

**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 PROPOSED  
REVISIONS TO COMMUNITY  
SOLAR POWER PURCHASE  
AGREEMENTS

**I. INTRODUCTION**

The Renewable Energy Coalition (the “Coalition”) submits these comments regarding PacifiCorp’s and Portland General Electric Company’s (“PGE’s”) proposed revisions to the community solar program (“CSP”) power purchase agreements (“PPAs”). While some proposed revisions appear helpful and clarifying, PacifiCorp and PGE also propose that CSP projects not be paid for some electricity that is made available to them. Specifically, PacifiCorp and PGE propose to *not* pay CSP projects for energy delivered within any time window that may exist after 90 days from the start of delivery (including test energy) and the CSP project achieving its Commercial Operation Date (“COD”).

This is inconsistent with and violates the Public Utility Regulatory Policies Act (“PURPA”) which requires utilities pay for all net output, and there is no legal basis for the utilities to refuse to pay qualifying facilities (“QFs”) which also happen to be CSP projects. CSPs have a statutory right to be compensated for all energy delivered.

Therefore, the Coalition recommends that the Oregon Public Utility Commission (the

“Commission”) reject in part PacifiCorp and PGE’s proposed revisions to the extent they would unlawfully allow a utility to pay nothing for CSP generation.

## II. COMMENTS

PacifiCorp and PGE each propose to amend Section 3.2 of their currently approved CSP PPA forms to state that the utility’s “obligation to purchase Start-up Test Energy will not exceed a maximum period of ninety (90) days.”<sup>1</sup> Both CSP PPA forms define Start-up Test Energy as “that portion of the Net Output of a Facility delivered to [the utility] before the Commercial Operation Date...”and define Commercial Operation Date (“COD”) as “the date that the Facility is deemed by [the utility] to be fully operational ...,” including that the Project Manager provides evidence that the Facility has been certified by the Commission.<sup>2</sup> As a result, the proposed revisions create the possibility of a time period where a CSP project may deliver power to the utility without receiving any compensation. Further, a utility could indefinitely prolong this time period by refusing to deem the project as having met its COD. This is unfair and unlawful.

The Commission’s CSP rules state that

Upon request, an electric company must enter into a 20-year power purchase agreement with a pre-certified project to purchase the project’s unsold and unsubscribed generation on an “as available” basis subject to the

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<sup>1</sup> PacifiCorp’s CSP Purchase Agreement Revisions at Section 3.2 (Jan. 27, 2021); PGE’s CSP Purchase Agreement at Section 3.2 (Jan. 25, 2021). The proposed revisions twice state the “maximum period of ninety (90) days.” *E.g.*, PacifiCorp’s CSP Purchase Agreement Revisions at Section 3.2 (Jan. 27, 2021)

<sup>2</sup> *E.g.*, PacifiCorp’s CSP Purchase Agreement Revisions at Section 1.

requirements of the Public Utility Regulatory Policy Act (PURPA) and ORS 758.505, et. seq.<sup>3</sup>

The federal and state PURPA mandate that utilities pay QFs for *all* generation, including the option of payment at an ‘as available’ rate.<sup>4</sup> Further, PURPA mandates that the rate utilities pay not discriminate against QFs.<sup>5</sup> Paying *nothing* for QF energy delivered to the utility is discriminatory and unlawful.

By contrast, other Commission-approved PPAs do not allow utilities to pay nothing for QF power. For example, Idaho Power Company’s CSP PPA provides that it will pay no less than the as-available rate for *all* energy from a CSP project, including test energy.<sup>6</sup> The Commission should similarly direct PGE and PacifiCorp to pay for *all* energy from a CSP project at no less than the as-available rate.

In the Staff Report, Staff notes that “the utilities argue they could be required to purchase start-up test energy indefinitely if a project fails to achieve CSP certification.”<sup>7</sup> This argument is unconvincing. The utilities’ as-available rates are, by definition, reflective of the price of energy at the specific time of delivery.<sup>8</sup> These prices are

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<sup>3</sup> OAR 860-088-0140(1)(a). Further, the Oregon Department of Justice has recognized that CSP projects are necessarily QF projects. Order No. 19-392 app. A attach. A at 1 (Oct. 4, 2019) (determining that CSP projects “should be QFs to facilitate the Commission’s jurisdiction...”).

<sup>4</sup> ORS 758.525(2); 18 CFR 292.304(d).

<sup>5</sup> 16 USC 824a-3(b).

<sup>6</sup> Idaho Power Company, Oregon Community Solar Interconnection and power Purchase Agreement at Section 3(d) (eff. Dec. 23, 2020).

<sup>7</sup> Staff Report, Item CA5 (Revisions to Utility Community Solar Program Power Purchase Agreements) at 3 (Feb. 16, 2021).

<sup>8</sup> *E.g., in re PGE Update to Schedule 201 - As-Available Rate*, Docket No. UM 2060, PGE Corrected Compliance Filing to Update Schedule 201 at Sheet No.

generally much lower than the fixed price payment that a QF is eligible for if it enters into a long-term contract. PGE and PacifiCorp should not be harmed because they will pay the lower as available price for energy it receives at a rate reflective of the cost of energy at that time. Even if a CSP project failed to achieve CSP certification and left the CSP, the as-available rate is the *lowest* price that QF would be entitled to receive under PURPA.

### III. CONCLUSION

For the foregoing reasons, the Commission should reject PGE and PacifiCorp's proposed revisions to the form CSP PPAs and instead direct both utilities to pay for *all* energy from a CSP project at no less than the as-available rate.

Dated this 19th day of February 2021.

Respectfully submitted,



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201-19 (eff. Dec. 2, 2020) (“The As-Available Rate is based on the Avoided Energy Cost for surplus energy at the time of delivery.”).