BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

Docket No. UM 2032

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Investigation into the Treatment of Network Upgrade Costs for Qualifying Facilities	THE COMMUNITY RENEWABLE ENERGY ASSOCIATION, THE NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION, AND THE RENEWABLE ENEGRY COALITION PREHEARING BRIEF

I. INTRODUCTION

The Community Renewable Energy Association ("CREA"), the Northwest & Intermountain Power Producers Coalition ("NIPPC"), and the Renewable Energy Coalition (the "Coalition") (collectively the "Interconnection Customer Coalition") respectfully submit this Prehearing Brief for consideration in Phase I of this docket by the Oregon Public Utility Commission (the "Commission" or "OPUC"). This proceeding is important to resolve one of the major obstacles to the development of Oregon state jurisdictional non-utility owned renewable energy facilities. The Federal Energy Regulatory Commission ("FERC") is currently investigating similar issues related to FERC-jurisdictional interconnections because cost allocation is an impediment to renewable energy development.[1] Notably, FERC's policies provide a fairer, more level

[1] *See Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17-000, 179 FERC ¶ 61,028 at P. 1(Apr. 21, 2022) ("The proposed reforms are intended

field than Oregon's policy, and, without significant changes in Oregon policy, this state's interconnection policies regarding cost responsibility for Network Upgrades may even further diverge from federal policy and impose an even greater barrier to state jurisdictional renewable energy facilities that are not owned by investor owned utilities.

This proceeding was broken into two phases, with the first phase limited to the following questions:

> 1. Who should be required to pay for Network Upgrades necessary to interconnect the QF to the host utility?
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> 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?[2]

Depending on the resolution of Phase I, the question for Phase II is:

> 3. 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 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?[3]

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to remedy deficiencies in the Commission's existing regional transmission planning and cost allocation requirements to ensure that Commission-jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential.").

2 Ruling at 1-2 (May 22, 2020).

3 Ruling at 2 (May 22, 2020).

Throughout this proceeding, the Interconnection Customer Coalition, Commission Staff, and Idaho Power Company ("Idaho Power"), PacifiCorp dba Pacific Power ("PacifiCorp"), and Portland General Electric Company ("PGE") (collectively the "Joint Utilities") have all submitted three rounds of testimony. NewSun Energy has submitted two rounds of testimony. It appears the parties agree that the docket needs to move to Phase II because all parties agree that beneficiaries and users of Network Upgrades should pay, but disagree on what that means and on the implementation of the policy.[4] Further, there appears to be agreement between the parties that Network Upgrades means any additions, modifications, or upgrades to the transmission system, at or beyond the point of interconnection, for large and small qualifying facilities ("QFs").[5] However, there is disagreement regarding under what circumstances users and beneficiaries should pay for Network Upgrades.

In addition, while the parties agreed that a Phase II is appropriate, the Interconnection Customer Coalition recommends that the Commission resolve certain

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4 Interconnection Customer Coalition/200, Lowe/4; Staff/100, Moore/35; Staff/200, Moore/6; Joint Utilities/300, Wilding-Macfarlane-Williams/6; Joint Utilities/300, Wilding-Macfarlane-Williams/20-21. Note that Staff also supports a "quick and simple implementation of this cost allocation policy rather than a protracted investigation in Phase II." Staff/300, Moore/17.

5 Staff/100, Moore/6-9; Staff/200, Moore/3; Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/11-13; Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/2-5. Note that beforehand the Interconnection Customer Coalition had not taken a position on whether the docket scope also included distribution upgrades, but now the Interconnection Customer Coalition agrees that the scope of the docket is Network Upgrades, which refers to upgrades to the transmission system for small and large QFs.

issues and provide guidance for Phase II. While Phase II is intended to address how should a policy that users and beneficiaries be required to pay for Network Upgrades be implemented, much of the testimony in this proceeding addresses this issue at least in part. The Commission's Phase I order should not simply answer the first question "yes" but should instead provide direction and resolve as many issues as practicable. This will achieve judicial economy so that the parties do not need to repeat their testimony and arguments, the Commission need not hear them again, and improvements in interconnection policies can be more quickly implemented.

Specifically, the Interconnection Customer Coalition recommends that the Commission resolve these core issues in Phase I. The Commission should first decide that retail customers, who are the users and beneficiaries, should be required to pay for interconnection upgrades, with the limited exception that utilities should be provided the limited opportunity to rebut this presumption. Phase II of this proceeding should focus on what circumstances would allow the utilities to overcome this presumption and what evidence the utilities would need to provide to demonstrate that costs exceed benefits.

There is disagreement between the parties on question two regarding whether QFs should have the option to interconnect using Energy Resource Interconnection Service ("ERIS") or something similar, or only be allowed to interconnect using Network Resource Interconnection Service ("NRIS"). The rest of this Prehearing Brief will give an overview of each party's position on these issues as background for the hearing to be held on June 16, 2022.

