

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 659

In the Matter of

Rulemaking to Update Division 82 Small
Generator Interconnection Rules, and
Division 39 Net Metering Rules.

COMMENTS OF THE
COMMUNITY RENEWABLE
ENERGY ASSOCIATION,
RENEWABLE ENERGY
COALITION, AND THE OREGON
SOLAR + STORAGE INDUSTRIES
ASSOCIATION

I. INTRODUCTION

The Community Renewable Energy Association (“CREA”), the Renewable Energy Coalition (the “Coalition”), and the Oregon Solar + Storage Industries Association (“OSSIA”) (collectively the “Interconnection Trade Groups”) respectfully submit these comments on the proposed rules of OAR 860-082 related to interconnection in response to the Notice of Proposed Rulemaking filed on September 26, 2023, for the Oregon Public Utility Commission’s (“OPUC” or the “Commission”) review.

The Commission should make the following changes to the proposed rules:

- Revise the interconnection handbook rules to require the utility to provide notice to active interconnection customers, establish a process to challenge changes to the interconnection handbook, and clarify the utility bears the burden to demonstrate reasonableness of any changes to the interconnection handbook;
- Revise the rules so that the 10-megawatt (“MW”) capacity measurement for eligibility to use the small generator interconnection rules should be consistent with the 10-MW capacity measurement for eligibility for small qualifying facilities to use the Commission’s standard power purchase agreement;
- Allow for capacity reductions of up to 60 percent of nameplate capacity and/or export capacity prior to execution of a system impact study agreement

and an additional 15 percent prior to execution of a facilities study agreement without material modification review of the impact on lower queued customers;

- Require the utilities to expeditiously correct the data input error that relies on DC capacity of interconnection customers' facilities;
- Delete the requirement that the interconnection applicant furnish a security deposit with the executed Interconnection Agreement;
- Provide 30 days for the interconnection applicant to review and execute the public utility's proposed Interconnection Agreement instead of 15 business days; and
- Clarify and provide a reasonable process by which the applicant may initiate arbitration or an expedited complaint under the rules if it disputes the public utility's proposed Interconnection Agreement.

II. COMMENTS

A. **Interconnection Handbooks: Revise the Rules to Require the Utility to Provide Notice to Active Interconnection Customers, Establish a Process to Challenge Changes to the Interconnection Handbook, and Clarify the Utility Bears the Burden to Demonstrate Reasonableness**

The Interconnection Trade Groups recommend the following changes to proposed rule OAR 860-082-0030(1)(b) on interconnection handbooks:

OAR 860-082-0030(1)(b) Interconnection requirements handbook. Each public utility must post an interconnection requirements handbook on its public website. Prior to revising its interconnection requirements handbook, a public utility must provide public notice and notice to interconnection customers with an interconnection agreement or active interconnection request. The public utility must also provideand an opportunity to comment, and the public utility must respond to any comments received. If a person challenges the revisions to the interconnection requirements handbook, then the public utility will file the revised interconnection requirements handbook with the Commission for review and approval. The public utility would bear the burden of proof to demonstrate the revisions

to the interconnection requirements handbook are reasonable. Each public utility must file a compliance filing of its interconnection requirements handbook to be reviewed by the Commission that incorporates the preferred default settings in OAR 860-082-0030(1)(c).

The proposed notice requirements will ensure that developers with operating projects and projects that are in development will become aware of a utility's proposed changes to its interconnection handbook. If a party has concerns with the utility's proposed changes to its interconnection handbook, then the utility should be required to file the proposed changes with the Commission for Commission review and approval. The Interconnection Trade Groups are open to suggestions on the review and approval process, but in any process the utility should bear the burden to demonstrate its proposed changes are reasonable.

These recommended changes will provide more certainty to developers when selecting sites to develop. Currently, developers rely on information from the utilities, including their interconnection handbooks, when making business decisions, including but not limited to the cost and feasibility of projects, selection of land parcels for development, and obtaining financing. If the utility requires an upgrade unrelated to safety, reliability, or adverse system impacts that was not specified in the utility's handbook, then that can disrupt the developer's siting choices and add unplanned costs. These recommendations will increase transparency and improve the working relationship between the utilities and the developers.

The Interconnection Trade Groups are not certain why these revisions were not included in the draft rules or what arguments there are against their inclusion. It is not

reasonable to assume that small generator interconnection customers are monitoring the utilities websites or OASISs, which can be difficult to navigate and subject to change. It should not be difficult for the utility to provide very limited notice to interconnection customers with an interconnection agreement or active interconnection request. The Interconnection Trade Groups understand that the utilities bear the burden of proof to demonstrate the revisions to the interconnection requirements handbook are reasonable, but that is not clearly spelled out in the Commission’s rules, and there is no reason why this information should not be clarified to reduce potential future disputes about who has the burden of proof.

