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Via Electronic Filing

Chair Megan Decker
Commissioner Letha Tawney
Commissioner Mark Thompson
Oregon Public Utility Commission
201 High Street SE, Suite 100
Salem, OR 97301

RE: Community Solar Interconnection Issues with PacifiCorp

Dear Commissioners:

The Renewable Energy Coalition (“REC”), Oregon Solar + Storage Industries Association (“OSSIA”), and Community Renewable Energy Association (“CREA”) (collectively the “Community Solar Interconnection Customers”) are submitting this letter to highlight significant and ongoing community solar-related interconnection issues on PacifiCorp’s system, and to request that the Oregon Public Utility Commission (“OPUC” or the “Commission”) take prompt action to address these concerns. Specifically, we request that the Commission change interconnection rules and policies to allow interconnection customers to hire third parties to complete interconnection work, incent reasonable completion of interconnection construction by ensuring that utilities must fully compensate interconnection customers for all lawfully available damages for delays or breaches of an interconnection agreement, and require PacifiCorp to hire more employees to complete interconnections if lack of resources is a cause of the interconnection delays.

There have been widespread delays related to interconnection of projects in PacifiCorp’s community solar program that already have interconnection agreements. These problems are unrelated to PacifiCorp’s interconnection queue management or interconnection studies. The problems appear to be widespread and related to various stages of project completion. This is causing harm to the developers, PacifiCorp customer subscribers, and low-income customer subscribers. This is especially of concern for low-income subscribers that have been counting on bill savings from the community solar program, which continue to be delayed. Community Solar

Interconnection Customers recognize and appreciate the important work that the Commission Staff has completed to date in UM 2111, and that the Commission's plan is to take up these specific substantive revisions in Group 4. However, more urgent action is required, and there are likely easy solutions that the Commission could adopt now. In addition, the Commission's limited resources might be better used to address these issues now on a general basis rather than in individual utility and interconnection customer complaints. Individual projects with immediate and pressing needs are reaching out to PacifiCorp separately to determine if mutually agreed resolution to these delays is possible, but Commission action could resolve many potential disputes. Thus, the Commission should take immediate action to allow interconnection customers to hire third parties to complete interconnection work, direct PacifiCorp to hire more employees to complete interconnections, and ensure that there are no arbitrary contractual impediments in the Commission-approved interconnection agreements that might prevent developers from recovering all lawfully available damages for delays or breaches of an interconnection agreement.

Additionally, the Community Solar Interconnection Customers request more transparency from PacifiCorp on these interconnection delays. The issue of PacifiCorp's interconnection delays was discussed at the June 30, 2023 Public Meeting, which raised a number of questions. For example, what are the causes of these interconnection delays? Are the delays specific to the community solar program or system wide? Has PacifiCorp discussed the issues internally for solutions? Does PacifiCorp not have enough resources in general for interconnection or is the issue related to prioritization of the resources? Is there a problem with regional allocation of the resources? The Commission should investigate PacifiCorp's interconnection resources to determine where and how the resources are being used. Further, the Community Solar Interconnection Customers are aware that there will be or are ongoing discussions between the Commission Staff, PacifiCorp, and the program administration team. All interested and impacted stakeholders, including Project Managers, community solar program staff, and trade associations should be invited to participate. In addition, it is likely that PacifiCorp may have different proposals for solutions to these issues, some of which may cause additional problems if project managers and trade associations are not at the table to consider alternatives. There needs to be transparency regarding interconnection issues and any processes to resolve the issues. The Community Solar Interconnection Customers are surprised that they have not been approached to be part of this important conversation. Thus, the Community Solar Interconnection Customers request more transparency from PacifiCorp on the delays and request open communications and participation with all stakeholders on any conversations related to these issues.

A. Interconnection Scope and Delays

Community solar program projects have been experiencing widespread increases in construction scope and interconnection delays with PacifiCorp. These comments highlight one subset of delays, which are that PacifiCorp has been unable to meet its obligations under

executed Interconnection Agreements to timely bring these facilities online. PacifiCorp entered into contracts with these community solar projects committing itself to meet the study and construction timelines. These community solar developers made reasonable business decisions in light of these timelines, but PacifiCorp has failed to meet its obligations.

