

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1401**

Investigation into Interconnection of
PURPA Qualifying Facilities With
Nameplate Capacity Larger Than
10 Megawatts to a Public Utility's
Transmission or Distribution System.

STAFF'S REPLY COMMENTS

Pursuant to Administrative Law Judge (ALJ) Wallace's Prehearing Memorandum issued May 12, 2009, staff of the Public Utility Commission of Oregon (staff) submits the following Reply Comments in this proceeding.

1. Background

Staff's Reply Comments address generally the issues brought up by Parties to this docket in Opening Comments as well as issues that had not been resolved at the time of the initial comment period. In addition to the overarching policy issues, Staff is including comments about the Agreement and Procedure as drafted and proposed by the utilities.

2. Summary of Staff's Recommendations on Selected Matters

1. Except as otherwise discussed in these Reply Comments, the Commission should adopt the common Agreements and Procedures that have been submitted by the consolidated utilities.
2. The Qualifying Facility (QF) should be responsible for the network upgrades that are required for its interconnection.
3. The point of delivery for the purpose of the Large Generator Interconnection Agreement (LGIA) and the Large Generator Interconnection Procedures (LGIP) should be the point of interconnection.
4. The renewal of a particular LGIA should not be unreasonably held up or denied. Expedited processes are allowed for LGIA renewal where no changes have been made by small generator.
5. The function of a Joint Operating Committee required by the FERC LGIA is not necessary and staff agrees it should not be included in the LGIA.
6. If adopted by the Commission, the LGIP should be filed as a tariff by the utilities.

3. Specific Comments on the Utilities' consolidated QF-LGIA and QF-LGIP

A. The QF-LGIA

1. The definition of the Small Generation Facility in this Agreement is 20 MW and smaller, a difference that will need to be reconciled with the Division 082 rules.
2. The Effective Date definition is unclear. Is the Agreement effective upon signing or upon completing all the facility upgrades, including a commissioning test? Staff recommends the Effective Date be the date when the Large QF has been interconnected, tested and the utility indicates it is ready to commence commercial operation.
3. The term of the interconnection agreement at Paragraph 2.2 of the QFLGIA:
 - The five month notice of intent to renew seems excessive. The length of the agreement is 10 years; not 9 years and 7 months. Staff recommends a 90 day notice period and that the existing agreement remain in force as long as the new agreement application has been filed and negotiations are in progress regardless of the term date on the existing agreement.
 - The second point seems too broad. Staff recommends that it be changed to say that no material change has occurred to the specific circumstances surrounding the individual QF except for changes due to government regulation and standards. Once a QF has established an interconnection it should not find itself subject to further network upgrades or other interconnection requirements and the ensuing costs (other than minor O&M) unless it modified its design or the overall rules change in some way outside of the control of the utility or the QF.
4. The provision for Change in Status, Article 2, Paragraph 2.3.4, allows 60 days to obtain the alternate FERC LGIA which seems too short. Staff recommends extending this period to 90 days.
5. Under the provision for filing, the completed LGIA should be filed with the Public Utility Commission of Oregon upon completion by parties.
6. Under provisions for Network Resource Interconnection Article 4, Section 4.1, there is a discussion of congestion management costs and congestion management procedures. What are these, do they apply to large QFs and how do they affect the ability of a QF to sell all of its contracted output to the utilities under provisions of PURPA?

7. Section 4.4, No Transmission Delivery Service: does this provision clarify that the transmission delivery service that is provided to take a QF load is contained in the power purchase agreement?
8. Under Article 5, Section 5.1, Options, the proposed agreement does not have any consequences to the Interconnection Provider for failing to meet the schedule it has agreed to for interconnection of the facility. The FERC model Agreement had provisions for Liquidated Damages for failure to meet schedules under some circumstances. Staff would like these provisions to be retained in the LGIA.
9. In the “General Conditions Applicable to Option to Build,” Section 5.2.(6), the utilities seem to have the ability, at any phase of the design or construction of the facilities, to review and change facilities and network upgrades. Staff would prefer that there be a point where the Transmission Provider buys off on the design and equipment and cannot require additional change thereafter without a rigorous showing of cause.
10. In the same section, paragraphs 5.2 (8) and (9) seem to conflict or may be redundant.
11. At Article 9, Section 9.9 some language about “Third Party Use” was eliminated without adequate explanation. The utilities should explain the reason for the deletion.
12. Under the provision for Operating and Maintenance Expense at Section 10.5., staff requests these provisions be modified to make clear that these are anticipated to be actual costs, not allocated or otherwise estimated costs.

