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June 3, 2022

VIA ELECTRONIC FILING

Attention: Filing Center
Public Utility Commission of Oregon
201 High Street SE, Suite 100
P.O. Box 1088
Salem, Oregon 97308-1088

Re: Docket UM 2032 – Staff Investigation into the Treatment of Network Upgrade Costs for Qualifying Facilities

Attention Filing Center:

Attached for filing in the above-captioned docket is the Joint Utilities' Prehearing Brief. Please contact this office with any questions.

Sincerely,

Suzanne Prinsen

Suzanne Prinsen
Legal Assistant

Attachment

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.

JOINT UTILITIES' PREHEARING BRIEF

June 3, 2022

Table of Contents

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

TABLE OF AUTHORITIES

Page(s)

Cases

Public Utility Commission of Oregon Orders

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

Federal Energy Regulatory Commission Decisions

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

Other State Commission Decisions

Statutes

Other Authorities

McDowell Rackner Gibson PC
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Portland, OR 97205

I. INTRODUCTION AND SUMMARY

A. Introduction

On May 22, 2020, the Administrative Law Judge (ALJ) adopted the following issue list for Phase I of this docket:

1. Who should be required to pay for Network Upgrades necessary to interconnect the Qualifying Facility (QF) to the host utility?

2. Should on-system QFs be required to interconnect to the host utility with Network Resource Interconnection (NRIS) or should QFs have the option to interconnect with Energy Resource Interconnection Service (ERIS) or an interconnection service similar to ERIS?[1]

The primary issue raised in this docket is who should be required to pay for Network Upgrades necessitated by a QF's interconnection: the QF, or utility customers? The Commission should adopt Staff's recommendation to (1) reaffirm the Commission's current QF interconnection polices, which require QFs to obtain NRIS and presumptively allocate the costs caused by the QF's interconnection to the QF; and (2) open Phase II of this docket to address the Commission's "quantifiable system-wide benefits" standard.

B. Summary

PURPA directs the Federal Energy Regulation Commission (FERC) to promulgate regulations to promote energy purchases from cogeneration and certain small power production facilities, or QFs. PURPA and FERC's implementing regulations establish three major obligations for electric utilities: (1) to sell electric energy to QFs; (2) to purchase electric energy from QFs; and (3) to interconnect with QFs.[2] While FERC is tasked with developing broad federal regulations to guide PURPA's implementation, individual state commissions are tasked with

[1] ALJ Ruling at 4 (May 22, 2020) (adopting Staff's proposed issue list).
[2] *See* 18 C.F.R. § 292.301-314.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

implementing PURPA at the state level.[3] States have discretion to implement PURPA consistent with state law and state regulatory policy, so long as the states exercise that discretion within boundaries established by federal law.[4]

Network Upgrades are the "additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Facilities connect to the Transmission Provider's Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System."[5]

The Commission's current QF interconnection cost-allocation policies require QFs to obtain Network Resource Interconnection Service, or NRIS. This policy is critical for retaining customer indifference. NRIS is the most efficient way to identify deliverability limitations and the associated costs resulting from a QF's chosen location in a timely manner,[6] and for allowing the Commission to allocate the cost of Network Upgrades caused by the QF to the QF. Commission policy also allows a QF to be reimbursed for some portion of its Network Upgrades to the extent the QF demonstrates that the Network Upgrades provide "quantifiable system-wide

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[3] 16 U.S.C. § 824a–3(f) (setting out the obligation in PURPA Section 210(f) for state regulatory authorities and nonregulated utilities to implement FERC's regulations); *see also FERC v. Mississippi*, 456 US 742, 767 (1982) (describing PURPA's "cooperative federalism").

[4] *S. Cal. Edison Co., San Diego Gas & Elec. Co.*, 70 FERC ¶ 61,215 at 61,675 (1995) ("Since 1980, the Commission has given the States wide latitude in implementing PURPA."); *Connecticut Light and Power Co.*, 70 FERC ¶ 61,012, 61,027-61,028 (1995).

[5] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/8-9. *See* QF-LGIP at 6, 8.

[6] The Commission has stated that utilities are to give QFs timely information about the costs associated with the development of their project where possible. *See Blue Marmot V LLC et al. v. Portland General Electric Co.,* Docket UM 1829, Order No. 19-322 at 16 (Sept. 30, 2019) (*Blue Marmot*) ("We generally consider it reasonable for electric companies to complete the due diligence process before sending final draft executable contracts for signature by QFs. A utility should review significant proposed QF delivery terms as early as possible, and ideally well before providing a final draft executable contract.").

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

benefits."[7] These policies were previously litigated in docket UM 1401, where many of the same issues raised by the QFs in this docket were raised and dismissed. The Commission's current policies are consistent with PURPA, consistent with state law, fair and reasonable to QFs and retail customers, and should be retained.

With respect to Issue 1, QFs should be required to pay for Network Upgrades necessary to interconnect the QF to the host utility. The Commission's current QF interconnection policies appropriately presume that interconnecting generators will bear the costs necessitated by their interconnection, including the costs of Network Upgrades.[8] By doing so, the Commission's policies are consistent with PURPA's customer indifference standard. They also provide a critical financial incentive for QFs and other generators to site their projects in economically efficient locations. Finally, allocating QF interconnection-driven Network Upgrade costs to QFs, rather than utility customers, ensures the Commission appropriately exercises its statutory duty to oversee customer rates to ensure they remain just and reasonable.

The Commission's QF interconnection policies leave open the possibility that QFs will be exempted from paying some portion of their interconnection-driven Network Upgrade costs if the QF can demonstrate that their Network Upgrades create "quantifiable system-wide benefits," a standard the Commission articulated in docket UM 1401 but has never fully explained or

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[7] *See In re Pub. Util. Comm'n of Or. Investigation into Interconnection of PURPA Qualifying Facilities with Nameplate Capacity Larger than 20 Megawatts to a Pub. Util.'s Transmission or Distribution System*, Docket UM 1401, Order No. 10-132 at 3 (Apr. 7, 2010).

[8] As Joint Utilities' Transmission Witnesses explain, the Commission's QF Large Generator Interconnection Procedures (QF-LGIP) defines Network Upgrades as upgrades at or beyond the point of interconnection with a transmission provider's transmission system. Order No. 10-132, Appendix A (QF-LGIP) at 11.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

explored.[9] Staff suggests, and the Joint Utilities concur, that the exploration of this standard should take place in Phase II of this docket to allow for exploration of this standard.[10]

With respect to Issue II, NRIS is the only appropriate interconnection service type for QFs. Allowing a QF to obtain ERIS would remove an essential financial incentive for the economically efficient development of QF power and would shift costs to retail customers. Despite the fact this docket has been open for nearly three years and the evidentiary record included four rounds of testimony, no party has proposed *and provided evidentiary support* for a workable alternative to NRIS.

In sum, the Commission should (1) reaffirm its current QF interconnection polices, which require QFs to obtain NRIS and presumptively allocate the costs caused by the QF's interconnection to the QF; and (2) open Phase II of this docket to address the Commission's "quantifiable system-wide benefits" test.

II. ISSUE 1: QUALIFYING FACILITIES SHOULD BE RESPONSIBLE FOR THE COSTS CAUSED BY THEIR INTERCONNECTION

Network Upgrade costs caused by QFs should be allocated to QFs for several reasons. First, FERC has established a regulatory scheme that gives states authority over QF interconnection costs, including Network Upgrades. That regulatory scheme assumes that QFs will pay those costs. The Commission therefore has authority to address this question. Second, PURPA's customer indifference standard requires the Commission to exercise its authority to implement PURPA in a manner that leaves retail customers financially indifferent to the utility

[9] Order No. 10-132 at 3.

[10] The Joint Utilities are open to exploring methodologies for implementing the Commission's "quantifiable system-wide benefits" test in Phase II of this docket, though they believe the implementation method proposed by the Joint Utilities is the only proposal made in this docket to date that is both workable and supported by evidence. *See* Joint Utilities/500, Vail-Bremer-Foster-Olennikov-Ellsworth/9.

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

purchase of QF power. This requires QFs to pay the costs necessitated by their interconnection.[11] Finally, this Commission has an obligation to allocate a QF's interconnection-driven Network Upgrades to QFs as part of its statutory duty to ensure rates are just and reasonable.

NewSun and the Interconnection Customer Coalition (ICC) argue that the Commission should adopt FERC's non-PURPA interconnection policy, applicable to FERC-jurisdictional interconnections, of presuming that interconnection-driven Network Upgrades should be allocated to transmission providers and passed on to retail customers.[12] Staff supports the Commission's existing policies, noting that a QF should be responsible for the cost of the Network Upgrades required by its interconnection to the extent those costs exceed a utility's avoided cost or the value of any "quantifiable system-wide benefits" created by the Network Upgrades.[13] This cost allocation, Staff explains, "is important both for conforming to PURPA and for protecting ratepayers from potentially significant costs."[14]

A. Federal law gives states authority to allocate QF interconnection costs and assumes that QFs will pay those costs.

Soon after PURPA's adoption, FERC made clear that state-jurisdictional QF interconnections would be governed entirely by state law and policy, not by federal law.[15] In 1980,

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[11] The Commission's current policies attempt to achieve this indifference by requiring QFs to pay for their interconnection-driven Network Upgrades unless some portion of those Network Upgrades is eligible for allocation to retail customers under the Commission's quantifiable system-wide benefits, a standard the Commission should address in Phase II of this docket.

[12] *See* ICC/300, Lowe/3; NewSun/200, Andrus/18.

[13] Staff/100, Moore/15 (citing Order No. 10-132 at 3); Joint Utilities/301, Wilding-Macfarlane-Williams/36, 43 (Staff Response to PGE DR 4, Staff Response to PacifiCorp DR 1).

[14] Staff/100, Moore/15.

[15] While FERC ordinarily has jurisdiction over a generator's interconnection with a utility's

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

FERC promulgated PURPA-specific interconnection regulations applicable to directly interconnected QFs. Those regulations state as follows:

> (a) Obligation to pay. Each qualifying facility shall be obligated to pay any interconnection costs which the State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or nonregulated electric utility may assess against the qualifying facility on a nondiscriminatory basis with respect to other customers with similar load characteristics.
>
> (b) Reimbursement of interconnection costs. Each State regulatory authority (with respect to any electric utility over which it has ratemaking authority) and nonregulated utility shall determine the manner for payments of interconnection costs, which may include reimbursement over a reasonable period of time.[16]

These regulations contemplate a framework specific to QFs, under which a state will have jurisdiction over the allocation of a QF's interconnection costs, even if the QF interconnects with

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transmission system, PURPA gives state authorities jurisdiction over such interconnections so long as the QF is selling all of its output to the directly interconnected utility *See e.g.*, 18 C.F.R. §§ 292.303(c), 292.306; *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Pub. Util. Regulatory Policies Act of 1978*, 45 Fed. Reg. 12,214, 12,221 (1980) (Order No. 69); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 62 FERC ¶ 61,128 (1993), *order on reh'g*, 64 FERC ¶ 61,139, 61,991 (1993), *order on reh'g*, 65 FERC ¶ 61,081 (1993) (landmark order addressing various jurisdictional issues and reiterating previous FERC rulings that "the states have exclusive jurisdiction over direct interconnections between a QF and the public utility which purchases its power."); *Standardization of Generator Interconnection Agreements and Procedures*, 104 FERC ¶ 61,103 at PP 813-14 (2003) (Order No. 2003). The exception to this rule is where the QF has the right to make sales to third parties. *PJM Interconnection, L.L.C.*, 114 FERC ¶ 61,191 at P 15 (2006). When initially analyzing PURPA, FERC Staff understood that it would entail a complex implementation scheme, but also recognized that states needed authority to make customers indifferent to the interconnection costs caused by PURPA's mandates, explaining, "[t]he-requirement under Sections 210 and 212 of the FPA that the party seeking interconnection must show himself to be ready, willing and able to pay the resulting costs, and the companion criterion that the interconnection order not be issued if it would result in a reasonably ascertainable uncompensated economic loss for any electric utility, might be seen as consistent with the statement in the Conference Report that the cogeneration section was not to be applied so as to force a utility's customers to subsidize a qualifying facility." *See Staff Paper Discussing Commission Responsibilities to Establish Rules Regarding Rates and Exemptions for Qualifying Cogeneration and Small Power Production Facilities Pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978*, Docket No. RM79-55, 44 FR 38863 (July 3, 1979).