B. Applicability:

The 10-MW Capacity Measurement for Eligibility to Use the Small Generator Interconnection Rules Should Be Consistent with the 10-MW Capacity Measurement for Eligibility for Small Qualifying Facilities to Use the Commission’s Standard Power Purchase Agreement

The applicability of the small generator interconnection rules, OAR 860-082-0005(1), should be updated consistent with the Commission’s recently adopted Division 29 rules governing purchases from QFs by focusing on the potential output of facility in AC, thus making the rules applicable to facilities with export capacity to the grid of up to 10 MW AC. This edit would modernize the rules for newer technologies—such as solar co-located with battery energy storage—that do not easily conform to the traditional “nameplate capacity” framework developed for traditional induction or synchronous generators. The Interconnection Trade Groups understand from discussion with Staff that Staff may have intended for the draft rules here to be consistent with the proposal in these

comments, but as currently drafted the proposed rules do not unambiguously achieve that objective.

The proposed rules on applicability state as follows:

(1) OAR 860-082-0005 through 860-082-0085 (the “small generator interconnection rules”) govern the interconnection of a small generator facility with a nameplate rating of 10 megawatts or less to a public utility’s transmission or distribution system. These rules do not apply if the interconnection between the small generator facility and the public utility is subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC).

(28) “Nameplate rating” means the sum total of maximum rated power output of all of a small generator facility’s constituent generating units and/or energy storage systems as identified on the manufacturer nameplate in Alternating Current (AC), regardless of whether it is limited by any approved means. For a generating unit that uses an inverter to change direct current energy supplied to an AC quantity, the nameplate rating will be the manufacturer’s AC output rating for the inverter(s).

While the Interconnection Trade Groups agree with the proposed clarification that the eligible capacity should be measured in AC and not DC, the eligibility should focus on the whole facility’s output and not the sum of the facility’s individual components. The proposed definition of nameplate rating and the applicability section are now out of sync with the Commission’s closely related Division 29 rules that make standard contracts available to proposed facilities with a “power production capacity” of 10 MW

AC, which is the whole facility’s “send out” measured at the point of interconnection.¹ That measure used in the Division 29 rules properly accounts for the co-location of battery storage with solar, wind, or other resources, and it thereby encourages the use of battery storage by allowing small generator facilities to co-locate battery storage with their facility without compromising their access to the streamlined contracting procedures for small facilities.

In contrast, the proposed rules, if applied as written, would discourage facilities from adding storage to their facility. It would do so by summing the capacity of the power generation components with the potential output of the storage component for purposes of measuring applicability of the streamlined small generator interconnection rules. If a project proponent designs its 8 MW AC solar array to include a 3 MW battery, for instance, it appears to be disqualified from using the small generator interconnection rules under the currently drafted rules. That could discourage the use of valuable storage resources that will enhance the capacity value of small-scale renewable resources.

To remove ambiguity, the Interconnection Trade Groups recommend that the Commission align the eligibility for the small generator interconnection with the eligibility for standard contracts to limit confusion and to encourage use of storage devices with small generators. The Interconnection Trade Groups propose that the rules

¹ See OAR 860-029-0010(20), (32) & 860-029-0045 (measuring capacity for purposes of the 10-MW standard contract eligibility as the entire facility’s maximum send-out at the point of interconnection in AC) (rules adopted in Docket No. AR 631); see also *Solar Energy Indus. Ass’n v. FERC*, 59 F4th 1287, 1291-94 (D.C. Cir. Feb. 14, 2023) (affirming FERC’s use of the send-out rule to measure capacity of hybrid QFs).

be applicable to any facility with an “export capacity” of 10 MW or less. The proposed rules define that term, at OAR 860-082-0015(11), as follows:

(11) “Export capacity” means the amount of power that can be transferred from the small generator facility to the distribution system. Export capacity is either the nameplate rating, or a lower amount if limited using an acceptable means identified in OAR 860-082-0033.

The Interconnection Trade Groups recognize that there may be valid reasons to focus on the summed capacity of the generation and storage equipment in interconnection studies such that the definition of “nameplate rating” should remain as proposed. However, for purposes of eligibility to use the small generator rules, the proposed definition of export capacity is the more appropriate measure for the reasons stated above.

**C. Capacity Changes:
The Rules Should Allow Capacity Changes to Encourage Customers’ Ability to Right Size Their Proposed Facilities to Available Capacity on the Grid**

The rules should allow for capacity reductions of up to 60 percent of nameplate capacity and/or export capacity prior to execution of a system impact study agreement and an additional 15 percent prior to execution of a facilities study agreement without material modification review of the impact on lower queued customers. Capacity increases should also be permitted where there is no impact to lower queued customers.

