Conditionally Pre-certify this Project subject to several conditions.



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
Low Income	No									
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

Recommendation Date:

4/22/2020

This Project has requested a waiver from the requirement in the Program Implementation Manual that Projects not begin construction on generating equipment prior to Pre-certification. The Program Administrator recommends that the Commission grant this waiver, and that it Conditionally Pre-certify this Project subject to several conditions.



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
Low Income	No										
Workforce Diversity	No										
Brownfield	No										
Dual-Use Ag	No										
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	
Submitted development timeline:	Yes	

PA Recommendation:

Recommendation: With_Reservations

Recommendation Date: 4/23/2020

This Project has requested a waiver from the requirement in the Program Implementation Manual that Projects not begin construction on generating equipment prior to Pre-certification. The Program Administrator recommends that the Commission grant this waiver, and that it Conditionally Pre-certify this Project subject to several conditions.

General Waiver Request Form

The Oregon Community Solar Program allows for Project Managers to submit a waiver to the Program Administrator for select Program Implementation Manual (PIM) project requirements on a case-by-case basis. The Program Administrator may recommend a waiver of any PIM provision as part of the pre-certification, certification, or major project amendment process, subject to final approval by the Oregon Public Utility Commission.

To request a waiver to the low-income subscription discount requirement, please fill out the Low-Income Discount Waiver Request Form at www.oregoncsp.org. This form is applicable for all other waiver requests. .

The process for requesting a waiver is as follows:

- 1. The Project Manager will fill out this waiver request form and submit to the Program Administrator on the Community Solar Program Platform at www.oregoncsp.org.** Waiver requests may be submitted as part of the project pre-certification or certification submittal process. It is recommended that Project Managers submit their waiver requests early in the process in order to better inform their project planning.
- 2. The Program Administrator will review the waiver request and provide a recommendation to the Oregon Public Utility Commission.** As part of this review, the Program Administrator may schedule a meeting with the Project Manager to discuss their project plans. Waiver requests will not be granted automatically but will be considered based on their merits on a case-by-case basis. The final decision to grant a waiver is made by the Commission at the time that a project is pre-certified or certified, and the recommendation provided by the Program Administrator is not binding.
- 3. The Oregon Public Utility Commission will make a final determination on whether to grant the waiver request at the time of pre-certification or certification.** As part of approving a waiver, the Commission may place additional conditions on a project that must be met

Oregon Community Solar Program Waiver Request

Project Manager Entity Name: _____

Point of Contact Name: _____

Point of Contact Phone Number: _____

Point of Contact Email: _____

Please provide the specific PIM language you are requesting relief from below:

PIM Chapter: _____

PIM Section: _____

Description:

Please provide a brief narrative that describes:

- a) The reason that you are requesting a waiver, and
- b) How this waiver would benefit the Program and/or Program Participants.

You may submit this narrative as a separate document if preferred. You may also attach documentation to this waiver request if relevant and necessary.

January 21, 2020

RE: Waiver Request

To: Oregon Public Utility Commission,

Neighborhood Power OR, LLC (“Neighborhood Power”) requests a one-time waiver of Chapter 3, Subsection (a) found on page 33 of the Program Implementation Manual (“PIM”). The section reads, “Construction on the generation equipment may not begin prior to Pre-Certification.” Neighborhood Power requests a waiver of the underlined sentence above. Neighborhood Power has been developing this Project specifically for the Oregon Community Solar Program (“Program”) and asks OPUC to accept our Project even though construction activities began prior to Pre-Certification.

Neighborhood Power has registered as a Project Manager within the Oregon Community Solar Program. The recent PIM adopted by Program allows waiver requests to be made as part of, or at any time, prior to Project Pre-certification. Neighborhood Power submits this additional narrative and information as support of its request for a waiver:

