



Oregon

Tina Kotek, Governor



550 Capitol St. NE
Salem, OR 97301
Phone: 503-378-4040
Toll Free: 1-800-221-8035
FAX: 503-373-7806
www.oregon.gov/energy

November 19, 2024

Elaine Albrich
Davis Wright Tremaine LLP
560 SW 10th Avenue
Portland, OR 97205

*Sent via email: elainealbrich@dwt.com; megan.chang@avangrid.com; Jeffrey.Durocher@avangrid.com
sara.parsons@avangrid.com; David.desmond@avangrid.com*

**Re: Oregon Department of Energy's Determination on Daybreak Solar Project's Amendment
Determination Request re: Sale-Leaseback**

Dear Ms. Albrich,

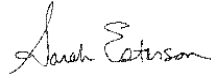
On October 17, 2024, the Oregon Department of Energy (ODOE or the Department) received an Amendment Determination Request (ADR) from Daybreak Solar, LLC (certificate holder) regarding the Daybreak Solar Project. Pursuant to OAR 345-027-0357, the ADR requests that the Department evaluate whether a sale-leaseback of facility equipment would require a site certificate amendment.

OAR 345-027-0357 requires that the ADR describe the proposed change, evaluate the determination being requested (e.g., if the certificate holder believes an amendment is not required, explain why) and provide any additional information that may assist the Department's evaluation. The Department reviewed the October 17, 2024 ADR and supplemental information provided. The Department determined that ADR and supplemental information provided adequately addressed the information requirements under OAR 345-027-0357(4) and agrees that the circumstances described do not require a site certificate amendment.

OAR 345-027-0357(6) states that, at the request of a member of the Energy Facility Siting Council (EFSC or Council), the Department's determination must be referred to the Council for concurrence, modification or rejection. In compliance with this rule, the Department will provide its determination to EFSC, informing Council members of their ability to review the Department's determination. Should a Council member request to review the determination, Council would likely conduct that review at its December 12-13, 2024 meeting.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Sarah Esterson". The signature is written in a cursive style.

Sarah Esterson, Senior Policy Advisor
Oregon Department of Energy
E: sarah.esterson@oregon.gov
P: (503) 385-6128

cc: Todd Cornett, Assistant Director of Siting, Oregon Department of Energy
Patrick Rowe, Assistant Attorney General, Oregon Department of Justice
Derek Green and Olivier Jamin, Davis Wright Tremaine LLP
Tommy Brooks and Tom Grim, Cable Huston

Attachments:

Attachment 1: Staff Evaluation and Determination

Attachment 2: Amendment Determination Request (Oct. 17, 2024) and Supplemental Information

Attachment 1: Staff Evaluation and Determination

Background and Description of Proposed Change

The Energy Facility Siting Council (EFSC or Council) issued a Site Certificate for the Daybreak Solar Project on November 19, 2021. The Site Certificate authorizes construction and operation of a 140 megawatt (MW) solar photovoltaic energy generation facility in Wasco County, Oregon. The facility is currently under construction, adjacent to Bakeoven Solar Project. Daybreak Solar Project and Bakeoven Solar Project Site Certificate are authorized to share related or supporting facilities, including a substation and 230 kV grid-interconnection transmission line.

On October 17, 2024, the Department received an Amendment Determination Request (ADR) from Daybreak Solar, LLC (certificate holder) explaining that the certificate holder was negotiating a tax equity, sale-leaseback transaction with a national financial institution (Bank).¹ Subsequent to submittal of the ADR and following execution, certificate holder provided excerpts from the Leaseback Agreement, naming the certificate holder, Daybreak Solar, LLC as the Lessee.² Under the Leaseback Agreement, the Bank has acquired legal title/ownership interest of the facility (the “sale”), with the exception of the shared substation and transmission line for which it would acquire security interest, and simultaneously agrees to lease the same equipment back to the certificate holder under a long-term lease (the “leaseback”). The Bank has not taken any ownership interest in the certificate holder, nor has the Bank taken control or possession of the facility. Certificate holder will continue to operate the facility and maintain, service and repair equipment.

The federal government provides tax credits for renewable energy facilities. The Bank will receive tax credits that the facility generates. Per the American Council on Renewable Energy, federal tax credits have played an indispensable role in the development and expansion of the U.S. renewable energy sector by providing crucial financial incentives for, among others, utility-scale renewable energy projects (such as Daybreak Solar Project), helping drive the development of these projects. Energy facilities are often owned by a limited liability company (such as Daybreak Solar, LLC). In most cases, the facility owner does not have sufficient tax liabilities to use available tax credits. Thus, the owner sells non-controlling passive interests in a facility to a tax equity investor in a tax equity transaction. This structure is designed to allow the tax equity investor to fund a portion of the capital cost of the facility and to receive a pre-negotiated rate of return, which consists primarily of the value of tax credits and other tax benefits, while lowering the overall cost of developing renewable energy projects. The availability of tax credits has also helped advance technology improvements and system efficiencies and reliability.³

Scope of Review

Under OAR 345-027-0357, a certificate holder may submit an ADR to the Department for a determination of whether a proposed change requires an amendment to a site certificate under OAR 345-027-0350.

Per OAR 345-027-0350, an amendment to a site certificate is required to:

¹ The ADR is included here at Attachment 2.