The Interconnection Trade Groups understand that the issue of capacity changes can be viewed as balancing the interests of interconnection customers with different queue positions in a serial queue. From a public policy perspective, the Interconnection Trade Groups urge the Commission to rule on the side of having more flexibility for

interconnection customers higher in the serial queue, which we believe will allow more customers to actually become interconnected. The Commission should also look to FERC, which when presented with a similar question decided that greater changes should be allowed. The Interconnection Trade Group’s revision would make the Division 82 rules consistent with the policies in FERC’s large generator interconnection procedures (“LGIP”) for serial interconnection queues as well as FERC’s procedures for small generators taking network resource interconnection in serial interconnection queues.² Finally, interconnection customers are those most impacted by changes in project size, and this is not a traditional utility vs. interconnection customer issue. The Interconnection Trade Groups urge the Commission to listen to how the industry most impacted by this issue would like it resolved.

The proposed rules only allow for a 10 percent capacity reduction and only if there is no adverse effect on lower queued customers,³ but this limited, possible reduction is not sufficient to allow small generators to right size their facilities to the capacity

² FERC more recently adopted a pro forma cluster study process as the default interconnection process for large generators, while leaving its preexisting serial process in place for small generators under 20 MW. The initial order adopting the new LGIP cluster process remains on rehearing regarding a number of issues, including how downsizing rights could apply in the cluster study context, *See* Order No. 2023, 184 FERC ¶ 61,054 (July 28, 2023), *on reh'g* 184 FERC ¶ 62,163 (Sept. 28, 2023) (stating that “requests for rehearing of the above-cited order filed in this proceeding will be addressed in a future order “ and “the Commission may modify or set aside its above-cited order, in whole or in part, in such manner as it shall deem proper.”) Because the Division 82 rules at issue here are serial queue rules, these comments cite to FERC’s processes for serial queues.

³ Proposed OAR 860-082-0015(25)(1)(c); OAR 860-082-0015(27).

available upon receipt of interconnection studies. The Commission’s currently effective rules for small generators provide no reasonable capacity reductions as a matter of right. Notably, the Commission has previously waived this rule to allow a capacity reduction that would allow a proposed community solar facility to right-size its facility to the feeder and avoid significant upgrades, even though a lower queued customer objected that the avoided upgrades may ultimately be shifted to it.⁴ Thus, the Interconnection Trade Groups agree with the direction in which the proposed rules move by proposing to loosen the current rules’ absolute bar on capacity reductions. But, as explained below, allowing capacity decreases of only 10 percent, and only if there is no adverse impact on a lower queued customer, is not sufficient.

The relevant revisions in the proposed rules are as follows:

OAR 860-082-0025(1)(c) An applicant with a pending completed application to interconnect a small generator facility must submit a new application if the applicant proposes to make any change to the small generator facility other than a minor equipment modification. This includes changes affecting the nameplate rating of the proposed small generator facility.

OAR 860-082-0015(27) “Minor equipment modification” means a change to a small generator facility or its associated interconnection equipment that:

⁴ *In re Marquam Creek Solar, LLC*, Docket No. UM 1631, Order No. 21-145 at 1-2 (May 7, 2021).

(c) Includes a reduction in the nameplate rating and/or export capacity of the small generator facility of 10 percent or less provided that a change made to a small generator facility with a pending completed application must not adversely impact lower queued projects...

Thus, the proposed rules will allow for a minimal 10 percent reduction of nameplate rating and/or export capacity only if there are no lower queued customers affected in any way, such as through the need for a re-study. As a practical matter, the newly proposed right for capacity reduction will only be available if no lower queued customers in the same vicinity are in the queue because a re-study or some other conceivable adverse impact would frequently occur to the lower queued customer. This extremely limited right to capacity reduction is too limited to be of much value.

While the rules should also provide as much data upfront to allow the customer to make the most informed interconnection request possible, the practical reality is that the customer often-times will not really know how much interconnection capacity is available until it receives the results of the utility's interconnection screens or a detailed study. The proposed rules appear to increase the detail and transparency of the screening and study results, but customers also need the capability to act on that information with more flexibility than provided in the proposed rules to adjust their capacity to right-size the project to the grid. More generally, capacity reductions are often needed during the development process for a number of reasons beyond the interconnection customer's control, including permitting issues and other development considerations that are moving in tandem with the interconnection process.

