

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 2032**

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Investigation into the Treatment of Network
Upgrade Costs for Qualifying Facilities

OSSIA'S RESPONSE TO THE JOINT UTILITIES'
MOTION FOR REHEARING AND/OR
CLARIFICATION

I. INTRODUCTION

In accordance with OAR 860-001-0720(4), the Oregon Solar + Storage Industries Association (“OSSIA”) timely submits this Response to the Joint Utilities Motion for Rehearing and/or Clarification of Order No. 23-005 in Docket No. UM 2032 (“Motion”). For the reasons laid out in this response, OSSIA opposes the Motion and urges the Oregon Public Utility Commission (“Commission”) to deny rehearing or clarification of Order No. 23-005.

II. STANDARD OF REVIEW

The Commission may grant rehearing or reconsideration of any order “if sufficient reason therefor is made to appear.”¹ The Commission’s administrative rules provide that the Commission may grant an application for rehearing or reconsideration if the applicant shows that there is, inter alia, “[a]n error of law or fact in the order that is essential to the decision” or “[g]ood cause for further examination of an issue essential to the decision.”² The administrative rules further provide that the application must identify: (a) the portion of the challenged order that the applicant contends is erroneous or incomplete; (b) the portion of the record, laws, rules,

¹ ORS 756.561(1).

² OAR 860-001-0720(3).

or policy relied upon to support the application; (c) the change in the order that the Commission is requested to make; (d) how the applicant's requested change in the order will alter the outcome; and (e) one or more of the grounds for rehearing or reconsideration in the administrative rules.³

III. RESPONSE

A. The Commission Should Not Reconsider its Decision to Allow ERIS

The Motion requests that the Commission reverse its decision to allow a Qualifying Facility ("QF") to interconnect using Energy Resource Interconnection Service ("ERIS"). The Motion suggests that allowing QFs to utilize ERIS presents legal and economic risks and is contrary to the Federal Energy Regulatory Commission's ("FERC") decision in *Pioneer Wind Park I, LLC.*, ("*Pioneer Wind*")⁴. The Commission decision properly balances the legal conclusion from *Pioneer Wind* and the utilities obligation to purchase power under the Public Utility Regulatory Policies Act ("PURPA"). As the record in this docket shows, FERC found that a utility cannot require a QF to include a curtailment provision in their power purchase agreement. However, *Pioneer Wind* does not prohibit a QF from choosing to deliver less than its full output.

The Commission decision does not create significant litigation risk, instead it allows QFs to choose to deliver its output at a level that avoids the need for expensive network upgrades. This decision enables QFs to make more efficient use of an extremely constrained transmission system and better position the state to meet the goals set out in HB 2021⁵. The Joint Utilities'

³ OAR 860-001-0720(2).

⁴ *Pioneer Wind*, 145 FERC ¶ 61,215.

⁵ ORS 469A.410.

request for reconsideration does not meet the Commission's standard for granting reconsideration.

B. The Commission Should Not Clarify its Statement that a Utility Must Offer Curtailment “at a Level that the Utility Agrees Obviates the Need for the Network Upgrade”

The Motion next asks for clarification on a point that has not been in dispute in this case. Allowing a QF to use ERIS does not guarantee transmission service. The interconnection process is different than the transmission service process. The Motion indicates that a request to interconnect through ERIS would not determine the risks of curtailment, however this an overly complex assessment of the requirement of the Commission's decision. Accordingly, this clarification is unnecessary as the Order does not cause ambiguity. Instead, the Commission allowed QFs to seek interconnection either through Network Resource Interconnection Service or ERIS and directs utilities to negotiate the appropriate contractual agreements. The order does not indicate that interconnection studies will inform how often non-firm transmission capacity will be available on the transmission system.

The utilities know their systems better than the developers, but the Commission should be skeptical of the argument that a utility could never determine an appropriate curtailment figure or an appropriate contractual arrangement that addresses the curtailment uncertainties. There is a power imbalance here; the utility is in the best position to determine the amount of transmission capacity available and the proper curtailment level, due to information they have that developers do not have. While ERIS will not reveal the amount of transmission capacity available, it will reveal the appoint at which a network upgrade is triggered. Utilities have contracted for non-firm transmission before; they can negotiate appropriate terms that would allow a QF to deliver less than their total output. As such, to the extent the Commission deems any clarification is

necessary, they should clarify that a utility should not use its superior access to information to delay or obstruct a QFs ability to enter into a negotiated contract and that the utilities are expected to negotiate such agreements in good faith.

IV. CONCLUSION

OSSIA believes that the Commission made the correct decision when it enabled QFs to use ERIS in addition to NRIS. The decision better enables QFs to take advantage of the existing transmission system and encourages development of QFs in Oregon. For the reasons articulated above, the Commission should not reconsider its decision to allow QFs to select ERIS, nor should it clarify the points made by the motion.

Dated this 5th day of April 2023.

Respectfully Submitted,

Oregon Solar + Storage Industries Association

A handwritten signature in black ink, appearing to read "Jack Watson", is positioned above the typed name.

Jack Watson
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