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August 13, 2009

Via Electronic and US Mail

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: Request to Open an Investigation into Interconnection of PURPA Qualifying
Facilities with a Nameplate Capacity Larger than 10 Megawatts to a Public
Utility's Transmission or Distribution System
Docket No. UM 1401

Dear Filing Center:

Enclosed please find an original of the Reply Comments on behalf of the
Industrial Customers of Northwest Utilities in the above-referenced docket.

Thank you for your assistance.

Sincerely yours,

/s/ Brendan E. Levenick
Brendan E. Levenick

Enclosures

cc: Service List

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Reply Comments of the Industrial Customers of Northwest Utilities upon the parties on the service list, shown below, by causing the same to be sent by electronic mail to all parties, as well as, deposited in the U.S. Mail, postage-prepaid, to parties which have not waived paper service.

Dated at Portland, Oregon, this 13th day of August, 2009.

/s/ Brendan E. Levenick
Brendan E. Levenick

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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1401

In the Matter of)	
)	
PUBLIC UTILITY COMMISSION OF)	REPLY COMMENTS OF THE
OREGON)	INDUSTRIAL CUSTOMERS OF
)	NORTHWEST UTILITIES
Staff Investigation into Interconnection of)	
PURPA Qualifying Facilities with Nameplate)	
Capacity Larger than 10 Megawatts to a)	
Public Utility's Transmission or Distribution)	
<u>System</u>)	

I. INTRODUCTION

The Industrial Customers of Northwest Utilities (“ICNU”) submit the following Reply Comments regarding the Proposed Large Generator Interconnection Procedures (“Proposed LGIP”) and Large Generator Interconnection Agreement (“Proposed LGIA”) (collectively “Proposed Agreements”), submitted by Pacific Power (“PacifiCorp”), Portland General Electric (“PGE”) and Idaho Power Company (“Idaho Power”) (collectively “the Utilities”). ICNU’s June 8, 2009 Opening Comments focused primarily on the Utilities’ proposed deletion of Article 11.4 from the Large Generator Interconnection Agreement (“LGIA”) that is required by the Federal Energy Regulatory Commission (“FERC”) for use by FERC jurisdictional interconnections. This proposed deletion would require Qualifying Facilities (“QFs”) larger than 10 megawatts (“large QFs”) to pay the full cost of network upgrades without reimbursement from the utility.

ICNU submits these Reply Comments as additional support for ICNU's proposal, which would require utilities to reimburse QFs the cost of network upgrades through a direct-payment mechanism that does not affect avoided cost rates. ICNU's Reply Comments also modify ICNU's proposal in response to comments and concerns raised by other parties at the July 6, 2009 workshop in this proceeding.

II. COMMENTS

The Utilities do not appear to dispute the logical conclusion that, if a particular network upgrade provides system-wide benefits, then the cost of that upgrade should be spread among all benefited customers. Instead, the Utilities appear to argue that, in the context of QFs established under the Public Utility Regulatory Policies Act ("PURPA"), network upgrades will rarely (if ever) provide system-wide benefits. Thus, the Utilities argue that reimbursing QFs the cost of network upgrades would undermine the PURPA directive that the utility and its customers remain indifferent to QF power. Contrary to the Utilities' assertions, FERC has definitively concluded that network upgrades provide system-wide benefits based on factual findings and evidence that FERC generated over the course of several years of agency proceedings. FERC and the federal courts have repeatedly rejected the same arguments raised by the Utilities in this case. Given the informal nature of this proceeding and the lack of testimony or an evidentiary hearing, the Commission should not promulgate standards that contradict FERC's longstanding and well-supported conclusions.

