



April 30, 2020

Oregon Public Utility Commission
Attn: PUC Commissioners
201 High Street SE, Ste 100
Salem, OR 97301

RE: Neighborhood Power's Waivers and Project Pre-Certification

Dear Commissioners,

I am writing to provide comments regarding staff's recommendation that Neighborhood Power's projects are Pre-Certified and their waiver request is granted. I will also be providing comments on Neighborhood's waitlisted project, River Valley Solar, as it is pertinent to the comments I will be making (Neighborhood stated this was their project in their testimony to the OPUC on February 20, 2020). As discussed below, Neighborhood Power has disregarded the community solar rules and framework on multiple occasions (not just building their projects prior to obtaining pre-certification), and they should not be awarded for doing such. Granting waivers for Neighborhood's projects is ultimately going to cause significant harm to other developers, such as myself, who have spent significant sums developing projects and have worked hard to stay within the framework of the program. My concerns with granting Neighborhood's waivers are stated below.

Construction Prior to Pre-Certification

The Program Implementation Manual clearly states multiple times that a project must be new and that construction cannot begin until it is pre-certified.

Page 13 – Registration Process and Requirements: "Project Pre-certification is required before Project managers may... b) begin construction of the solar generating system"

Page 33 - Installation Requirements: 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."

A fundamental premise of the community solar program is to create incremental growth of renewable energy. Neighborhood's projects would create zero incremental growth as these projects have already been built.

In Neighborhood's December 13, 2019 testimony to the OPUC in UM 1930, they state that "It was not until the webinar on November 21st, 2019 that we had any indication that start of construction could

affect our eligibility... This seemingly simple rule change..." This was not a rule change, rather this concept had been discussed in the public domain since at least June 11, 2019 when the draft Project Pre-certification chapter of the Program Implementation Manual was released. That draft chapter contemplated such a rule as it stated that before beginning construction, project managers must "submit draft plan set..., request design consultation meeting with technical verifier for the program...". It is also my understanding that this was also discussed in industry work groups even prior to this, which Neighborhood conveniently did not participate in. If they were in fact as they've stated, invested in and preparing for the program, it was completely reckless on their part to begin construction without even at least inquiring about this as a potential issue.

Neighborhood also tries to make the argument in their December 13, 2019 testimony to the OPUC that they had to start construction on their projects in order to preserve the full value of the Investment Tax Credit. This is false. The IRS provides developers with other avenues to safe harbor the full value of the Investment Tax Credit without commencing construction. In fact, as long as a developer outlays 5% of the total project costs prior to the end of the year (typically done by buying some equipment and placing it in a warehouse), they have up to 4 years to construct the project.

Co-location of Projects

A fundamental aspect of the Program is that a project, or series of projects does not total more than 3 MW, if co-located within a 5-mile radius. This is not only found within the Program Implementation Manual, but in the OARs. The Program Implementation Manual defines a Single Development as "Projects that have a common ownership structure, an umbrella sale arrangement or revenue-sharing arrangement". The Program Implementation Manual goes on to say that "Co-location of Projects with the characteristics of a single development is not permitted within a five-mile radius unless: The total capacity is 3 MW-AC or less..."

After seeing Neighborhood's testimony to the OPUC on February 20, 2020 and seeing that Stephen Gates is the Manager of RSP OR, LLC, who is the manager of Mt. Hope Solar, LLC, Williams Acres Solar, LLC, Dunn Rd Solar, LLC, & River Valley, LLC, I looked up where each of these projects are located. This is easily found in county permitting applications or even within the PURPA PPAs for these projects. What I found is that two of these projects are co-located with each other; Williams Acres Solar and River Valley Solar. In fact, they are less than two miles apart and total over 4.3 MW. Considering that they share the same manger and that they were built by the same organization, it seems very clear to me that this is exactly the type of situation that the OARs and Program Implementation Manual is trying to prevent.

The co-location rule is not something that just appeared at the last minute in the Program Implementation Manual as Neighborhood is asking you to believe with the construction prior to pre-certification issue, rather it was established in the OARs in June of 2017. I am not privy to their Community Solar Program applications, but if there are any misrepresentations, it should be considered tampering and their applications should be immediately terminated.

Waitlisted Projects are at Greater Risk of not being Constructed

Nearly a year ago now, the State of Oregon modified their land use rules which greatly impact the development opportunities within Portland General Electric territory. In my mind, there are extremely limited opportunities for new projects outside of the projects that currently have land use permits. I also believe that nearly all of these projects were submitted into the Community Solar Program.

Projects that currently have land use approvals must initiate their approved use prior to their permits expiring. In most cases, that must occur within 1-4 years of when those permits were granted, depending on the county. Considering that it is currently unknown when additional program capacity will become available, many of the projects that are currently on the waitlist have a high likelihood that their permits will expire before future capacity allocations are made. By granting Neighborhood's projects their waivers, the risk profile for every single waitlisted project increases substantially. On the flip side, considering that Neighborhood has already initiated their use per their permit, they do not face this risk.

Conclusion

There are developers that have been following the rules, not seeking waivers, and have made significant investments and business decisions based upon the OARS, draft PIM and current PIM approved rules. To make exceptions to these rules means changing project selection odds and therefore putting hundreds of thousands of dollars at risk for developers that have been trying to do everything right and it effectively penalizes developers that have followed the rules. I don't think it's right to penalize developers for following the rules.

In summary, GreenKey Solar is 100% fully **against** awarding Neighborhood Power projects Pre-Certification status given: 1) they did not follow the rules, 2) they most likely pulled building permits and started construction after the PIM draft rules clearly stated projects that had started construction would not be eligible for pre-certification status, 3) multiple of their projects are co-located, which is a direct violation of the rules, and 4) awarding their projects Pre-Certification status would cause irreparable harm to other developers that have followed the rules and would undermine the legitimacy of the entire Oregon Community Solar Program.

Thank you for taking these points into consideration and I sincerely hope you will make the right decision and not award Pre-Certification status to the projects belonging to Neighborhood Power, at the expense of other developers who have followed the rules.

Regards,



John Hunter Strader
President