ITEM NO. RA1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: February 6, 2024

REGULAR __X__ **CONSENT** ____ **EFFECTIVE DATE** _____ **N/A** _____

DATE: January 3, 2024

TO: Public Utility Commission

FROM: Ted Drennan

THROUGH: Caroline Moore and Scott Gibbens **SIGNED**

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF:
(Docket No. UM 2032)
Staff Investigation into Treatment of Network Upgrade Costs for Qualifying Facilities.

STAFF RECOMMENDATION:

Staff recommends the Public Utility Commission of Oregon (Commission) approve the compliance filings made by Idaho Power, PacifiCorp, and PGE (collectively the Joint Utilities or JU), subject to the Staff recommended changes detailed below.

DISCUSSION:

Issue

Whether the Commission should approve the compliance filings submitted for Idaho Power, PacifiCorp, and Portland General Electric, and enabling Qualifying Facilities (QFs) to be studied for both Energy Resource Interconnection Service (ERIS) and Network Resource Interconnection Service (NRIS) and allowing the QF to select ERIS in certain circumstances.

Applicable Rule or Law

The utilities' filings are made in response to direction provided by the Commission in Order No. 23-005. Two specific items ordered by the Commission are most pertinent here, which are the following:[1]

[1] See Order No. 23-005, pp. 35-36.

> 3. The utilities are directed to develop and make filings, as necessary, to facilitate a QF's ability to pay for both ERIS and NRIS analysis.
>
> 4. The utilities are directed to negotiate a non-standard contract implementing a QF's decision, after review of both ERIS and NRIS reports, to interconnect with a host utility using ERIS, so long as the QF voluntarily commits to allow curtailment at a level that obviates the need for the Network Upgrades identified in a NRIS report.

<u>Analysis</u>

Background
In Docket No. UM 2032, the Commission investigated whether on-system QFs should be required to interconnect to the host utility with NRIS or should have the option to interconnect with ERIS or an interconnection service similar to ERIS. In Order No. 23-005, dated January 30, 2023, the Commission determined that "QFs should interconnect under NRIS, with a limited exception[,]" when the "QF voluntarily commits to allow curtailment at a level that obviates the need for the Network Upgrades identified in a NRIS Report."[2] The Commission directed utilities to, "develop and make appropriate filings that facilitate a QF's ability to pay for both ERIS and NRIS analyses[,][3]" and to interconnect to a host utility using ERIS, so long as the QF commits to allow curtailment that obviates the need for Network Upgrades that would be needed for NRIS."[4]

The Community Renewable Energy Association (CREA), the Northwest & Intermountain Power Producers Coalition (NIPPC), and the Renewable Energy Coalition (REC), collectively the Interconnection Customer Coalition (ICC) filed a motion for clarification, rehearing or reconsideration on March 17, 2023. The Joint Utilities filed a motion seeking clarification, rehearing or reconsideration on March 21, 2023. The Commission denied the parties' requests for rehearing or reconsideration in Order No. 23-164, dated May 9, 2023, while providing further clarification of Order No. 23-005.

The Commission clarified that its decision would offer more "flexibility in interconnection and transmission arrangements via non-standard contracts."[5] Further, "these directives applied to voluntary arrangements via non-standard contracts and did not direct the filing of any tariff."[6] The Commission also clarified that their order "does not include any

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[2] Order No. 23-005, pp. 33, 35.
[3] Order 23-005, p. 2.
[4] Ibid.
[5] Order 23-164, p. 10.
[6] Ibid, p. 11.

requirement for the utility to provide specific assurances beyond identifying what would be consistent with the transmission services available to deliver the QF power."[7] Finally, the Commission recognized this approach raises, "the potential for disputes,"[8] that the Commission would need to address.