[16] 18 C.F.R. § 292.306.

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

the utility's transmission system. Moreover, they presume that ***the QF will reimburse the utility*** (and by extension, retail customers) for the costs of its interconnection, not the other way around.[17]

Although FERC's *non*-QF interconnection polices have evolved through the decades, FERC's QF interconnection policies have changed little since 1980. This is the case even though FERC issued an order only two years ago intended to modernize its original PURPA regulations.[18] Moreover, although FERC has issued a number of orders updating its *non-QF* interconnection policies over the years, FERC has never, to the Joint Utilities' knowledge, applied its non-PURPA interconnection policies to state-jurisdictional QFs, despite QF requests to do so.[19]

FERC declined to apply its general interconnection policies to QFs just last year. In *Beaver Creek,* QF developers challenged the Montana Public Service Commission's policy of assigning network upgrades to QFs, without refund, and without regard to the system benefits that the QF or related network upgrades required to interconnect the QF would contribute to a utility's system.[20] The developers asked FERC to conclude that the Montana Commission's policy violated PURPA because the state policy was discriminatory—it differed from the FERC's interconnection policies

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[17] 18 C.F.R. § 292.306(b) describes the reimbursement mechanism for Network Upgrades as running from the QF to the utility (to the extent the utility pays for the costs upfront), not the other way around, as in the case of a FERC-jurisdictional interconnection agreement where the generator pays its interconnection costs upfront, subject to later reimbursement by the utility. *See, e.g.,* Order No. 69 at 12,230 (responding to comments seeking clarification on "the manner in which electric utilities would be reimbursed" by explaining that it is best left to the states to decide whether a QF should pay for its interconnection in an upfront lump sum or amortized over some period of time).

[18] *Qualifying Facility Rates and Requirements Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, 172 FERC ¶ 61,041 at PP 87-88 (2020) (Order No. 872).

[19] FERC's standard generator interconnection policies, which were adopted in FERC Orders 2003 and 2006, do not apply to state-jurisdictional QFs. *See, e.g.,* Order No. 2003 at P 814 (pro forma LGIP); *Standardization of Small Generator Interconnection Agreements and Procedures*, 111 FERC ¶ 61,220 at PP 516-518 (2005) (Order No. 2006), order on reh'g, 113 FERC ¶ 61,195 (2005) (Order No. 2006-A); *Beaver Creek Wind I, LLC et al*, 176 FERC ¶ 61,116 (Aug. 23, 2021)("*Beaver Creek*"); *Cherokee County Cogeneration Partners, LLC*, 175 FERC ¶ 61,002, P 18 (2021) (rejecting a reactive power rate schedule filed by a QF, upon determining that the interconnection was state-jurisdictional). .

[20] *In re Beaver Creek Wind, et al.,* Petition for Enforcement and Declaratory Ruling, Dkts. EL21-86-000, QF20-1303-000, QF20-1304-000 (June 24, 2021).

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

and principles established in Orders 2003 and 2006. After extensive briefing on the issue, including from the majority of the commenters in this docket—PacifiCorp, Portland General Electric, the Community Renewable Energy Association, the Renewable Energy Coalition, and NewSun Energy—FERC rejected the request.[21] FERC's original PURPA interconnection regulations remain as effective as they were in 1980.

1. FERC's definition of QF interconnection costs is broad.

The types of interconnection costs that fall within the scope of federal PURPA regulations, and thus are subject to state cost-allocation, are extremely broad. FERC defines QF "interconnection costs" as follows:

> [T]he reasonable costs of connection, switching, metering, transmission, distribution, safety provisions and administrative costs incurred by the electric utility directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility, to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection costs do not include any costs included in the calculation of avoided costs.[22]

This definition sweeps within its orbit all interconnection driven costs that are reasonably necessary for QF interconnection and incremental to the utility's own costs of serving load, and includes Network Upgrades, the type of interconnection costs at issue in this docket.[23]

When adopting this definition, FERC explained that interconnection costs "may include, but are not limited to, operating and maintenance expenses, the ***costs of installation of equipment***

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[21] *See Beaver Creek,* 176 FERC ¶ 61,116 at P 2

[22] 18 C.F.R. § 292.101(b)(7).

[23] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/15-16 (describing the types of Network Upgrades that could be required to interconnect a QF).

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

elsewhere on the utility's system necessitated by the interconnection, and reasonable insurance expenses."[24] Thus, QF interconnection costs that are subject to state jurisdiction can include the cost of facilities at or beyond the point of interconnection (i.e., "elsewhere on the utility's system"). By broadly defining interconnection costs, FERC made clear the definition was "designed to provide the State regulatory authorities . . . with the flexibility to ensure that all costs which are shown to be reasonably incurred by the electric utility as a result of interconnection with the qualifying facility will be considered as part of the obligation of the qualifying facility."[25]

Interconnection-driven Network Upgrades are not typically within a state commission's purview because they are, by definition, part of a utility's transmission system, rather than its distribution system.[26] But under PURPA's flip-flopped jurisdictional scheme,[27] a QF's interconnection-driven Network Upgrades are uniquely subject to state discretion. This Commission explicitly exercised its jurisdiction over QF Network Upgrades by taking FERC's Large Generator Interconnection Procedures (LGIP), which addresses the type of transmission system upgrades (including Network Upgrades) typically within FERC's jurisdiction and modifying the LGIP to reflect state policy. Under FERC's pro forma LGIP, Network Upgrades are defined as follows:

> [T]he additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Facilities connect to the Transmission Provider's

[24] Order No. 69 at 12,217 (emphasis added).
[25] Order No. 69 at 12,217.
[26] *See* Order No. 2003 at P 813.
[27] For example, those regulations presume that the QF will repay a *utility* for any costs of Network Upgrades, not the other way around. 18 C.F.R. § 292.306.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

> Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System.[28]

In order to address them through the state interconnection process, this Commission incorporated FERC's definition of Network Upgrades into the Oregon QF-LGIP.[29]

Network Upgrades can be subdivided into two types: (1) non-deliverability-related Network Upgrades associated primarily with ERIS (ERIS Network Upgrades) and (2) deliverability-related Network Upgrades associated primarily with NRIS (NRIS Network Upgrades).[30] The significance of each type of Network Upgrade is discussed in more detail in Section III. But *both* types of Network Upgrades are within the scope of FERC's definition of QF interconnection costs.[31]

2. PURPA requires QFs to pay for their interconnection costs in order to effectuate PURPA's customer indifference standard.

PURPA requires a utility to purchase QF power; in exchange, PURPA also requires customers to remain economically indifferent to the source of power the utility purchases by ensuring the cost to the utility associated with purchasing energy and capacity from a QF does not exceed the cost the utility would incur if it were purchasing from some other source.[32] This

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[28] *See* QF-LGIP at 11. *See also* Staff/100, Moore/7; ICC/100, Lowe/8; NewSun/100, Rahman/6; *see also* Joint Utilities/401, Vail-Bremer-Foster-Larson-Ellsworth/2, 12, 48 (ICC Response to PGE DR 1; NewSun Response to PGE DR 1, 41) (using same definition of "Network Upgrades.")

[29] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/8-9. The other typical categories of interconnection costs are "Interconnection Facilities," which are defined as facilities and equipment located between the QF generator and the point of interconnection with a utility's transmission system, and "Distribution Upgrades," which refer to upgrades to a utility's *distribution* system at or beyond the point of interconnection. The definitions of these terms in the Oregon QF-LGIP mirror the definitions in FERC's LGIP. *See* QF-LGIP at 6, 8.

[30] Joint Utilities/100 Vail-Bremer-Foster-Larson-Ellsworth/16-17.

[31] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/15-17.

[32] 16 U.S.C. § 824a-3(b) ("No such rule prescribed under subsection (a) shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy."); Joint Explanatory Statement of the Committee

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

"customer indifference" standard is an articulation of the concept, integral to PURPA, that customers should not subsidize QF development.[33]

The Commission has implemented PURPA policies consistent with the customer indifference standard by directing a purchasing utility to address the costs of QF interconnection as part of the generator interconnection process, rather than as an adjustment to the avoided cost

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of Conference, H.R. Rep. No. 95-1750, 95th Cong. 2nd Sess. at *98 (1978) (PURPA was "not intended to require the ratepayers of a utility to subsidize cogenerators or small power [producers]."); 18 C.F.R. § 292.304(a)(2) ("Nothing in this subpart requires any electric utility to pay more than the avoided costs for purchases."); 18 C.F.R. § 292.101(b)(6) (defining "avoided costs" as "the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility..., such utility would generate itself or purchase from another source."); Order No. 69 at 12,219 ("Under the definition of 'avoided costs' in this section, the purchasing utility must be in the same financial position it would have been had it not purchased the qualifying facility's output."). *See also, e.g.*, *S. Cal. Edison Co. San Diego Gas & Elec. Co.*, 71 FERC ¶ 61,269, 62,079-80 (1995); *see also Portland Gen. Elec. Co. v. Pac. Nw. Solar, LLC*, Docket UM 1894, Order No. 18-025 at 7 (Jan. 25, 2018) ("[O]ne critical feature of our implementation of PURPA, including (but not limited to) the terms and conditions of our regulated PURPA contracts, is the need to ensure that ratepayers remain financially indifferent to QF development."). When implementing PURPA, states are bound by PURPA's mandates and have no authority to exceed its boundaries. Indeed, without PURPA, states would have no authority to set prices for any wholesale sale of power from a generator to a regulated utility, nor to dictate contract terms or conditions for such transactions. Both would fall under FERC's exclusive jurisdiction. PURPA allows states to exercise authority over these issues, but subject to the condition that states exercise that authority consistent with PURPA—including its customer indifference mandate. *See, e.g.*, *S. Cal. Edison Co.*, 71 FERC ¶ 61,269, 62,079-62,081. While states may take many types of actions to encourage renewable development beyond PURPA's limitations to encourage development of renewable resources, those actions must be founded in state law (such as providing tax incentives, mandating construction of specific types of generation, passing a carbon tax, etc. through state legislation), rather than PURPA. *Id.* Given this customer indifference mandate, states lack authority to implement PURPA in a manner that exposes customers to additional cost, risk, or harm as a consequence of the purchase of QF power when compared to the utility's alternatives.

