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CCSA Comments Regarding Neighborhood Power Waiver Requests 5-1-2020

The Coalition for Community Solar Access (CCSA) submits these comments in response to Staff's Report¹ regarding Regular Agenda item #2 in the upcoming May 5, 2020 Public Meeting. In that report, Staff – following the Program Administrator's (PA's) lead - has recommended conditional approval of the pre-certification applications and associated waiver requests by Neighborhood Power.

Summary

CCSA is neutral on this issue. CCSA appreciates the perspective provided by the PA and Staff in making its recommendation, however we do not view the decision as black-and-white or as simple as the PA's analysis might suggest. In fact, we disagree with the framing of key elements used to justify the PA's position and believe there is merit to deny Neighborhood Power's waiver request.

That said, CCSA is not interested in letting the Neighborhood Power projects fail, which would come not only at the detriment to Neighborhood Power the company, but also be a black eye for the community solar program and at least some of its potential participants.

The scenario before us is a result of overly risky decision making by Neighborhood Power, but also the product of a program with limited available capacity, extremely tight economics, and that took nearly four years to design and launch. CCSA asks that the Commissioners consider solutions to this issue that can enable a win-win for project owners and participants, and therefore the program.

The following comments provide more detail regarding our concerns with the PA analysis, why we think these projects should not fail, and potential solutions for the Commission to consider.

¹ Staff Report (4/29/2020). <https://edocs.puc.state.or.us/efdocs/HAU/um1930hau145824.pdf>

PA Analysis Lacks Important Details

CCSA is highly supportive of the PA and its work in getting a functional program off the ground and running, however the recommendation submitted for Neighborhood Power's waivers was not comprehensive in balancing the factors associated with this contentious decision. CCSA disagrees with the PA's framing of several key elements relating to the justification used for the recommended waivers. The following bullets highlight PA statements that we feel did not adequately address everything at stake:

- The PA states that it does not believe that granting the waivers will “harm the Program or Participants”.
 - Clearly, project owners on the waitlist (and potentially customers that may have been in talks with those registered project managers) would feel differently. Projects on the waitlist are thrust back into a waiting game of risk and uncertainty with regards to timing and economics of program capacity, while in parallel continuing to face financing and development milestone costs. Understandably, the waitlisted projects, particularly those 3-4 projects at the top of the list, would feel harmed by a decision that allows projects that violated rules to move ahead. The fact that Neighborhood Power's projects are able to leverage the 30% Federal Investment Tax Credit (ITC) as opposed to 26% for unbuilt projects eligible for the same capacity tier, may give Neighborhood Power's projects a disproportionate economic advantage.²

- The PA states that this circumstance does not present “a significant point of distinction from other proposed Projects in terms of the additionality of the Projects contemplated”.
 - The “point of distinction” is enormous from the perspective of a solar developer. CCSA recognizes the PA is primarily focused on “additionality” in terms of these being new projects (not previously operated), but we feel it glosses over the fact that starting construction on a project is a hugely significant milestone that typically does not occur unless there is near absolute confidence in the project's future (e.g., being pre-certified). It is the point at which a project has essentially determined there is no turning back. While speculation and some level of risk-taking is a healthy reality for solar development in any competitive market, carrying that speculation into the construction phase is highly atypical.

- The PA states that it “does not intend for this recommendation to set a precedent for future waivers of the Program's new construction requirement”.

² The 30% ITC stepped down to 26% starting January 1, 2020. The change in the ITC has a material impact on the project's cost, representing as much as a couple hundred thousand dollars for a typical 2 MWac project. While there are “safe harboring” provisions to allow projects to potentially leverage the 30% ITC despite not having been literally under construction in 2019, CCSA is unaware of any projects in the program – aside for Neighborhood Power - that have been able to take advantage of that option. Our understanding is that most developers are not willing to outlay investments in project costs without a clear line of site on project construction.

