

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. UM 1930)
Community Solar Conditional Pre-Certification Process

In December 2019, the Commission approved the Program Implementation Manual (PIM), which provides guidelines on implementing the CSP.

Analysis

While the Program includes a process to seek a waiver from PIM requirements, there is not currently a mechanism to address foundational issues that bar participation stemming from issues beyond these requirements. Having the contractual authority to sell a Project's power is one such foundational issue, because once a Project is pre-certified it is able to enroll Participants and sign contracts.

To appropriately balance the interests of Projects, subscribers, ratepayers, and the utilities, Staff proposes the use of a conditional pre-certification process. In essence, a conditional pre-certification would allow the Commission, at the time of pre-certification, to require Projects meet additional criteria before certification, or within a specified period.

Background

On January 21, 2020, the Program began accepting solar Project applications for pre-certification. The CSP received applications from 33 projects. In Portland General Electric's (PGE) service territory, there are currently 53.4 MW of proposed capacity in the CSP Project pre-certification queue.

Table 1: CSP Project Application Queue

	Applied for CSP ¹		Allotted Capacity		On Waitlist	
	Projects	MW	Projects	MW	Projects	MW
PGE	28	62.2	15	34.0	9	19.4
PAC	4	6.2	4	6.2	0	0
IPC	1	2.9	1	2.9	0	0
Total	33	71.3	20	43.1	13	28.3

Twenty-one Projects who have applied for the CSP, totaling 47.4 MW, have also signed Power Purchase Agreements (PPAs) with PGE. The Program has always maintained that Qualifying Facilities who met all Program requirements would be eligible to participate in the CSP.² To ensure additionality, the QF Projects could not have already been under construction or built.

¹ Four projects who initially applied for the CSP, proposed by PGE, withdrew their applications.

² This is a basic premise of the CSP since the Commission's authority to regulate the Program stems from PURPA. Consideration of QFs in the traditional interconnection queue was central to the discussion on CSP interconnection and there was even a process to allow QFs to transfer from the traditional interconnection queue to the newly formed CSP interconnection queue.

While the design of the CSP contemplated QFs participating, Staff was surprised to see the majority of Projects entering the CSP pre-certification queue in PGE's service territory had executed PPA contracts with the Utility. In effect, signing a PPA means that the developer has contractually agreed to sell their Project's power to the Utility, and the Utility can thereby rely upon that power. Upon realizing that a majority of the Projects in PGE's service territory had signed PPAs, the PA team reached out to the developers to understand why they would enter a PPA when they intended to participate in the CSP. The developers stated that signing a PPA was the least-risk way to protect the economic viability of the Project in case it did not receive capacity in the CSP or it was not pre-certified by the Commission.³ While their current contracts would preclude them from enrolling subscribers, these Projects were under the impression that they would be able to terminate their contracts with the utility and participate fully in the CSP if selected.

While these Projects and Project Managers technically meet all the requirements for pre-certification in statute, administrative rule, and in the PIM, their executed PPAs would practically bar them from Program participation. Thus, the CSP must determine whether Projects who have entered into a binding PPAs with PGE are eligible for participation in the Program and can be pre-certified to be a CSP Project, and if so how to proceed.

Authority for Conditional Pre-certification

The requirements for Certification outlined in the Administrative Rules, specify that the Commission will certify Projects that meet the specified criteria, including *any other conditions identified by the Commission at the time of pre-certification*.⁴ The PIM allows the Program Administrator wide latitude in making pre-certification recommendations and specifies that Commission will pre-certify Projects at its sole discretion.⁵ Staff does not view conditional pre-certification as a new or additional process to those specified in the rules and PIM, but rather an exercise of the authority granted to the Program Administrator to make recommendations to the Commission, and of the Commission to ensure compliance with these conditions before certifying a Project

³ Staff spoke with OSEIA and developers about CSP projects who have PPAs with PGE on February 20, 2020.

⁴ OAR 860-088-0050(3).

⁵ Program Implementation Manual, p. 64 (updated Dec. 20, 2019).

Staff's Proposed Process

Staff proposes that process for conditional pre-certification operate similarly to the waiver process laid out in the PIM, as outlined below.⁶

- Program Administration team, at their discretion, makes recommendations to the Commission that a Project be granted conditional pre-certification. In doing so, the PA will recommend the criteria to be met and the time frame for doing so.
- Staff will present all Projects with conditional pre-certification recommendations to the Commission as regular agenda items at a public meeting.
- The Commission will approve, alter, or reject the recommendations made by the Program Administrator.
- Assuming the Commission grants the conditional pre-certification, the Project Manager must submit documentation of compliance with the conditions of pre-certification to the Program Administrator in the time provided, or seek an extension with the Commission.
 - When a Project demonstrates compliance with the pre-certification condition to the satisfaction of the PA, the Project may act as any other pre-certified Project building toward final Project certification.
 - If the Project is unable to meet the conditional criteria for pre-certification the Program Administrator will recommend the Project be rejected by the Commission and Staff will present this recommendation as a regular agenda item at a public meeting.
- The documentation demonstrating compliance with the conditions of pre-certification will be provided to the Commission when the Project is presented for certification.

Implication for Projects with executed PPAs

Staff assessed a variety of options and determined that conditional pre-certification provides the best mechanism for allowing Projects with existing contracts to participate in the CSP. For these Projects, the Program Administrator would recommend that conditional pre-certification include the following conditions:

1. Projects be granted six weeks in which to terminate their contract with the utility.
 - a. Notably this time frame is for termination only, not the settlement of any damages stemming from early termination or breach of contract.
2. Projects are not able to enter into contracts with customers until the Program Administrator has confirmed receipt of documentation confirming that the Project has terminated its contract with the utility.
3. The Project will not be listed on the CSP clearinghouse, where customers can sign up for Projects, until the Program Administrator has received documentation confirming that the Project has terminated its contract with the utility.

⁶ *Id.*, p. 54.

For the majority of CSP Projects in PGE's service territory, conditional pre-certification gives them a chance to secure a position in the Program prior to exiting their contract with the utility. At the same time, the conditional pre-certification will protect customers.

Staff is cognizant that the conditional pre-certification by itself is insufficient to resolve the issue of exiting an existing PPA. The Commission could consider additional steps to help bring this outstanding issue to a quick resolution. Such steps could include directing Staff to act as a facilitator, host discussions between parties, monitor progress and provide regular, public updates to the Commission.

Conclusion

The Commission has the authority to set additional conditions at the time of pre-certification of CSP Projects. In exercising this authority the Commission will protect the viability of the Program in PGE's territory where the vast majority of Projects have existing Power Purchase Agreements.

PROPOSED COMMISSION MOTION:

The Commission should adopt Staff's proposed process for conditional pre-certification as a valid exercise of its authority under the Community Solar Program.