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Solar Parties Comments on PGE's Actions Relating to the Community Solar Program Launch 2-24-2020

The Oregon Solar Energy Industries Association and Coalition for Community Solar Access (hereto after referred to as the "Solar Parties") submit these comments for consideration by the Oregon's Public Utility Commission (Commission) and associated stakeholders engaged in the State's Community Solar Program ("Program"). The following comments are in response to a series of events and actions over the weeks following the Program launch with regards to Portland General Electric's (PGE's) engagement as a Project Manager and quasi-administrator.

Background

Recent events associated with the community solar queue for PGE have raised serious concerns and questions for participating Project Managers and the Solar Parties more generally with regards to project eligibility, as well as utility participation in the Program. By most accounts, the initial launch of the Program (January 21, 2020) played out in a manner that was consistent with expectations.¹ Demand in PGE territory (28 projects, ~62.2 MW) exceeded the supply for the general capacity allocation (~35 MW), due to cost-effective projects being leveraged from the traditional interconnection queue (no applications were submitted for the carve-out capacity (~11.6 MW)). Pacific Power had less applications submitted (3 general projects, 5.8 MW, and 1 carve-out project, 360 kW) due to the limited number of sufficiently mature projects in its traditional interconnection queue.

While the strong turnout in PGE territory was expected, the Solar Parties (and we believe Staff and the Program Administrator) were confused by the full amount that was submitted in the applications (~62.2 MW), as it exceeded the traditional queued capacity for projects with a minimum of a completed system impact study (SIS) by about 9 MW. Regardless, the Program Administrator proceeded running a lottery to determine which projects would initially be accepted for official pre-certification review. The mystery projects and other concerns surfaced over the coming weeks in the following order:

- January 22 – Lottery results are posted on the Program website and applicants were informed of the results and next steps.

¹ Find queue here - <https://www.oregoncsp.org/p/ProjectQueue/>.

Note that a 2.9 MW project was submitted into Idaho Power's program queue on February 1. Also note that four projects recently submitted applications into Pacific Power's community solar program (CSP) "interconnection" queue.

- February 6 – The Program Administrator sends emails to all participating Project Managers informing them that PGE has signed Standard Contract Power Purchase Agreements (PURPA PPAs) with a number of Qualifying Facilities that submitted applications to the Program, and that “PGE believes that Project Managers that submitted applications for projects with existing Public Purchase Agreements are ineligible to participate in the Community Solar Program because the power is already under contract.” Further, three Project Managers were informed that PGE was specifically leveraging four of their projects for its own community solar program applications.
- February 19 – PGE withdraws its four applications from the Program and the Program Administrator informs the respective Project Managers as such.

For additional context, it’s worth noting that none of the four projects PGE submitted for application into the Program were selected during the lottery process. Further, PGE did not inform any of the project owners of its intent to leverage those projects for the Program. Finally, the Solar Parties have recently learned through Staff and at least one communication between PGE and a Project Manager, that PGE is asserting it was unaware that the projects it was attempting to leverage for its own applications were already also applying for pre-certification in the Program as well.

Overview

The Solar Parties, along with several other engaged stakeholders, have been in a flurry the past few weeks developing responses (legal and other) to the shocking news surfacing from PGE through Staff and the Program Administrator. Though PGE has now withdrawn its applications, the Solar Parties believe PGE’s attempt to flip third-party owned projects into the Program as its own deserves close scrutiny, regardless of whether it was based on a simple misunderstanding or a calculated strategy. Further, we strongly object to the suggestion that PPAs cannot be terminated and view this assertion as particularly alarming given all but three of the applications submitted into PGE’s community solar queue currently hold PPAs that will need to be terminated or materially amended for the projects to participate in the program. The following comments provide a response on both issues.

