
March 5, 2020

VIA ELECTRONIC MAIL (mailto:puc.filingcenter@state.or.us)

Public Utility Commission of Oregon
201 High St. SE, Suite 100
Salem, OR 97301-3398

RE: **OPUC March 10 Regular Meeting, Agenda Item RA-1**
Project PP-2020-08 Request for Waiver of Interconnection Study Requirement
Requestor's Comments to the Commission

Dear Honorable Commissioners:

Description of Waiver Requested

Sunthurst Energy, LLC (“Sunthurst”) respectfully requests the Commission waive the completed interconnection study requirement for CSP pre-certification for its Pilot Rock Solar 2 Project (“PRS-2”).¹ Waiver will permit the 3.0 MW PRS-2 to have pre-certification status qualifying it for the Interim Offering reimbursement rate.

Why Waiver is Just

PRS-2, with a July 5, 2018 interconnection request date, is THE most senior Oregon CSP in the PacifiCorp interconnection queue that has not received its interconnection study. Per its August 27, 2018 Study Agreement, PAC committed to completing a Facilities Study by October 2018. PacifiCorp recently informed PRS-2 that it plans to complete the PRS-2 Facilities study in “6 to 8 months”--presumably August-October 2020. By contrast, PacifiCorp estimates that applicants in the CSP Interconnection queue will receive studies in 3-6 months--presumably meaning June-August 2020. CSP projects entering the PacifiCorp CSP Interconnection Queue today will receive their studies before PRS-2 receives its study. PRS-2, who spent over \$80,000 in reliance on a first-come, first-served process is being shunted to the back of the line behind developers who started years later. Unless PRS-2's completed interconnection study requirement is waived, there is a high likelihood that CSP projects applying for CSP Interconnection today will receive their studies and qualify for pre-certification before PacifiCorp completes the Facilities Study for PRS-2, and that by the time PacifiCorp completes the PRS-2 study, PacifiCorp's Interim Offering will be fully subscribed.²

¹ The Commission adopted the Community Solar Program Implementation Manual (PIM) on December 17, 2019, establishing detailed procedures for application, pre-certification, and final certification. Order No. 19-438. The PIM provides, on page 34, that projects must complete a utility interconnection study prior to applying for pre-certification.

² The portion of PacifiCorp's Interim Offering available to PRS-2 is 24.225 MW. As of March 6, 2020, the PA has recommended 6.68 MW (27.5% of the available amount) for pre-certification.

Why Waiver May be Legally Required

The primary effect of the completed interconnection study requirement is to disadvantage larger projects that are privately developed (including PRS-2). The requirement does not apply to public or non-profit Project Managers, or to projects with capacity of 360 kW or less. Anyone other than a private Project Manager with a project over 360 kW may be pre-certified without having a completed interconnection study. See PIM, at 34. In creating a back door open only to public bodies and non-profits, the Commission risks getting over its skis.

Assuming without conceding that the legislature legally may discriminate against private Project Managers in favor of public and non-profit Project Managers, it did not do so in SB 1547. Under the statute, a Project Manager may be an “electric company” or an “independent third party”. ORS 757.386(1)(d). “Public” Project Manager and “non-profit” Project Manager do not appear. The statute also directs the Commission to adopt implementing rules that, at a minimum:

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

ORS 757.386(2)(b). The PIM’s requirement that private (but not public or non-profit) Project Managers have completed interconnection study is not premised on furthering any of the statutory standards, above.

The Commission’s CSP rules, adopted June 29, 2017 do not mention “public” or “non-profit” Project Managers either. Nor do they require a completed interconnection study for pre-certification. See OAR 860-088-0040(2)(d)(requiring “*all documentation* relevant to the interconnection process as provided in OAR Chapter 860, division 82”)(emphasis added). The completed interconnection study requirement with its various exceptions appears to be without precedent in community solar or PURPA programs, and legally un-vetted.³

In sum, the completed interconnection study requirement, which (a) discriminates against private developers without apparent statutory authorization, and (b) conflicts with the Commission’s rule 0040(d)(2) (requiring “all documentation relevant to the interconnection process” but not a completed interconnection study), appears legally infirm if a waiver provision is not utilized.⁴

³ In a recent PURPA section 210(h)(2)(a) enforcement proceeding, FERC declared a state cannot require a completed interconnection agreement as a prerequisite to a QF establishing a legally enforceable obligation (LEO). *FLS Energy, Inc.*, 157 F.E.R.C. P61,211, 61730 (F.E.R.C. December 15, 2016)(“ We find that, just as requiring a QF to have a utility-executed contract, such as a PPA, in order to have a LEO is inconsistent with PURPA and our regulations, requiring a QF to tender an executed interconnection agreement is equally inconsistent with PURPA and our regulations. Such a requirement allows the utility to control whether and when a LEO exists -- e.g., by delaying the facilities study or by delaying the tendering by the utility to the QF of an executable interconnection agreement.”). Although not controlling in this case, the PIM’s completed interconnection study agreement runs afoul of *FLS Energy, Inc.*

⁴ The infirmities discussed above may also apply to the 25% capacity carve-out.