[33] *See, e.g.,* Order No. 18-025 at 4 (internal quotation marks and citations omitted) (Commission has "on a number of occasions, reaffirmed [its] intention to encourage the economically efficient development of QFs, while protecting ratepayers by ensuring that utilities pay rates equal to that which they would have incurred in lieu of purchasing QF power"); *In re Pub. Util. Comm'n of Or., Investigation into Qualifying Facility Contracting and Pricing*, Docket UM 1610, Order No. 14-058 at 12 (Feb. 24, 2014) ("We first return to the goal of this docket: to ensure that our PURPA policies continue to promote QF development while ensuring that utilities pay no more than avoided costs."); *In re Staff's Investigation Relating to Elec. Util. Purchases from Qualifying Facilities*, Docket UM 1129, Order No. 07-360 at l (Aug. 20, 2007) ("This Commission's goal is to encourage the economically efficient development of QFs, while protecting ratepayers by ensuring that utilities incur costs no greater than they would have incurred in lieu of purchasing QF power (avoided costs)."); Docket UM 1129, Order No. 05-584 at 11 (May 13, 2005) ("We seek to provide maximum incentives for the development of QFs of all sizes, while ensuring that ratepayers remain indifferent to QF power by having utilities pay no more than their avoided costs."); Docket UM 1129, Order No. 06-538 at 37 (Sept. 20, 2006) ("[O]ur overriding goals in this docket are to encourage QF development, while ensuring that ratepayers are indifferent to QF power."); *In re Investigation into Elec. Util. Tariffs for Cogeneration and Small Power Production Facilities*, Docket No. R-58, Order No. 81-319 at 3 (May 6, 1981) (stating goal of PURPA is "to provide maximum economic incentives for development of qualifying facilities while insuring that the costs of such development do not adversely impact utility ratepayers who ultimately pay these costs").

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

prices the utility must pay for the QF's output.[34] In other words, to maintain customer indifference to the purchase of QF power, the QF is paid for energy and capacity through a QF power purchase agreement (PPA) with the purchasing utility,[35] but the QF pays for its interconnection costs separately, as part of the interconnection agreement with the utility's transmission provider.[36] Assessing QF interconnection costs separately through the interconnection process allows for site-specific evaluation of interconnection costs. This distinct interconnection process is vital for maintaining customer indifference, because QF site selection is the key driver of the costs needed to interconnect the QF in a manner that allows the utility to reliably deliver QF power to its customers.[37]

In adopting interconnection policies that allocate Network Upgrade costs to the QFs that cause them, this Commission expressly noted the prohibition against requiring customers to subsidize QFs by explaining that this Commission's QF interconnection policies and allocation of Network Upgrade costs are bounded by the "limitations of the avoided cost rate."[38]

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[34] Order No. 07-360 at 26-27, Appendix A at 4 ("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.").

[35] Although a QF's individually determined interconnection costs are separately paid by the QF, Idaho Power's current avoided costs include a value that is paid to the QF that is representative of the avoided Network Upgrade costs associated with the proxy resource. Joint Utilities/300 Wilding-Macfarlane-Williams/10.

[36] When adopting its PURPA regulations, FERC decided "to separate the utility's avoided costs with regard to purchases from qualifying facilities, from the costs incurred as a result of interconnection with a qualifying facility." Order No. 69 at 12,217. However, in drawing this distinction, FERC emphasized that ***customers should be held harmless from both categories of costs***, stating "legitimate costs not recovered [as interconnection costs] can be netted out in the calculation of avoided costs." Order No. 69 at 12,217. FERC also has clarified that, "transmission or distribution costs directly related to installation and maintenance of the physical facilities necessary to permit interconnected operations may be accounted for in the determination of avoided costs if they have not been separately assessed as interconnection costs." *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at P 38 n.73 (2013) (Pioneer Wind). The Commission has not wavered from its position that under its PURPA "rules the utility is not obligated to incur ***any additional costs*** by reason of interconnected operation with [QFs]." *Small Power Production and Cogeneration Facilities—Qualifying Status*, 45 Fed. Reg. 17,959, 17,965 (1980) (Order No. 70) (subsequent history omitted) (emphasis added).

[37] *See, e.g.*, Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/19-20 (explaining that the "biggest factor affecting the cost of Network Upgrades is the QF's siting decision.").

[38] Order 10-132 at 3-4.

McDowell Rackner Gibson PC
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Portland, OR 97205

B. The Commission's Statutory Duties Require the Commission to Protect Customers from Unreasonable Costs

Even if PURPA did not impose on this Commission the obligation to ensure customers are held indifferent to the purchase of QF power, state regulatory policy and the discharge of the Commission's statutory duties would require the allocation of interconnection-driven Network Upgrades to the interconnecting generators that cause them. The Commission's current generator interconnection policies provide a critical financial incentive for QFs and other generators to site their projects in economically efficient locations. Without this price signal, QFs would be indifferent to the costs caused by their siting choices. As a result, they would be incented to site their projects in locations that are most financially advantageous to themselves, regardless of the potentially exorbitant costs to accommodate their output —costs that ultimately will find their way into retail rates. On the other hand, allocating QFs' interconnection-driven Network Upgrade costs to QFs, rather than utility customers, is consistent with the Commission's statutory duty to ensure customer rates are just and reasonable.[39]

1. QF Network Upgrade costs can be exorbitant, and their magnitude depends largely on where a QF developer chooses to site a project.

The cost of a generator's interconnection can vary dramatically depending on siting, load, existing transmission system facilities, and existing generation.[40] In some locations on a utility's transmission system, the costs of Network Upgrades needed to interconnect a generating facility can be relatively low or zero; in other locations, the costs of Network Upgrades needed to

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[39] ORS 756.040 ("In addition to the powers and duties now or hereafter transferred to or vested in the Public Utility Commission, the commission shall represent the customers of any public utility or telecommunications utility and the public generally in all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction. In respect thereof *the commission shall make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates*.") (emphasis added).

[40] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/19-20.

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Portland, OR 97205

interconnect can be significantly higher—tens of millions of dollars or more.[41]

The level of ERIS Network Upgrades needed to grant a QF's request for interconnection service ordinarily depends on the state of the facilities near the location of the QF's point of interconnection and what system modifications are needed to facilitate a safe and reliable interconnection of the QF to the transmission system.[42] In PacifiCorp's Oregon service territory, interconnection studies for various 40 MW solar generating resources have identified the need for ERIS Network Upgrades that range from $138,000 for some generators to as high as $10,200,000 for others.[43] Because Network Upgrades are site- and generator-specific, these do not represent the ceiling for potential ERIS Network Upgrades.

The level of NRIS Network Upgrades needed to grant a QF's request for interconnection service depends on the amount of existing generation, planned generation, load, existing transmission system facilities, and transmission constraints at the QF's chosen location.[44] In areas with sufficient load to absorb additional generation or areas free from transmission constraints, NRIS studies will identify no additional Network Upgrades needed beyond those already identified in ERIS studies.[45] However, in constrained areas that cannot absorb additional generation, NRIS studies are likely to identify additional deliverability-related Network Upgrades required to integrate the QF with the utility's system and deliver the QF's power retail customers. In some areas, NRIS-specific Network Upgrades (that is, Network Upgrades beyond those identified in an ERIS study) for an interconnecting generator may cost nothing; in others, they can be *hundreds of*

[41] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/19-20.
[42] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/19-20.
[43] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/19-20.
[44] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/19-20.
[45] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/20.

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Portland, OR 97205

millions of dollars.[46]

Other factors, such as project size, can also play a role in driving the magnitude of interconnection costs, but the biggest factor affecting the cost of Network Upgrades is completely out of the purchasing utility's hands: the site chosen by the QF.[47]

2. Unless the Commission allocates a QF's interconnection-driven Network Upgrades to the QF, utility customers will end up paying for them.

For each of the Joint Utilities, the primary user of the transmission system is the utility's merchant or load service function,[48] whose transmission rates are paid by its customers.[49] Thus, if any Network Upgrade costs that are necessary to accommodate QF power are not paid by QFs, they will not disappear—they must be paid by someone else. That someone will primarily be utilities' retail customers.[50] As Staff notes, these costs could be significant.[51]

Upgrades to a transmission provider's system can be exorbitantly expensive. It is thus critical that Commission policy incentivize the development of projects that make economic sense.[52] Indeed, the Commission has repeatedly affirmed that its obligations under PURPA and state law are to encourage *economically efficient* QF development while maintaining customer

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[46] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/20.
[47] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/20.
[48] Idaho Power's functional separation is different than PacifiCorp's and PGE's in that Idaho Power has a transmission, merchant, and load service function. For purposes of this testimony, Idaho Power's load service function is comparable to PacifiCorp's and PGE's merchant functions.
[49] Over 81 percent of PacifiCorp Transmission's annual transmission revenue comes from providing load service to PacifiCorp's retail customers. Similarly, PGE Merchant holds approximately 87 percent of the long-term transmission rights for PGE Transmission. Idaho Power's retail customer load service accounted for 70 percent of its transmission function's long-term transmission rights in 2018. Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/21.
[50] The Joint Utilities assume that any Network Upgrades they are forced to construct to accommodate QF power that are not paid for by QFs will be eligible for retail rate recovery. The Commission noted in Order No. 05-584, that a utility's lack of discretion in signing PURPA QF contracts favors the likelihood of the contracts being deemed prudent. Similarly, if utilities were to be required by Commission policies to bear the costs of QF interconnection, such cost would also presumably be found prudent, no matter how high they were. Order No. 05-584 at 56.
[51] Staff/100, Moore/15.
[52] *See* Section II.C.4, explaining how non-QF developers must *also* find economically efficient locations for their project before utilities, who must exercise prudence when negotiating such transactions, will commit to purchasing their power.

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Portland, OR 97205

indifference.[53] If the Commission were to change its policies to make a QF indifferent to the cost of accommodating its project, there would be no financial incentive for economically efficient QF development. Doing so would also illegally subsidize QF development by effectively guaranteeing a QF recovery of its siting costs, which "is fundamentally inconsistent with PURPA, as PURPA sets QF compensation at the *utility's* avoided costs, not at the QF's cost."[54] If the Commission were to require retail customers to pay for QF Network Upgrade costs, the overall level of Network Upgrade costs caused by QFs and imposed on retail customers is difficult, if not impossible, to anticipate because the costs are unique to each QF based on its siting choice and unknown until the interconnection study process is complete.[55]

3. Particularly given the potential magnitude of QF interconnection costs, allocating QF interconnection costs to the QFs that cause them is necessary to ensure retail rates are just and reasonable.

The Commission has a statutory obligation to ensure that customer rates are just and reasonable.[56] Under PURPA, interconnection costs for directly interconnected QFs fall squarely within the scope of utility costs this Commission must scrutinize. Given the potential significance of these costs, along with the ever-changing state of the transmission grid, the ultimate rate impact of policies exempting QFs from interconnection cost responsibility is unknown.[57] And yet some parties in this docket seek to make their Network Upgrade costs eligible for retail cost recovery,

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[53] *See, e.g.,* Order No. 07-360 at l ("This Commission's goal is to encourage the economically efficient development of QFs, while protecting ratepayers by ensuring that utilities incur costs no greater than they would have incurred in lieu of purchasing QF power (avoided costs)."

[54] Order No. 872 at P 41 ("Guaranteeing QFs cost recovery is fundamentally inconsistent with PURPA, which sets the rate the QF is paid at the purchasing electric utility's avoided cost, not at the QF's cost. Such a rate structure is not discriminatory.").

[55] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/19-20. As the transmission system becomes more constrained, historical results are not likely to capture the magnitude of possible Network Upgrade costs.

[56] ORS 757.210.

[57] As noted previously interconnection studies have shown interconnection-driven Network Upgrades caused by a single QF as high as tens of millions of dollars. Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/19. Because results are site-specific, the numbers could be higher.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

regardless of their magnitude.[58] Presumably, this Commission would not allow a utility to select a small generator in a competitive solicitation if that generator caused retail customers to incur $100 million in Network Upgrade costs without imposing a significant disallowance. The incompatibility of this position with the Commission's statutory duties seems self-evident.