The right to make significant capacity reductions and other design changes during the interconnection process is an important tool that should be made available to small generators. As the BTRIES Toolkit filed in Docket No. UM 2111 explains, “system impacts may not be known until after the screening or study process, interconnection customers would like to be able to modify projects after receiving results without submitting a new application and losing their interconnection queue position.”⁵ Further, where the practice is to not allow meaningful design changes during the process, “time delays and costs . . . can be substantial for both utilities and customers.”⁶ For battery storage in particular, “it may be possible for the customer to revise the Export Capacity to a new limit” to avoid costly upgrades and maximize use of existing capacity on the grid.⁷ Similarly, “Customers may consider adding storage to a [distributed energy resource] design (that did not originally contain ESS) in order to address identified upgrades or screen failures.”⁸ Thus, the BTRIES Toolkit recommends allowing customers to “decrease nameplate capacity or Export Capacity, or potentially changes to the operating schedule” upon receipt of its supplemental review studies after failing the initial screening for fast-track process.⁹

⁵ *Building a Technically Reliable Interconnection Evolution for Storage: Toolkit & Guidance for Interconnection of Energy Storage & Solar-Plus-Storage*, p. 103 (March 2022) (hereafter “BTRIES Toolkit”). This report was filed in the UM 2111 docket by the Interstate Renewable Energy Council on March 30, 2022.

⁶ BTRIES Toolkit at 103.

⁷ BTRIES Toolkit at 104.

⁸ BTRIES Toolkit at 104.

⁹ BTRIES Toolkit at 112; *see also id.* at 113 (providing proposed rule language); *id.* at 115 (proposing similar rule language for design changes made after receipt of a system impact study).

FERC has allowed for an absolute right to make significant reductions of proposed “electrical output” during its serial interconnection process regardless of the impact on lower-queued customers and even allows capacity increases if there is no adverse impact on lower-queued customers. FERC’s serial LGIP contains a provision (at § 4.4) that provides the customer with a right to make a reduction of up to 60 percent in plant capacity or interconnection service level upon receipt of the feasibility study and prior to executing the system impact study agreement, with a further 15-percent reduction upon receipt of the system impact study and prior to execution of the facilities study agreement.¹⁰ Those reductions can total 75 percent and are expressly allowed without “material modification” review for the impact on lower queued customers.¹¹ Further reductions, as well as increases to capacity, are also potentially authorized under “material modification” review for impact on lower-queued customers at any point.¹² If the “material modification” test applies (e.g., when a capacity decrease is in excess of 60 percent upon receipt of feasibility study), the FERC LGIP (at § 4.4.3) allows the customer to request that the transmission provider evaluate whether the proposed change

¹⁰ *See Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043, at PP 406-407 (April 19, 2018) (discussing the FERC rules); *see also Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103, at PP 161-168 (July 24, 2003) (initially adopting this policy). FERC serial queue LGIP is posted online available at <https://www.ferc.gov/sites/default/files/2020-04/LGIP-procedures.pdf>. .

¹¹ Order No. 845, 163 FERC ¶ 61,043, at PP 406-407.

¹² FERC LGIP, § 4.4, available at <https://www.ferc.gov/sites/default/files/2020-04/LGIP-procedures.pdf>. .

will be deemed a material modification, and if so, to withdraw the proposed modification without losing its queue position.

FERC’s small generator interconnection procedures (“SGIP”), for facilities with capacity of 20 MW or less, are designed solely for a service comparable to energy resource interconnection service, which FERC did not expect to entail significant network upgrade costs, and thus FERC’s SGIP does not contain these same express downsizing provisions of the LGIP.¹³ However, if small generators under the FERC process choose to secure network resource interconnection service that includes deliverability to load—which is more analogous to the service typically offered under this Commission’s Division 82 rules—then the customer would use the LGIP and Large Generator Interconnection Agreement (“LGIA”), including the right to make reductions to capacity.¹⁴ Thus, FERC’s policy for serial queues is relevant to Oregon’s Division 82 process.

¹³ *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, 70 Fed Reg 34 (June 13, 2005), FERC Stats. & Regs. ¶ 31,180, P 40 (May 12, 2005) (stating, “we expect that, for most interconnections of Small Generating Facilities, there will be no Network Upgrades”) (May 12, 2005); *id.* at P 139 (explaining that “[t]he one interconnection service that the Commission proposed to make available to the Small Generating Facility is similar to the Energy Resource Interconnection Service that is offered under the LGIA”); *see also id.* at Appendix E, at § 1.4 (containing SGIP § 1.4, regarding modifications of interconnection request).

¹⁴ Order No. 2006, 70 Fed Reg 34, at P 140 (stating, “If [a customer] wishes to interconnect its Small Generating Facility using Network Resource Interconnection Service, it may do so. However, it must request interconnection under the LGIP and execute the LGIA.”).