PRS-2's Request Meets the Legal Standards for Waiver

In approving the PIM, the Commission authorized the Project Administrator (PA) to advocate for waiver of any provision of the PIM where strict adherence to the PIM requirements would undermine program goals⁵ and raise significant equity or policy concerns. Order No. 19-438, Slip op. at 1. And the Commission retains authority to waive CSP rules for good cause. OAR 860-88-0005(2). Good cause exists for granting PRS-2's requested waiver because the discriminatory completed interconnection study requirement does not expand access to solar energy for customers, may be unlawful, and is unjust as applied to PRS-2.

Sunthurst's Responses to Staff's March 2 Memo Opposing PRS-2 waiver

- **Staff's assertion (Staff Memo, at 3) that granting the waiver may affect multiple competing projects is speculative.**

Currently there are 13 other Oregon solar projects with 42 MW combined capacity that entered the PacifiCorp interconnection queue prior to PIM's December 17, 2019 adoption.⁶ How many of those projects meet the other requirements for pre-certification--including the 5-mile test, and the non-ministerial permit test--is unknown. PRS-2 believes most have not yet satisfied other conditions and it is one of the only 3 MW PacifiCorp projects currently meeting all other requirements for pre-certification.

Staff does not say why it would be undesirable if other private developers also received a waiver. The PacifiCorp Interim Offering has capacity available at the present time, meaning that additional CSP projects are still needed. Non-profit and public Project Managers (who can be pre-certified even though they do not have a completed interconnection study) have not rushed to apply. Perhaps Staff assumes that the private projects in the traditional queue may not be viable, and therefore will tie up Interim Capacity but fail to deliver a project. This again, is speculative. Waiver could be beneficial because private Project Managers developing 3 MW projects typically have more experience and because larger projects typically can bear more costs. But this may be a non-issue, since PRS-2 is the only CSP that has requested a waiver.

- **Staff's assertion (Staff Memo, at 3) that PRS-2 chose not to utilize the CSP Interconnection Process is incorrect.**

PRS-2 applied for the PacifiCorp CSP interconnection queue, but PacifiCorp determined that PRS-2 did not meet the load limit eligibility criteria. PacifiCorp's screening criteria disqualify 3 MW projects from 97% of its feeder circuits. See Order No. 19-392, Appendix A, at 8.

⁵ "The goal of the Oregon Community Solar Program is to expand access to solar energy for customers who are not able to or do not want to invest in a rooftop system, including but not limited to renters, people who live in multifamily buildings, low-income customers and small businesses in rented or leased space. Customers can purchase energy from a community solar project--such as a large solar system on a business, school or church--and receive a credit on their monthly utility bill for the electricity from their portion of the project." PIM at 4. PRS-2 addressed this in its February 10 letter (Staff Memo, Attach B).

⁶ Projects applying for interconnection after December 17 may be treated differently on the basis that they had notice of the completed interconnection study requirement prior to entering the SGIP queue.

- **Staff’s assertion (Staff Memo, at 3) that PRS-2 advocated for the completed interconnection study requirement is taken out of context.**

PRS-2 was actively engaged in stakeholder meetings, and at all times advocated for an implementation that respected the “first applied, first served” principle. Stakeholders expressed consensus on this principle. Sunthurst never supported a framework wherein new projects and projects with public or non-profit Project Managers could jump in front of projects with senior queue positions.⁷

Conclusion: Waiver is the Workable and Fair

Sunthurst appreciates the complexities involved in designing a new program, and supported the CSP program throughout, including the capacity carve-out afforded public and non-profit developers. However Sunthurst is deeply disappointed that CSP, while “sympathizing” with PRS-2’s situation, is unwilling to help, particularly when the waiver exists for such purposes. Though not intended, the completed interconnection study pre-certification requirement unfairly discriminates against PRS-2 because it has a private Project Manager, while not reasonably furthering the stated goal of the CSP. Granting a waiver is the best way to balance the need to move forward with program implementation while honoring the stakeholder consensus that interconnection queue seniority would be respected.

If the Commission needs more time to evaluate whether a waiver is warranted, Sunthurst asks, in the alternative, that the Commission conditionally pre-certify the PRS-2 project pending further review. This is the temporary resolution Staff is recommending for twenty-one Projects in PGE’s CSP queue while the CSP determines whether projects with existing power purchase agreements are eligible. A conditional pre-certification would give Sunthurst and the CSP further time to investigate both the practical impacts of waiver and the legal soundness of the completed interconnection study requirement without jeopardizing PRS-2’s ability to qualify for the Interim Offering.

Sincerely,



Kenneth Kaufmann

Attorney for Sunthurst Energy, LLC

Electronic Copy:

kimberly.toews@state.or.us

natascha.smith@state.or.us

⁷ Sunthurst’s comments on Staff’s October 4, 2019 report on CSP Interconnection may be reviewed at: <https://edocs.puc.state.or.us/efdocs/HAC/um1930hac164817.pdf>.