Moreover, for multi-jurisdictional utilities like PacifiCorp and Idaho Power, the impacts of such a policy should be measured by its impact on Oregon customers alone. If the Commission were to adopt Oregon PURPA policies that require retail customers to fund multi-million dollar Network Upgrade projects at the discretion of individual QFs, other states, which would not be bound by the regulatory policies of their sister states nor by federal preemption, might be unwilling to pass on Oregon-policy-driven Network Upgrade costs to their own retail customers.[59] This seems particularly likely in states that have actually considered this issue and concluded that, in order to protect their state's customers, QFs must pay for their Network Upgrades, including NRIS Network Upgrades, without refund.[60] If the Commission were to absolve QFs of responsibility for shouldering Network Upgrades caused by QF projects, it should do so with the understanding that 100 percent of any resulting retail customer costs would be recoverable from Oregon customers.

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[58] *See e.g.*, ICC/300, Lowe/5. ICC recommends that the "Commission should assume that all system users benefit from system upgrades, and that all Network Upgrade [interconnection costs] should be paid by all users of the system." Although ICC agrees that in "rare instances" a Network Upgrade may not provide system-wide benefits and should therefore not be paid for by retail customers, ICC's recommendation has no limitations based on the magnitude of the Network Upgrade cost.

[59] Joint Utilities/300, Wilding-Macfarlane-Williams/33.

[60] *See, e.g., In re Application of Rocky Mountain Power for Approval of the Power Purchase Agreement Between PacifiCorp and Glen Canyon Solar A, LLC,* Utah P.S.C. Docket No. 17-035-26 et. al. Consolidated Order at 30-31 (Dec. 22, 2017) (concluding that QFs are responsible for obtaining NRIS interconnection and paying for their interconnection costs) ("Glen Canyon emphasizes that QFs are responsible for delivering their output to the point of interconnection and that, thereafter, the utility is responsible for transmitting the output to load. This is precisely the reason it is essential that interconnection costs, including investments in transmission infrastructure, be accurately estimated and assessed as a component of interconnection costs. If the QF avoids those costs at the interconnection assessment stage, no mechanism exists to later assess them and ratepayers will bear the burden.").

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Portland, OR 97205

As Staff has noted, allocating the cost of Network Upgrades caused by a QF's interconnection to the QF that caused them "is important both for conforming to PURPA and for protecting ratepayers from potentially significant costs."[61] The Joint Utilities agree with Staff that the Commission's current QF interconnection cost-allocation policies should be retained.[62]

4. The Commission's policies treat QFs fairly.

Finally, the Commission's policies treat QFs fairly. QFs are not the only state-jurisdictional interconnection customers responsible for paying the costs of their interconnection. In fact, all state-jurisdictional interconnection customers are treated comparably in this regard. Division 82 of the Commission's administrative rules reflects the Commission's state regulatory policies for interconnecting small QF and non-QF generators alike and makes interconnection customers responsible for the cost of their interconnection.[63] The same policy is carried over into the Commission's QF-specific large generator interconnection policies, as reflected in the Commission's QF Large Generator Interconnection Procedures (QF-LGIP) and QF Large Generator Interconnection Agreements (QF-LGIA), with only minor differences.[64]

Under these policies, all costs driven by a generator's interconnection—whether those costs are associated with Interconnection Facilities, Distribution Upgrades, System Upgrades, or

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[61] Staff/100, Moore/15.

[62] Staff/100, Moore/6, 35. While Staff currently supports the Commission's existing policies (and the principles underlying them), Staff believes that implementation of those policies should be further refined in dockets UM 2000 and in Phase II of this docket. Staff/100, Moore/6, 35. Specifically, Staff is concerned that avoided interconnection costs may not be adequately captured in the utilities' current avoided-cost calculations and recommends reviewing this issue in docket UM 2000. Second, Staff questions whether QFs are being properly credited for "quantifiable system-wide benefits" created by their interconnection-driven Network Upgrades and recommends that the Commission address this issue in Phase II of this docket. The Joint Utilities take issue with some of Staff's statements about these issues, but generally support reviewing these issues in the venues Staff recommends. *See* Joint Utilities/300, Wilding-Macfarlane-Williams/ at 6. To the extent Staff makes any explicit recommendations in their prehearing brief, the Joint Utilities will address them in the next round of briefing.

[63] OAR 860-082-0005 *et. seq.*

[64] *See* Order No. 10-132.

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Portland, OR 97205

Network Upgrades—are assigned to the generator that caused them.[65] This is true for QFs and non-QFs alike.[66] Indeed, Oregon regulatory policy consistently favors allocating cost responsibility based on cost-causation. The Joint Utilities are aware of no policy rationale—under either state law or PURPA—that would support favoring QFs over non-QFs by relieving QFs of the responsibility to pay for their own interconnection costs.

C. Federal Pricing and Cost Allocation Policies Do Not, and Should Not, Apply to State-Jurisdictional Interconnection Customers, Including QFs

A common theme raised by QFs in this docket is that the Commission's QF interconnection policies should be informed by FERC's federal pricing and cost allocation policies. FERC policy, applicable to FERC-jurisdictional interconnection customers, requires an interconnection customer to up-front fund the costs of its Network Upgrades, which are later subject to reimbursement to the interconnection customer; in other words, the opposite of the "reimbursement" process contemplated by PURPA. This specific FERC policy is grounded in the statutory goals of the Federal Power Act (FPA), not PURPA or state law, making it inapplicable to QFs.[67]

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[65] This includes allocation of upgrades that are the functional equivalent of "Network Upgrades" to QFs. While Division 82 interconnection rules do not explicitly use the term "Network Upgrades" but instead use the term "System Upgrades," as the Joint Utilities' Transmission Witnesses explain, the Commission's Division 82 interconnection rules nevertheless allocate all interconnection-driven costs to the generator that causes them, including the functional equivalent of Network Upgrades (that is, upgrades to the utility's transmission system at or beyond the point of interconnection). The issue of whether a small QF should be required to obtain ER or NR interconnection service was not explicitly litigated in AR 521, the docket adopting the Commission's Division 82 interconnection rules.

[66] There is only one exception: if a large QF can demonstrate that some part of the Network Upgrades caused by its interconnection provides "quantifiable system-wide benefits," a portion of the QF's Network Upgrades may be assigned to retail customers in the amount of the demonstrated benefit. *See* Order No. 10-132 at 3. This "quantifiable system-wide benefits test" is addressed in Section III.

[67] As the DC Circuit noted, "[FERC's] rationale for crediting network upgrades, based on a less cramped view of what constitutes a 'benefit,' reflects its policy determination that a competitive transmission system, with barriers to entry

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Portland, OR 97205

The QF parties argue either that (1) the Network Upgrades necessitated by a QF's interconnection should be presumed to benefit all utility customers in the amount equivalent to their costs and passed on to utility customers, or (2) that the Network Upgrades necessitated by a QF's interconnection should be presumed to benefit all utility customers in an amount equivalent to their costs *unless and until* the utility demonstrates that the Network Upgrades do not provide such benefits.[68]

To the extent these proposals would allocate a QF's Network Upgrade costs to retail customers, the proposals are misapplied given the limitations of the avoided cost rate, would result in uneconomical siting choices by QFs, and would harm retail customers.[69] To the extent these proposals would create a presumption of prudence that must be litigated by the utility in order to obtain relief for customers, they lack factual foundation and are, in any event, unworkable.

1. The Commission has considered and appropriately rejected the proposition that FERC's policies govern QF interconnection. The QFs offer no new rationale for revisiting this conclusion.

The Commission has considered and rejected the proposition that FERC policies apply to QF interconnections. In 2010, in docket UM 1401, the Commission ordered Oregon transmission providers to create an Oregon QF-LGIP and QF-LGIA, using modified versions of FERC's LGIP and LGIA, for use in processing Oregon QF interconnections. Utilities were ordered to remove certain FERC-mandated provisions from the QF-LGIP and QF-LGIA, including the obligation for

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removed or reduced, is in the public interest." *Entergy Services, Inc. v. FERC*, 319 F3d 536, 543-44 (D.C. Cir. 2003). The court concluded that "[FERC] has reasonably explained that its crediting pricing policy avoids both gold plating and less favorable price signals such that the enlarged transmission system, which it views as a public good, can function reliably and continue to expand." *Id.* at 544. While an enlarged transmission system has long been considered a "public good" for purpose of wholesale interstate competition, state commissions have typically scrutinized discretionary transmission system investments by regulated utilities for prudence, rather than presuming they are eligible for retail cost recovery.

[68] ICC/100, Lowe/7, 11-12; NewSun/100, Rahman/4, 10-11; NewSun/300, Bunge/5.

[69] Joint Utilities/300, Wilding-Macfarlane-Williams/21-22.

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Portland, OR 97205

utilities to reimburse interconnecting QFs for their Network Upgrade costs. Those changes specifically modified FERC policy to make QFs—not utility customers—responsible for QF interconnection costs.[70] The Commission's order rejecting FERC's interconnection cost-allocation policy stated as follows:

> [The] argument that FERC has long held that Network Upgrades provide system wide benefits is not persuasive to this point. None of the authorities cited [by proponents of FERC's policy] are related to facilities governed by PURPA and thus none faced the limitation of the avoided cost rate.[71]

In short, the Commission concluded that FERC's policy is not consistent with PURPA's avoided cost framework.

In docket UM 1401, the Commission also directed Oregon transmission providers to remove the option for an interconnecting generator (here, a QF) to elect ERIS. The removal of the ERIS option means that a QF seeking interconnection service under the QF-LGIP is required to obtain NRIS.[72] PGE explained in that proceeding that if QFs were permitted to avoid NRIS and seek ERIS service, the purchasing utility (and its customers) could be put in the position of subsequently having to pay for transmission upgrades needed to get the QF's output to load.[73] Yet the utility would not be allowed to reduce the price it is obligated to pay for the QF power to reflect this additional cost, thereby paying more than its avoided cost for the QF output in violation of PURPA.[74]

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[70] First, the Oregon Commission directed transmission providers to eliminate Section 11.4.1 of FERC's pro forma LGIA from the Oregon QF-LGIA. Section 11.4.1 is the provision that entitles an interconnection customer to be reimbursed for the cost of its Network Upgrades through payment of transmission credits over time. Eliminating Section 11.4.1 made QFs presumptively responsible for the cost of their Network Upgrades under the QF-LGIA.
[71] Order No. 10-132 at 3-4.
[72] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/25.
[73] Docket UM 1401, Joint Response of Portland General Electric Company, PacifiCorp and Idaho Power Company to Bench Request at 2-3 (Dec. 29. 2009).
[74] Docket UM 1401, Joint Response of Portland General Electric Company, PacifiCorp and Idaho Power Company to Bench Request at 2-3 (Dec. 29. 2009).

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

While making a QF presumptively responsible for both ERIS and NRIS Network Upgrades, the Commission added the following qualifier to its ruling on QF cost responsibility for Network Upgrades:

> Interconnection Customers are responsible for all costs associated with network upgrades unless they can establish quantifiable system-wide benefits, at which point the Interconnection Customer would be eligible for direct payments from the Transmission Provider in the amount of the benefit.[75]

The parties have referred to this limited exception to the Commission's QF interconnection cost allocation as the Commission's "quantifiable system-wide benefits test." The Joint Utilities understand this issue is likely to be the subject of Phase II of this proceeding and address it briefly in Section III. In short, however, this Commission has considered and appropriately rejected the application of FERC interconnection policies to QFs, and there is no sound legal or policy reason to revisit this conclusion.