PGE’s Four Applications

Although PGE has since withdrawn its applications, the manner in which it attempted to participate deserves investigation to ensure a more transparent process going forward. PGE’s attempt at participating in the Program by leveraging four projects, unbeknownst to the project owners, was at best an honest mistake compounded by poor internal communication, and at worst a strategic (though flawed) plot aimed at obtaining market share by undermining the trust and expectations of other Project Managers and all stakeholders.

In the best-case scenario, PGE could have assumed owners of the four projects it was targeting did not have their own plans to participate in the Program. This is hard to believe based on the record of comments and stakeholder discussions that occurred during the implementation process where it was clear that a successful launch of the Program would depend on taking advantage of the existing PGE traditional interconnection queue projects. In fact, Staff and the Program Administrator largely sought

pre-approval from the Commission to be able to hold a lottery due to anticipation of projects being leveraged from PGE's interconnection queue that would, in turn, exceed the Program's capacity allocation.² Similarly, PGE's effort to submit four applications on Day 1 of the Program launch suggests it was aware of the high-potential for a lottery and therefore the need to apply earlier rather than later to have a chance at being awarded capacity.

In addition, two of the projects PGE attempted to leverage were owned by Neighborhood Power, which had recently filed written comments ahead of (and made verbal comments during) the Commission's Public Meeting on December 17, 2019, making it abundantly clear of their intention to participate in the program.³ Regardless, even if this was somehow an internal communication failure for PGE, it still demonstrates questionable judgement and raises additional questions. For example, why wouldn't PGE do the due diligence of looping in the project owners given those owners would be listed as contacts in the pre-certification application? More glaringly, the PPAs don't require the project owners to give PGE the RECs generated from the project until the resource deficiency period (2025 for most of the PPAs), which means PGE would need the project owner's authorization to obtain RECs generated in earlier years in order to pass them onto subscribers. Why wouldn't PGE reach out to the project owners to negotiate those terms? Or, did PGE not understand the REC requirement built into the PPA, or maybe not understand the requirements built into the program regulations?

In the worst-case scenario, PGE knew very well that many, or all, of the program-eligible projects in its queue were intending on applying into the program and it (PGE) wanted to figure out a way to obtain some market share. Since there is a limit to the amount of capacity any one Project Manager can have in this initial capacity allocation (25%), PGE targeted four projects as opposed to a dozen or more. It kept quiet about its strategy in the face of an extensive stakeholder process designed to identify problem areas for the program and create solutions (e.g., interconnection) to enable a successful program launch. If this was the case, PGE acted in bad-faith and in a highly unethical manner that should be concerning for the Commission and worthy of consideration by the Program Administrator as an act of queue tampering.

Lastly, the Solar Parties have generally accepted the legislative intent to allow for utilities to participate as Project Managers in the community solar program. Though we've raised concerns with regards to potential advantages the utilities might carry from a competitive standpoint, we've also recognized that the utilities ability to participate could make them a more constructive stakeholder in the development and operation of the program. Notably, Oregon is a test-case in the national community solar policy realm as a market that is enabling pure competition between utilities and third-party developers. This initial experience in Oregon is unfortunate and would likely be used as an example for other markets to not follow suit.⁴

² A quick review of PGE and Pacific Power's traditional interconnection queues provided a transparent understanding of potential Program applications.

³ See written comments filed by Stephen Gates here - <https://edocs.puc.state.or.us/efdocs/HAC/um1930hac82329.pdf>

⁴ Pacific Power has thus far appeared to act in good faith. It issued a request for proposal (RFP) in 2018 in an attempt to identify potential project partners, which ended up being premature due to the delay of the program launch and lack of Program Implementation Manual at that time.