Notably, in Order No. 10-132, this Commission approved use of an LGIP provision that mirrors the FERC's serial queue LGIP provisions adopted in Order No. 2003 with respect to downsizing rights.¹⁵ Those rules remain in effect to this date for the utilities still using a serial queue. There is no justification for denying that downsizing right to small generators also.

The primary policy argument against allowing for reductions to the interconnection capacity requested is that, in avoiding the costs of major system upgrades through capacity reduction, the customer may be shifting those system upgrades to a lower queued customer. However, that concern does not justify constricting the right to make significant capacity reductions during the interconnection process. If the system upgrades are large, the first customer to discover them through the interconnection process should be allowed to reduce its capacity to right-size its facility to the existing grid, instead of maintaining a policy that hopes that a lower queued customer correctly guessed the correct right-sized capacity when it entered the queue. To the extent the lower queued customer may otherwise benefit from the first customer's withdrawal from the queue due to the inability to meaningfully reduce its capacity, the Interconnection Trade Groups question whether such gamesmanship is really the policy the Commission should be promoting in the interconnection rules.

¹⁵ *In re Investigation into Interconnection of PURPA Qualifying Facilities with Nameplate Capacity Larger Than 20 Megawatts to a Public Utility's Transmission or Distribution System*, Docket No. 1401, Order 10-132, App. A at 20-22 (Apr. 7, 2010) (containing OPUC-approved LGIA § 4.4).

Similarly, the concern that a lower queued customer may be forced into a re-study in the case of the first customer lowering its capacity is also not sufficient justification for constricting the right to reduce capacity during the process. The fact that a lower queued generator that is in the study phase may be adversely impacted by the decisions and actions of a higher queued generator is an unfortunate fact of how a properly functioning serial interconnection queue should work, and a higher queued generator has a de facto higher priority right relative to lower queued projects. When balancing the interests of the different customers, it is more important to provide flexibility to the higher queued customer. FERC explained in addressing this point in Order No. 845:

Furthermore, lower-queued interconnection requests have always faced potential impacts from the decisions of higher-queued interconnection requests. For example, lower-queued interconnection requests are frequently impacted by the withdrawal of higher-queued interconnection requests. The impact on lower-queued interconnection requests from a withdrawal higher in the queue is similar to what would happen when a higher-queued interconnection customer requests a reduction in interconnection service level. In both cases, the higher-queued interconnection request could avoid paying for some level of network upgrades (if such upgrades are required), and lower-queued interconnection requests could be impacted as a result.¹⁶

This Commission has also applied similar reasoning when it granted a waiver of the existing rule in Marquam Creek Solar, reasoning that the beneficial impact of the capacity reduction to the higher queued customer was known and significant while the adverse impact on the lower queued customer was speculative.¹⁷

¹⁶ Order No 845, 163 FERC ¶ 61,043, P 409.

¹⁷ *In re Marquam Creek Solar, LLC*, Docket No. UM 1631, Order No. 21-145 at 2.

In sum, therefore, the Interconnection Trade Groups recommend that the rules be revised to be consistent with the FERC LGIP modification rights for changes to capacity.

**D. Data Conversion to Export Capacity:
The Rules Should Require the Utilities to Expediently Correct the Data
Input Error that Relies on DC Capacity of Interconnection Customers'
Facilities**

The Interconnection Trade Groups understand that it has been revealed in this process that one or more of the utilities logs the capacity of facilities into interconnection software based on the DC rating of the component parts (e.g., solar panels) even when the facility's AC export capacity from inverters is far lower. Apparently, due this data input error, interconnection studies have been incorrectly overestimating the amount of AC capacity being injected into the AC grid, and this error has likely resulted in significant overstatements of the upgrades needed to interconnect new generators. This is an error that needs to be promptly corrected to allow for distributed energy resources to effectively utilize the existing capacity on the system and enable Oregon to meet its clean energy goals. Two actions should be taken to correct this situation.

First, the rules should require the utilities to immediately correct this data entry practice for prospective customers and, to the extent it still exists, for interconnection customers still in the queue and not yet connected. It appears that all interested stakeholders are in agreement on this point.

Second, the data error should be promptly corrected in all affected systems with respect to all operating facilities where it exists. The Commission should set a date certain by which utilities must include in their databases the AC nameplate rating and export capacity of all operating facilities. The utilities should also file a report shortly

thereafter confirming that the task has been completed. Without a date certain in the near term and a report, the Commission and stakeholders may have no easy way to ensure when this important data conversion will be completed.