B. The QF-LGIP

1. A requirement for a second \$10,000 deposit in addition to the application fee at the time of the Feasibility Study as required at Section 6.1 seems excessive.
2. At Section 12.2.2 there is an “Obligated Entity” that is defined and should be part of the first section with definitions.

4. ICNU Opening Comments.

- A. Staff disagrees that the Agreement, as drafted, allowed for unreasonable illegal or negligently incurred costs to be imposed on large QF interconnection customers. However, Staff is amenable to a change that would further safeguard QFs from such costs.

- B. The statement that QFs are discriminated against relative to FERC generators appears misinformed. FERC generators include in the sales price of the power they sell, the transmission costs to move the power from the generator to the point of use which include ongoing payments to the interconnected utility for the use of the utility's T&D system. PURPA QFs only sell power or capacity without any separate charge for the additional use they put on the interconnected utility's T&D system.
- C. As a policy matter, the Commission should not require ratepayers to cover the cost of network upgrades arising from a generator's interconnection.

ICNU objects to the utilities' proposed deletion of Article 11.4 from the FERC LGIA. ICNU requests that a similar clause be retained in the Oregon-specific LGIA to the effect that a large QF would recover the "cost of network upgrades" related to its interconnection from all other utility ratepayers.

Staff has been advised by its attorney that this issue presents both policy and legal issues. As to the legal guidelines, staff's attorney advises that the Commission has previously correctly observed on several occasions that a key principle under PURPA implementation is the Commission should "seek to provide maximum incentives for the development of QFs of *all* sizes, while ensuring ratepayers remain indifferent to QF power by having utilities pay no more than their avoided cost rates." See, e.g. Commission Order No. 05-584 (Docket UM 1129) at 11 (emphasis in original).

The Commission's existing rules, while perhaps not directly controlling, track this principle. OAR 860-029-0010(8) defines the "Costs of interconnection" as "the reasonable costs of connection, switching, dispatching, metering, transmission, distribution, equipment necessary for system protection, safety provisions, and administrative costs incurred by an electric utility directly related to installing and maintaining the physical facilities necessary to permit purchases from a qualifying facility."¹ OAR 860-029-0060(1) then provides that "Any interconnection costs shall be the responsibility of the owner or operator of the qualifying facility."

Further, in the recently completed AR 521 rulemaking proceeding for small generator interconnection, the Commission considered ICNU's request (basically identical to the one it proposes in this docket) that the costs for "system upgrades" be shared among small generators. The Commission rejected this proposal, reasoning:

Because not all small generator facilities under this Commission's jurisdiction will be using a public utility's transmission system, a process allowing cost sharing of system upgrades using transmission credits is not feasible. The participants in the rulemaking process were unable to find another method of sharing such costs. The proposed rules, however,

¹ The definition for "cost of interconnection" does not specifically include "network upgrades."

include language that is meant to strictly limit a public utility's ability to require one small generator facility to pay for the cost of system upgrades that primarily benefit the utility or other small generator facilities, or that the public utility planned to make regardless of the small generator interconnection. Under the proposed rules, a public utility may only require a small generator facility to pay for system upgrades that are "necessitated by the interconnection of a small generator facility" and "required to mitigate" any adverse system impacts "caused" by the interconnection. We therefore believe the proposed rules adequately protect small generator facilities and that ICNU's fears are unfounded.