Ability to Terminate (or amend) PPAs

The most significant remaining concern and unknown coming out of PGE's recent actions hinge on the question of whether PGE is intending to prevent, or attempt to prevent, the ability of Project Managers that have applied into the Program to be able to terminate or amend their respective PURPA PPAs with the utility. Our understanding is that all but three projects (~6 MW-AC) currently hold a PURPA PPA with PGE, therefore ~47 MW are potentially exposed to this threat. While the Solar Parties assumed it was self-evident that the projects were applying into the Program and that the termination of a PPA was an available option, several developers and also the Solar Parties have reached out to PGE recently to either request the termination or an amendment to an existing PPA or seek guidance on PGE's stance on the issue. As discussed more below, the Solar Parties affirm that: 1) market experience in Oregon (and with PGE) has demonstrated the ability to terminate PURPA PPAs; 2) there has been a wealth of indication over the past 12 months (at least) that PGE's queue projects would be leveraged for the program; and 3) there is significant risk to the Program if these projects are not available as a result of PGE denying termination.

Precedent

The Solar Parties understand (through industry members) that PGE has willingly allowed for the termination of PURPA PPAs, as recently as this past Fall, 2019. These terminations have been completed for a number of reasons spawning from requests by developers. Further, PGE has talked about the ability to terminate a PPA at no cost to the project developer.⁵ If projects have had this ability in the past it would be discriminatory to prevent future projects from leveraging a similar option. The Solar Parties defer to the Renewable Energy Coalition (REC) for additional legal positions. From a policy standpoint, the high interest and anticipation in the Program by the Commission, stakeholders, the Legislature, and customers, should provide sufficient evidence for PGE to not stand in the way of what are by far the most viable projects currently available for the Program in the State.

Indications that PGE's Queue Projects Would be Leveraged

PGE waited until a week after the program launched to discretely announce an issue which could effectively undermine nearly 90% of the project capacity currently in PGE's community solar queue. During the implementation process over the past year, there was significant focus on interconnection solutions due to the severe issues in Pacific Power territory which threatened to undermine the prospects of any potential community solar project in that territory. For PGE territory, there was recognition of major challenges for future development due to updated state land-use rules, however there was comfort in the assumption that PGE's queue contained a few dozen MWs of QF projects at a relatively mature state in development that could be re-purposed in the near-term for community solar. As mentioned previously, the Solar Parties believe this recognition was in large part what drove the Staff and Program Administrator's anticipation for needing a lottery. During and after the implementation process, there have been a number of formal and informal opportunities for PGE to flag or interject any concerns it may have regarding the eligibility of the majority of those projects with being able to convert

⁵ See PGE's presentation (January 31, 2019), Slide 6.

https://oregonpuc.granicus.com/MetaViewer.php?view_id=1&clip_id=367&meta_id=18201

to community solar. More recently, PGE could have acknowledged the clear signals provided by the solar industry in two sets of comments filed in Q4 2019:

- OSEIA-CCSA Comments filed October 15, 2019⁶. In those comments, the Solar Parties 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”).”* Ironically, the intent of these comments was more directed at a concern/question relating to applicant eligibility into the program rather than a concern for a potential maneuver by PGE to prevent the PPAs from ever being terminated or amended. Either way, this input was submitted on the public record which we assume PGE, being a well-resourced utility, would have read. Yet, PGE made no mention to the Commission, Staff, Solar Parties, or others of a potential challenge it might introduce.
- Neighborhood Power “PUC Pleadings” filed December 13, 2019.⁷ These comments provided clear evidence to all stakeholders, including PGE, that Neighborhood Power intended to submit four QF projects (which currently hold PURPA PPAs) into the community solar program. Not only did PGE appear to not inform Neighborhood Power that the PPAs may act as a constraint for Neighborhood’s participation eligibility, it also did not provide notice that it (PGE) intended to use two of those same PPAs for its own project application submissions.

Again, thinking in terms of the best-case versus worse-case scenarios, PGE’s silence on this issue either suggests a convenient ignorance, or a darker market strategy. While PGE might argue that the Project Managers should have checked in with PGE on the ability to change or terminate a PPA, it’s understandable that the developers were confident in this flexibility based on market experience and with the general sense that the engaged stakeholders (including, we assume – Staff and the Program Administrator) understood those projects were being targeted for community solar. Our understanding is that PGE even connected with some QF developers regarding the prospects of a partnership on community solar, though ultimately acted unilaterally in submitting its own applications. Further, the Project Managers holding PPAs would not want to pursue the termination of those PURPA agreements until being assured of capacity in the Program (i.e., the point of Pre-Certification).