E. Issues Related to Execution of Interconnection Agreement

**1. Deposit:
Delete the Requirement the Applicant Furnish a Security Deposit with the Executed Interconnection Agreement**

Portland General Electric Company (“PGE”), PacifiCorp dba Pacific Power (“PacifiCorp”), and Idaho Power Company (“Idaho Power”) (collectively the “Joint Utilities”) proposed in their written comments that OAR 860-082- 0025(7)(f) should require the applicant to submit a deposit with its signed interconnection agreement,¹⁸ and the proposed rules have incorporated this proposal in the rule. The Interconnection Trade Groups strongly oppose requiring the applicant to submit a financial deposit on the short timeframe that will be applied to execution of an interconnection agreement. Instead, the deposit supporting procurement and/or construction should be governed by the interconnection agreement itself, which should require the deposit be furnished a reasonable time (e.g., 20 days) before commencement of those activities. Requiring the applicant to furnish a financial deposit for interconnection upgrades with the executed interconnection agreement will impede renewable energy development because the deposit can be significant—several hundred thousand or even millions of dollars in some cases. Developers will likely need time to raise such funds, and many may not be able to

¹⁸ Docket No. UM 2111, Joint Utilities’ Comments at 4-5 (May 5, 2023).

do so within the short timeframe (15-30 days) within which it is reasonable to require the interconnection agreement to be executed.

A review of other relevant interconnection rules confirms that requiring the applicant to furnish the financial deposit supporting construction with the executed interconnection agreement is not the normal process. The Commission's current Division 82 rules do not state that financial security must be supplied with the executed interconnection agreement. The rules simply state that the customer must return the executed agreement within 15 business days.¹⁹ The deadline to submit any financial deposit would be governed by the interconnection agreement itself, and that agreement should provide reasonable time to submit the deposit before the utility must begin procurement and construction.

Similarly, FERC's SGIP (at § 4.8) provides the customer 30 days to sign the Small Generator Interconnection Agreement ("SGIA"), or request that the disputed agreement be submitted to FERC for resolution.²⁰ But it does not state that a deposit must be submitted within 30 days. Instead, the SGIP states the customer that executes the SGIA then proceeds under the SGIA. In turn, FERC's SGIA (§ 6.3) requires the financial security in the amount of the construction costs be submitted at least 20 days before commencement of procurement and/or construction. That process makes sense because the customer has time to raise the potentially significant financial deposit after

¹⁹ OAR 860-082-0025(7)(e).

²⁰ Current versions of FERC's approved pro forma interconnection agreements and procedures are available at:<https://www.ferc.gov/electric-transmission/generator-interconnection/standard-interconnection-agreements-and-procedures>. .

execution of the interconnection agreement, but the customer cannot compel the utility to commence procurement and construction activities prior to doing so.

After the Interconnection Trade Groups raised this issue in the informal rulemaking process, Staff suggested it had resolved the deposit problem in its Staff Report proposal issuance of the proposed rules and commencement of a formal rulemaking procedure.²¹ But the proposed rules do not resolve the issue and still need further revision.

The Staff Report cited proposed OAR 860-0082-0035(5)(a) and stated:

Staff is also not swayed by arguments that the deposit could be “several hundred thousand or even millions of dollars in some cases.” The interconnection applicants may agree to progress payments for the costs of the interconnection facilities. Under such an arrangement the interconnection customer would pay the lesser of \$10,000 or 25 percent of the estimated costs. A deposit of \$10,000 does not seem unduly burdensome.

However, the cited provisions of the rules are not unambiguously consistent with Staff’s asserted understanding that rules cap the level of the deposit the utility might require at the time of execution of the interconnection agreement. The applicable provision of the rules addressing the process for executing the interconnection agreement is proposed OAR 860-082-0025(7)(f), and that provision states that the applicant must supply “any required deposit” without identifying any limit on the level or type of deposit and without cross referencing any other provision of the rules that might impose a cap on the level or type of the deposit a particular utility might attempt to impose. The provision cited in the

²¹ Staff Report, Docket No. UM 2111 at 15 (Aug. 15, 2023).

Staff Report, proposed OAR 860-082-035(5)(a), addresses a different subject related to the option to pay in installments instead of a lump sum *at the time of commencement of construction*.²² It does not necessarily speak to any limits on the deposit a utility may be able to claim at the time of execution of the interconnection agreement, and given the Commission’s historic reluctance to interpret the rules in a manner that requires more of utilities than is expressly stated, the Interconnection Trade Groups are reasonably concerned that the proposed rule does not accomplish Staff’s stated objective. For the rules to accomplish what Staff appears to intend, proposed OAR 860-082-0025(7)(f) would need to be changed from “any required deposit”, to “any required deposit not to exceed the amount in proposed OAR 860-082-0035(5)(a).”