² *Id.*

³ American Council on Renewable Energy, *The Risk Profile of Renewable Energy Tax Equity Investments* (December 2023) (pp. 2-3). <https://acore.org/wp-content/uploads/2023/12/ACORE-The-Risk-Profile-of-Renewable-Energy-Tax-Equity-Investments-1.pdf>

- (1) Transfer ownership of the facility or the certificate holder as described in OAR 345-027-0400;*
- (2) Apply later-adopted laws as described in OAR 345-027-0390;*
- (3) Extend the construction beginning or completion deadline as described in OAR 345-027-0385;*
- (4) Design, construct, or operate a facility in a manner different from the description in the site certificate, if the proposed change:
 - (a) Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource or interest protected by an applicable law or Council standard;*
 - (b) Could impair the certificate holder's ability to comply with a site certificate condition;*
or
 - (c) Could require a new condition or a change to a condition in the site certificate.**

Subsections (1) and (4) are applicable and evaluated below. Subsections (2) and (3) are not applicable.

Evaluation

Partial transfer of ownership through the leaseback would not result in a change in possession or control of the facility.

Under OAR 345-027-0350(1), a site certificate amendment is required if there is a transfer in ownership of the facility or the certificate holder as described in OAR 345-027-0400. Based on the information provided in the ADR, the leaseback would not result in a transfer in ownership of the certificate holder but would result in partial transfer of ownership of the facility. The question to be assessed is how or whether this type of partial ownership transfer should be evaluated under OAR 345-027-0400(8). Per OAR 345-027-0400(8)(b), a Council order approving a request for amendment to transfer the site certificate must find that “[t]he new owner is or will be lawfully entitled to possession or control of the site or the facility described in the site certificate.” Thus, the intent of OAR 345-027-0350(1) and OAR 345-027-0400 seem to be to ensure that the entity that owns and has possession or control of the facility is the certificate holder.

The ADR provides excerpts from the executed Leaseback Agreement, naming the certificate holder, Daybreak Solar, LLC as the Lessee.⁴ The lease names AG-HBAN Trust as the Lessor and is signed on behalf of AG-HBAN Trust by Wilmington Trust, National Association. In these submissions, Daybreak also provided the following contact information for the Bank:

The Huntington National Bank
Equipment Finance Division
525 Vine St., 14th Floor
Cincinnati, OH 45202
HBEF.Service@huntington.com
REF@huntington.com

⁴ *Id.* and Attachment 1.

(866) 329-7286

Per outside counsel for the Bank,⁵ AG-HBAN Trust is a special purpose trust created by Huntington National Bank (HNB) which operates at HNB's direction. The purpose of the Trust is to hold the facility assets. AG-HBAN Trust is the Lessor entity under the lease because it is the entity that actually holds title to the assets.

The following Lease Agreement provisions, in particular, demonstrate Daybreak Solar, LLC will continue to be lawfully entitled to possession or control of the site or the facility:

- Lease Section 4(a) "Possession of the Project" – states the parties to the lease acknowledge that *"the Project is in the possession of the Lessee"*
- Lease Section 4(b) "Use of the Project" – states *"The Lessee shall use the Project that it leases in the conduct of its business, for the purpose for which the Project was designed, and shall not permanently discontinue use or service of the Project. . ."*

The Department considers the above-referenced terms to be a clear demonstration that the leaseback would not result in a change in possession or control of the site or the facility. Therefore, a site certificate amendment to transfer is not required by OAR 345-027-0350(1) and OAR 345-027-0400.

The leaseback will not result in a significant adverse impact Council has not previously addressed by Council or require a new condition or change to a condition in the site certificate.

Per OAR 345-027-0350, a site certificate amendment is required if the proposed change:

(a) Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource or interest protected by an applicable law or Council standard;

(b) Could impair the certificate holder's ability to comply with a site certificate condition; or

(c) Could require a new condition or a change to a condition in the site certificate.

The "three could" are evaluated to determine whether the proposed change warrants review through the amendment process.

OAR 345-027-0350(a) and (c)

The Organizational Expertise standard relies upon, in part, names, addresses and contact information of any co-owners of the facility (OAR 345-021-0010(1)(a)). The ADR includes contact information for the Bank and based on the terms of the leaseback agreement, co-ownership of facility components with the Bank will not impact the certificate holder's ability to meet the standard.

⁵ November 8, 2024 email correspondence from Tommy Brooks, Cable Huston, to Patrick Rowe, Oregon Department of Justice.

The transaction will not result in any change to the operation of the facility as authorized in the Site Certificate, nor will it impact Council's ability to enforce the Site Certificate. Therefore, the Department does not consider the proposed change to be likely to trigger OAR 345-027-0350(a) or (c).

OAR 345-027-0350(b)

To evaluate OAR 345-027-0350(b), the Department identifies three Site Certificate conditions which merit review, GEN-GS-04, PRE-RT-01 and PRE-RT-02.

Site Certificate Condition GEN-GS-04 states:

Before any transfer of ownership of the facility, facility component or phase, or ownership of the site certificate holder, the certificate holder shall inform the Department of the proposed new owners. The requirements of OAR 345-027-0400 apply to any transfer of ownership that requires a transfer of the site certificate. (Emphasis added).

Here, the certificate holder informed the Department of the proposed new owner of facility components before entering the Lease Agreement, thus complying with this condition. However, as discussed above, OAR 345-027-0400 is not triggered because the certificate holder is retaining possession and control of the facility. Further, as the certificate holder discusses in the ADR, if in the future, the Bank were to take possession or control of the facility (e.g., due to a certificate holder default on lease payments), GEN-GS-04 would require the certificate holder to inform the Department of the transfer. That, however, is only a hypothetical and not the situation being analyzed here.