ICNU recognizes, however, that there may be rare and unique circumstances in which network upgrades may not provide system-wide benefits. Thus, the Commission should adopt a general requirement based on the assumption that network upgrades benefit all

customers, but allow utilities to present evidence demonstrating that a particular network upgrade does not provide any system-wide benefits on a case-by-case basis. The utilities should be required to demonstrate that the network upgrade is unique from a typical network upgrade because the utilities have traditionally argued that even typical network upgrades do not benefit all customers. Requiring large QFs to affirmatively demonstrate that a particular network upgrade provides system-wide benefits is not feasible because large QFs lack the expertise and resources to carry this burden.

A. FERC’s Conclusion that Network Upgrades Provide System-Wide Benefits is a Factual Finding Resulting from Several Years of Agency Proceedings

The Utilities appear to argue that network upgrades will rarely, if ever, provide system-wide benefits. The Utilities’ unsupported assertions are not facts. In adopting the FERC agreements, FERC noted that its policy of socializing the cost of network upgrades:

looks beyond the direct usage related benefits usually associated with transmission system enhancements. That is, [FERC’s] approach also recognizes the reliability benefits of a stronger transmission infrastructure and more competitive power markets that result from a policy that facilitates the interconnection of new generating facilities.

Standardization of Generator Interconnection Agreements and Procedures, 106 FERC ¶ 61,220 at P. 583-84 (2004) (“Order 2003-A”). Hence, even in those circumstances in which all customers do not *directly* benefit from a particular network upgrade, all customers *indirectly* benefit from a more reliable transmission infrastructure and a more competitive power market. Prior to reaching this conclusion, FERC looked very closely at this issue, and has repeatedly rejected the same arguments raised by the utilities in this proceeding.

1. All Customers Benefit from a More Reliable Transmission System and a More Competitive Power Market

In Consumer Energy Co., FERC rejected arguments raised by utilities that network upgrades associated with short-circuit and stability related problems should be directly assigned to interconnection customers. Consumer Energy Co. 96 FERC ¶ 61,132 at P. 61,561 (2001) (“Consumer Energy”). Specifically, FERC held that the testimony in the proceeding established that the upgrades were “crucial to protect other generators and equipment in the vicinity of the new generator against potential damage resulting from fault currents.” Id. FERC emphasized the fact that, because the grid is a cohesive network, “expansion benefits all users of the grid.” Id. Thus, even if the network upgrades “would not have been installed but for a particular request for service,” those network upgrades benefit all users. Id.

In a subsequent case, FERC relied on the evidence generated in the Consumer Energy proceeding and held that:

the integrated transmission grid is a cohesive network whose expansion benefits all users of the grid. Even if they do not increase network capacity, short-circuit and stability-related upgrades that facilitate network expansion benefit *all* users, not just the newly-interconnecting generator, since the grid is continuously expanding and *all* users of the grid benefit from its continued stability.

Entergy Services, Inc., 96 FERC ¶ 61,311 at P. 62,202 (2001) (“Entergy Services”) (emphasis added). FERC emphasized the fact that its policy “will promote the interconnection of generation that is sorely needed in various regions of the country.” Id. at P. 62,203. Moreover, FERC acknowledges that public utilities and other transmission providers “fails to recognize the offsetting benefits that customers will ordinarily receive from upgrades to the transmission grid

and from a more competitive generation market.” International Transmission Co., 123 FERC ¶ 61,065 at P. 61,553 (2008). Such benefits can take the form of “improved reliability, improved ability to import generation due to counterflows that are created from the exporting generator, and reduced locational marginal prices.” Id. Similarly, FERC has consistently held that “even if a customer can be said to have caused the addition of a grid facility, the addition represents a *system* expansion used by and benefitting *all* users due to the integrated nature of the grid.” Public Service Co. of Colorado, 62 FERC ¶ 61,013 at P. 61,061 (1993) (“Colorado”).