See Commission Order No. 09-196 at 4-5. [The proposed rule referenced in the above-discussion was adopted and is found at OAR 860-082-0035(4).]

Further, new rule OAR 860-082-0015(34) defines "system upgrade" as:

...an addition or modification to a public utility's transmission or distribution system or to an affected system that is required to accommodate the interconnection of a small generator facility.

Turning to ICNU's Opening Comments, it does not provide a definition of "network upgrade" but references the FERC LGIA to define a network upgrade as (paraphrasing): additions, modifications and upgrades that occur on the utility's side of the point of interconnection that are related to the QF's interconnection. See ICNU Opening Comments at 5-6. This seems to be generally the same as the definition for "system upgrade" found at OAR 860-082-0015(34).

Without directly saying so, ICNU seems to be trying to fit its "share all network upgrade costs among all ratepayers" proposal within the guiding PURPA principle of "ratepayer neutrality." It appears ICNU's argument travels along the following twisting, bumpy road: (1) any "network upgrade" necessarily benefits all ratepayers (equally?), and (2) "ratepayer neutrality" is achieved because this benefit necessarily equals or outweighs the cost of the network upgrades. ICNU's argument, seemingly based upon the basic PURPA principle of ratepayer indifference, thus crosses from a legal discussion to one of policy and evidentiary support for its factual assertions.²

As a policy matter, the Commission's decisions and rules discussed above show a strong preference for requiring the cost-causing generator to be responsible for the costs related to its interconnection. See also *Staff's Investigation Relating to Electric*

² ICNU relies upon a FERC decision and a federal court opinion to the effect that, as a binding factual matter, all network upgrades related to generator interconnection necessarily benefit other customers. See ICNU Opening Comments at 5-7. Staff's attorney advises that the FERC opinion and court decision are only relevant to interconnections that are jurisdictional to FERC and are not binding upon this Commission.

Utility Purchases from Qualifying Facilities, OPUC Order No. 07-360 at Appendix A, page 5 (order adopting large QF guidelines) (“The utility should not adjust avoided cost rates for any distribution or transmission system upgrades needed to accept QF power. Such costs should be separately charged [to the generator] as part of the interconnection process.”). ICNU has failed to present a compelling argument for reversing the Commission’s previous policy choice to assign system/network/interconnection costs to the generator.

As to the evidentiary matter, staff is not at all persuaded by ICNU’s broad, factually unsupported statement that all generator interconnections that require a network upgrade necessarily provide a benefit in each and every case to all (or any) utility ratepayers. Clearly, each such interconnection will have its own unique facts and there may, or may not, be a “benefit” to one or more ratepayers. Even if there was some “benefit” to one or more ratepayers, ICNU does not state how the Commission is to place a value on it. ICNU also fails to provide guidance on how the Commission is to determine which of the utility’s ratepayers can be said to have received this value. With all due respect to FERC (and recognizing it operates under a different legal mandate and operational system), staff is not persuaded that the best course is to simply decree, with no factual support, that all ratepayers are (equally?) benefited by each and every network upgrade related to each and every QF interconnection.

As such, staff recommends that, should the Commission desire to move away from its long-standing policy choice that the “cost-causing generator pays for interconnection/system/network upgrades,” and in order to comply with the basic PURPA legal principle of “ratepayer neutrality,” staff recommends the Commission require the generator requesting cost recovery show, at a minimum, that the network upgrade arising from its interconnection: (1) provides a benefit to one or more ratepayers; (2) specifically identify the ratepayers that are benefited and show how they are benefited; and (3) specifically identify the value of the benefit to each of these ratepayers. If the generator is able to carry its burden of proof on these (and likely other) factual issues, then the Commission could decide, as a policy matter, to share or socialize the network upgrade costs among the benefited ratepayers.

This concludes staff’s Reply Comments.

Dated at Salem, Oregon, this 13th day of August, 2009

s/Ed Durrenberger
Ed Durrenberger
Senior Analyst
Electric and Natural Gas Division