Site Certificate Condition PRE-RT-01 states:

Before beginning construction of the facility, facility component or phase, the certificate holder shall submit to the State of Oregon, through the Council, a bond or letter of credit in a form and amount satisfactory to the Council to restore the site to a useful, non-hazardous condition. The certificate holder shall maintain a bond or letter of credit in effect at all times until the facility has been retired. The Council may specify different amounts for the bond or letter of credit during construction and during operation of the facility. (Emphasis added).

Site Certificate Condition PRE-RT-02 states:

*Before beginning construction of the facility, facility component or phase, the certificate holder shall submit to the State of Oregon, through the Council, a bond or letter of credit naming the State of Oregon, acting by and through the Council, as beneficiary or payee. The total bond or letter of credit amount for the facility is \$10,729,000 million dollars (Q2 2021 dollars), to be adjusted to the date of issuance, and adjusted on an annual basis thereafter, as described in sub-paragraph (b) of this condition: *** (Emphasis added).*

As explained in the ADR, the certificate holder will retain and continue to be responsible for all obligations under the Site Certificate. That would include these retirement and financial assurance obligations. Further, these conditions don't require the certificate holder to own the energy facility equipment. Thus, leaseback would not impact the State's interest in ensuring there is sufficient financial

assurance for the State to retire the facility, should the certificate holder fail to do so. The certificate holder remains responsible for all obligations under the site certificate.

Determination

For the reasons discussed above, the Department has determined that the sale-leaseback transaction entered by Daybreak Solar, LLC does not require an amendment to the Daybreak Solar Project Site Certificate.

Attachment 2: Certificate Holder's Amendment Determination Request

ESTERSON Sarah * ODOE

From: Sarah.ESTERSON@energy.oregon.gov
Subject: Daybreak Solar LLC - Notice and Amendment Determination Request
Attachments: Avangrid Daybreak_Amendment Determination Request to ODOE_10.17.24.pdf

From: Albrich, Elaine <ElaineAlbrich@dwt.com>
Sent: Thursday, October 17, 2024 12:50 PM
To: ESTERSON Sarah * ODOE <Sarah.ESTERSON@energy.oregon.gov>; Rowe Patrick G <Patrick.G.Rowe@doj.oregon.gov>
Cc: CHANG, MEGAN <megan.chang@avangrid.com>; Durocher, Jeffrey <Jeffrey.Durocher@avangrid.com>; Green, Derek <DerekGreen@dwt.com>; Jamin, Olivier <OlivierJamin@dwt.com>; Tom Grim <Tgrim@cablehuston.com>; tbrooks@cablehuston.com; Bainter, Allison <AllisonBainter@dwt.com>
Subject: Daybreak Solar LLC - Notice and Amendment Determination Request

Hi Sarah and Patrick –

Please see the attached and let me know if there are questions. Thank you! Elaine



Elaine Albrich she/her
Partner | Davis Wright Tremaine LLP

P 503.778.5423 **C** 503.250.4429 **E** elainealbrich@dwt.com
A 560 SW 10th Avenue, Suite 700, Portland, OR 97205

DWT.COM [in](#) [X](#)

October 17, 2024

VIA EMAIL: Sarah.ESTERSON@energy.oregon.gov and Patrick.G.Rowe@doj.state.or.us

Sarah T. Esterson
Senior Policy Advisor
Oregon Department of Energy
550 Capitol St. NE
Salem, OR 97301

Patrick Rowe
Senior Assistant Attorney General
Oregon Department of Justice, Natural
Resources Section
Counsel to the Oregon Department of Energy
550 Capitol St. NE
Salem, OR 97301

Re: Daybreak Solar – Notice and Amendment Determination Request

Dear Sarah and Patrick:

Thank you for the telephone call last week to discuss a potential tax equity financing transaction involving our client Daybreak Solar, LLC (“Daybreak”) and the Daybreak Solar Project (“Project”). As we discussed, the potential transaction involves a national, reputable financial institution (“Bank”) acquiring legal title to the Project’s personal property (e.g., facility equipment, but not any real property rights) and simultaneously leasing the same personal property back to the Daybreak pursuant to a long-term lease. Daybreak would continue to control, possess, and operate the Project pursuant to the Daybreak Site Certificate, dated November 19, 2021 (“Site Certificate”).

For the reasons we presented in our letter and discussed on the phone, we maintain that this transaction does not trigger a transfer or amendment to the Site Certificate under the Department’s rules. We request your concurrence and present the enclosed amendment determination request (“ADR”) to support your determination. And while we maintain that OAR 345-027-0400 does not apply to this transaction, to the extent you disagree, we request that the Department consider this submittal the required notice under OAR 345-027-0400(2).

October 17, 2024

Page 2

Daybreak is not authorized to disclose the Bank's name or information until the transaction closes. Therefore, we have not included it in this ADR. If and when the contemplated transaction closes, Daybreak will provide ODOE the Bank's contact information as further detailed in the ADR.

We request that you process this ADR expeditiously to the extent possible. Thank you for your consideration, and we look forward to working with the Department to obtain your concurrence that no Site Certificate amendment is required.

Very truly yours,

Davis Wright Tremaine LLP



Elaine R. Albrich

Enclosure

cc: Avangrid: Jeffrey Durocher
Bank Outside Counsel: Tommy Brooks and Tom Grim
DWT: Derek Green and Olivier Jamin

Daybreak Solar, LLC
Daybreak Solar Project

Amendment Determination Request

October 17, 2024

I. Project Background

Daybreak Solar Project is an approved solar photovoltaic energy generation facility with a nominal generating capacity of approximately 140 megawatts alternating current (MWac) located in Wasco County, Oregon (“Project”). The Project is approved to share related or supporting facilities with two adjacent facilities (Bakeoven Solar Project and Sunset Solar Project), including a 100 MW battery storage system, collector substation, operations and maintenance building, and an approximately 11-mile 230 kilovolt transmission line. The facility site boundary includes approximately 10,640 acres with up to 1,817 acres of permanent footprint.