Over the years, FERC has frequently rejected attacks on these conclusions raised by various utilities and other transmission providers. E.g., Appalachian Power Co., 63 FERC ¶ 61,151 at 5-6 (1993) (rejecting “the direct cost assignment of integrated grid facilities . . . even if the grid facilities would not be installed but for a particular customer’s service”); Midwest ISO, 127 FERC ¶ 61,109 at P. 61,438 (2009) (“network upgrades, even ‘but for’ upgrades, benefit all transmission customers”); Duke Energy Hinds, LLC, 117 FERC ¶ 61,210 at P. 62,114 (2006) (“[the] transmission grid is a cohesive network whose expansion benefits all users”); Entergy Arkansas, Inc., 99 FERC ¶ 61,097 at 12 n.14 (2002); (network upgrade costs “should be borne by all users of the transmission system”); Entergy Services, Inc., 101 FERC ¶ 61,289 at P. 62,164 (2002) (“Network upgrades benefit all network users as soon as they are installed, and continue to benefit the network regardless of whether the particular facility is generating power at any given time”).

Further, the federal courts have consistently affirmed FERC’s factual conclusion that a more reliable transmission system and more competitive power market benefits all

customers. For example, in affirming FERC's decision in Entergy Services, the District of Columbia Circuit held that:

a competitive transmission system, with barriers to entry removed or reduced, is in the public interest. That [the utility] would confine 'benefits' to increases in capacity of the transmission system or to enhancements other than maintained stability in an expanded system. . . overlooks [FERC's] long-held view of the benefits of expansion and the role of network system upgrades.

Entergy Services, 319 F.3d 536, 543-544 (D.C. Cir. 2003). The court emphasized the fact that FERC's "rationale for crediting network upgrades [is] based on a less cramped view of what constitutes a 'benefit.'" Id. at 543. In addition, the District of Columbia Circuit affirmed FERC's factual conclusion that the addition of a grid facility "represents a *system* expansion used by and benefitting *all* users due to the integrated nature of the grid." Nat'l Ass'n of Regulatory Comm'rs v. FERC, 475 F.3d 1277, 1285 (D.C. Cir. 2007); also Exxon Mobil Corp. v. FERC, 2009 U.S. App. LEXIS 14947, at 8 (D.C. Cir. 2009) (Network upgrades "improve the entire network, thus their cost must be spread among all users"). The court expressly rejected the utilities' challenge to "the empirical conclusion that Network Upgrades benefit the entire network" and found their arguments to be "unsupported" and "insufficient." Nat'l Ass'n of Regulatory Comm'rs v. FERC, 475 F.3d at 1285. In sum, FERC's longstanding conclusion that network upgrades provide system-wide benefits is a well-supported factual finding. Both FERC and the federal courts have consistently rejected the same arguments raised by the Utilities in this proceeding.

2. The Record in this Proceeding Lacks Sufficient Evidence to Overcome FERC's Longstanding and Well-Supported Conclusions

This is an informal proceeding with no testimony or evidentiary hearing.

Consequently, the parties' comments and responses to data requests ("DRs") are the only evidence that has been generated. The Utilities' responses to ICNU's DRs establish that large QFs are required to sponsor network upgrades that would be recoverable under the FERC Agreements. ICNU Opening Comments at 8-10, Attachment A. The record in this proceeding lacks sufficient evidence to overcome FERC's longstanding and well-supported conclusion that network upgrades provide system-wide benefits. In the absence of such evidence, the Commission should not approve agreements inconsistent with those that are in effect across the entire country. Accordingly, ICNU urges the Commission to insert a provision into the Proposed Agreements allowing large QFs to recover the cost of network upgrades from the utility through a direct payment mechanism that does not affect avoided cost rates.

B. Utilities Must Bear the Burden of Establishing that a Particular Network Upgrade Does Not Provide System-Wide Benefits

ICNU acknowledges that there might be an exceptional situation in which a necessary network upgrade is entirely separate from the integrated transmission system and, therefore, only benefits a single interconnection customer. Nonetheless, in such circumstances, utilities must bear the burden of demonstrating that a particular network upgrade does not provide system-wide benefits. This allocation of the burden of proof is consistent with FERC case law, recognizing that direct assignment of network upgrade costs might be reasonable under exceptional circumstances.

