



Portland General Electric Company
121 SW Salmon Street • 1WTC0306 • Portland, OR 97204
portlandgeneral.com

March 9, 2020

Via Electronic Filing

Public Utility Commission of Oregon
Attention: Filing Center
P.O. Box 1088
Salem, OR 97308-1088

Re: UM 1930 Portland General Electric Company Reply Comments to Staff's
Recommendations

Dear Filing Center:

Enclosed for filing in the above captioned docket are PGE's reply comments to Staff's March 5, 2020 recommendations regarding conditional pre-certification of projects in the Community Solar Program queue.

Sincerely,

A handwritten signature in blue ink that reads "Karla Wenzel".

Karla Wenzel
Manager, Regulatory Policy and Strategy

KW/np
Enclosure

PGE appreciates the opportunity to respond to Staff's recommendations regarding conditional precertification of projects in the Community Solar Program (CSP) queue. The issues raised in this docket have been challenging, and at times, fractious, and PGE appreciates the diligence and even-handedness of Staff's approach to chart a fair process in light of the unanticipated challenge (and surprise) of: 1) having so many qualifying facilities (QFs) that have signed PURPA PPAs selling their power to PGE; and 2) those QFs also entering the queue to be certified CSP projects. We agree with Staff that having the contractual authority to sell a project's power (and have the renewable energy certificates) is a foundational issue to participating in CSP.¹ This key requirement underlies the Staff recommendation.

We offer a clarification and a recommendation to Staff's memo. First, the clarification: the documentation that the QF has terminated the PURPA PPA will likely come from PGE as PGE has to agree to termination of a QF contract. If the QF provides something other than a PGE notice of termination, PGE requests that it be provided a copy of the QF's documentation satisfying the condition, and have an opportunity to comment before a precertification decision is made. Second, PGE recommends that the Commission keep the precertification queue open, to see if more projects come forward, ones that have not already sold their power, including those that do not have signed PURPA PPAs with PGE. PGE realizes that unanticipated land use rule changes may have significant impact on large community solar projects and is interested in seeing whether there are eligible projects that would enter the queue.

Before discussing PGE's response to Staff's recommendation in more detail, we'd like to set some context. PGE is working to support a dramatic transition of our energy system to a clean, resilient, reliable and affordable energy future and help Oregon reach its greenhouse gas reduction goals. This includes planning and investments that support decarbonizing the system while keeping it reliable, as well as innovative products and partnerships to enable customers to customize their energy delivery.

We support CSP as a tool to help meet our customers' desires and promote development of additional solar installations, and we want the program to be a success. At the same time, we remain focused on keeping customer prices affordable as we decarbonize the system and implement costs associated with multiple public policies that are important to the many businesses, families, and low-income customers we serve. We are ever mindful that 20 percent of our customers struggle to pay their electric bill.

¹ In fact, PGE's proposed Schedule 204, filed in tariff Advice No. 20-04 Solar Program Purchase Agreement contains the condition for community solar projects that ". . . Have not already sold, leased, assigned, contracted for (including pursuant to the execution of a power purchase agreement under PURPA) or otherwise disposed of the Net Output of the CSP Project, except for the sale of subscriptions for Subscribed Energy to Participants consistent with the CSP."

Staff's conditional precertification recommendation

PGE generally supports the Staff recommendation premised on the assumption that a necessary condition to certification is that the project must have the legal right to sell the project output to subscribers in the CSP. Failure to meet the condition will mean that the project not be permitted to participate. With regard to Staff's recommended process for the QF to demonstrate that the condition has been met, we request that the utility be copied when the documentation is submitted to the Commission and provided an opportunity to comment. It is unclear in Staff's process whether the QF's documentation of satisfying the condition, will be presented to the Commission at a public meeting.

PGE notes that its PURPA PPAs cannot be unilaterally terminated by the QF. Also, they cannot be breached by the QF, and terminated by the utility to allow the QF to apply for a new contract at a higher price.² This provision is a longstanding *pro forma* contract clause from the UM 1129 docket designed to protect customers from paying higher prices³. There is a term (Section 9.5) that survives termination in the PURPA PPAs, and that provision directs that if the same project is resubmitted to PGE, then the same terms and conditions of the terminated agreement apply. For the QF to participate in the CSP, not only must PGE allow termination of the PURPA PPA, but it must also waive or not enforce the provision that survives termination.

To explore potential resolution of the contract issues will require the QFs to negotiate with PGE. The QFs are obligated and have locked into an avoided cost price for the power output of the projects and associated RECs during the deficiency period. To agree to termination and waive the surviving provision, in order to facilitate the QF's participation in CSP at much higher prices does not appear to make sense nor does it seem to be fair to our customers.⁴ In a hypothetical Commission prudency review of such action, PGE questions whether the Commission's economic staff and other stakeholders would view such action to be prudent and reasonable—trading a lower price contract for a much higher one. Nonetheless, PGE is open to exploring alternative solutions, and is interested in the consideration offered by the QFs. PGE is not interested in being a project manager.

² While PGE has permitted Power Purchase Agreements to be terminated if the project is not being developed or constructed (and upon calculation of damages, if any), PGE has not permitted termination of PPAs for projects that are being constructed under an existing PPA solely for the purpose of enabling that project to sell its output to another buyer or to PGE at a higher cost. Allowing this would set an untenable precedent.

³ Order 07-360, Appendix A, page 2 (Docket No. UM 1129).

⁴ To place the QFs request to terminate in context, PGE also notes that there has been considerable litigation – more than 70 complaints filed in multiple venues-- among various QFs against PGE, contesting the applicability of standard contract terms including pricing. PGE's approach in addressing complaints is to take positions to hold and interpret standard contract terms consistently.

From PGE's perspective, this is a complicated matter and invites ideas and proposals that balance important priorities and principles. To inform our approach, we've developed the following principles:

- **Consider PGE's support for the state's decarbonization, and equity agenda:** includes cost effective and accelerated decarbonization; allowing ways for low-income or communities of color to participate; community solar program being one means toward decarbonization and customer participation.
- **Consider the perspectives of customers:**
 - those who want to participate in CSP; those local governments who want CSP as an option for their residents;
 - those who have a difficult time paying their electricity bills and might participate as a low-income participant;
 - those who will pay the costs of the program through upward pressure on rates;⁵
 - those who will avoid the costs of the program if they choose long term direct access.
- **Honor the sanctity of contracts and the need to enforce them in a nondiscriminatory manner.**
- **Consider the precedent of the action taken on future actions, and the ability of others to argue PGE is acting in a discriminatory manner.**

With these principles in mind and with optimism that discussions can lead to potential resolutions not yet envisioned, PGE looks forward to exploring solutions with these QFs, Commission Staff and the Commission.

Respectfully



Karla Wenzel
Manager, Regulatory Policy and Strategy
Portland General Electric Company

⁵ With regard to upward pressure on rates, PGE recognizes that delay in launching and filling the capacity of the CSP means that all customers will continue to pay the administrative start up costs of the Program Administrator and if the program capacity is quickly filled and the program launched, the price pressure from the administrative costs then shifts to program subscribers.