The Project was approved originally as part of the Bakeoven Solar Project and was subsequently split from the Bakeoven Site Certificate when the Oregon Energy Facility Siting Council (“EFSC”) issued the Daybreak Site Certificate, dated November 19, 2021 (“Site Certificate”). Daybreak Solar, LLC, a wholly owned subsidiary of Avangrid Renewables, LLC (“Avangrid”), holds the Site Certificate (“Certificate Holder”).

II. Amendment Determination Request

Certificate Holder seeks concurrence from the Oregon Department of Energy (“ODOE”) through this amendment determination request (“ADR”) that the Proposed Change (defined below) does not trigger an amendment to the Site Certificate. Specifically,

- The Proposed Change does not trigger an amendment to the Site Certificate under OAR 345-027-0350(1) because the Proposed Change does not amount to a “change in ownership * * * of the facility” within the meaning of OAR 345-027-0400.
- The Proposed Change does not trigger an amendment to the Site Certificate under OAR 345-027-0350(4) because upon closing, Certificate Holder will continue to operate the Project as described in the Site Certificate, consistent with the prior findings and conditions of approval.

Proposed Change

Certificate Holder is negotiating a tax equity financing transaction with a national financial institution with good standing (“Bank”). The transaction contemplates that Certificate Holder would enter into a sale-leaseback financing transaction whereby the Bank would acquire legal title to certain Project equipment as personal property (“sale”) and then simultaneously lease the same equipment back to Certificate Holder pursuant to a long-term lease (“leaseback”). At closing, the Bank would not take any ownership interest in the Certificate Holder itself; it would not control or possess the Project; and Certificate Holder would retain its interest in all underlying real property rights and some related or supporting facilities. Until the transaction closes, Certificate Holder cannot disclose the name of the Bank. Certificate Holder, however, is able to provide the following information to further describe the Proposed Change:

- *Term and Renewal.* The initial term of the leaseback is anticipated to be about 25 years. At the end of the initial term, the Certificate Holder has the option to renew the term of the leaseback at fair market rental values for the Project[, provided that (1) the renewal term must end no later than the date on which 20% of the Project’s remaining useful life remains and (2) at the end of

the renewal term, the fair market value of the Project is at least 20% of the Project's fair market value at the beginning of the renewal term.

- *Project Equipment.* At closing, Bank acquires ownership interest in equipment related to the 188.3 MWdc integrated solar photovoltaic system, comprised of SEG solar modules, Array Technologies trackers, and TMEIC inverters. It would not acquire ownership in related or supporting facilities (like the transformer, substation, gen-tie) that are shared with Bakeoven Solar Project and Sunset Solar Project pursuant to Condition GEN-GS-07 in the Site Certificate ("shared facilities"). Bank will only acquire a security interest in the shared facilities and Bank would have no right to own, control or possess the shared facilities unless triggered by a Future Scenario (defined below) under the leaseback.
- *Possession and Use.* Upon closing of the transaction, the Project is irrevocably accepted by Certificate Holder (as lessee) for the lease term and Certificate Holder is obligated to operate the Project as it was designed and shall not permanently discontinue the use or service of the Project.
- *Operation and Maintenance.* Certificate Holder is obligated, at its cost and expense, to operate, maintain, service and repair the Project in accordance with all applicable laws, including all permits and authorizations held by Certificate Holder. These permits and authorizations are defined in the leaseback and include the Site Certificate.
- *End of Term.* Certificate Holder has the right to renew the lease at the end of the term. If the lease is not renewed, Certificate Holder has the right to purchase the Project's equipment back from the Bank. Alternatively, Certificate Holder may elect to return the Project's equipment back to the Bank at the end of the term, in which case the Bank will be assigned the remainder of Certificate Holder's rights in the Project, including site control and Certificate Holder's obligations under all applicable laws, permits and authorizations, including the Site Certificate.
- *Event of Default.* If Certificate Holder defaults under the leaseback and is unable to cure the default, the Bank may step into the shoes of Certificate Holder and operate the Project, acquire and hold the Project's real property rights, and/or sell the Project.

III. Analysis

Certificate Holder has evaluated and concluded that the Proposed Change would not trigger a transfer of the site certificate or an amendment of the site certificate under EFSC's applicable rules.

A. Transfer Rules, OAR 345-027-0400 and OAR 345-027-0350(1)

A request for amendment ("RFA") to transfer a site certificate is required "for a transaction that results in a change in the ownership, possession, or control of the facility or the certificate holder" under OAR 345-027-0400(1)(a) ("transfer rule"). The Proposed Change does not involve a change in ownership or control of the Certificate Holder; therefore the below analysis is focused on whether the Proposed Change involves a "change of ownership, possession, or control of the facility." For purposes of this analysis, the following definitions are relevant:

- Facility. ORS 469.300(14) defines “facility” as the “*energy facility together with any related or supporting facilities.*”
- Energy facility. ORS 469.300(11)(a) defines “energy facility” by technology, including “*solar photovoltaic power generation facility*” under subpart (11)(a)(D).
- Related or supporting facilities. ORS 469.300(24) defines “related or supporting facilities” to include “*any structure, proposed by the applicant, to be constructed or substantially modified in connection with the construction of an energy facility, including associated transmission lines, reservoirs, storage facilities, intake structures, road and rail access, pipelines, barge basins, office or public buildings, and commercial and industrial structures.*”
- Solar photovoltaic power generation facility. OAR 345-001-0010(56) defines “solar photovoltaic power generation facility” to include “*an assembly of equipment that converts sunlight into electricity and then stores or transfers that electricity. This includes photovoltaic modules, mounting and tracking equipment, posts, electrical cabling, inverters, transformers, collection systems, fencing, and other components.*”