On September 12, the JU submitted a joint compliance filing to fulfill the Commission directives. This filing included "narrowly tailored and targeted" revisions to each utility's QF-Large Generator Interconnection Procedures (QF-LGIP) and QF-Large Generator Interconnection Agreement (LGIA),[9] as well as the associated QF schedules.[10] Revisions to small generator Interconnection Request form and Facilities Study Agreement were also provided. The proposal is also intended to apply to QFs using the small generator interconnection procedures (SGIP) and agreements (SGIA), however, the JU note that:

> Because the existing Division 82 rules and PacifiCorp's SGIP are silent with respect to interconnection service type, there are no changes necessary to implement the Commission's decision in Order No. 23- 005 except the Joint Utilities propose to amend the small generator Tier 4 Interconnection Request form to allow the QF to elect to be studied for NRIS or both NRIS and ERIS (consistent with the large generator Interconnection Request form). The Joint Utilities also propose to modify the small generator Facilities Study Agreement so that the QF's selection of NRIS or ERIS is clear.[11]

An errata filing was submitted November 8, 2023 to correct PacifiCorp's Standard Oregon Qualifying Facility Large Generator Interconnection Procedures, Section 3.2. This clarified that an applicant must select either NRIS or request that it be studied concurrently for NRIS and ERIS.

Joint Utility Proposal
The proposal incorporates the required ERIS option and introduces additional requirements to mitigate issues that may arise in the interconnection process and contracting risks identified by the JU.

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[7] Ibid, p. 12.
[8] Ibid.
[9] See Order No. 10-132 (establishing the current state-level QF-LGIP and QF-LGIA).
[10] Includes Idaho Power's Schedule 85, PacifiCorp's Schedules 37 and 38, and PGE's Schedules 201 and 202.
[11] See Joint Utilities' Application September 12, 2023, pp. 7-8.

<u>Study Process</u>: The JU proposal modifies the interconnection process and associated interconnection application forms so QFs requesting NRIS can also request a concurrent study for ERIS. QFs utilizing this flexibility are required to commit to moving forward with an ERIS interconnection prior to executing a Facilities Study Agreement. The JU include this provision to mirror the requirements for FERC jurisdictional generators and address restudy and delay risk.[12] The JU note that having certainty about the project's interconnection service requirements at this final study milestone is particularly important in PacifiCorp's cluster study process and consistent with the requirements of non-QF cluster participants.[13] The QFs are also required to sign an attestation that confirms they understand that ERIS requires them to execute a non-standard power purchase agreement (PPA). The JU note that the attestation is designed to ensure the QF understands the "consequences" of this decision and to, "avoid future disputes if a QF later regrets or disputes its choice of ERIS."[14]

<u>Interconnection agreement</u>: The JU proposal modifies the interconnection agreements to include ERIS as an option, provided the QF signs a non-standard PPA prior to executing an interconnection agreement for ERIS. The JU include this requirement to implement Commission direction that ERIS is contingent upon use of a non-standard PPA.[15] The JU also note their inability to break interconnection agreements once the agreements are signed and the impact that a "speculative" interconnection agreement has on other generators.[16]

The JU proposal focuses on establishing a procedural framework and does not delve into the substance of potential arrangements to accommodate ERIS. For example, the JU proposal does not specify curtailment provisions.

Stakeholder Comments
On November 22, 2023, comments addressing the JU compliance filing were filed by Staff, OSSIA, NewSun, and the Interconnection Customer Coalition (ICC) objecting to the requirement to sign a PPA prior to executing an LGIA or SGIA for ERIS. Stakeholders complain that the requirement is discriminatory as other QFs and non-QF interconnection customers seeking service are not required to execute a PPA prior to executing a GIA.

Legally, the ICC argue the JU proposal to require a signed non-standard PPA prior to execution of a GIA, "violates the QF's right to create a legally enforceable obligation

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[12] Joint Utilities' Reply Comments, January 5, 2024, pp. 2-3.
[13] Id.
[14] Id., p. 14.
[15] Id., p. 5.
[16] Id., pp. 5-6.