²² Proposed OAR 860-082-0035 states in its entirety:

(5) A public utility may not begin work on interconnection facilities or system upgrades before an applicant receives the public utility’s good-faith, non-binding cost estimate and provides written notice to the public utility that the applicant accepts the estimate and agrees to pay the costs. A public utility may require an applicant to pay a deposit before beginning work on the interconnection facilities or system upgrades.

(a) If an applicant agrees to make progress payments on a schedule established by the applicant and the interconnecting public utility, then the public utility may require the applicant to pay a deposit of up to 25 percent of the estimated costs or \$10,000, whichever is less. The public utility and the applicant must agree on progress billing, final billing, and payment schedules before the public utility begins work.

(b) If an applicant does not agree to make progress payments, then the public utility may require the applicant to pay a deposit of up to 100 percent of the estimated costs. If the actual costs are lower than the estimated costs, then the public utility must refund the unused portion of the deposit to the applicant within 20 business days after the actual costs are determined.

However, the better policy is to eliminate the deposit requirement at the time of execution of the interconnection agreement. The interconnection customer will have limited time to pay the deposit upon receipt of the utility's proposed agreement. Even if the rules made clear that proposed OAR 860-082-0035 controls, only the initial deposit level in proposed OAR 860-082-0035 is limited to \$10,000, and only if the customer agrees to the utility's proposed progress payments thereafter. The rule places no limits at all on the subsequent progress payments the utility may require, and the customer could still be subject to posting a full deposit for network upgrades—on the order of potentially hundreds of thousands of dollars—long before it has completed financing as is prepared to pay such sums. Thus, for all the reasons stated above, the Interconnection Customer Coalition continue to maintain that the deposit for construction costs should be due shortly before commencement of construction, as existing OAR 860-082-0035 already appears to establish.

**2. Time Period:
Provide 30 days for the Applicant to Review and Execute the Public
Utility's Proposed Interconnection Agreement**

The currently proposed draft rule provides the customer 15 business days to execute the interconnection agreement or initiate negotiation of a non-standard interconnection agreement.²³ However, as noted above, FERC's SGIP provides the customer with 30 days to execute the utility's proposed interconnection agreement or to initiate a dispute resolution process through the filing of an unexecuted agreement with

²³ See proposed OAR 860-082-0025(7)(f).

FERC. The Interconnection Trade Groups recommend use of the 30-day period in FERC’s SGIP for the applicant’s review and execution of utility’s proposed interconnection agreement.

**3. Dispute Resolution:
Clarify and Provide a Reasonable Process by Which the Applicant
May Initiate Arbitration or an Expedited Complaint Under the Rules
if it Disputes the Public Utility’s Proposal**

The proposed rules maintain the existing rule’s language suggesting that the applicant may request negotiation of a “non-standard” interconnection agreement if it chooses not to execute the utility’s proposed interconnection agreement.²⁴ The Interconnection Trade Groups are concerned with the lack of clarity on the process for the alternative options to simply signing the utility’s proposed interconnection agreement. Those options include negotiating a non-standard interconnection agreement or, alternatively, initiating an available dispute resolution procedure, such as arbitration through use of Division 82’s arbitration process in OAR 860-082-0080, filing an expedited complaint pursuant to ORS 756.500, or filing a petition for alternative dispute resolution before a mediator pursuant to Division 2 of the Commission’s rules, OAR 860-002-0000 *et seq.* In most cases, a dispute would regard the contents of the proposed interconnection agreement’s addendums, which contain substantive provisions regarding the upgrades and costs required for the interconnection. A dispute over those issues may not be properly resolvable through negotiation of a “non-standard” interconnection agreement, but rather would more likely be resolvable through the Commission’s

²⁴ See proposed OAR 860-082-0025(7)(f).

arbitration, complaint, or mediation processes. However, nothing in the current or proposed rules regarding execution of the interconnection agreement references the option to initiate available dispute resolution processes, and thus there is ambiguity as to how quickly the applicant must initiate such a dispute resolution process to ensure it maintains its queue position while a good faith dispute is resolved.