The Project is a solar photovoltaic power generation facility and includes related or supporting facilities that it shares with Bakeoven Solar Project and Sunset Solar Project including battery storage system, collector substation, operations and maintenance building, Supervisory Control and Data Acquisition system, 230 kV transmission line, collector system, access roads, fencing, gates, and temporary staging areas (“shared facilities”). See Final Order on Request for Amendment 1 to Bakeoven Solar Project Site Certificate, Table 2 and General Standard of Review Condition 7 (Daybreak Solar Project). Certificate Holder entered into a shared facilities agreement with Bakeoven Solar and Sunset Solar, as required by the Site Certificate.

The Proposed Change contemplates the Bank acquiring the ownership interest in the integrated solar photovoltaic system comprising the solar photovoltaic power generation facility. The Bank, however, would not acquire an ownership interest in certain related or support facilities e.g., the shared facilities. The Bank also would not acquire any right in the underlying facility site. Upon closing, the Bank would simultaneously acquire its interest in the Project’s equipment and lease back its interest to the Certificate Holder, who would continue to control, possess, and operate the Project under the leaseback as described in the Certificate.

It is Certificate Holder’s position that the Bank is not acquiring “ownership of the facility” as the terms are used in OAR 345-027-0400 because the Bank: (1) would not acquire any interest in the underlying facility site; (2) would not own certain related or supporting facilities e.g., shared facilities that comprise part of the “facility”; and (3) would have no right to control or possess the “facility.” The mere fact that the Bank does not take full ownership of the facility in and of itself supports a finding that OAR 345-027-0400 is not triggered by the Proposed Change. The context of the rule language also supports this conclusion.

First, OAR 345-027-0400(8) requires that in order for EFSC to approve an RFA to transfer the site certificate, EFSC must find that the “new owner is or will be lawfully entitled to possession or control of the site or the facility described in the site certificate.” OAR 345-027-0400(8)(a). EFSC would not be able to approve a transfer of the Site Certificate to the Bank because the Bank would have no legal right to possess or control the site or the facility under the leaseback. Consequently, the Proposed Change

cannot be the type of transaction EFSC meant to require a transfer or site certificate amendment. Further, the language in subpart (8)(a) seems to imply, notwithstanding the punctuation and the use of “or” in subpart (1)(a), that the new owner must not only own the facility but also have possession or control of the site or the facility. Finally, the language in OAR 345-027-0350 seems to support a reading that ownership, control, or possession are collective because subpart (1) simply states that an amendment is required for “[t]ransfer of ownership of the facility or the certificate holder as described in OAR 345-027-0400.”¹

For these reasons, ODOE may find that the Proposed Change does not involve a transfer requiring a site certificate amendment under OAR 345-027-0400 and OAR 345-027-0350(1).

There are two potential scenarios that may require a transfer and site certificate amendment in the future due to a change of the underlying facts – an event of default under the leaseback or the end of the leaseback term (individually, “Future Scenario” and collectively, “Future Scenarios”). Under the first Future Scenario, Certificate Holder could default on the leaseback, fail to cure the default, and the Bank could foreclose on the Project. Under this scenario, the Bank would acquire the rights to control and possess the facility along with all of Certificate Holder’s leasehold rights and obligations to the underlying facility site. Under the second Future Scenario, at the end of the leaseback, Certificate Holder could opt not to renew the lease and not to buy back the Project equipment. Under this scenario, the Bank would retain ownership in the Project equipment and also acquire the rights to control and possess the facility along with all of Certificate Holder’s rights and obligations to the underlying facility site.

Both these Future Scenarios are forward looking and the fact that these scenarios could occur do not in and of itself trigger the need for a site certificate transfer or amendment under the transfer rules. Should one of the Future Scenarios occur, Certificate Holder would be obligated to notify ODOE under GEN-GS-04 and the Bank would be obligated by operation of law to pursue an RFA to seek a transfer and site certificate amendment. Certificate Holder commits to providing the Bank’s contact information to ODOE after closing in case there was ever a scenario where ODOE needed to contact the Bank.

B. Three Could’s Test, OAR 345-027-0350(4)

A site certificate amendment may be required if the Proposed Change triggered one of the “three could’s” under OAR 345-027-0350:

(4) Design, construct, or operate a facility in a manner different from the description in the site certificate, if the proposed change:

(a) Could result in a significant adverse impact that the Council has not addressed in an earlier order and the impact affects a resource or interest protected by an applicable law or Council standard;

¹ Certificate Holder notes that the Site Certificate itself uses language broader than the rule. Condition GEN-GS-04 requires notice of any transfer of the facility or a “facility component.” To the extent notice is required under GEN-GS-04, Certificate Holder requests that ODOE consider this ADR the required notice. The condition language appears to come from OAR 345-025-0006(15), which does not include the “component” language.

(b) Could impair the certificate holder's ability to comply with a site certificate condition; or

(c) Could require a new condition or a change to a condition in the site certificate.