II. NETWORK UPGRADE COSTS

The Commission's current policy on the cost of Network Upgrades was established in Docket Nos. UM 1401 and AR 521. In UM 1401, the Commission stated that "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."[6] Further, in AR 521 the Commission explained as follows:

> The proposed rules, however, include language that is meant to strictly limit a public utility's ability to require one small generator facility to pay for the cost of system upgrades that primarily benefit the utility or other small generator facilities, or that the public utility planned to make regardless of the small generator interconnection. Under the proposed rules, a public utility may only require a small generator facility to pay for system upgrades that are 'necessitated by the interconnection of a small generator facility' and 'required to mitigate' any adverse system impacts 'caused' by the interconnection.[7]

Thus, these policies require interconnection customer to pay for the costs associated with Network Upgrades in the following circumstances: 1) if those network upgrades were reasonably necessitated by the interconnection of that generator; 2) only to the extent that the upgrades do not provide a system-wide benefit for which the QF developer or owner

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6 *In re Investigation into Interconnection of Public Utility Regulatory Policies Act QFs with Nameplate Capacity Larger than 10 MW to a Pub. Util.'s Transmission or Distrib. Sys.*, Docket No. UM 1401, Order No. 10-132 at 3 (Apr. 7, 2010).

7 *In re Rulemaking to Adopt Rules Related to Small Generator Interconnection*, Docket No. AR 521, Order No. 09-196 at 5 (June 8, 2009).

should be provided a refund or discount; 3) only to the extent the upgrades do not primarily benefit the utility or other small generator facilities; and 4) only if the public utility would not have made the upgrade regardless of the small generator interconnection. In addition, interconnection customers are not responsible for unreasonable, imprudent, or negligent costs.[8]

Under current policy it is unclear how an interconnection customer would establish quantifiable system-wide benefits to be reimbursed for Network Upgrade costs.[9] Further, the Joint Utilities were unable to provide any guidance on how this policy should be demonstrated by interconnection customers.[10] The only case that the Interconnection Customer Coalition is familiar with a QF attempting to establish quantifiable system-wide benefits was *Madras PVI, LLC v. PGE*, but the parties reached settlement and dismissed the case.[11] Additionally, the Joint Utilities do not normally credit the interconnection customer for the value conferred by paying for upgrades that replace aged equipment that the utility would have needed to replace soon even without the interconnection customer's interconnection request. Thus, the current policy has operated as a *de facto* prohibition on the ability for the users and beneficiaries of Network Upgrades (which typically are primarily utility customers) to shoulder any responsibility

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8 *See, e.g.*, OAR 860-082-0035(2), (4) ("The applicant *must pay the reasonable costs of the interconnection facilities*. … The applicant *must pay the reasonable costs of any system upgrades*.") (emphasis added); OAR 860-082-0060(2).

9 Note Staff is also unsure how an interconnection customer would establish quantifiable system-wide benefits. *See* Staff/100, Moore/15.

10 Interconnection Customer Coalition/100, Lowe 12-13.

11 *See generally Madras PVI, LLC v. PGE*, Docket No. UM 2009.

for the costs of upgrades and is resulting in interconnection customers significantly subsidizing retail customers.

A. Interconnection Customer Coalition's Position

The Interconnection Customer Coalition's position on this issue is that the Commission should assume that all system users benefit from Network Upgrades, and that all Network Upgrades should be paid by all users and beneficiaries of the system.[12] Further, the utilities can rebut that presumption by demonstrating the Network Upgrades do not provide any benefits to other users or at least provide only partial benefits.[13] There could be instances where the interconnection customer splits the costs with other users and beneficiaries, the users and beneficiaries pay for the costs, or the interconnection customer pays for the costs.[14] The Interconnection Customer Coalition does not assert that benefits provided by a Network Upgrade will always equal the costs.[15] For example, "the benefits could be less than the costs, equal to the costs, or even greater than the costs."[16]

Specifically, the Interconnection Customer Coalition recommends that:

> the Commission [] retain the principle that beneficiaries pay for benefits, adopt a presumption that QF Network Upgrades provide system-wide benefits equivalent to the utility

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12 Interconnection Customer Coalition/100, Lowe/6-7, 21; Interconnection Customer Coalition/300, Lowe/5.