Instead of proposing solutions to timely interconnect these facilities, PacifiCorp recently sent various interconnection agreement amendments to several community solar program projects. In general, the amendments seek to increase the scope of construction for which the developers are responsible, to significantly delay interconnection of these community solar program projects and unilaterally impose new schedules. These delays and the unilateral imposition of schedule changes creates obvious concerns for projects completion, but also creates a more general and long-term concern related to this potentially precedential action by an interconnecting utility. In some instances, projects have been built and the customer-side interconnection has been completed for over a year, but the projects are waiting on PacifiCorp to finish its interconnection work. These delays are unreasonable and there is currently no adequate recourse for these community solar program developers.

B. The Interconnection Delays Are Causing Harm to Developers, and End Use Customers, especially Low-Income Customers

These interconnection delays are causing harm to interconnection customers (developers), and end use customers, including low-income customers. For developers, interconnection delays can cause various harms. One harm to developers relates to financing community solar projects. Many developers seek financing from lenders for the development of a project, including local Oregon lenders. This is a new business model, and it often takes considerable time and effort to get lenders comfortable with Oregon's community solar program, which is a unique even among community solar programs. Many times, the financing contracts will contain a date by which the project must start producing and selling energy to the utility. If the project's interconnection is delayed, then the developer may not be able to sell energy to the utility by the date in the financing contracts, which results in lost revenues. This also results in idle capital if the project has finished construction, which is not economic and harms the developer's interest. It is unlikely that PacifiCorp would delay interconnection of its own resources to the point that it would have months or even a year's idle capital. This could cause the developer to default on the financing contracts, owe liquidated damages to the lender, or (hopefully) negotiate with the lender for an extension. In the long-run, delays like this could harm the developer's relationship with a lender and cause a lender not to want to finance community solar program projects with the developer due to these delay risks. Moreover, lenders, especially small, local banks and credit unions that lend to a developer, may be even more reluctant to finance a future project because of their negative experience. Also, lenders may not be willing to finance additional projects until the first project is operational, which can be a major strain on community solar project development. Overall, these types of delays create

an environment of uncertainty and risk that could cause outside capital and investors to begin questioning whether they should invest in Oregon's community solar program.

These interconnection delays are also causing harm to PacifiCorp's customers, including low-income customers, by preventing customers from receiving the bill credits. The subscribers to these community solar program projects affected by the delays were relying on these energy and bill credits to reduce their electric bills. Many customers signed up to these community solar program projects to ensure some of their energy usage was offset by renewable energy. This is especially harmful when PacifiCorp's electric rates are increasing at historic levels and energy from the community solar program projects could have helped lower their bills. Many of the customers for these projects are low-income subscribers, who are especially harmed by any delay in bill credits from the community solar program projects. In addition, these delays can also frustrate subscribers to the point where they terminate their community solar program contracts. Project Managers would then have to find new subscribers, putting project financing at risk and making the Oregon community solar program look bad.

Finally, another harm is the public perception on Oregon's community solar program due to these delays. The more delays and issues this program faces, the less likely customers will be to want to sign up for the program. Additionally, it will also cause developers not to want to invest in Oregon (this problem and a few others are already having this impact). Thus, the reputational harm associated with these delays can have widespread harms, including harms associated with the Commission's implementation of the program. Lastly, if issues related to community solar interconnections cannot be resolved it puts into question whether interconnection issues in Docket No. UM 2111 will be adequately resolved.

C. The Commission Should Allow Interconnection Customers to Hire Third Parties to Complete Interconnection Work and Encourage PacifiCorp to Hire More Employees to Complete Interconnections

To address the harms related to the delays in interconnection, the Commission should allow interconnection customers to hire third parties to complete interconnection work, direct PacifiCorp to hire more employees to complete interconnections, and allow developers to seek all damages for delays or breaches of an interconnection agreement. These recommendations would increase certainty and predictability of development for these and future community solar program projects.