First, the Project is headed to commercial operation and Certificate Holder will retain all rights to control, possess, and operate the Project consistent with the Site Certificate, and will be subject to all existing conditions and obligations under the Site Certificate. Therefore, Certificate Holder maintains that the Proposed Change would not result in a significant adverse impact to a resource protected by an applicable law or EFSC standard. In fact, the transaction contemplated by the Proposed Change requires Certificate Holder to operate the Project as planned and approved in order for the Bank to qualify for certain tax credits generated by the Project's ongoing operation. Certificate Holder and its parent company, Avangrid, remain the basis for ongoing compliance with respect to EFSC's organizational expertise requirement. Further, the Proposed Change does not affect Certificate Holder's existing financial assurance or ODOE's ability to draw upon the bond.

Nonetheless, Certificate Holder acknowledges that OAR 345-027-0350(4)(a) may be triggered under one of the Future Scenarios. If such a situation arose, Certificate Holder would be obligated to notify ODOE under GEN-GS-04 and then Bank would be obligated by operation of law to pursue an RFA to seek a transfer and site certificate amendment at that time. There is mechanisms in place to ensure that if a Future Scenario arose, ODOE would be notified and could proceed as needed to ensure ongoing compliance. Accordingly, ODOE may find that the Proposed Change does not trigger an amendment under OAR 345-027-0350(4)(a).

Next, Certificate Holder has evaluated its obligations under the current Site Certificate conditions and nothing about the Proposed Change affects Certificate Holder's ability to comply with any condition. Of particular note related to general requirements, organizational expertise, financial assurance, and decommissioning:

- Certificate Holder continues to hold full operational control over the Project with its existing operational expertise and support from Avangrid. It will continue to meet all GEN-GS conditions. To the extent any notice was required under GEN-GS-04, Certificate Holder's communications to date, including this ADR, satisfy any such notice requirement.
- The Proposed Change does not impair Certificate Holder's ability to comply with GEN-OE-01. The contemplated transaction does not involve the corporate structure of Certificate Holder's parent company.
- The Proposed Change does not impair Certificate Holder's ability to comply GEN-OE-02 to GEN-OE-05, as Certificate Holder retains all control over the facility operation and any contractor.
- Certificate Holder will continue to be obligated to comply with the GEN-RT-01 and GEN-RT-02 unless one of the Future Scenarios occurs, at which point in time, Certificate Holder will be obligated under GEN-GS-04 to notify ODOE. At that point in time, a transfer or an amendment of the Site Certificate may be required.

The Proposed Change does not impair Certificate Holder's ability to comply with any existing condition at this point in time. Certificate Holder commits to providing the Bank's contact information to ODOE after

closing in case there was ever a scenario where ODOE needed to contact the Bank. Accordingly, ODOE may find that the Proposed Change does not trigger an amendment under OAR 345-027-0350(4)(b).

Finally, Certificate Holder has evaluated whether the Proposed Change would require a new or revised Site Certificate condition. Certificate Holder relies on GEN-GS-04 to ensure that should one of the Future Scenarios occur, proper notice and subsequent action would be taken in coordination with ODOE. Certificate Holder will provide the Bank's contact information upon closing to supplement this ADR, ensuring that ODOE has the relevant information needed should it need to initiate enforcement actions following one of the Future Scenarios. Again, the fact that a Future Scenario could occur does not in and of itself create the need for a new condition. Accordingly, ODOE may find that the Proposed Change does not trigger an amendment under OAR 345-027-0350(4)(c).

IV. Conclusion

In sum, Certificate Holder requests that ODOE concur that the Proposed Change does not trigger a transfer or amendment of the Site Certificate. If the transaction contemplated by the Proposed Change closes, Certificate Holder will provide ODOE the Bank's contact information within 10 days of closing.

November 6, 2024

VIA EMAIL: Sarah.ESTERSON@energy.oregon.gov and Patrick.G.Rowe@doj.state.or.us

Sarah T. Esterson
Senior Policy Advisor
Oregon Department of Energy
550 Capitol St. NE
Salem, OR 97301

Patrick Rowe
Senior Assistant Attorney General
Oregon Department of Justice, Natural
Resources Section
Counsel to the Oregon Department of Energy
550 Capitol St. NE
Salem, OR 97301

Re: Daybreak Solar – Response to Request for Additional Information for Amendment Determination Request

Dear Sarah and Patrick:

We received a Request for Additional Information from the Oregon Department of Energy (“ODOE”), dated October 28, 2024 (“RAI”), in response to the Notice and Amendment Determination Request Daybreak Solar, LLC (“Daybreak”) filed on October 17, 2024 (“ADR”). We also received a question from the Oregon Department of Justice (“ODOJ”) on October 18, 2024. This letter provides Daybreak’s response to the RAI and ODOJ question.

ODOE RAI 1

Confirm that: a) the Bank will acquire legal title only to the SEQ solar modules, Array Technologies trackers and TMEIC inverters; and b) the Bank will not take title to any other energy facility equipment such as the posts (approximately 69,438 posts, steel or pile-type, with assumed concrete foundations) or the chain-link perimeter fence described in the Final Order for Bakeoven Solar Project Amendment 1 (p. 15).

Response: The Bank acquired the equipment listed in Annex A of the Lease. A copy of Annex A is provided in [Attachment 1](#). If not listed on Annex A, the Bank did not acquire the equipment or facility component. While not expressly enumerated in Annex A, the Bank

acquired the equipment comprising the “integrated solar photovoltaic system” and the parties infer that includes the posts attached to the solar panels. The integrated solar photovoltaic system does not, however, include related or supporting facilities like the access roads, the perimeter fence, or the Common Facilities.