13 Interconnection Customer Coalition/100, Lowe/6-7, 21; Interconnection Customer Coalition/300, Lowe/5-6.

14 Interconnection Customer Coalition/100, Lowe/10-11; Interconnection Customer Coalition/300, Lowe/5.

15 Interconnection Customer Coalition/300, Lowe/5-6.

16 Interconnection Customer Coalition/300, Lowe/6.

> identified costs for those Network Upgrades, and allow utilities to rebut that presumption by demonstrating that a specific QF Network Upgrade does not provide system-wide benefits at all or in part.[17]

The Interconnection Customer Coalition believes it is important for the Commission to resolve the issue of who should bear the burden of demonstrating whether parties other than the interconnecting facility benefit from (or do not benefit from) a given Network Upgrade.[18] The presumption should be that all Network Upgrades benefit all users of the system, unless the utilities can prove that ratepayers or users are not beneficiaries.[19] Thus, the Joint Utilities should have the burden of demonstrating users of the system do not benefit from the Network Upgrade.

The Joint Utilities should bear the burden for several reasons. First, the utilities have more information about their system and utility operations.[20] Second, utilities are "monopoly providers of interconnection services that have discriminated against and imposed unreasonable, unfair and unjust costs, and practices upon QFs."[21] Third, having the utilities make this evaluation should facilitate the creation of a transparent and non-discriminatory standard.[22] Right now, most interconnection customers lack the ability and resources to prove that a given Network Upgrade provides system-wide benefits. Indeed, the utility possesses the details regarding its system, and therefore, absent utility

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17 Interconnection Customer Coalition/100, Lowe/21.
18 Interconnection Customer Coalition/100, Lowe/11-12
19 Interconnection Customer Coalition/100, Lowe/12.
20 Interconnection Customer Coalition/100, Lowe/19.
21 Interconnection Customer Coalition/100, Lowe/19.
22 Interconnection Customer Coalition/100, Lowe/19-20.

cooperation, the interconnection customer would normally only be able to obtain such information necessary to demonstrate the full extent of such benefits by filing a formal complaint and propounding discovery on the utility. Fourth, as FERC has long recognized, it is well established that most Network Upgrades provide some benefit to the system, and thus the presumption should require the utility to disprove that ordinary expectation.[23] In general, the information asymmetry and likelihood that Network Upgrades provide some benefit to the system, supports the presumption that Network Upgrades provide benefits, and the utilities must demonstrate otherwise.

Fifth, the Commission has the requisite expertise to address and resolve any issues related to whether costs exceed benefits. In utility rate proceedings, the Commission typically reviews the prudence and reasonableness of utility capital investments,[24] including transmission and interconnection costs.[25] The utility similarly has the burden of proof and persuasion.

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23 Interconnection Customer Coalition/100, Lowe/20.

24 *See generally, e.g.*, *In re PacifiCorp Cost Recovery Adjustment and Coal Removal Mechanism*, Docket No. UM 2183 (Commission opened a new docket following PacifiCorp's 2020 general rate case to evaluate the reasonableness of coal decommissioning cost estimates because the record in the rate case was inadequate).

25 *See generally, e.g.*, *In re PacifiCorp Request for a General Rate Revision*, Docket No. UE 374, Order No. 20-473 at 35-39 (Dec. 18, 2020) (the Commission reviewed the reasonableness of cost overruns for various transmission projects and disallowed many costs).

FERC has adopted a policy that Network Upgrades provide system-wide benefits.[26] Federal courts have directed FERC to ensure that transmission costs are roughly paid for by who benefits from them.[27] As the Interconnection Customer Coalition's witness explained, "most Network Upgrades probably provide some benefit to the system and thereby all customers."[28] Thus, the Commission should also adopt as policy that Network Upgrades provide system-wide benefits. However, FERC did not adopt a rebuttal presumption doctrine where a party could rebut how much users benefited from a Network Upgrade. Here, the Interconnection Customer Coalition is recommending a rebuttal presumption policy that is more favorable to the utilities than even FERC's current policy.

B. Commission Staff's Position

Staff's position on cost allocation of Network Upgrades is that the Commission's existing policies are appropriate to protect ratepayers and strike a balance between the interests of QFs and ratepayers.[29] Staff asserts that QFs should be responsible for "Network Upgrade costs that exceed the utilities' avoided Network Upgrade costs."[30]

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26 *Standardization of Generator Interconnection Agreements and Procedures*, FERC Order No. 2003, 104 FERC ¶ 61,103 at P. 676, fn108 (July 24, 2003) ("The proposed definition [of Network Upgrades] also states that the 'facilities and equipment are used by and benefit all user of the transmission gride, without distinction or regard as to the purpose of the upgrade…'").

27 *See, e.g.*, *Illinois Com. Comm'n v. FERC*, 576 F3d 470 (7th Cir. 2009); *see also, e.g.*, *Old Dominion Elec. Coop. v. FERC*, 898 F3d 1254 (D.C. Cir. 2018).

