

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: July 13, 2021**

REGULAR CONSENT EFFECTIVE DATE July 14, 2021

DATE: July 6, 2021

TO: Public Utility Commission

FROM: Joe Abraham

THROUGH: Bryan Conway, JP Batmale, and Sarah Hall **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. UM 1930)
Community Solar Program Approval for Financing Related Collateral
Assignments.

STAFF RECOMMENDATION:

Consent to the assignment of the Project Managers' rights and responsibilities under the Community Solar Program Purchase Agreements (CSP PPA) for the Belvedere Solar and Dover Solar projects to Seminole Financial Services, LLC, in the event of a default by the Project Manager in the respective projects' financing arrangements.

DISCUSSION:

Issue

Whether the Commission should accept the Program Administrator's (PA) recommendation to consent to the assignment of the Project Managers' rights and responsibilities under the CSP PPAs for the Belvedere Solar and Dover Solar projects to Seminole Financial Services, LLC, in the event of a default by the Project Manager in the respective projects' financing arrangements.

Applicable Rule or Law

ORS 757.386(2)(a) directs the Commission to establish a program that provides electricity customers the opportunity to share the costs and benefits of electricity generated by community solar energy systems.

On June 29, 2017, in Order No. 17-232, the Commission adopted formal rules for the Community Solar Program (CSP or Program) under OAR Division 88 of Chapter 860.

In accordance with OAR 860-880-0190, on December 17, 2019, in Order No. 19-438, the Commission adopted the CSP Implementation Manual (PIM) and the program policies and procedures therein.

On April 9, 2020, in Order No. 20-122, the Commission adopted terms for the CSP PPAs. Section 10 of the CSP PPAs states, "Neither Party may assign this Agreement without the consent of the other Party and the Oregon Public Utility Commission, which shall not be unreasonably withheld."

Analysis

Background

Solar Town, LLC (Solar Town), is the registered Project Manager for four pre-certified community solar projects in Portland General Electric (PGE) service area. For two of these projects, Belvedere Solar and Dover Solar, Solar Town is ready to 1) sign a CSP PPA with PGE, and 2) enter into a project financing agreement with Seminole Financial Services, LLC (Seminole Financial).¹ In a separate Staff memo, Staff has recommended the Commission approve Solar Town's request to transfer the Project Manager role for these two projects from Solar Town to Belvedere Solar, LLC and Dover Solar, LLC, respectively (collectively referred to as Solar Town Project Managers). The Solar Town Project Managers will be the counterparties to the PGE CSP PPAs and the financing agreements with Seminole Financial Services, LLC.

On June 14, 2021, Solar Town asked the CSP Program Administrator to request that the Commission consent to the assignment of the CSP PPAs for the Belvedere Solar and Dover Solar projects to Seminole Financial in the case that the Project Manager is in default of the project's financing agreement. Solar Town explained that:

- 1) The project financing agreements with Seminole Financial require the Solar Town Project Managers to assign the CSP PPAs to Seminole Financial as collateral security;

¹ Earlier this year, the Commission approved transfer of the Belvedere Solar project from a previous project manager, Sulus Solar, LLC, to the current project manager, Solar Town, LLC. See Order No. 21-045, *In the Matter of Public Utility Commission of Oregon, UM 1930 Request to Approve Amendment for Belvedere Solar*, Docket No. UM 1930 (February 12, 2021).

- 2) Seminole has required the Solar Town Project Managers to obtain consent to the assignment of the CSP PPA as a condition for executing the project financing agreements; and
- 3) The CSP PPA requires that such consent to assignment be provided by both the utility and the Commission.

Program Administrator's Review

In its review of Solar Town's request for the Commission's consent to the assignment of the Belvedere Solar and Dover Solar PPAs to Seminole Financial in the case of the Solar Town Project Managers' default of the financing agreements, the PA talked to other project developers to learn about their experiences with project financing. The PA learned that, in solar project finance, it is typical for a project developer to offer the project as collateral to the lending partner that provides construction financing, giving the lender the ability to assume control over the project in the event of default. The standard Qualifying Facility PPA requires the utility or other off-taker to consent to the assignment of the PPA by the project developer to another entity. As part of the financing process, it is common for lenders to require that the project developer obtain written agreement from the utility or other off-taker that it will consent to the assignment of the PPA from the developer to the lender in the event that the project developer defaults on its financing agreement with the lender. It is common practice for utilities to consent to such collateral assignments.

In the case of community solar projects, the CSP PPA requires that both the utility and the Commission consent to any assignment of the PPA by Project Manager to another entity. The PA finds that the Commission's consent to assignment of the PPAs from the Solar Town Project Managers to Seminole Financial in the event the Project Managers' default on their financing agreements is a necessary and typical part of solar project development. The PA notes that similar requests for Commission consent to PPA assignment will likely be submitted for other community solar projects in the future. The PA recommends the Commission consent to assignment of the PPAs for the Belvedere Solar and Dover Solar projects now, in order to allow the project financing to close in a timely manner, and consider at a future date a blanket approval for financing-related assignments.

Staff notes that the requirement in the CSP PPA for the Commission, in addition to the utility, to consent to assignment was established as a protection against the utility bearing the risk of assigning the PPA to a party that the Commission may not allow to operate the project as a CSP project.

Conclusion

Staff finds that assignment of the CSP PPA to a project's financial lender in case of the Project Manager's default of the financing agreement is standard practice in solar project development. Staff also finds that, in case of such assignment, it will be in the interest of the lender to keep the project operating in order to generate revenues that will repay the loan. Staff recommends that the Commission consent to the assignment of the CSP PPAs for the Belvedere Solar and Dover Solar projects as requested by the Solar Town Project Managers.

Because the PA expects that Project Managers will likely make similar financing-related requests for consent to assignment of CSP PPAs in the future, Staff and the PA will assess the value and may bring forward to the Commission a recommendation to issue blanket consent for all projects and Project Managers that meet specific criteria. Staff will also assess the potential need to make PIM changes to reflect this process.

PROPOSED COMMISSION MOTION:

Consent to the assignment of the Project Managers' rights and responsibilities under the Community Solar Program Purchase Agreements for the Belvedere Solar and Dover Solar projects to Seminole Financial Services, LLC, in the event of a default by the Project Manager in the respective projects' financing arrangements.