ODOE RAI 2

Provide a copy of the lease to support the argument that the Bank will not be lawfully entitled to possession or control of the equipment, site or the facility (unless one of the future scenarios described in the ADR were to occur). If the lease is not yet signed, we would accept quotes of the relevant terms from the lease. Please affirm your willingness to provide a copy of the executed lease (redacting financial terms considered confidential), once available.

Response: The transaction is closed and the Lease is executed. The relevant sections in the Lease that ensure Bank is not lawfully entitled to possess or control the equipment, site or facility, include but are not necessarily limited to the following:

- Lease Section 4(a), Possession of the Project;
- Lease Section 4(b), Use of the Project;
- Lease Section 5(a) Operation and Maintenance;
- Lease Section 5(b), Replacement Parts; and
- Lease Section 7(a), Casualty Occurrence.

Excerpts of the relevant Lease sections are included in Attachment 2. Daybreak respectfully requests that ODOE not require Daybreak to provide the entire Lease, even in redacted form, as it is long and has many financial terms throughout. Daybreak hopes the excerpts of the salient terms that respond to ODOE RAI 2 are sufficient.

ODOE RAI 3

Provide contact information for the Bank, or affirm willingness to provide to the Department after closing.

Response: The appropriate Bank contact is provided below.

The Huntington National Bank
Equipment Finance Division
525 Vine St., 14th Floor
Cincinnati, OH 45202
HBEF.Service@huntington.com
REF@huntington.com
(866)329-7286

ODOJ Question

Under OAR 345-001-0010(24), an “owner” of a facility is the “owner or lessee under a capital lease.” The Amendment Determination Request does not address that. Does your client consider the lease with the bank to constitute a capital lease?

Response: The ODOE rules do not define “capital lease.” Applying a plain language interpretation, the term “capital lease” is defined in the context of a “lease purchase agreement,” and a “lease purchase agreement” is defined as: “[a] rent-to-own purchase plan under which the buyer takes possession of the goods with the first payment and takes ownership with the final payment; a lease of property (esp. equipment) by which ownership of the property is transferred to the lessee at the end of the lease term. • Such a lease is treated as an installment sale. Under a capital lease, the lessee is responsible for paying taxes and other expenses on the property. — Also termed lease-to-purchase agreement; hire-purchase agreement; capital lease. Cf. operating lease under lease.” See Black's Law Dictionary (12th ed. 2024).

Daybreak considers the term “capital lease” more as an accounting term for US GAAP and IFRS book accounting purposes rather than being applicable to this transaction. Daybreak is not treating this transaction as a lease for book accounting purposes, and for US GAAP and IFRS book accounting purposes, Avangrid considers this an owned asset. For legal and tax purposes, the equipment is owned by the Bank. Therefore, our position is that while the Lease may not be a “capital lease” within the meaning of the ODOE rule, it does give Daybreak the possession and control and future rights to own the equipment, like a “capital lease” and therefore helps support Daybreak’s argument that no transfer is triggered.

Thank you for your consideration and please let us know if you require any additional information to complete your review.

Very truly yours,

Davis Wright Tremaine LLP



Elaine R. Albrich

Enclosure

cc: Avangrid: Jeffrey Durocher
Bank Outside Counsel: Tommy Brooks and Tom Grim
DWT: Derek Green and Olivier Jamin

Attachment 1

ANNEX A

DESCRIPTION OF PROJECT – All Equipment

The following equipment, and ancillary property related thereto, related to the 140 MW-AC integrated solar photovoltaic system colloquially known as “Daybreak Solar”, located at the Project Location (as described in Annex B to the Schedule to the Lease), and comprised of seven feeder circuits connecting to the substation in the Common Facilities, but excluding the Common Facilities (as that term is defined in the Shared Facilities Agreement):

Modules: 42,028 SEG Solar SEG-445-BMA-BG; 235,116 SEG-450-BMA-BG; and 142,604 SEG-455-BMA-BG.

PCS: 41 (205 inverters) TMEIC Solar Ware Ninja PVU-L0840GR NINJA 5.

Trackers: Array Tech DuraTrack HZ v3 trackers, including 123 x 2-string and 5,043 x 3-string trackers in use, 106 un-used trackers and 33 partial trackers.

Meter: Two Schneider Electric PowerLogic Ion 8650 MET2C & MET2D on mv bus; and two Schneider Electric PowerLogic Ion 8650 MET2A & MET2B on hv bus.

DC Disconnect: Shoals Big Lead Assembly (BLA) load break disconnects.

AC Disconnect: 49 G&W Electric, specifically 8 for pad mount switchgear (one for each of the 7 circuits and one spare) & 41 total within the 41 power control systems.

Attachment 2

RELEVANT LEASE AGREEMENT SECTIONS¹

4. DELIVERY, USE AND OPERATION.

(a) Possession of Project. Upon execution by the Lessee of this Lease, the Project shall be deemed to have been delivered to, and irrevocably accepted by, the Lessee for lease hereunder. The parties acknowledge that, as of the Basic Term Commencement Date, the Project is in the possession of the Lessee.

(b) Use of Project. The Lessee shall use the Project that it leases pursuant to this Lease in the conduct of its business, for the purpose for which the Project was designed, and shall not permanently discontinue use or service of the Project. The Project will at all times be used for commercial or business purposes.