The Importance of Leveraging the Existing Queue Projects for the Program

The importance of leveraging the projects in PGE’s traditional queue is critical to enabling a successful launch of Oregon’s community solar program. The passage of updated state land-use rules in May 2019 (though effectively started in late 2018), have essentially prohibited future cost-effective commercial solar development for over 80% of the Willamette Valley.⁸ The QF development has essentially ceased in PGE territory as a result of these new rules. Further, as demonstrated by Neighborhood Power’s plea with the PUC to allow projects under construction to be eligible for participation in the community solar program, the permits that have been issued for the projects in PGE’s interconnection queue are under time constraints to “commence construction” based on the varying deadlines imposed in each county. If a project has not commenced construction by the respective county’s deadline, an extension of the

⁶ <https://edocs.puc.state.or.us/efdocs/HAC/um1930hac172714.pdf>

⁷ <https://edocs.puc.state.or.us/efdocs/HAC/um1930hac82329.pdf>

⁸ The rules effectively prohibit over 80% of the Willamette Valley to new commercial solar development -see this article - <https://www.jdsupra.com/legalnews/oregon-s-dlcd-finalizes-solar-siting-78067/>

permit is not a viable option since it would trigger a default to the *updated* state rules, which would almost certainly prevent the project from being able move forward.

The ~53 MW that applied into the Program represents the lowest hanging fruit with regards to cost-effective solar development for PGE territory and its customers. It also represents the full extent of QF capacity that could be leveraged in the Program, well less than the ~90 MW enabled by the regulations for PGE's initial capacity tier. Notably, the modeling used by Staff to develop assumptions regarding internal rate of return targets was derived in large part by the economics of the QF projects in PGE territory. These projects were typically developed as part of portfolios, which enabled additional economies of scale. While the Solar Parties are hopeful for future development to occur in PGE territory, there is little chance (without another change in land use rules) of similar types of portfolios (both in scale and cost) being developed. The already tight economics in Oregon's community solar program, combined with fewer and more expensive development opportunities, paints a challenging market ahead for the Program. Unfortunately, these challenges are enhanced even further by declining federal incentives, from 26% in 2020, to 22% in 2021, and then 10% in 2022.⁹

Ultimately, it is the customers that will lose out the most if PGE were to prevent the Program from being able to leverage these QF projects. While there were interconnection solutions established to revive project opportunities in Pacific Power territory, the land use issues that impact nearly all of PGE territory outside of the major urban areas remains a massive development hurdle. Not leveraging the QF projects in PGE territory would therefore result in more development delays, and likely less, and more costly, project participation opportunities for customers. Less participation opportunities also carries with it less subscribers to support the cost recovery of the program administrative costs.

Conclusion

The Solar Parties have been invested stakeholders in Oregon's community solar program since the idea was first publicly spawned in 2015.¹⁰ While the utilities have not seen eye-to-eye with most stakeholders every step of the way throughout the various processes that created the current program, PGE's actions associated with duplicating project applications and potentially preventing ~90% of the applicant capacity from being eligible to participate are shocking developments. While the full intent and strategy by PGE may never be fully understood, the Solar Parties recommend particularly close scrutiny by the Commission on these issues and the remaining implementation components being led by the utilities (i.e., proposed PPA and interconnection tariffs), as well as future utility engagement as both Project Managers and quasi-administrators in the program.

Respectfully submitted,

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⁹ <https://www.seia.org/initiatives/solar-investment-tax-credit-itc>

¹⁰ Note – OSEIA has been engaged at every step, but CCSA became engaged in 2017