2. FERC itself has declined to apply its non-QF interconnection cost allocation policies to QFs.

While FERC has issued several orders over the past several decades addressing federal interconnection policies, it has never made those policies applicable to QFs.[76] Moreover, FERC has recognized the different cost-allocation treatment afforded state-jurisdictional QFs and FERC-jurisdictional generators. In 2012, FERC accepted PacifiCorp's request to discontinue paying a small generator refund credits for its interconnection-service upgrade after the generator switched from a FERC-jurisdictional interconnection agreement to a state-jurisdictional QF interconnection agreement.[77] FERC's order noted that once the QF switched to a state-jurisdictional

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[75] Order No. 10-132 at 3.
[76] *See, e.g.,* Order No. 2003 at P 813.
[77] *PacifiCorp*, FERC Letter Order, Docket No. ER 12-2223 (Sept. 6, 2012).

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Portland, OR 97205

interconnection, PacifiCorp no longer had an obligation to refund the QF for Network Upgrades through FERC transmission credits.[78] FERC accepted a repayment agreement reflecting the fact that, consistent with Oregon policy, the QF's Network Upgrades should have been directly assigned to the QF.[79] In other words, FERC itself has not applied FERC's interconnection cost allocation policies to state-jurisdictional QFs, but instead allowed PacifiCorp to allocate the costs of Network Upgrades to the state-jurisdictional QF that caused them.

3. There is no factual basis on which to presume that Network Upgrades benefit retail customers in the amount of the Network Upgrade cost or that such costs are just and reasonable to retail customers, and thus no factual basis for applying FERC's presumption.

ICC argues that the Commission should presume that all system users benefit from system upgrades, and that all Network Upgrades should be paid by all users of the system.[80] NewSun takes the same position.[81] NewSun recommends that QFs should be reimbursed for all system upgrades other than those that "demonstrably benefit only a single facility," and that Oregon should adopt a process similar to the FERC process.[82] Each of these suggestions would make utility customers presumptively responsible for QF Network Upgrades unless and until the utility proved otherwise. These recommendations are inappropriate, unworkable, and inconsistent with the Commission's obligation to ensure that a utility's costs used to determine rates are just and reasonable.

First, the parties have offered no factual basis to support a presumption that QF interconnection-driven Network Upgrades benefit all users of the system—let alone *Oregon retail*

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[78] *PacifiCorp*, FERC Letter Order, Docket No. ER 12-2223 (Sept. 6, 2012).
[79] *See PacifiCorp*, FERC Letter Order, Docket No. ER 12-2223 (Sept. 6, 2012).
[80] ICC/100, Lowe/7.
[81] NewSun/100, Rahman/4, 10-11; NewSun/300, Bunge/5; Joint Utilities/301, Wilding-Macfarlane-Williams/14, 17 (NewSun Response to PGE DR 24, 26).
[82] NewSun/200, Andrus/18-19.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

customers.[83] A $200 million dollar Network Upgrade on the transmission system needed to accommodate a QF at its chosen location may benefit the QF, independent power producers (IPPs), out-of-state interconnection or transmission customers, and/or utilities or retail customers in other states. Or a particular Network Upgrade may benefit the QF alone. In any event, there is no sound basis on which to presume such Network Upgrade costs, incurred at the QF's discretion, create benefits that flow exclusively to Oregon retail customers or that their benefits have any relation to their cost. Indeed, Staff rejects the assertion that all QF-driven Network Upgrades provide system-wide benefits to retail customers that are commensurate with their costs, noting there is, in fact, evidence to the contrary.[84] Staff points out that, as a practical matter, QF-driven Network Upgrade costs "have the potential to exceed hundreds of millions of dollars," and that under the QFs' proposal, retail ratepayers would bear the substantial majority of these costs.[85] Thus, according to Staff, adopting FERC's bright-line approach would "expose[] ratepayers to unreasonable risk of cost shifting."[86] Making retail customers responsible for QF-driven Network Upgrades would be inconsistent with that requirement and could render retail rates unjust and unreasonable.[87]

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[83] Mr. Lowe reprises the arguments made by the Industrial Customers of Northwest Utilities in docket UM 1401—arguments that were explicitly considered and rejected by the Commission.

[84] Staff/200, Moore/8-9. Staff also notes that utility investments are evaluated on an "all-in" basis, that is, for both power and delivery costs, while QF purchases are not. This is a point the Joint Utilities have previously made. *See, e.g.,* Joint Utilities/300, Wilding-Macfarlane-Williams/37-38. Staff also correctly makes the point that QFs are not transmission system users from a cost-responsibility perspective and thus do not contribute to paying for Network Upgrade costs that are rolled into transmission rates. Staff/200, Moore/9.

[85] Staff/200, Moore/9.

[86] Staff/200, Moore/9.

[87] *See* Joint Utilities/300, Wilding-Macfarlane-Williams/11-13, 23-25. In any event, this would be an unworkable and unfounded presumption. As the Joint Utilities' transmission witnesses explain, transmission planners engage in transmission system planning precisely because all upgrades are not created equal, and, therefore, not all warrant identification in a transmission plan or study, much less inclusion in rates. There is no basis for assuming that the cost of any Network Upgrade is equal to its value, let alone that that value accrues to retail customers. The fact that all system investments are not equivalent in value is, in our view, a key reason that transmission providers are required to engage in significant planning efforts to determine where making investments in the transmission system is the most useful and cost-effective.

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Portland, OR 97205

Aside from lack of foundation, ICC's and NewSun's proposal to shift the burden of proof to utilities to demonstrate the value of QF-driven Network Upgrades raises the specter of endless, complex litigation. Staff noted this concern as well, stating that "assigning the burden of proof to Transmission Providers" to make this determination on a case-by-case basis "would result in even greater disputes, delays, and uncertainty" under PURPA.[88] The Joint Utilities agree. And, as the Joint Utilities have noted in the context of the Commission's "quantifiable system-wide benefits" test, it remains unclear how any party would quantify a specific financial benefit of a Network Upgrade or allocate financial benefits from a specific Network Upgrade to specific parties.[89]

In any event, if the Network Upgrades triggered by a QF's interconnection are presumed by the Commission to provide quantifiable system-wide benefits to *retail customers* commensurate with their cost unless the utility demonstrates otherwise, the Commission should clarify whether utilities have an *obligation* to litigate this issue each time the utility has concerns about the benefits of QF-driven Network Upgrades. This vigilance would presumably be necessary to protect retail customers from inappropriate costs.

4. Competitive independent power producers are differently situated than QFs and should be treated differently.

ICC and NewSun assert that QFs should be treated the same way competitive IPPs are treated by FERC.[90] But, in addition to the fact that different legal regimes govern FERC and state commissions, QFs are not similarly situated to IPPs, and the cost of IPP interconnections do not raise the same cost issues that QF interconnections do.

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[88] Staff/200, Moore/11.

[89] *See, e.g.,* Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/10. The Joint Utilities addressed the challenges and complexities associated with this idea in testimony *See, e.g.,* Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/10-24.

[90] ICC/100, Lowe/7; NewSun/300, Bunge/5; Joint Utilities/301, Wilding-Macfarlane-Williams/14, 17 (NewSun Response to PGE DR 24, 26).

McDowell Rackner Gibson PC
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Portland, OR 97205

The concerns about uncontrolled costs that exist in the context of PURPA do not exist in the context of voluntary, competitive utility purchases of power from IPPs. When a utility engages in a *voluntary* agreement to purchase power, the utility takes steps to ensure the overall costs of purchasing power from an IPP, including interconnection and delivery costs, are, on the whole, prudent.[91] For example, PacifiCorp's recent request for proposals (RFP) required a bidder to demonstrate not only that its price of power was competitive, but *also* that its interconnection and transmission costs were reasonable, before PacifiCorp would commit to purchase from the IPP.[92] This means there can be winners and losers in the RFP based on the economic efficiency of developing a project at the IPP's chosen site. For *involuntary* resource acquisitions like QF PPAs, however, utilities have no authority to decline to purchase QF power at all, let alone specifically because the costs of taking and delivering the QF power would be deemed imprudent. Consequently, retail customers are forced to rely on the Commission, rather than the utility, to protect them from unreasonable or imprudent QF costs.

There are other reasons QFs and competitive IPPs are not similarly situated. A QF does not need to find a willing purchaser for its power; it can unilaterally require any utility to purchase its output.[93] No competitive IPP generator enjoys this benefit. A QF can obtain the right to a state-established price for its power before a contract is executed.[94] No competitive IPP generator enjoys this benefit. Moreover, a directly interconnected QF can site its project at any location within a utility's service territory and insist that a utility purchase its full output from that location,

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[91] Joint Utilities/300, Wilding-Macfarlane-Williams/24, 38.
[92] Similarly, PGE's RFPs typically require bidders to demonstrate that they have arrangements to interconnect and to transmit their output to PGE's system, in the case of off-system bidders. Joint Utilities/300, Wilding-Macfarlane-Williams/38.
[93] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/28-30, 32-33; Joint Utilities/200, Wilding-Macfarlane-Williams/7-8.
[94] Joint Utilities/200, Wilding-Macfarlane-Williams/7-8.

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Portland, OR 97205

something a competitive IPP generator has no right to do. In short, there are meaningful differences between QFs and non-QFs,[95] including PURPA's must-take obligation, the limitation of the avoided-cost rate, the requirement for a utility to deliver QF power on firm transmission to load, and the fact that the QF interconnections at issue in this docket fall within the Commission's jurisdiction, not FERC's.[96]

Additionally, because a utility can negotiate competitive PPA pricing with non-QF generators, the interrelated dynamic between PPA pricing and deliverability costs means that both must be considered in any calculation of the overall avoided cost of non-QF resources.[97] A utility might accept a higher PPA price for a generator with low delivery costs, whereas it might insist on lower PPA prices or greater operational flexibility for a generator with higher delivery costs.[98] By contrast, for obligations incurred by a utility as part of the QF must-take obligation, the PPA

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[95] *See, e.g.,* Joint Utilities/200, Wilding-Macfarlane-Williams/7-8.

[96] There are also operational differences between QFs and non-QFs. FERC-jurisdictional generators may need firm delivery, or they may not; they may be used for load service, or they may not; they may be economically curtailable, or they may not. This operational and financial flexibility does not exist for QF power, because of the nature of the obligations QFs place on utilities. Consequently, the studies associated with ERIS may be appropriately scoped for some FERC-jurisdictional generators. Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/33. Moreover, FERC-jurisdictional generators are often *both* the interconnection customer *and* the transmission customer with respect to the generator's output. Thus, if a FERC-jurisdictional generator intends to deliver its output on firm transmission, it can address the deliverability issues associated with the generator's location in one of two ways: by seeking NRIS, whereby deliverability issues are examined in the interconnection process; or by seeking ERIS and then examining deliverability issues in the transmission service study process. This unity of identity does not exist for directly interconnected QFs, where the QF makes its interconnection arrangements but passes the burden of making transmission arrangements onto the utility and its customers. Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/33.