5. MAINTENANCE.

(a) Operation and Maintenance. The Lessee shall, and shall cause the Operator to, at all times at the Lessee's cost and expense (but subject to the limitation set forth in Section 9.6 of the O&M Agreement), operate, maintain, service and repair the Project in good operating order, repair and condition (A) in accordance and consistent with (1) the manufacturer's warranties, recommendations and all maintenance and operating manuals or service agreements, whenever furnished or entered into, including any subsequent amendments or replacements thereof, issued by the manufacturer, (2) the requirements of all applicable insurance policies, (3) preserving all rights to any warranties, indemnities or other rights or remedies (such service to include monitoring the degradation of the Project and enforcing or assisting with the enforcement of the applicable warranties with respect to such degradation), (4) all Applicable Laws, the Power Purchase Agreement, the O&M Agreement and the Site Agreements, and (5) Prudent Industry Standards (and, in any event, to such similar standards as similar companies in the same business as the Lessee apply with respect to comparable projects owned, leased and operated by such companies, but in any event, to no lesser standard than that employed by the Lessee and its Affiliates for comparable projects owned, leased or operated by them); and (B) without limiting the foregoing, so as to cause the Project to be in at least the same condition as when delivered to the Lessee hereunder, except for ordinary wear and tear, including in accordance with Section 5(b).

(b) Replacement Parts. The Lessee shall, and shall cause the Operator to, replace at the Lessee's cost and expense, parts of the Project which become worn out, lost, destroyed, damaged or otherwise unfit for use, with new or reconditioned replacement parts which are free and clear of all Liens other than Permitted Liens and have a value, utility and remaining useful life at least equal to the parts replaced (assuming that they were in the condition required by the Lease). Except as expressly provided in Section 5(d), title to all such parts, modifications and additions to the Project immediately shall vest in the Lessor, without any further action by the Lessor or any other Person, and they shall be deemed incorporated in the Project for all purposes of the related Schedule and the Lease. Unless replaced in accordance with this Section 5(b), the Lessee shall not remove any parts originally or from time to time attached to the Project, if such parts are essential to the operation of the Project, are required by any other provision of the Lease or cannot be detached from the Project without interfering with the operation of the Project or impairing the current or estimated end-of-term residual value, function, operation or remaining economic useful life of the Project, or would cause the Project (or any portion thereof) to constitute "limited use property" within the meaning of Rev. Proc. 2001-28, 2001-19 I.R.B. 1156 or Rev. Proc. 2001-29, 2001-19 I.R.B. 1160 or any successors thereto.

¹ Lessee is Daybreak Solar LLC and Operator is Avangrid Renewables LLC.

7. LOSS OR DAMAGE.

(a) Casualty Occurrence. The Lessee hereby assumes and shall bear the entire risk of any Casualty Occurrence with respect to the Project. As used herein, "**Casualty Occurrence**" shall mean any of the following events with respect to the Project: (1) loss or disappearance of the Project, the Equipment or any material portion thereof or loss or use thereof due to theft or disappearance for a period in excess of ten (10) consecutive days; but in no event later than the last day of the Term; (2) destruction or damage of all or any material portion of the Equipment or the Project that renders repair uneconomic or permanently unfit for normal use by the Lessee for any reason whatsoever; (3) any loss or disappearance of or damage or destruction to the Equipment or the Project or any material portion thereof which results in an insurance settlement with respect to such Equipment or Project on the basis of an actual or constructive total loss; or (4) the condemnation, confiscation, appropriation, seizure, requisition or other similar taking of title to the Equipment or the Project or the imposition of any Lien (other than Permitted Liens) on the Project or any Equipment by any Governmental Authority for ten (10) days or more, but in no event later than the last day of the Term.

LEASE AGREEMENT

Dated as of October 23, 2024

Among

**DAYBREAK SOLAR, LLC,
as Lessee**

and

**AG-HBAN TRUST,
as Lessor**

Daybreak Solar Project

IN WITNESS WHEREOF, the Lessee and the Lessor have caused this Lease Agreement to be executed by their duly authorized representatives as of the Closing Date.

LESSOR:

AG-HBAN TRUST

By: Wilmington Trust, National Association,
as Trustee

By: _____

Name: Steve Barone
Title: Vice President

LESSEE:

DAYBREAK SOLAR, LLC

By: 

Name: Jorge Pedron
Title: Authorized Representative



By: 


Name: Jorge Alvarez
Title: Authorized Representative

Counterpart No. 1 of 2 serially numbered manually executed counterparts. To the extent, if any, that this document constitutes chattel paper under the Uniform Commercial Code, no security interest in or sale of the lease created hereby may be created or perfected through the transfer and possession of any counterpart, other than the original counterpart containing the receipt therefor executed by the Lessor.

Receipt of this original counterpart is hereby acknowledged on this 23rd day of October, 2024.

AG-HBAN TRUST

By: Wilmington Trust, National Association, as
Trustee

By:  _____

Name: Steve Barone

Title: Vice President

IN WITNESS WHEREOF, the Lessee and the Lessor have caused this Lease Agreement to be executed by their duly authorized representatives as of the Closing Date.

LESSOR:

AG-HBAN TRUST

By: Wilmington Trust, National Association,
as Trustee

By:  _____

Name: Steve Barone
Title: Vice President

LESSEE:

DAYBREAK SOLAR, LLC

By: _____

Name: Jorge Pedron
Title: Authorized Representative

By: _____


Name: Jorge Alvarez
Title: Authorized Representative

Counterpart No. 3 of 3 serially numbered manually executed counterparts. To the extent, if any, that this document constitutes chattel paper under the Uniform Commercial Code, no security interest in or sale of the lease created hereby may be created or perfected through the transfer and possession of any counterpart, other than the original counterpart containing the receipt therefor executed by the Lessor.

Receipt of this original counterpart is hereby acknowledged on this 23rd day of October, 2024.

AG-HBAN TRUST

By: Wilmington Trust, National Association, as
Trustee

By:  _____

Name: Steve Barone

Title: Vice President