("LEO")."[17] Further, they argue that "[u]nder the Joint Utilities' proposal, the utility could easily "avoid[] PURPA requirements" to interconnect the QF using ERIS as directed in Order No. 23-005 "simply by refusing to enter into a contract [, i.e., the non-standard PPA,] with a QF."[18]

Practically, the stakeholders raise concerns about the pressure the JU proposal puts on QFs to negotiate a new type of non-standard QF arrangement.[19] The ICC contend the utility approach will, "give the utility's power supply arm an unreasonable amount of leverage to force the QF to 'agree' to non-standard PPA terms under potentially extreme time pressure."[20] Finally, the QFs raise concerns about the pressure to begin PPA negotiations so early in the interconnection process that vital information, such as the cost information in a facilities study, is not yet available for most of the negotiation period.

Another concern is that, under the utilities' proposal, QFs are required to attest that they understand the "consequences" of proceeding with ERIS when executing the Facility Study Agreement. NewSun raised objections to this calling it "unnecessary and improper" [21]

Finally, stakeholders raise concerns about the lack of information about voluntary curtailment terms and the amount of curtailment required to avoid Network Upgrades in the ERIS study process.[22]

JU Response
The Joint Utilities counter that there is sufficient time for a QF to execute a non-standard PPA. They clarify that the QF should be able to execute the PPA immediately before the GIA and will have information necessary to begin negotiations following the "receipt of a system impact/cluster study."[23] The JU argue that it is reasonable to place different expectations on QFs seeking a different interconnection arrangement and that these QFs pose a unique risk of clogging the queue because, the potential to reach agreement on "voluntary curtailment or other solutions…creates more uncertainty

[17] See ICC comments, p 6.
[18] ICC Comment, p. 7, *quoting Cedar Creek Wind, LLC*, 137 FERC ¶ 61,006, at P 35.
[19] See ICC Comments, pp. 3-8.
[20] Ibid, p. 7.
[21] NewSun Opening Comments p. 4, "It is the equivalent of requiring the interconnection customer to submit a signed attestation that they intend to follow the applicable rules and procedures. Doing that which is otherwise already required needs no additional 'attestation.'"
[22] See OSSIA Opening Comments, p. 2, ICC Opening Comments, p. 6, Joint Developers Reply Comments, pp. 3-4.
[23] See Joint Utilities' Reply Comments, p. 12.

around whether the QF will ultimately reach agreement and sign a non-standard PPA".[24]

[24] See Joint Utilities' Reply Comments, p. 9.

The JU also argue that the Commission has ordered them to implement this is in good faith and has sufficient protections to address a LEO dispute on a case-by-case basis.[25]

Further, they state the QF would have "roughly 210-300 days (or seven to 10 months) from signing the Facilities Study agreement to the deadline to execute the QF-LGIA."[26] This statement assumes the QF would begin negotiations while the Facilities Study was in process. The process would be much shorter however if the negotiations started upon receipt of the study results, potentially as short as three months. The following table shows the steps and timing of the process envisioned by the utilities. There is potential for variability in the study timing, as well as the Transmission Provider delivering the draft QF-LGIA. Here the utility could compress the timeline by completing the study or providing the draft QF-LGIA sooner than required.

	Scenario A*	Scenario B	
	Days		Notes
Facilities study agreement executed			
Draft facilities study results provided within 90 or 180 days depending on accuracy	90	180	Utilities control timing
Interconnection customer provides comments on draft study	30	30	
Transmission Provider delivers draft QF-LGIA to Interconnection Customer	30	30	Utilities control timing
Negotiate and execute QF-LGIA	60	60	
Potential total time	210	300	Assumes utility uses full time allowed
Potential total time following receipt of facilities study	90-120	90-120	90 days assumes immediate provision of draft QF-LGIA
*Under Scenario A the transmission provider will complete the facilities study with no more than +/- 20 percent cost estimate, for scenario B that falls to a +/- 10 percent cost estimate.			

In response to QF requests for more information about curtailment in the ERIS study reports, the JU explain that this request cannot be known in an interconnection study and is inconsistent with Commission direction provided in reclarification provided with Order No. 23-005.[27]

[25] See Joint Utilities' Reply Comments, p. 12.
[26] See Joint Utilities' Reply Comments, p. 12, and footnote 30.
[27] See Joint Utilities' Reply Comments, pp. 14-16.