1. Interconnection Customers Should Be Allowed to Hire Third Parties to Complete All Phase of Interconnection Work, Especially When the Utility Refuses or is Unable or Unwilling to Timely Complete Work

From REC and OSSIA’s understanding, PacifiCorp has had to delay finishing interconnection of these projects in part due to a lack of resources. Thus, allowing the developers to hire third parties to complete the interconnection could help alleviate this strain on resources. This is an issue Community Solar Interconnection Customers have been raising since 2019 as a top issue to help address the interconnection issues facing Oregon,¹ and an issue that the Commission stated could be further discussed in Docket No. UM 2000.² REC, OSSIA, CREA and NIPPC raised this issue in its letter to the Commission and scoping comments in Docket No. UM 2111.³ This issue is not set to be addressed in UM 2111 until Group 4; the docket is still in Group 1 and currently behind schedule. It will likely be several years before Group 4 is raised. The Commission should address the issue promptly for all community solar projects in UM 1930. In addition, the Commission should move this up in UM 2111 and allow interconnection customers to hire third parties to complete interconnection work.

2. PacifiCorp Should Hire More Employees or Contractors to Complete Interconnections, the Costs of Which Are Already Borne by Interconnection Customers

The Commission should direct PacifiCorp to hire more employees or contractors to complete these interconnections. The specific areas of expertise needed should be identified and a plan established to hire more employees or contractors. Currently, PacifiCorp apparently does

¹ See *In re Commission Investigation into Public Utility Regulatory Policies Act Implementation*, Docket No. UM 2000, NIPPC, REC, and CREA Responses to Staff Questions (Mar. 29, 2019); see also Docket No. UM 2000, NIPPC, REC, and CREA’s Supplemental Answers to Staff’s Questions (Apr. 26, 2019). The Interconnection Trade Associations first requested that these three issues be prioritized as the most important interconnection issues to be addressed in 2020. See *In re Commission Investigation into the Treatment of Network Upgrade Costs for Qualifying Facilities*, Docket No. UM 2032, NIPPC, REC, and CREA Comments on Staff’s Draft Issues List at 7-8 (Apr. 9, 2020).

² *Sandy River Solar, LLC v. Portland General Electric*, Docket No. UM 1967, Order No. 19-218 at 26 (June 24, 2019) (“Although we conclude that OAR 860-082-0060(8)(f) as written does not include a reasonableness standard, we note that requirements regarding the use of third-party consultants in the interconnection process can be further considered in Docket UM 2000.”).

³ See *In re Commission Staff Investigation into Interconnection Process and Policies*, Docket No. UM 2111, Interconnection Trade Associations Interconnection Letter (Jan 4, 2022); Docket No. UM 2111, Interconnection Trade Associations’ (NIPPC, REC, and CREA) Comments at 4-6 (Feb. 24, 2022); Docket No. UM 2111, OSSIA’s Comments at 2 (Feb. 24, 2022).

not have resources or employees to finish these interconnections. Projects should not be fully constructed for over a year and waiting for interconnection, especially these types of small community solar interconnections. In the normal, private sector, when a business faces increased demand for its product and delays up to a year, then it will adjust its operations to provide additional products and services. Most of the costs associated with PacifiCorp's interconnections should be paid by the interconnection customers who are requesting interconnection service, so there is no reason not to hire additional employees. PacifiCorp would hire more employees to complete interconnection of a utility-owned project, if needed. PacifiCorp should not be allowed to forgo hiring needed employees just because a project is not utility owned.

3. Interconnection Customers Should Be Compensated for the All the Damages Caused by PacifiCorp's Interconnection Delays

The Commission should also ensure that interconnection customers and developers have the ability to recover all lawfully available damages from the utility if the utility is defaulting on the interconnection agreement. Damages from breach of a contract are intended to cover the loss for the non-breaching party, put the non-breaching party back in the position they would have been if the other party had held up their end of contract, and provide proper incentives to discourage parties from breaching contracts in the first place by, among other things, imposing a duty and obligation on the breaching party to reduce or minimize the effect and any losses resulting from the injury.

