

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: June 28, 2022**

REGULAR CONSENT EFFECTIVE DATE June 29, 2022

DATE: June 20, 2022

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)
Consent to the assignment of Community Solar Program Power Purchase Agreements.

STAFF RECOMMENDATION:

Consent to the assignment of a Community Solar Program Project Manager's or project owner's rights and responsibilities under the CSP power purchase agreement (PPA) for all projects meeting the assignment criteria in the event of a default in the projects' financing arrangements.

DISCUSSION:

Issue

Whether the Commission should consent to the assignment of a Community Solar Program (CSP or Program) Project Manager's (PM) or owner's rights and responsibilities under the CSP PPA in the event of a default in the project's financing arrangements.

Applicable Rule or Law

Oregon Revised Statute (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 under Oregon Administrative Rules (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 power purchase agreements. 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

The Community Solar Program Administrator (PA) investigated the need for the Commission’s consent to assignment of CSP PPAs. The PA found that in solar project finance it is typical for a project developer to offer the project as collateral to the lending partner that is providing construction financing. This provides the lender the ability to assume control over the project in the event that the project developer defaults on its financing agreement. Additionally, it is common for lenders to require that the project developer obtain written agreement from the utility or other off-taker that, in the event of default, the utility or off-taker will consent to the assignment of the PPA from the developer to the lender. Lastly, it is common practice for utilities to consent to such collateral assignments.

The PA’s investigation indicated these industry practices should be expected for most CSP projects. The CSP PPA, however, requires that such consent to assignment be provided by both the utility and the Commission. Staff notes that the Commission’s consent to assignment will likely be requested for most CSP projects as they progress through the Certification process.

In Order No. 21-231, the Commission adopted Staff’s recommendation to consent to the assignment of the PM’s rights and responsibilities under the PPA for two projects. In Order No. 22-038, the Commission again consented to the assignment of the PM’s rights and responsibilities under the PPA to the project’s financial lender. In both Orders, the Commission acknowledged Staff may bring forward to the Commission a recommendation to issue blanket consent for all projects and PMs that meet specific criteria.

Staff's Proposal

Staff recommends that the Commission issue blanket consent to the assignment of a PM's or project owner's rights and responsibilities under the PPA upon completion of the following assignment criteria:

1. A PM or project owner has signed a PPA with their electric utility for the power produced by a pre-certified project.
2. The PM has entered into, or will enter into upon provision of consent to assignment, a construction loan agreement or similar financing agreement that requires the PM or project owner to offer the project as collateral in the event of default in its lending agreement.
3. The PM or project owner has obtained a construction loan agreement or similar financing arrangement that requires assigning its right and responsibilities to the lender in the case of default in its lending agreement; and that default in the lending agreement is the only condition that would cause this assignment.
4. The electric utility that is party to the PPA for the project has provided consent to this collateral assignment to the PM or project owner.
5. The PM or project owner has provided documentation to the PA that each of the above criteria has been met.
6. The PA has reviewed the documentation, the PA and Staff have confirmed that the above criteria are met, and PA has notified the PM or project owner.

Stakeholder Feedback

Staff shared the proposal with Portland General Electric, Pacific Power, and Idaho Power and requested feedback. The three utilities confirmed with Staff that they do not have any concerns with the proposal.

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. Because the PA expects that projects will likely make similar

financing-related requests for consent to assignment of CSP PPAs in the future, Staff recommends the Commission issue a blanket consent for all PMs and project owners that meet specific criteria.

PROPOSED COMMISSION MOTION:

Consent to the assignment of a PM's or project owner's rights and responsibilities under the CSP PPA for all projects meeting the assignment criteria in the event of a default in the project's financing arrangements.