Staff Recommendations
Staff has reviewed the compliance filings, as well as the comments from the interested parties. Staff believes the utility filings meet the letter of the requirements of the Order, that is, QFs are given an opportunity to be studied for both ERIS and NRIS; and, with two modifications, will be worth putting into practice. The remainder of this memo focuses on consideration of modifications that may make the proposal more likely to work for QFs.

Staff Approach
While the Commission did not conclude that ERIS should be available for all QF interconnections, it recognized the potential for more efficient optimization of the existing transmission system under certain arrangements. Staff appreciates the Commission's interest in capturing greater value from the PURPA framework and willingness to engage in a certain level of experimentation. This aligns with Staff's overarching PURPA strategy to send clear signals about the ways that QFs can bring value to ratepayers during the energy system transition and hold QFs accountable for delivering that value.

Staff recognizes that experimenting with ERIS flexibility comes with certain risks, including disputes, delays in the interconnection queue, and a degree of uncertainty about the cost and reliability implications of interconnecting QFs under a different deliverability standard. It also relies on the ability of utilities and QFs to reach agreement on new types of QF PPA terms. Staff does not believe this is a framework that is guaranteed to result in success.

That said, Staff believes that innovation in this space has the potential to enable more cost-efficient non-emitting resource development, in Oregon, and in support of the state's small-scale resource requirement. Staff also believes that innovation in this space will encourage QF configurations that might respond better to deliverability constraints e.g., solar + storage. Given these opportunities, Staff considered both compliance with the letter of the Commission order and whether the proposal appears workable enough to be put to the test. Staff makes recommendations to help address procedural challenges for QFs but acknowledges that these modifications do not remove the complexity of PPA negotiation or potential for future disputes.

PPA Requirement
Staff understands the concerns about the imbalance in power structure between the utility and the QF created by the timeline to execute a PPA. Relying on successful negotiation of a new type of contractual arrangement for QFs is a risk of this experiment and the time pressure created by JU proposal compounds the issues. Negotiating a

PPA without a full picture of the interconnection costs facing the QF exacerbates these issues further.

Staff supports the JU desire to have more certainty about the viability of the non-standard PPA prior to entering into GIAs which cannot be broken. As noted in the Commission's order, ERIS is available to QFs that "voluntarily commit" to curtailment and executing a non-standard PPA. Allowing a QF to execute a GIA for ERIS before the QF has voluntarily committed to the terms of a non-standard PPA is a risk for the utility and other generators.

Staff disagrees with Stakeholder arguments the utility will be able to avoid LEO obligations by refusing to enter into contracts with QFs. The Commission recognized the ability for QFs to use ERIS could lead to situations with parties who "have different assumptions about what combinations of arrangements are physical and legally possible."[28] This may lead to disputes but, "addressing those disputes as necessary will help inform our future understanding of the possibilities and limitations in use of the system through more creative approaches to interconnection and transmission service."[29] Staff believes there are protections in place guarding against potential utility refusals to operate in good faith. The Commission's stated priority here is, "to encourage the efficient use of varying transmission and interconnection options to maximize use of the system."[30] As such Staff expects the utilities to operate in good faith, as well as explore alternatives that will accomplish the Commission's goals.

Staff has identified two solutions (outside of a project-specific dispute process) that can help reduce the burden to QFs while retaining the PPA requirement:

1. **PPA grace period:** Staff's original proposal was to allow a grace period in which QFs can break their PPA without penalty.[31] The JU expressed support for a limited grace period,[32] but NewSun and OSSIA indicate that this does not help the QF's viability and will still have a negative impact on other generators if the PPA is eventually terminated.[33] The main advantage of this proposal is that it relieves the pressure of the power imbalance, but it does not necessarily avoid impacts on other generators from less viable projects moving forward on key milestones.

[28] See Order 23-164, p. 11.
[29] See Order 23-164, p. 11.
[30] See Order 23-164, p. 11.
[31] See Staff's Opening Comments, p. 3.
[32] See Joint Utilities' Reply Comments, p. 7.
[33] See Joint Developers Reply Comments, p.2.