As it currently stands, PacifiCorp and other utilities have generally been permitted to include certain liability waivers in their Commission-approved interconnection agreements, which it appears the utilities would invoke to attempt to prevent interconnection customers from recovering the normally applicable damages owed by the breaching utility under the interconnection agreement. This situation serves to limit the normally applicable incentive the utility would have under well-established damages law for the utility to perform its duties under the contract.

To illustrate, PacifiCorp's Community Solar Interconnection Agreement contains contradictory and highly confusing provisions that state a party is liable for "any loss, claim, or injury, or expense including reasonable attorney fees," but that also purport to limit the amounts recoverable to "direct damages" and purport to waive liability for consequential damages, including "loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability."⁴ The Community Solar Interconnection Customers are not opining on the lawfulness of any limitations of liability in these Commission-required agreements, but certainly this confusing language raises the question

⁴ PacifiCorp's Community Solar Interconnection Agreement at §§ 5.2 & 5.4.

of whether it is purporting such a broad liability waiver that it may not even be an enforceable waiver. For example, the Commission may not have the legal authority to require an interconnection customer to waive its right to damages, including treble damages, under ORS 756.185(1) in order to obtain service from a monopoly utility that has the exclusive right to serve the customer. ORS 756.185(1) provides: “Any public utility which does, or causes or permits to be done, any matter, act or thing prohibited by ORS chapter 756, 757 or 758 or omits to do any act, matter or thing required to be done by such statutes, is liable to the person injured thereby in the amount of damages sustained in consequence of such violation. If the party seeking damages alleges and proves that the wrong or omission was the result of gross negligence or willful misconduct, the public utility is liable to the person injured thereby in treble the amount of damages sustained in consequence of the violation. Except as provided in subsection (2) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.”

Although the applicability and effect of a particular liability waiver to a specific set of facts involves complicated legal issues beyond the scope of this letter, the salient fact here is that the Commission has allowed the utilities to condition the right to enter into an interconnection agreement on the customer’s “agreeing” to a contract provision that purports to limit the customer’s ability to recover otherwise lawfully available damages in the case of a utility delay or other breach that destroys the viability of the customer’s community solar facility. It is further clear that if the utility believes it has no, or minimal, potential liability for a breach of the project deadlines or other key elements of interconnection agreements, the utility has little incentive to allocate more resources to complete the interconnections within those deadlines. Thus, by allowing inclusion of such liability waivers that purport to insulate the utility from actual damages otherwise available in court for the utility’s breach of contractual or statutory duties, the Commission is itself contributing to situations like the current delays in the CSP interconnections. The Commission should end the use of these liability waivers in Commission-approved agreements to ensure that interconnection customers have the opportunity to recover any lawfully available contractual and statutory damages from a utility that breaches its obligations under an interconnection agreement and applicable regulatory requirements.

Delays due to the utility can cause actual harm to the developers as explained above. There is no reason why interconnection customers and developers, who are at the mercy of their competitors to interconnect them, should not have the basic protections and remedies of other businesses when they are wronged. Thus, developers need to be able to seek all damages from the utility in the event of utility defaults and delays without any Commission-approved impediments in a take-or-leave it form contract.

D. CONCLUSION

Interconnection is major impediment to renewable project development in Oregon. This issue needs to be addressed for all types of projects, including community solar program

projects. Otherwise, Oregon will not meet its clean energy goals and utility customers will not be able to claim a portion of their electricity usage is offset from renewable energy. To address the harms related to the delays in interconnection, the Commission should allow interconnection customers to hire third parties to complete interconnection work, direct PacifiCorp to hire more employees to complete interconnections, and allow developers to seek all damages for delays, increased construction scope, and/or breaches of an interconnection agreement. The Community Solar Interconnection Customers also request more transparency from PacifiCorp on the delays and request open communications and participation with all stakeholders on any conversations related to these issues.



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