1. FERC Allows the Direct Assignment of Network Upgrade Costs Only if the Utility Establishes that Exceptional Circumstances Warrant Direct Assignment

FERC has expressly “reserved direct assignments for only those transmission facilities which fall into what [FERC has] referred to as an ‘exceptional category’ consisting of radials which are so isolated from the grid that they are and will remain non-integrated.” Colorado, at P. 61,061. Although the assumption is that network upgrades provide system-wide benefits, in some circumstances, FERC “will consider alternate proposals” allowing transmission providers to “propose a different cost allocation in a particular case if they could show that 100% reimbursement would lead to an improper subsidy.” Int’l Transmission Co., 120 FERC ¶ 61,220 at P.17 (2007). FERC, however, will require transmission providers to “explain the facts of the case and the assumptions on which [the transmission provider’s] calculation is based and provide evidentiary support.” Standardization of Generator Interconnection Agreements and Procedures, 109 FERC ¶ 61,287 at P. 56 (2004) (“Order 2003-B”). “[T]he Transmission Provider bears the full burden of showing that any such proposal is just and reasonable and not unduly discriminatory or preferential, and is appropriate under the circumstances.” Id. Accordingly, the Commission should require utilities who wish to deviate from the FERC standard to demonstrate the reasonableness of the direct assignment of network upgrade costs on a case-by-case basis.

2. A System Whereby Large QFs are Required to Establish the System-Wide Benefits Associated with Network Upgrades is Not Feasible

As evidenced by the comments in this proceeding, there is a fundamental difference of opinion regarding the issue of whether network upgrades provide system-wide benefits. In fact, it is unlikely that a utility will *ever* acknowledge that a particular network

upgrade provides system-wide benefits because such an admission would require the utility to refund a substantial percentage of the total interconnection costs to the customer. In addition, the utilities possess and control all of the information and supporting documentation necessary to establish the system-wide benefits associated with network upgrades. Large QFs do not have sufficient resources to gather and produce such information, and the Utilities are unlikely to make it readily available. Thus, if the Commission requires large QFs to establish that network upgrades provide system-wide benefits, it is unlikely that large QFs will ever receive reimbursement for network upgrade costs.

Those situations in which a network upgrade is so isolated from the rest of the system that it does not benefit other customers are exceptional. Despite the exceptional nature of these upgrades, utilities would likely argue that network upgrades do not provide system-wide benefits in every single interconnection. Thus, if large QFs are required to establish that network upgrades provide system-wide benefits, then utilities will be given a backdoor to re-litigating this issue every time a large QF seeks interconnection. Unlike the utilities, large QFs do not have sufficient resources to re-litigate this issue. Accordingly, the Commission should adopt a general policy that network upgrades provide system-wide benefits, but allow utilities to rebut this presumption with evidence establishing that a particular upgrade is exceptional, isolated from the system and, therefore, benefits only the individual interconnection customer.

III. CONCLUSION

The Utilities would have the Commission believe that FERC's decision to socialize network upgrade costs was an unsubstantiated policy decision. As explained above, however, FERC looked hard at this issue and ultimately concluded based on substantial factual

evidence that all customers benefit from a stronger transmission system and more competitive power market. The Utilities' proposed modification to the FERC LGIA is plainly inconsistent with these longstanding and well-supported conclusions. The record in this informal proceeding lacks sufficient evidence to overcome FERC's conclusions. In the absence of such evidence, the Commission should not adopt a system that is inconsistent with an established, nationwide system.

With respect to those exceptional situations in which a particular network upgrade is totally isolated from the system, the Commission should require utilities to establish that the upgrade at issue does not provide system-wide benefits. Given the fundamental difference of opinion regarding this issue and the utilities' disparate level of expertise and resources, a system whereby large QFs are required to prove the system-wide benefits associated with network upgrades is simply not feasible.

Dated this 13th day of August, 2008.

Respectfully submitted,

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