2. **Extend the GIA timeline:** As an alternative, the JU could provide more time to execute a GIA, and therefore negotiate the PPA, after the Facilities Study information is available. This approach focuses on increasing the likelihood that the QFs that proceed with PPAs and GIAs will be viable. However, this approach will cause delays in the interconnection process for other generators.

Staff now revises its original proposal and believes that a GIA timeline extension would relieve timeline pressure for PPAs and help ensure sufficient information for QF decisions to proceed. In examining a small sample of studies on PGE's OASIS site, cost increases from the System Impact Study (SIS) to Facilities Study (FaS) ranged from 16 percent to 200 percent. A QF negotiating a PPA with cost assumptions based on a SIS that is later told that the actual costs facing them would be three times the initial estimate would potentially need to start negotiations over. In fact, the impact of large deviations seen between studies is likely a barrier to negotiations between utility and QF prior to provision of the FaS results.

Given the potential cost differences between the SIS, and the FaS, Staff is not convinced there will be time to negotiate a PPA in all cases. Under the JU proposal, the QF will have 90-120 days[34] from receipt of the draft FaS until the GIA is signed, which may not be enough time to negotiate a non-standard PPA. Staff therefore recommends allowing an additional 60 days for negotiations. Under this approach customers would have 120 days to reach agreement on a PPA following receipt of the draft GIA from the utility. There should also be an option for additional 30-day extensions as needed.

Providing a timeline extension will impact other generators with delays and uncertainty. However, the other solutions will cause similar uncertainty and Staff believes that the better solution is the one that focuses on increasing the likelihood that viable PPAs and GIAs will be executed.

<u>ERIS Attestation</u>
Relating to the requirement to attest to understanding the consequences of selecting ERIS prior to executing a Facility Study Agreement, Staff agrees that the attestation is unnecessary and can be removed. Staff appreciates the JU wanting to ensure applicants are aware of requirements associated with ERIS, but this can be accomplished by clearly stating such in the tariff, schedules, and applications.

<u>ERIS Information</u>

[34] Following receipt of a draft FaS the interconnection customer has 30 days to provide comments, the transmission provider has 30 days to provide a GIA, and there is 60 days allowed for negotiating—thus a maximum of 120 days, although the utility could streamline providing the GIA.

Finally, Staff understands the JU's decision to not delve into specific ERIS options to accommodate curtailable QFs but notes that leaning on this simplicity now may require the Commission to provide additional guidance about reasonable study assumptions and PPA provisions through future dispute filings. While the information will not be provided in the interconnection study, the QF will have the information available through simultaneous PPA negotiations. QFs may still have difficulty negotiating a non-standard PPA if there is not enough clarity related to curtailment, which will impact the QF's revenue stream. Staff believes that moving forward with the current proposal to be the best approach, given the experimental nature of this endeavor.

Conclusion

Based on the review of the JU application, Staff concludes the filings are largely compliant with Order 23-005 and should be adopted with two modifications. First, the requirement for a QF to attest it will negotiate a non-standard PPA prior to executing a Facilities Study Agreement is unnecessary and unduly burdensome to the QF and should be removed.

Second, QFs need sufficient time to negotiate non-standard PPAs once they have the full picture of the costs of the interconnection. There should be additional time allowed for negotiating a PPA following receipt of the Facilities Study/draft QF-LGIA, Staff recommends an additional 60 days allowed, with the potential for 30-day extensions if needed. Parties can file for dispute resolution in cases where negotiations do not proceed apace; building in additional time here may lessen the potential for complaints filed based solely on inability to finalize a PPA.

PROPOSED COMMISSION MOTION

Approve the Joint Utilities filings with the condition that they remove the requirement that QF's attest that they understand the "consequences" of selecting ERIS prior to executing a Facilities Study Agreement and allow a minimum of 120 days from receipt of the draft QF-LGIA for negotiating a non-standard PPA, with optional 30-day extensions, if needed.