Clarity regarding the rights of interconnection customers will save the Commission and interconnection customers significant resources and remove a powerful tool that at least Portland General Electric Company (“PGE”) has used to attempt to force interconnection customers to agree to PGE’s position or be removed from the interconnection queue. For example, in the Zena Solar dispute, PGE recently took the position that the interconnection customer should be removed from the interconnection queue (effectively killing the project) if the interconnection customer sought to challenge PGE’s proposed interconnection upgrades. The lack of clarity on the point in the Commission’s rules resulted in PGE and the interconnection customer making five separate filings, totaling 101 pages of argument and 71 pages of exhibits and affidavits, regarding whether Zena Solar would be removed from the interconnection queue.²⁵ The

²⁵ See generally *Zena Solar, LLC v. Portland Gen. Elec. Co.*, Docket No. UM 2164, Zena Solar Motion for Interim Relief and Preliminary Injunction (May 24, 2021); Docket No. UM 2164, PGE Response to Motion for Interim Relief (July 2, 2021); Docket No. UM 2164, Zena Solar Reply in Support of Its Motion for Interim Relief and Preliminary Injunction (July 23, 2021); Docket No. UM 2164, PGE Leave to File Sur-Reply and Sur-Reply in Opposition to Zena Solar’s Motion for Interim Relief and Preliminary Injunction (Aug. 12, 2021); Docket No. UM 2164, Zena Solar Motion to File Surreply and Surreply in Support of Its Motion for Interim Relief and Preliminary Injunction (Aug. 16, 2021).

Commission ultimately decided that the interconnection customer could proceed with its complaint without compromising its queue position during the complaint proceeding,²⁶ but not after the small interconnection customer engaged in significant litigation just to know whether it would have the opportunity to adjudicate its dispute.

To avoid unnecessary procedural disputes, the rules should clearly explain that initiation of available dispute resolution processes does not compromise the customer's queue position. The Commission's existing rules already specify that the applicant's queue position is maintained during pendency of an arbitration petition pursuant to OAR 860-082-0080, and it would be appropriate to also include the option to use an expedited version of the Commission's complaint process under ORS 756.500, or the recently adopted alternative dispute resolution process OAR 860-002-0000 *et seq.* The Interconnection Trade Groups are open to discussing additional details for an expedited version of a complaint process for this purpose in a future phase of this rulemaking.

Accordingly, the Interconnection Trade Groups recommend an edit to clarify that the applicant does not lose its queue position if it provides notice of intent to initiate an available dispute resolution process within 30 days of the receipt of the utility's proposed

²⁶ See Docket No. UM 2164, Order No. 21-319 at 5 (Sept. 29, 2021) (stating, "We do not award an injunction, but we extend the interim relief that we granted on August 31, 2021, to December 10, 2021, by which time we plan to issue a final decision in this docket on an accelerated procedural schedule further addressed below."); see also *Zena Solar, LLC v. Portland Gen. Elec. Co.*, Docket No. UM 2074, Ruling at 1-2 (March 27, 2020) ("I find good cause to grant, on a temporary basis, the interim relief requested by Zena regarding their queue position.... Therefore, I grant Zena's motion for preliminary relief and direct PGE to keep Zena in its current position in the queue.").

interconnection agreement and, within 30 days of providing such notice, files an arbitration petition pursuant to OAR 860-082-0080, an expedited complaint pursuant to ORS 756.500, or a petition for alternative dispute resolution before a mediator pursuant to OAR 860-002-0000 *et seq.*

4. The Commission Should Adopt the Following Edits to OAR 860-082-0025(7)(f)

In accordance with the above comments on issues related to execution of the interconnection agreement, the Commission should adopt the following edits to OAR 860-082-0025(7)(f):

OAR 860-082-0025(7)(f) Interconnection Agreement. If the proposed interconnection is approved and requires no construction of facilities by the public utility, the public utility must provide the applicant an executed interconnection agreement no later than five business days after approving the interconnection. If the proposed interconnection is approved and requires construction of facilities, the public utility must provide the applicant an executed interconnection agreement, along with a non-binding good faith cost estimate and construction schedule for any required upgrades, no later than 15 business days after approving the interconnection. If the applicant does not return a countersigned interconnection agreement ~~and any required deposit~~ to the public utility, ~~or~~ request negotiation of a non-standard interconnection agreement, or provide the public utility with written notice of intent to initiate an available dispute resolution process within ~~15 business~~30 days of receipt of an executed interconnection agreement, the application is deemed withdrawn. In the event that the applicant provides notice of intent to initiate an available dispute resolution process, the applicant shall file an arbitration petition pursuant to OAR 860-082-0080, an expedited complaint pursuant to ORS 756.500, or a petition for alternative dispute resolution before a mediator pursuant to OAR 860-002-0000 *et seq.* within 30 days of sending the utility the notice of intent to initiate dispute resolution. The

applicant's queue position will be maintained during the applicant's chosen dispute resolution process.

III. CONCLUSION

The Interconnection Trade Groups recommend that the edits proposed above be incorporated in the final proposed rules and additional actions be directed regarding the data entry practice described above.

Dated this 12th day of October 2023.

Respectfully submitted,

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