28 Interconnection Customer Coalition/100, Lowe/20.

29 Staff/100, Moore/6.

30 Staff/100, Moore/6. *See also* Staff/200, Moore/6.

However, Staff states it is "concerned that these policies for the treatment of Network Upgrade costs for QFs are not currently being implemented, or at least, is concerned with how they are implemented."[31] Staff asserts that "QFs, retail ratepayers, and other users of the system should share the costs of Network Upgrades proportionally to the benefits the Network Upgrades provide."[32] Staff notes concerns with avoided cost calculations that should be addressed in another docket.[33]

Staff does not support FERC's Network Upgrade policy even though it sees benefits to a bright line approach.[34] However, Staff mentions several potential policies for allocating Network Upgrade costs such as Idaho's fixed percentage approach (Cassia Formula) and the Southwest Power Pool's capacity upgrade approach, but states these policies should be explored in Phase II.[35]

Staff finds the Interconnection Customer Coalition's proposal to have the burden placed on the utilities to demonstrate a Network Upgrade does not provide system-wide benefits "compelling" but is concerned with the practicality of the approach.[36] Staff

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31 Staff/100, Moore/6. *See also* Staff/300, Moore/8.

32 Staff/200, Moore/4-5. *See also* Staff/300, Moore/8.

33 Staff/100, Moore/18-22. Note the Joint Utilities respond to this, but the Interconnection Customer Coalition is not responding to these issues. *See* Joint Utilities/300, Wilding-Macfarlane-Williams/7-17. It is the belief of the Interconnection Customer Coalition that the calculation of avoided costs is outside the scope of this docket. If the Commission wishes to hear more about this issue, then the Interconnection Customer Coalition reserves the right to respond.

34 Staff/100, Moore/23; Staff/200, Moore/9.

35 Staff/100, Moore/25-28. *See also* Staff/200, Moore/6-7.

36 Staff/200, Moore/10.

suggests a two-step approach to be investigated in Phase II.[37] Staff has also stated it supports a "simple, quicker percentage allocation formula" because it will be difficult to develop a more robust avoided network upgrade and quantifiable system benefits test, resolving this issue quickly will better position utilities to meet various clean energy goals, and it would lead to a resolution faster.[38] In fact, in its final round of testimony, Staff acknowledges the impediment that exorbitant interconnection costs are to achieving Oregon's recently enacted renewable energy policy goals.[39] Thus, Staff even appears to propose adoption of an interim solution at the close of Phase I of this proceeding whereby the interconnection customer and the utility would share the cost of Network Upgrades with the interconnection customer paying 75 percent and the utility paying 25 percent of such costs.[40]

In acknowledging that at least some sharing of costs is justified, Staff aptly recognizes that requiring the utility to share in the costs will introduce at least some incentive for the utility to make "prudent determinations when identifying deliverability constraints and associated upgrades."[41] That point is well founded because under the current arrangement – where the utility assigns 100 percent of the upgrade costs to the interconnection customer – the utility has no incentive to control costs or limit the upgrades to those actually necessary for the interconnection. Indeed, because

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37 Staff/200, Moore/11-12.
38 Staff/300, Moore/9-10.
39 Staff/300, Moore/9-13.
40 Staff/300, Moore/9-13.
41 Staff/300, Moore/11.

interconnection customers are attempting to sell their energy to the utility and thereby displace utility-owned generation, the utility even has an incentive to inflate such interconnection costs to make competing generation projects uneconomic and avoid purchases from competing generation.

On this point, FERC also found that the judgments regarding the need and configuration of Network Upgrades are inherently "subjective."[42] FERC explained, "a number of aspects of the 'but for' approach are subjective, and a Transmission Provider that is not an independent entity has the ability and the incentive to exploit this subjectivity to its own advantage."[43] Further, FERC found no basis to conclude that, "in the absence of independence, it is possible to implement a 'but for' pricing approach that avoids this inherent subjectivity."[44] Thus, FERC determined that interconnection customers should receive a 100 percent refund for such costs to avoid such discrimination by incumbent utilities.[45]

The Interconnection Customer Coalition agrees with Staff that a simple Network Upgrade cost-sharing approach may be preferable to a case-by-case, benefit-based cost allocation approach.[46] A simple cost-sharing approach could be middle ground between the recommendations of the Joint Utilities and the Interconnection Customer Coalition. However, the Interconnection Customer Coalition recommends the utility transmission

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42 Order No. 2003, 104 FERC ¶ 61,103, PP 677, 696 (July 24, 2003).
43 *Id.* at P 696.
44 *Id.*
45 *Id.*
46 Interconnection Customer Coalition/300, Lowe/8.

provider pay 75 percent of the Network Upgrade costs above the avoided Network Upgrade costs and interconnection customers pay the remaining 25 percent.[47] Further, "the Commission should retain the protection that if a utility was planning on making the Network Upgrades regardless of the QF's interconnection or if the equipment being replaced is so old that it would need to be replaced in the near term in any event, then the QF should not be responsible for the associated costs."[48]

C. Joint Utilities' Unreasonable Position

The Joint Utilities recommend that interconnection customers be responsible for Network Upgrades that "would not have been required but-for [the QF's] interconnection request."[49] As a preliminary matter, the Joint Utilities' arguments are focused almost entirely on interconnection customers that are QFs; however, state jurisdictional interconnection customers include other facilities like community solar facilities,[50] and it is more appropriate to consider the issues in this proceeding related to all state-jurisdictional interconnection customers.