- While CCSA does not anticipate a flood of developers to take the same level of risk pursued by Neighborhood Power, approving this waiver has the potential to indicate to the market that it pays off to take more risks and potentially disregard the rules. Further, depending on the successor capacity allocation, the ITC dropping from 26% to 22% at the end of 2020 coupled with commence construction deadlines for various land-use permits could create similar dilemmas for other project owners in the future.

We want Neighborhood Power's Projects to Succeed

CCSA is not interested in Neighborhood Power's projects failing. There are several reasons for this, including:

- Small utility-scale solar development is a challenging sector, particularly here in Oregon and especially so for the community solar program, and we would rather support rather than undermine fellow solar developers. This is especially true during the tumultuous times experienced throughout the economy due to the COVID-19 pandemic.
- Future development opportunities in PGE territory are limited by new land-use restrictions and tight program economics. It is unclear how many more projects may apply into the program, but initial indications are not strong - for example there is currently only one project that has applied into PGE's CSP interconnection queue. Further, what is clear is that projects that already have land use permits and that were developed as part of a "portfolio" (such as those under Neighborhood Power) are the best positioned to successfully move forward in the program.
- Neighborhood Power's jump on construction means it could have projects online in the very-near future and be issuing credits to subscribers. Comments filed by customers supportive of Neighborhood Power demonstrate customers are anticipating this opportunity. From a public- and customer- facing perspective, the participation of Neighborhood Power's projects would allow the program to launch sooner than it would otherwise which may help build public awareness of the broader program support a wave of demand making it easier for other projects to secure subscribers in the future.

The Commission Can Make this Right

CCSA is most concerned with ensuring the Commissioners are fully aware of the implications around this decision, and that the current scenario is, at least in part, a product of the challenges created by program design and implementation and prior Commission decisions. As the PA recommendation noted, the "Commissioners indicated support of a waiver in the specific circumstances posed by Neighborhood Power given the uncertainty that program delays have introduced for developers." Rather than helping one project owner while harming others, the Commissioners should consider solutions that work toward a greater good for the program and its participants.

CCSA supports the concepts put forward by Conifer Energy Partners³ which attempt to maintain fairness and avoid harming projects that conform to the program rules. For example, Conifer suggested that more capacity could be made available in this initial allocation to cover the selected Neighborhood Power projects.⁴ Conifer also suggested that the Neighborhood Power projects could be secured positions on the waitlist for the next capacity allocation (but held at the current credit rate) so that they do not take space from the initial capacity allocation. These are creative solutions that get at the heart of the project owners concern with not having a fair and level playing field if some projects are able to proceed despite not conforming to the current rules at the cost and harm to others. Additionally, consideration of these waivers amplifies the broader risks to future program participation as the remaining unbuilt projects face shrinking windows to exercise the current land use permit.

From a policy perspective, CCSA would press that simply releasing the remainder of the initial capacity tier at the current credit rate could address developer concerns and ultimately work toward resolving one of the key factors that created this situation in the first place: uncertainty. Granted, economics remain extremely challenging, and as CCSA and the Oregon Solar Energy Industries Association have echoed for well over a year it is going to be difficult for anything other than larger portfolios of projects to be developed without some other grant funding assistance. With future declines in the ITC and continued land use struggles, this reality only becomes greater. CCSA recognizes the Commissioners are unlikely to make a major decision on this topic right now, but we hope there is an acknowledgement that Neighborhood Power is an indicator of a bigger issue and that swift action will be needed in the near future to address the risks and costs faced by waitlisted projects and to fuel hope and ingenuity for development by others.

Respectfully submitted,

/s/

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³ Conifer Energy Partners, LLC. Comments filed 4/28/2020. Found here:
<https://edocs.puc.state.or.us/efdocs/HAC/um1930hac16734.pdf>

⁴ CCSA would clarify that this capacity be pulled from the successor allocation of the initial capacity tier, and not be incremental.