[97] Joint Utilities/300, Wilding-Macfarlane-Williams/14. One example is the $680 million Aeolus to Bridger/Anticline 500 kV Transmission Project constructed by PacifiCorp as part of an effort to develop, in Staff's words, "at least 1,150 MW of least cost, least risk renewable generation." Staff/100, Moore/20. Although the costs of the project were significant, PacifiCorp explained in both its acknowledged IRP and in its rate case seeking rate recovery for this project that PacifiCorp analyzed both the power costs and the delivery costs for its IRP action items and determined that, when considered together, they presented the least-cost least-risk resources for utility customers that would result in a relatively small rate impact. *Id.*

[98] Joint Utilities/300, Wilding-Macfarlane-Williams/14-15.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

price generally remains the same whether interconnection costs are minimal or astronomical.[99] In short, QFs and competitive IPP generators are markedly different.[100]

As the Joint Utilities have explained, when utilities execute PPAs voluntarily with competitive IPPs, utilities take steps to ensure those PPAs are prudent on an all-in basis, including interconnection and delivery costs.[101] Utilities cannot be blind to interconnection and delivery costs because it is the utility's obligation to ensure all *voluntary* resource acquisitions are prudent and just and reasonable for ratepayers. For *involuntary* resource acquisitions like QF purchases, however, only this Commission's PURPA policies stand between retail customers and imprudent, unjust, and unreasonable costs.

Finally, the Commission should reject arguments by the QF parties that it is discriminatory to require QFs to bear the Network Upgrade costs they cause, instead of subjecting those costs to the non-QF cost-allocation framework adopted by FERC in Order No. 2003.[102] This argument ignores FERC's unequivocal statement that a "QF selling at retail is not eligible to interconnect under . . . Order No. 2003" because "such interconnections are governed by state law."[103] If states cannot adopt different cost allocation policies for QF interconnections, then FERC's express delegation of authority to the states would be largely meaningless. Accepting the QF parties' argument would amount to effectively applying the interconnection framework adopted in Order No. 2003 to QFs despite FERC's clear statement in Order No. 2003 that it was not doing so.

Moreover, not only does the express language in Order No. 2003 make clear it does not apply to QFs, when FERC issued Order No. 2003, it did not change in any way the QF

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[99] Joint Utilities/300, Wilding-Macfarlane-Williams/15.
[100] Joint Utilities/200, Wilding-Macfarlane-Williams/7.
[101] *See* Joint Utilities/300, Wilding-Macfarlane-Williams/38.
[102] *See, e.g.,* NewSun/100, Rahman/13.
[103] Order No. 2006-A at P 102.

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

interconnection cost allocation policies set forth in 18 CFR § 292.306. Had FERC intended for the allocation policies in Order No. 2003 to apply to QFs, it could have said so in Order No. 2003 and amended Section 292.306 accordingly.

D. Conclusion

QFs should be required to pay for Network Upgrades necessary to interconnect the QF to the host utility. The Commission's current policies are consistent with PURPA's customer indifference standard, provide a critical financial incentive for economically efficient QF development, and ensure the Commission appropriately exercises its statutory duty to oversee customer rates to ensure they remain just and reasonable.

III. ISSUE 2: NETWORK RESOURCE INTERCONNECTION IS THE ONLY SERVICE TYPE APPROPRIATE FOR QUALIFYING FACILITIES

QF parties object to the Commission's requirement that QFs obtain NRIS, a comprehensive level of interconnection service. But customer indifference requires a directly interconnected QF to interconnect with NRIS. First, NRIS is the appropriate interconnection service for QFs given FERC's articulation of the requirements for the delivery of a QF's output under PURPA. Second, and critically, allowing a QF to obtain ERIS rather than NRIS would shift the costs of Network Upgrades needed to deliver QF power to retail customers in violation of PURPA's customer indifference principle.

NRIS is critical because an NRIS interconnection study is the only type of interconnection study that allows the utility, the QF, and the Commission to identify deliverability issues associated with a QF's siting choice. If deliverability-related Network Upgrades are required to

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

accommodate a QF, they tend to be far more costly than ERIS Network Upgrades.[104] An NRIS interconnection study identifies these problematic issues early on. In doing so, it provides the QF with important information about the feasibility and cost effectiveness of its project.[105] An NRIS study also allows the Commission to allocate any identified deliverability Network Upgrades to the appropriate party in a straightforward manner. Without an NRIS study, costly but necessary deliverability upgrades remain invisible until after the utility is forced to seek transmission service to deliver QF power from the point of interconnection with the purchasing utility to the utility's load, and the deliverability costs are finally made clear in transmission service studies. At this point, the Network Upgrade costs are committed to FERC's discretion and the Commission may be powerless to prevent these costs from being allocated to retail customers, no matter how high they are.[106]

Recognizing these issues, Staff asserts that NRIS, "is likely the most practical interconnection service for QFs,"[107] and "the cleanest way to manage the cost allocation of deliverability-driven Network Upgrades for QFs."[108] The Joint Utilities agree. And despite parties' suggestions to the contrary, there is no straightforward regulatory alternative to requiring NRIS that will ensure customers remain unharmed by a QF's interconnection in all instances.

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[104] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/19-20.
[105] The Commission has stated, in a similar context, that early identification and communication of significant QF deliverability issues should be addressed as early as possible in the QF contracting process. *See Blue Marmot* at 16.
[106] If a utility is required to build additional facilities to accommodate a *transmission service* request necessitated by a QF, those costs would no longer be recoverable through the interconnection process (over which the Commission has authority), nor, presumably, recoverable through a change in the QF's PPA price if that PPA has been executed and there are no conditions associated with the QF's entitlement to that price. Thus, the costs caused by the QF would presumably be the utility's responsibility. Because the utility would be forced to build to accommodate the QF, the costs should be deemed a necessary part of doing business and flowed through to Oregon customers rather than utility shareholders.
[107] Staff/100, Moore/32.
[108] Staff/100, Moore/33.

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

A. NRIS is the only type of interconnection service that accurately reflects QF demands on the utility system.

Network Upgrades can be divided into two general categories: First, there are Network Upgrades that are primarily needed to safely and reliably physically interconnect the generating resource to the utility's transmission system. These are identified in an ERIS study.[109] ERIS is a basic interconnection service, and ERIS studies are not intended to identify Network Upgrades that may be required to ensure the generator's output can be delivered to any customers. ERIS is intended to make a generator "eligible to deliver the Generating Facility's output using the existing firm or non-firm capacity of the Transmission Provider's Transmission System on an as-available basis,"[110] meaning, the generator's interconnection evaluation will turn a blind eye to whether potential deliverability issues exist in the area of the generator's chosen interconnection site.[111] ERIS may be appropriate in those cases where the availability of transmission capacity—or the lack thereof—is not critical to the generator, which may be true for any number of reasons, whether operational, financial, or contractual.[112] ERIS can be paired with firm transmission in some instances, but because of the unique nature of QF transactions, allowing a QF to obtain ERIS means that delivery issues will not be identified or addressed in the interconnection process, but later in the transmission service process, which can shift significant costs to customers.[113]

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[109] *See* Order No. 2003, Appendix C at 4 (*pro forma* LGIP) ("Energy Resource Interconnection Service").
[110] Order No. 2003, Appendix C at 4 (*pro forma* LGIP) ("Energy Resource Interconnection Service").
[111] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/28.
[112] *See, e.g.,* Order No. 2003 at P 767; Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/28.
[113] ERIS may be appropriate to pair with firm transmission in some instances, for example, where the generator can be economically curtailed (not possible for QFs), or where the interconnection and transmission customer are the same, making parties indifferent to whether the deliverability costs show up in an interconnection service study or a transmission service study. This unity of identity does not exist for "on-system" QFs interconnecting and selling directly to the purchasing utility, where the interconnection customer is the QF and the transmission customer is the utility.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

Second, there are Network Upgrades beyond those identified in an ERIS study that are needed to ensure the generation in the area where the generator proposes to interconnect can be reliably delivered to the load on the transmission provider's system during peak load conditions.[114] Such upgrades have been described as "deliverability-driven" Network Upgrades, or NRIS Network Upgrades.[115] NRIS is a more comprehensive interconnection service intended to make an interconnecting generator eligible to deliver its output to load on a firm basis.[116] NRIS allows the generating facility to be integrated with the transmission provider's system "in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers" by identifying and resolving Network Upgrades necessary to ensure the interconnecting generator's power can be delivered to utility load.[117] A utility integrates its own generation resources to serve retail customers using firm network transmission service, a type of firm transmission service that is specifically designed to allow the utility to integrate, economically dispatch, and regulate its current and planned resources to serve load.[118] Thus, NRIS was intended for generating facilities like QFs, which are intended for retail load service, and NRIS studies are tailored to this purpose. In sum, FERC's different interconnection service types—ERIS and NRIS—were designed to provide interconnection service to different kinds of interconnection

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[114] Order No. 2003, Appendix C at 16 (*pro forma* LGIP) (3.2.2.2).
[115] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/17.
[116] *See, e.g.*, Order No. 2003 at P 768, P 784 ("[T]he study for Network Resource Interconnection Service identifies the Network Upgrades that are needed to allow the Generating Facility to contribute to meeting the overall capacity needs of the Control Area or planning region whereas the study for Energy Resource Interconnection Service does not.").
[117] Order No. 2003, Appendix C at 9 (*pro forma* LGIP) ("Network Resource Interconnection Service"). It should be noted that an NRIS study does not necessarily identify *all* barriers to delivery, some of which may be identified only later in transmission service studies, but NRIS is intended to roughly identify barriers to delivery. Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/18.
[118] Firm network transmission service (or firm network service) is a type of firm transmission service used by utilities to integrate, economically dispatch, and regulate current and planned resources to serve load. Firm network transmission service ensures that power can be delivered where it is needed to reliably serve retail customers. Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/17, 28.

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Portland, OR 97205

customers. While ERIS can, in some instances, be paired with a generator intended for retail load service, pairing ERIS with a QF can lead to significant cost-shifting in the context of PURPA's must-purchase obligation.

B. A QF requires firm transmission service for delivery, and only NRIS studies the QF for deliverability to load.

Aside from the practical fact that QFs are used to serve retail load, which counsels for obtaining firm network transmission service to manage delivery to that load,[119] FERC has made clear that a QF's output must be delivered using firm transmission service, and that QF output cannot be curtailed except in system emergencies.

In 2013, FERC issued an order in *Pioneer Wind Park I, L.L.C.,* ("*Pioneer Wind*"), that clarified that PURPA requires a utility to deliver QF power on firm transmission, no matter where a QF sites its project.[120] As a result, the utility's merchant or load-service function, in its role as the transmission customer, must obtain firm transmission service to deliver the directly interconnected QF's power to load. In order to properly identify the costs associated with the firm delivery, a QF must seek a level of interconnection service that was designed with the principal purpose of enabling that firm transmission service, *i.e.,* NRIS.[121]

The case involved a QF, Pioneer Wind Park I, L.L.C, (Pioneer), siting its project in a constrained area of PacifiCorp's Wyoming system. PacifiCorp's merchant function proposed to address this issue with a PPA provision that stated that Pioneer would be curtailed ahead of other existing generators to the extent necessary to honor the utility's existing transmission rights. In

[119] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/28.
[120] *Pioneer Wind,* 145 FERC ¶ 61,215.
[121] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/27.

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

other words, PacifiCorp's merchant function proposed to use a "last-in, first-cut" approach when there was not enough firm transmission to deliver all of the existing generators plus the new QF.[122]

FERC concluded the PPA provision violated PURPA by proposing to curtail the QF as if it were a non-firm transmission service customer. FERC made it clear that, even under transmission-constrained circumstances, a utility's merchant or load-service function must make *firm* transmission service arrangements for QF power and only curtail the QF power if there are system emergency conditions.[123] In other words, the delivery obligations associated with a QF's output are the type of delivery obligations for which NRIS was designed.[124]

C. If a QF is not required to obtain NRIS, but simply obtains ERIS, deliverability costs will be shifted to retail customers.