Put another way, the Joint Utilities recommend that "the QF would be responsible for the costs associated with all system upgrades that would not have been incurred by

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47 Interconnection Customer Coalition/300, Lowe/8.

48 Interconnection Customer Coalition/300, Lowe/8-9.

49 Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/24-25.

50 In Oregon, community solar facilities must also be QFs; however, the utilities do not have the same mandatory purchase obligation for the vast majority of their net output and there is no avoided cost rate, which are the prime justifications by the Joint Utilities for ensuring that interconnection customers continue to subsidize the utilities and retail customers when they benefit from Network Upgrades.

the utility and its customers 'but-for' the QF's interconnection request."[51] The Joint Utilities understand the definition of "quantifiable system-wide benefits" to mean that QF reimbursement "must ensure that the overall cost of QF power does not exceed the utility's avoided cost, even with that reimbursement."[52] The Joint Utilities essentially view avoided costs as a cap on the cost to purchase QF power,[53] even when the QF is subsidizing the utility and retail customers by paying for Network Upgrades that benefit them.

The Joint Utilities reason that allocating all interconnection customers' interconnection-driven Network Upgrade costs to interconnection customers ensures that customer rates are just and reasonable.[54] The Joint Utilities claim the QF must be responsible for the Network Upgrades to maintain customer indifference otherwise ratepayers would be subsidizing QFs.[55] If the Commission were to require that the users and beneficiaries pay for all or a portion of the Network Upgrade costs, then the Joint Utilities recommend the Commission ensure the costs are recoverable in rates in some form of preapproval.[56]

The Joint Utilities argue against the use of FERC's presumption that Network Upgrades provide system-wide benefits and instead favor a "but for" test that FERC long

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51 Joint Utilities/200, Wilding-Macfarlane-Williams/11.
52 Joint Utilities/300, Wilding-Macfarlane-Williams/18.
53 *See* Joint Utilities/300, Wilding-Macfarlane-Williams/18.
54 Joint Utilities/200, Wilding-Macfarlane-Williams/4.
55 Joint Utilities/200, Wilding-Macfarlane-Williams/4-6; Joint Utilities/300, Wilding-Macfarlane-Williams/7.
56 Joint Utilities/300, Wilding-Macfarlane-Williams/32-33.

ago rejected for use by non-independent, vertically integrated monopoly transmission providers like Oregon's investor-owned utilities.[57]

The Joint Utilities' "but for" test is unreasonable for several reasons. First, as FERC found, it subjects the interconnection customer to the inherently subjective determinations on the need and cost for upgrades without providing the incumbent utility with any incentive to control such costs. Second, the "but for" test essentially means an interconnection customer would always pay for the Network Upgrades regardless of whether there were any system-wide benefits.

Third, if the test for system benefits is a "but for" test that requires an interconnection customer to demonstrate that the Network Upgrade was not "required but for its interconnection request," then the only way for an interconnection customer to meet the Joint Utilities' test would be for the interconnection customer to prove that a utility assigned the interconnection customer a Network Upgrade that was not caused by its interconnection (i.e., that the utility violated the Commission's rules).[58] This runs afoul of the Commission's policy to allow interconnection customers to be reimbursed if there are quantifiable system-wide benefits.

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57 Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/23; Joint Utilities/200, Wilding-Macfarlane-Williams/7, 11; Joint Utilities/300, Wilding-Macfarlane-Williams/4-5; Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/11.

58 See Interconnection Customer Coalition/100, Lowe/17-18.

The Joint Utilities' assertions about interconnection customer siting decisions are also misplaced.[59] The Interconnection Customer Coalition disagrees that changing the Network Upgrade cost allocation policy would cause interconnection customers to site in areas that require significant Network Upgrades. Interconnection customers, especially under current policies, want to develop at good sites to reduce costs, but interconnection customers have limited insights into the potential interconnection costs or interconnection timelines because of a lack of information from the utilities.[60] Transparency regarding the utility's system would allow an interconnection customer to make more informed siting decisions. The Interconnection Customer Coalition's recommendation adequately addresses this concern because if the interconnection customer's siting decision results in the utility and retail customers obtaining little benefit, then the utility can provide evidence to meet its burden of proof to make such a demonstration.