- 1) Project Managers such as Neighborhood Power have been actively looking forward to participating in the upcoming Oregon Community Solar Program. The Program rules and PIM have been worked on for many months. Project Managers preparing to participate have made good faith efforts to abide by the rules, even as changes were still happening. It is not the intent of Neighborhood Power to request this waiver for future Projects. The waiver is requested because this Project has been under development, and the Program is new, and the rules were not fully known until a few weeks in advance of the Program start of January 2020. Going forward, it is Neighborhood Power’s intent to adhere to the PIM without any reliance on a waiver—in other words, future community solar projects will not start construction prior to Pre-Certification.
- 2) Oregon-based Neighborhood Power has been selling solar produced electricity by the kWh for the past 10 years. We are the long-term (30+ years) owner and operator of many Megawatts of projects. We are highly motivated and committed to be a good participant in the Program and community, in order to develop future projects, secure subscribers, and contribute to the success of the Program and a future pipeline of Projects we hope to develop.
- 3) Community solar projects have development cycles that span months and often years. Community solar projects incur a myriad of development activities and need high sums of money, time, and effort in advance of being placed in service. Neighborhood Power acted in good faith to invest in Oregon and the upcoming Program and made a decision to start construction before the opening of the Program based on all currently available information that Projects would qualify as long as they were not “placed in service” before being approved by the Program. During the webinar on November 21st, 2019 Project Managers had their first indication that “start” of construction activities could affect a Project’s eligibility. The small text change adopted in the latest PIM made Projects that started construction prior to pre-certification ineligible. This small change puts our company in financial risk and jeopardizes the investors and lenders who agreed to invest in Oregon’s renewable energy infrastructure and the Program.
- 4) For the past three years Neighborhood Power has been preparing for the Oregon Community Solar Program, including moving key operations from Hawaii to Oregon and investing heavily in this Project to prepare for this Program. Neighborhood Power incurred many different expenditures, such as:
 - secured rights to develop land and negotiated, signed, and paid for land lease contracts on this site
 - performed and paid for system engineering, design, and structural analysis
 - applied for and paid permitting (electrical, fire, building, etc.) fees
 - cooperated on utility impact studies and electrical reviews
 - paid for grid upgrades to support the Project
 - completed a geotechnical report and implemented a safety plan
 - obtained a legal review for property, tax, insurance, investment and other laws

- performed NEC and building code compliance review
 - reviewed and selected products and negotiated supplier terms and conditions
 - paid for the equipment and materials including freight, storage costs, import fees, and taxes
 - found, arranged, and syndicated investors and lenders to fund this Project
 - obtained construction loans and project insurance
 - contracted and paid for clerical and professional labor to develop the tax models, financial proforma, and other legal documents for this Project
 - hired and paid local mechanical and electrical skilled labor for onsite assembly of the equipment
 - started construction to avoid the tariffs and import fees and secure the full 30% investment tax credit
 - educated corporate, non-profit, and low-income subscribers on the Program
- 5) The federal Investment Tax Credit (“ITC”) available to solar projects, like those participating in the Oregon Community Solar Program, has declined from 30% to 26% beginning January 1, 2020. The ITC will continue to decline each year hereafter, eventually settling at 10%. This means each year the cost of creating a new community solar project will rise, along with the rates subscribers will pay. Granting a waiver will allow the Oregon Public Utilities Commission to fully leverage the 30% federal tax credit, to the benefit of the Program and its participants, enabling subscribers to obtain lower rates from the Project.
- 6) Over the past few years the US solar industry has been hit with multiple rounds of increasingly higher tariffs and import fees on solar panels, steel, aluminum components and power electronics. These tariffs along with tightening grid space and increasing costs of interconnection have put a strain on the US solar industry. Neighborhood Power has worked to stay active under these conditions by investing in markets like Oregon that have committed to making the transition to renewable energy.
- 7) By granting a waiver, OPUC will enable subscribers to more rapidly participate in a community solar project, bringing positive attention to the Program. Projects currently under development could be activated more quickly than Projects that have not yet started construction. By granting a waiver, OPUC can show early adoption within the first 6 months. Early adoption will highlight to stakeholders, media outlets, and interested communities the successful kick-off of the Program and will validate the Program in the eyes of the public and the officials that diligently worked to create it since 2016.

In consideration of the above circumstances and information, Neighborhood Power requests a one-time waiver of Chapter 3, Subsection (a) page 33, the underlined sentence above, for this Project.

Respectfully,



Stephen S. Gates
President, Neighborhood Power OR, LLC