If a QF is not required to pay for its interconnection-driven NRIS Network Upgrades, the need for those upgrades will not go away. Similarly, if a QF sites a project in a location where QF power cannot flow reliability to customers without millions of dollars in Network Upgrades, turning a blind eye to deliverability issues in the interconnection process does not magically render the QF's power capable of flowing reliably to load. Rather, ignoring deliverability issues in the interconnection process simply "hides" them—and the attendant costs—until they are later identified in the utility's transmission service studies, which in the end makes retail customers responsible for paying them absent some other method of allocating those costs to QFs.[125] In other words, allowing a QF to obtain ERIS simply means that deliverability issues will not be studied

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[122] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/29.
[123] *Pioneer Wind,* 145 FERC ¶ 61,215.
[124] NewSun Witness Mr. Rahman agrees that "NRIS is used by generators like QFs that require dedicated firm system capacity to satisfy a power purchase agreement or otherwise require or desire firm capacity to avoid curtailments and financial deficiencies." NewSun/100, Rahman/14.
[125] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/30-31. And, as noted, there is no basis on which to presume Network Upgrades caused by a QF benefit retail customers, let alone that they benefit retail customers in an amount commensurate with their costs.

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

until later, when the Commission has lost jurisdiction to allocate the Network Upgrade costs in the QF's interconnection agreement.

D. It is reasonable and appropriate to require QFs to obtain NRIS

ICC and NewSun suggest that requiring a QF to interconnect with NRIS creates a significant barrier to QF development.[126] But NRIS is not a barrier of any kind when a QF project is sited in an area where interconnection with the utility and delivery of the QF's power are economical and reasonable. In a site where there is enough load to absorb additional generation and no transmission constraints exist, the costs of interconnecting with ERIS and NRIS are nearly identical.[127] If the QF has sited its project in a constrained area, allowing a QF to interconnect using ERIS simply shifts the identification of deliverability-driven Network Upgrades to the transmission service request (TSR) study process and the burden of paying for those Network Upgrades to retail customers.[128] NRIS simply allows parties to identify *inefficient or uneconomic* QF development.

E. Proposed alternatives to NRIS do not work.

1. Voluntary curtailment is not a workable option.

ICC suggests that a QF could interconnect with ERIS if the QF agreed to voluntary curtailment of its output to avoid interconnection costs.[129] The Joint Utilities interpret this suggestion to mean that a QF could agree that its power could be delivered on non-firm transmission service, which would allow the utility to curtail the QF. In theory, this approach could prevent the need for the transmission provider to perform a deliverability analysis or identify

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[126] ICC/100, Lowe/22-26; NewSun/100, Rahman/16-17, 19; NewSun/300, Bunge/2-6.
[127] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/20.
[128] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/20-21.
[129] ICC/100, Lowe/25-26.

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

deliverability-related Network Upgrades. However, this suggestion is unworkable. From an operational perspective, even if a utility secured non-firm transmission service to deliver a QF's power, the periods when that non-firm transmission service is unavailable will be driven by system conditions, not an interconnection customer's choice.[130] For that reason, it may be difficult, if not impossible to determine in advance when or how often a QF may need to be curtailed, and the need to curtail for operational reasons may not always coincide with the periods or frequency to which the QF has agreed.[131] From a legal perspective, after FERC's issuance of the *Pioneer Wind* decision, delivering QF power on non-firm transmission is not a viable option.

NewSun also argues that solar generators in California interconnect using ERIS and are frequently curtailed.[132] But this California Independent System Operator (CAISO) example provides no useful blueprint for Oregon, and NewSun witness Mr. Rahman acknowledges that California and Oregon are "fundamentally different" in terms of power supply.[133] Moreover, the Joint Utilities understand that California has sought and received a FERC exemption from the PURPA must-take obligation for QFs over 20 MW.[134] In other words, NewSun's examples appear inapplicable to the issues before this Commission.

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[130] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/19-21.
[131] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/18-21, 30.
[132] NewSun/100, Rahman/17-18; s*ee also* Joint Utilities/401, Vail-Bremer-Foster-Larson-Ellsworth/45, 53 (NewSun Response to PGE DRs 36, 58).
[133] NewSun/100, Rahman/17.
[134] *In re Pacific Gas & Elec. et al*., 135 FERC ¶ 61,234 (2011) (granting PURPA Section 210(m) exemption for California utilities). In any case, Mr. Rahman did not specify whether the solar generators he identified are QFs or not, and if they are, whether they are selling to a utility under a must-purchase obligation or simply selling into the California Independent System Operator (CAISO) market. In any event, Mr. Rahman provided no evidence that the projects he cited as examples are QFs that impose on a utility the obligation to take QF power at a specific location and deliver it to the utility's load. In any event, CAISO manages economic dispatch of resources within its footprint and entirely different transmission access considerations apply in an area with an ISO. *See* Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/32. Moreover, a state utility commission's jurisdiction over QF interconnections attaches only when the QF is selling 100 percent of its output to the directly interconnected utility. *See id.*

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

2. It is unreasonable to require utilities to dump or dispose of QF power when transmission constraints prevent utilities from moving that power.

NewSun also stated in response to discovery requests about its ERIS alternatives that if QF power cannot be delivered to load due to delivery constraints, the utility could simply sell the QF power in the market "or otherwise dispose of it."[135] This suggestion is unreasonable and would harm utility customers. From a legal perspective, if a utility has designated a QF (or non-QF) as a network resource, it must sign an attestation stating that the resource is being used to serve load.[136] To the extent the utility seeks to do something other than serve load with that resource, like sell to the market, it would need to follow the strict Open Access Transmission Tariff (OATT) process for seeking permission to un-designate the resource and to secure point-to-point transmission service.[137] Aside from that, it would be imprudent for the Commission to force utilities to purchase power at avoided cost, only to force the utility to sell that power at prevailing market prices, whether they are positive or negative, in a constrained area (assuming the utility can even deliver the power to a "market" within the constrained area, which is unlikely).[138]

As the Joint Utilities' transmission witnesses explain,[139] the very transmission constraints that prevent delivering a QF's output to load would make it challenging to transmit the QF's output to a market.[140] And then a utility would need to accept whatever market price was available at the time the QF generated—which in times of negative pricing could mean *paying* a buyer to accept

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[135] Joint Utilities/301, Wilding-Macfarlane-Williams/20-21 (NewSun Responses to PGE DR 31 and 34); Joint Utilities/401, Vail-Bremer-Foster-Larson-Ellsworth/40 (NewSun Response to PGE DR 31).
[136] *See* Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/30-31; *see also, e.g.*, PacifiCorp OATT Section 29.2 (viii).
[137] Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/30-31.
[138] Joint Utilities/300, Wilding-Macfarlane-Williams/35-36.
[139] Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/30-31.
[140] Even if transmission were available, the utility would need to expend its resources to locate a buyer and then acquire one or more transmission reservations to transmit the QF power to the buyer.

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

the QF output. Because QF avoided cost prices include capacity payments, the utility would almost certainly be selling the QF output at a loss. In short, utilities should not be required to "dispose" of QF power through means other than serving the utility's load because the utility's avoided costs are intended to compensate QFs for serving load.[141]

Finally, in extreme cases, an overabundance of non-curtailable resources in a constrained area, such as generation in a load pocket that cannot be exported out, could create conditions that threaten reliability, not just on the utility's system but potentially on adjacent transmission provider systems, unless the utility makes investments to ensure the generation can, in fact, be exported out of the area.[142] As a practical matter, a utility must address delivery constraints associated with moving QF power.[143] Doing so involves actual costs, and those costs must be borne by someone.

3. The use of point-to-point transmission service would not resolve deliverability issues.

ICC suggests that using point-to-point transmission service, rather than firm network transmission service, to deliver the QF's power to load could avoid the need for NRIS.[144] But this proposal solves neither the deliverability nor cost-shifting issues associated with siting in a constrained area.[145] If transmission constraints prevent the delivery of the QF's power to load from the QF's point of interconnection, those constraints will show up in a transmission service study for firm point-to-point transmission service, just as they would show up in a study for firm network transmission service. Deliverability constraints do not simply disappear because a utility

[141] Joint Utilities/300, Wilding-Macfarlane-Williams/36.
[142] Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/30-31.
[143] Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/30-31.
[144] ICC/100, Lowe/25.
[145] Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/31.

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

chooses a different form of firm transmission service. ICC's proposal would simply shift delivery costs from the QF's interconnection process to the utility's TSR study process.[146]

4. The community solar model does not appear to provide a workable solution for all QFs.

Staff states that it is open to the idea of exploring how allowing ERIS service could impact Network Upgrade costs if compelling data supporting that option becomes available in the Commission's Community Solar Program (CSP), docket UM 1930.[147] It is not clear to the Joint Utilities how the CSP data could solve for the NRIS problem. For one thing, the CSP includes some unique protections intended to mitigate the risk that interconnecting generators would trigger significant deliverability-driven Network Upgrades, including location-specific generator size caps,[148] as well as additional protections to limit cost shifting to retail customers should the size caps prove insufficient.[149] It is not clear whether Staff would contemplate importing such protections to QF interconnections generally, or whether Staff is envisioning some other solution to manage deliverability costs. Moreover, even if CSP generators do not happen to trigger significant deliverability-driven Network Upgrades, the location-specific nature of constraints and the fact that constraints change over time would not guarantee that QF projects sited elsewhere would see the same results.

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[146] Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/31.
[147] Staff/100, Moore/35; Joint Utilities/401, Vail-Bremer-Foster-Larson-Ellsworth/59 (Staff Response to PGE DR 14).
[148] *See* Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/34. This cap has been a work-in-progress, and its effectiveness at risk mitigation was altered when the cap was raised in accordance with a Staff recommendation. *In re Pub. Util. Comm'n of Or., Community Solar Program Implementation*, Docket UM 1930, Order No. 19-392, Appendix A at 8-9 (Nov. 8, 2019).
[149] *See* Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/34. Key protections also include a PPA provision referred to as a "Conditional DNR," which provides contractual protection in the event the generator triggers significant Network Upgrades despite the existence of other protections. *See, e.g.*, Docket UM 1930, Staff Report at 12 (July 20, 2020).

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

5. Tailoring QF interconnection policies to a QF's "business model" does not solve complex PURPA issues.

Staff also suggests that it would support allowing a QF to select NRIS or ERIS based on the QF's "business objectives" "[t]o the extent that it's allowed under PURPA's mandatory purchase obligation,"[150] and if it is more practical than NRIS.[151] Staff suggests that this flexibility could potentially benefit ratepayers and QFs "*if* the QF selecting ERIS also enters into a non-standard contract, forgoes network resource status, and accepts curtailment provisions in exchange for fewer deliverability-driven [network] upgrades."[152] Staff's hypothetical path forward for ERIS would require the Commission to assume that fundamental elements of PURPA are eliminated, including the must-take obligation, the standard contract, and the need to ensure deliverability to retail load using firm transmission service.[153] The Commission would therefore be required to investigate and adopt new policies attempting to implement this approach. These would presumably involve investigating how to address complex timing and study issues related to the disconnect in timing between PPA negotiations and transmission service study requests, as well as addressing individualized negotiations around curtailment.[154] Implementation of such a policy

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[150] Staff/200, Moore/13.
[151] Staff/200, Moore/14. NewSun makes a similar suggestion. NewSun/100, Rahman/16-17. Mr. Rahman appears to recognize some limitations on a utility's authority to curtail QFs. *See* Joint Utilities/401, Vail-Bremer-Foster-Larson-Ellsworth/41-42, 44, 54-55 (NewSun Response to PGE DRs 32-33, 35, 59).
[152] Staff/200, Moore/13.
[153] *See* Staff/200, Moore/13.
[154] For example, including a conditional designated network resource provision in all PPAs might solve certain issues related to cost-shifting. *See In re Rulemaking to Address Procedures, Terms, and Conditions Associated with Qualifying Facility Standard Contracts*, Docket AR 631, Order No. 21-353, Appendix A at 7-9 (Oct. 26, 2021) (general discussion of the concept). This approach could prevent a PPA from being finalized until the transmission service request and any necessary studies are complete and could require Commission involvement depending on the outcome of the transmission service request. In instances where a QF sites in a PacifiCorp load pocket where there is insufficient load available to sink additional generation, the Commission has adopted a tool that can in some instances

McDowell Rackner Gibson PC
419 SW 11th Avenue, Suite 400
Portland, OR 97205

is likely to be fraught with complexities, and, like efforts to provide individualized quantification and allocation of "system-wide benefits" of Network Upgrades, would likely result in "even greater disputes, delays, and uncertainty" under PURPA.[155] Assuming Staff's proposal were theoretically reconcilable with PURPA, its implementation would be complicated, time-consuming, and ultimately impractical when compared to NRIS.