Staff agrees with the Joint Utilities that ratepayers need to be held indifferent and that interconnection customers should be encouraged to make economical siting decisions, but Staff notes concerns that "the Joint Utilities' proposal—which reflects their current treatment of QF Network Upgrades costs—is not doing this. Staff is concerned that the Joint Utilities are ignoring both avoided Network Upgrade costs and potential system benefits of Network Upgrades above the avoided cost."[61] Staff notes

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59 *See* Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/20-21; *see also* Joint Utilities/200, Wilding-Macfarlane-Williams/6, 13.

60 Interconnection Customer Coalition/100, Lowe/21-22; Interconnection Customer Coalition/300, Lowe/17-18.

61 Staff/100, Moore/16.

"indifference would suggest that beneficiaries pay for the value of benefits received" and that "[t]here is not a sufficient process in place to identify any additional 'system-wide benefits' or upgrades that 'benefit the utility or other small generator facilities' above the utility's avoided cost."[62]

D. NewSun's Position

NewSun recommends that host utilities or transmission providers should ultimately pay for the Network Upgrades necessary to interconnect a QF as the QF should be treated the same as any other generator unless the Network Upgrades solely benefit a single QF.[63] NewSun asserts that "Network Upgrades to the transmission system benefit all system users, not just the QF in question, and increase the value of the transmission system 'asset'."[64] Some examples of benefits NewSun provides are increased infrastructure for additional renewable projects, increased load serving capability, better resiliency, congestion relief.[65]

III. NRIS AND ERIS

A. Interconnection Customer Coalition's Position

The Interconnection Customer Coalition recommends that the Commission should allow all interconnection customers the option to be interconnected using ERIS or an

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62 Staff/100, Moore/18 (internal citations omitted).
63 NewSun/100, Rahman/4, 11; NewSun/200, Andrus/18.
64 NewSun/100, Rahman/10.
65 NewSun/200, Andrus/15; NewSun/400, Andrus/9-15; NewSun/500, Boissevain/3-11.

interconnection service similar to ERIS.[66] Allowing interconnection customers to interconnect using ERIS or a similar alternative could lead to more innovative and cost-effective solutions to addressing high interconnection costs. One concern raised by the Joint Utilities is the issue of "deliverability" associated with ERIS and designated network resource status. However, there are various alternatives to NRIS that would still allow for firm deliverability. Further, the utilities will allow ERIS for their own resources, so it is possible that ERIS or an alternative could work for QFs.

One alternative for on-system projects is the QF generation could be delivered on a firm basis using firm Point-to-Point transmission service ("PTP") and still be designated as a network resource.[67] For example, PacifiCorp in the past has used PTP transmission service to transport energy from the QF in a load pocket, an area where there is more generation than load, to PacifiCorp's load elsewhere on its system.[68] PacifiCorp has ceased allowing QFs to use third-party PTP transmission service because it changed its interconnection study process.[69] However, that does not mean it is not still a viable option and alternative to NRIS.

Another example is Oregon's Community Solar Program ("CSP") in which the utilities will study and interconnect CSP projects under "the scope of a FERC ERIS

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66 Interconnection Customer Coalition/100, Lowe/24-25; Interconnection Customer Coalition/300, Lowe/12-13.

67 Interconnection Customer Coalition/100, Lowe/25.

68 Interconnection Customer Coalition/300, Lowe/15-16.

69 Interconnection Customer Coalition/300, Lowe/16.

study."[70] If CSP projects are able to interconnect using ERIS, then QFs should also be allowed to interconnect using ERIS or another alternative in certain circumstances.

While this proceeding is focused on whether on-system QFs should be precluded from using ERIS, is worth noting that off-system QFs already can use ERIS service. An off-system QF can ensure firm deliverability to the purchasing utility's system by interconnecting with ERIS on the non-purchasing utility's system and purchasing firm PTP transmission service to a point of delivery with available transfer capability on the purchasing utility's system. Another example is a project could interconnect at a point of interconnection on the purchasing utility's system using ERIS, purchase firm PTP transmission service from a non-purchasing utility, and deliver firm energy to the purchasing utility at a point of delivery with available transfer capability. Both options could still result in the same firm delivery as NRIS and designation of network resource status. These various examples demonstrate there are alternatives to NRIS that still allow for firm delivery and designation of network resource status.

Another alternative to NRIS that would have lower levels of deliverability is when a QF is willing to voluntary curtail its power to avoid the need for NRIS interconnection costs.[71] From a public policy perspective, this would make better use of

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70 *In re Community Solar Implementation*, Docket No. UM 1930, Order No. 20-038, Appendix A at 4 (Feb. 4, 2020). *See also In re Community Solar Implementation*, Docket No. UM 1930, Order No. 19-392, Appendix A at 6-10 (Nov. 8, 2019).