F. Conclusion

The parties' proposed ERIS alternatives are riddled with implementation problems. The Joint Utilities continue to agree with Staff's assertion that NRIS is the most efficient way to identify deliverability limitations and the associated costs associated with a QF's chosen location in a timely manner.[156] Moreover, the Commission's NRIS policy is a fair, just, and reasonable policy consistent with PURPA and should be retained.

IV. THE COMMISSION'S "QUANTIFIABLE SYSTEMWIDE BENEFITS" TEST SHOULD BE EVALUATED IN THE NEXT PHASE OF THIS DOCKET

Under current Commission policies, a QF is presumptively responsible for the costs of its interconnection-driven Network Upgrades but may be reimbursed for some portion of those costs if the QF can demonstrate that the Network Upgrades caused by its interconnection provide "quantifiable system-wide benefits."[157] If a QF can do so, the QF would be eligible for refunds in

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help mitigate QF-created deliverability costs by requiring a QF to purchase a firm, point-to-point transmission wheel on a third-party's system to move certain of its generation to load. *See In re Pub. Util. Comm'n of Or., Staff Investigation into Qualifying Facility Contracting and Pricing,* Docket UM 1610, Order No. 20-064 (Mar. 3, 2020). This load-pocket-specific tool does not work in all circumstances, however, and post-interconnection tools that may be created to solve for deliverability issues are cumbersome, complex, and often ineffective. Thus, such tools provide no clear substitute for requiring a QF to obtain NRIS as a policy matter.

[155] Staff/200, Moore/11.

[156] *See Blue Marmot* at 16 ("A utility should review significant proposed QF delivery terms as early as possible, and ideally well before providing a final draft executable contract.").

[157] Order No. 10-132 at 3.

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Portland, OR 97205

the amount of the demonstrated benefit.[158] In establishing this test, the Commission did not define the phrase "quantifiable system-wide benefits."[159] To our knowledge, the Commission has never provided guidance on what this phrase means or how a QF (or any other party) might demonstrate that some or all of its necessary Network Upgrades provide "quantifiable system-wide benefits," what sorts of benefits might qualify under this standard, and to whom the benefits must accrue before they are eligible for recovery.[160]

Although there was a significant amount of discussion about the quantifiable system-wide benefits test in parties' testimony, the contours of the Commission's quantifiable system-wide benefits test remain unclear and have not been sufficiently developed to support adopting any specific methodology or procedures for its implementation at this time. Indeed, it is not clear to Staff or the Joint Utilities how to define the basic underpinnings of the test. When the Joint Utilities asked Staff in discovery how Staff believed the test should be interpreted or applied, Staff explained that it had not yet developed a position on how the system-wide benefits of a QF's interconnection-driven Network Upgrades could be measured or quantified, or *when* such benefits should be measured or quantified, let alone who the appropriate "beneficiaries" might be.[161] For that reason, most parties, including the Joint Utilities, have proposed addressing the issue in Phase II of this docket.[162]

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[158] Order No. 10-132 at 3.
[159] *See generally* Comments filed in Docket UM 1401 (some parties advocated for adoption of FERC's cost-allocation policy); Order No. 10-132 at 3-4 (declining to adopt FERC's cost-allocation policy and adopting instead the "quantifiable system-wide benefit" standard, which had not been previously discussed in the docket).
[160] Joint Utilities/301, Wilding-Macfarlane-Williams/3-4, 34-35, 37 (ICC Response to PGE DR 11; Staff Response to PGE DR 3, 5) (admitting that the Commission has not provided guidance on any of these questions). The Joint Utilities believe the beneficiary of QF-driven Network Upgrades is the QF. Joint Utilities/300, Wilding-Macfarlane-Williams/30.
[161] *See* Joint Utilities/301, Wilding-Macfarlane-Williams/34-35 (Staff Response to PGE DR 3).
[162] *See* Joint Utilities/301, Wilding-Macfarlane-Williams/34-35 (Staff Response to PGE DR 3).

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Portland, OR 97205

If the Commission is to retain the system benefit test, it will be important to resolve several foundational issues, including the identity of "beneficiaries" the Commission was intending to include within its scope. Potential beneficiaries of transmission system Network Upgrades could include Oregon retail customers (assuming an upgrade is prudent, and its benefits accrue to Oregon customers), but they could also include FERC-jurisdictional transmission and interconnection customers, such as IPPs, direct access customers in Oregon, direct access customers outside of Oregon, and utilities and customers from other states. Given the nature of the interstate grid, these types of entities are all users of the interstate transmission system that FERC is charged with overseeing, and thus within the scope of potential "beneficiaries" under the FPA. But to the Joint Utilities' knowledge, the state of Oregon has never defined most of these transmission system users—that is, non-Oregon retail customers—as "beneficiaries" entitled to receive payments from Oregon retail customers.

Moreover, because a utility's avoided cost represents an overall cap on the costs associated with the purchase of QF power that may be passed through to retail customers,[163] any state regulatory definition of "system-wide benefits" that provides for QF reimbursement must ensure that the overall cost of QF power does not exceed the utility's avoided cost, even with that reimbursement. In testimony, the Joint Utilities proposed a construct under which a QF would be exempt from the cost of its interconnection if the utility has already determined through its transmission planning process that a particular Network Upgrade is necessary for reliability

[163] The Joint Utilities have described this as a "but for" test. Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/20-21. While this description appears to have created some confusion, it is derived from PURPA's definition of avoided cost, which is "the cost to the electric utility of the electric energy which, ***but for*** the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source." 16 U.S.C. § 824a-3(d) (emphasis added).

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419 SW 11th Avenue, Suite 400
Portland, OR 97205

purposes or for transmission capacity expansion to allow for cost-effective load service.[164] Under this test, the Commission could reasonably presume that the Network Upgrade would provide benefits that justify their inclusion in utility rate base.[165] Parties have criticized the Joint Utilities' approach as too narrow,[166] but the Joint Utilities are unaware of any other reasonable or legally appropriate process for determining whether a QF should be exempted from some element of cost responsibility for a Network Upgrade caused by its interconnection.[167] In general, it is unclear how system-wide benefits associated with any particular Network Upgrade would be identified, quantified, or allocated to any specific beneficiaries with any precision.

The issue Staff recommends be addressed in Phase II raises complex and important questions that must be answered before the Commission can or should adopt specific policies implementing a "quantifiable system-wide benefit" test.[168] Given the number of remaining open questions about the test, the Joint Utilities support Staff's recommendation that the Commission address this issue in Phase II of the docket.[169]

In adopting the issue list for Phase I of this proceeding, the ALJ also adopted a contingent Issue 3 for a possible subsequent phase of this docket, which states as follows:

> If the answer to Issue No. 1 is that users and beneficiaries of Network Upgrades (which typically are primarily utility customers) should pay for the Network Upgrades necessary to interconnect the QF to the host utility, how should that policy be implemented? For example, should utility

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[164] *See* Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/21; Joint Utilities/200, Wilding-Macfarlane-Williams/11-13; Joint Utilities/300, Wilding-Macfarlane-Williams/19-20.

[165] In Phase II, the parties will need to consider the circumstance where the use of a previously-identified Network Upgrade by a QF then necessitates the construction of another Network Upgrade to address the need originally identified in the utility's transmission plan—as ultimately utility customers must remain indifferent to the purchase of QF generation.

[166] *See* Staff/100, Moore/22; ICC/100, Lowe/16-18.

[167] *See* Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/10. Staff has admitted that the quantification and allocation of such costs is challenging and likely time-consuming, and thus posed a hypothetical cost-sharing mechanism for discussion in Phase II. Staff/300, Moore/8-11.

[168] Joint Utilities/300, Wilding-Macfarlane-Williams/30-31.

[169] *See, e.g.*, Joint Utilities/301, Wilding-Macfarlane-Williams/39-41 (Staff Response to PGE DR 8-10).

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> customers, and other beneficiaries and/or users, fund the cost of the Network Upgrades upfront, or should the QF provide the funding for the Network Upgrade subject to reimbursement from utility customers? Should the QF, utility customers, and other beneficiaries and users, if any, share the costs of Network Upgrades?[170]

If the Commission adopts Staff's recommendations to (1) retain the Commission's current cost-allocation policies; and (2) address the quantifiable system-wide benefits test in Phase II, Issue 3 should be revised to reflect that Phase II should address the Commission's "quantifiable system-wide benefits" test.

It may also be appropriate to include in Phase II of this docket consideration of whether it would be possible to implement a cost-sharing mechanism among Oregon-jurisdictional interconnection customers for certain interconnection costs.[171]

V. CONCLUSION

The Commission should reaffirm its existing QF interconnection cost-allocation policies. These policies require QFs to obtain Network Resource Interconnection Service, the most efficient way to identify deliverability limitations and the costs associated with a QF's chosen location in a timely manner, and to allocate the cost of Network Upgrades caused by a QF to the QF. These policies also allow a QF to be reimbursed for some portion of its Network Upgrades to the extent the QF demonstrates that the Network Upgrades provide "quantifiable system-wide benefits."[172]

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[170] Amended Staff Proposed Issues List at 2 (Apr. 28, 2020).

[171] As Staff notes, PacifiCorp's recent cluster study process allows for cost-sharing for interconnection-driven Network Upgrades. Staff/100, Moore/27-28; *see also* Joint Utilities/301, Wilding-Macfarlane-Williams/38 (Staff Response to PGE DR 7). Moreover, The Commission has also previously considered the possibility of a cost-sharing mechanism among state-jurisdictional interconnection customers for certain interconnection costs on the basis that a QF's Network Upgrades may benefit other state-jurisdictional interconnection customers. *See In re Rulemaking to Adopt Rules Related to Small Generator Interconnection,* Docket AR 521, Order No. 09-196 (June 8, 2009).

[172] Order No. 10-132 at 3.

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The Commission should address its "quantifiable system-wide benefits" test in Phase II of this proceeding, and Issue 3 should be revised to reflect this scope.

In the event the Commission does not retain its current QF interconnection cost-allocation policies, the Commission should open a proceeding to determine how best to mitigate or address the resulting cost impacts on customers. Necessary mitigation measures would presumably include the development and implementation of protections similar to those adopted in the context of the CSP, including generation caps and mandatory conditional DNR provisions in QF PPAs, which would allow the Commission to adjust a QF PPA price after execution should the QF's location drive meaningful delivery-driven Network Upgrades. The proceeding should also ensure there is a process for utilities to seek emergency relief at the Commission, and should affirm that, to the extent the QF-driven interconnection costs nevertheless escape review or mitigation, utilities will obtain cost recovery from Oregon customers for any costs necessitated by QF interconnection.

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