71 Interconnection Customer Coalition/100, Lowe/25-26; Interconnection Customer Coalition/300, Lowe/14-15.

scarce resources as the electric grid becomes more congested, which is an issue the Commission has acknowledged.[72]

Puget Sound Energy ("PSE") recently had a voluntary interconnection tariff, Schedule 153, go into effect at the Washington Utilities and Transportation Commission.[73] This tariff creates an optional transmission interconnection service for QFs in which QFs can choose limited curtailments as an alternative to paying full Network Upgrades if PSE has adequate available transmission capacity.[74] The QF is allowed to choose a lower quality of interconnection service compared to NRIS while still addressing deliverability issues raised by the Joint Utilities.[75] PSE's interconnection tariff appears to be a workable alternative to the full NRIS that the Joint Utilities are proposing that could resolve many interconnection-related disputes. It provides a constructive and creative solution to extremely high interconnection costs faced by QFs.

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72 *See, e.g., In re PacifiCorp Application for Approval of 2022 All-Source Request for Proposals*, Docket No. UM 2193, Order No. 22-130 at 3-4 (Apr. 28, 2022) (the Commission did not require PacifiCorp to allow conditional firm bids, but the Commission did direct PacifiCorp to "provide analysis of potential solutions to include conditional firm bids in the next [request for proposals]" because "increasing constraints on the transmission system, particularly on the west side of the PacifiCorp system, *make it important to begin to more seriously consider alternative transmission products* that may deliver a significant portion of the value that some resources offer the system") (emphasis added).

73 *See* Interconnection Customer Coalition/301, Lowe/1-17 (PSE's Schedule 153 QF Transmission Interconnection Service Tariff and additional explanatory materials, and WUTC Staff Memorandum for Dec. 23, 2021 Open Meeting).

74 Interconnection Customer Coalition/301, Lowe/9.

75 Interconnection Customer Coalition/301, Lowe/9.

Further, PSE's interconnection tariff demonstrates there are workable alternatives to NRIS contrary to the Joint Utilities' assertion.

The Commission should not prohibit QFs from interconnecting using ERIS or similar alternatives to NRIS because it will shut the door on innovative solutions to mitigate high interconnection costs and long interconnection timelines. The Interconnection Customer Coalition has provided various examples of NRIS alternatives for on-system and off-system projects. There are likely more, but if the utilities are allowed to require only NRIS, then cost-effective, innovative solutions like these might never be able to be implemented in Oregon. The Commission has acknowledged that utilities should "begin to more seriously consider alternative transmission products that may deliver a significant portion of the value that some resources offer the system."[76] Thus, the Commission should allow QFs to interconnect using ERIS or alternative interconnection services similar to ERIS.

B. Commission Staff's Position

Staff's position is that NRIS is not the only way to firmly deliver a generator's output to load, but it is "likely the most practical interconnection service for QFs."[77] Staff reasons NRIS is most practical because "[i]t is the cleanest way to manage the cost allocation of deliverability-driven Network Upgrades for QFs."[78] Further, Staff reasons that allowing a QF to interconnect using ERIS could leave the identification of Network

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76 Docket No. UM 2193, Order No. 22-130 at 4.
77 Staff/100, Moore/32; Staff/200, Moore/14.
78 Staff/100, Moore/33.

Upgrades to the transmission service request, which would not allow the costs to be allocated to the QF.[79]

However, Staff is open to exploring this issue more once data becomes available from Oregon's CSP in Docket No. UM 1930 that is allowing CSP QFs to interconnect using ERIS.[80] Further, Staff is open to exploring the possibility of allowing ERIS if a QF "enters into a non-standard contract, foregoes network resource status, and accepts curtailment provisions in exchange for fewer deliverability-driven upgrades."[81] Staff understands the benefits of ERIS or an alternative service as it could "overcome issues related to QF Network Upgrades."[82]

The Interconnection Customer Coalition does not agree with Staff's recommendation to wait for the results from the CSP before deciding whether QFs should be able to interconnect using ERIS or another similar service.[83] First, the CSP only includes small solar QFs, which is not representative of all the potential QFs that would use ERIS. Second, it is more likely large QFs, not CSP QFs, may lead the way in revealing innovative, cost-effective alternatives to NRIS.[84] The Commission should not close the door on innovation and investment by requiring QFs only to interconnect using NRIS.

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79 Staff/100, Moore/33-34.
80 Staff/100, Moore/34-35.
81 Staff/200, Moore/13-14.
82 Staff/300, Moore/16.
83 Interconnection Customer Coalition/200, Lowe/6-7.
84 Interconnection Customer Coalition/200, Lowe/6.

C. Joint Utilities' Unreasonable Position

The Joint Utilities recommend that all interconnection customers be required to interconnect using NRIS because it is the "only appropriate interconnection service type for [QFs] directly interconnecting with the purchasing utility under PURPA[.]"[85] The Joint Utilities list several reasons why NRIS should be required including:

> 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, allowing a QF to obtain ERIS, rather than NRIS, would shift costs caused by the QF to retail customers in violation of PURPA's customer indifference principle. Third, there are differences between QFs and FERC-jurisdictional interconnection customers that bear on the question of why FERC-jurisdictional interconnection customers should get a choice between ERIS and NRIS, while QFs should not.[86]

The Joint Utilities reason that interconnection customers should be required to interconnect using NRIS because QFs need to be eligible for firm network transmission service in order to manage delivery of serving retail load.[87] The Joint Utilities claim that PURPA requires a utility to deliver QF power with firm transmission.[88] The Joint Utilities claim that NRIS is the only appropriate way to identify all the Network Upgrades and that allowing a QF to interconnect using ERIS would shift costs to the

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85 Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/4, 27.
86 Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/27.
87 Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/28.
88 *See* Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/29. The Interconnection Customer Coalition disagree and will address this issue of deliverability and firmness in its Post-Hearing Brief and Post-Hearing Response Brief.

ratepayers.[89] Finally, the Joint Utilities argue QF interconnection customers should not be treated similar to non-QF interconnection customers that can select ERIS because non-QF policies are governed by the Federal Power Act instead of PURPA.[90]

The Joint Utilities claim that PTP transmission service is not a practical solution because it would shift costs from the QF's interconnection process to the utility transmission service request study process.[91] The Interconnection Customer Coalition is unaware of any cost shifts when PacifiCorp used the PTP transmission service to get power out of a load pocket and the Joint Utilities have not provided any evidence to the contrary.[92] Thus, using third-party PTP transmission service is a viable alternative to NRIS that could reduce costs and should be an option for QFs.

D. NewSun's Position

NewSun recommends that a QF should be allowed to select NRIS or ERIS based on what best meets the QF's business objective.[93] NewSun reasons that NRIS is

> significantly more likely to have the effect of creating unviable economics that would fundamentally have the effect of denying the QF its ability to sell power under the PURPA mandatory purchase obligation is unjust and unfair, particularly given the much higher likelihood to have higher,

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89 Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/30-32; Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/27.

90 Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/32-33.

91 Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/31.

92 Interconnection Customer Coalition/300, Lowe/16. Note the Interconnection Customer Coalition will reevaluate this recommendation if the Joint Utilities can provide evidence to the contrary.

93 NewSun/100, Rahman/4, 18.

> or even impossible costs, that might not be necessary to get the power to the off-taking utility or load.[94]

NewSun also asserts that "forcing QF generation into the NRIS path is largely inconsistent with other" generator interconnections through the Western Electricity Coordinating Council area.[95] NewSun asserts that the requirement to interconnect with NRIS has created confusion for developers and investors in Oregon as well as "impenetrable obstacles … and ultimately proved to be a substantial barrier to new solar QF deployment in the state[.]"[96] NewSun provides examples of alternatives to NRIS that include interconnecting with ERIS while still being delivered on a firm basis, delivering in a narrow time window to avoid transmission constraints and upgrades, and the CSP that is allowing QFs to interconnect through ERIS.[97]

IV. CONCLUSION

The Commission should adopt the Interconnection Customer Coalition's recommendation that there should be a rebuttal presumption that Network Upgrades provide system-wide benefits that should be paid by all users and beneficiaries unless the

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94 NewSun/100, Rahman/18, 19.

95 NewSun/100, Rahman/19; *see also* NewSun/300, Bunge/2-3 ("One challenge that proved unique to Oregon, however, was the requirement effectively imposed via the state-jurisdictional interconnection process, which only allows interconnection as NRIS (including how, in particular, Pacificorp implements their NRIS studies), for QF projects to deliver power to load rather than just a point on their system (i.e. a point of interconnection). In other states where I have developed projects, the QF's obligation is merely to deliver power to the Point of Interconnection (POI). Delivery of the power beyond the POI is the utility's responsibility.").

96 NewSun/300, Bunge/3-4.

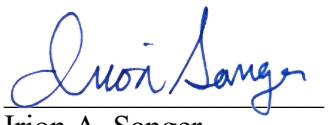
97 NewSun/400, Andrus/3-4.

utility can prove there are no benefits. The Interconnection Customer Coalition recommends the Commission proceed to Phase II to address how to implement this policy. Regarding ERIS and NRIS, the Interconnection Customer Coalition recommends the Commission should allow all QFs the option to be interconnected using ERIS or an interconnection service similar to ERIS.

Dated this 3rd day of June 2022.

Respectfully submitted,

Sanger Law, PC



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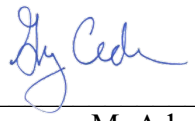

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