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June 3, 2022

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Investigation into the Treatment of Network Upgrade Costs for Qualifying Facilities.
Docket No. UM 2032

Dear Filing Center:

Please find enclosed the Prehearing Brief of the Alliance of Western Energy Consumers in the above-referenced docket.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

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.	)
	)

PREHEARING BRIEF

ON BEHALF OF THE

ALLIANCE OF WESTERN ENERGY CONSUMERS

June 3, 2022

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I. INTRODUCTION

Pursuant to the Administrative Law Judge's ("ALJ") November 29, 2021 Prehearing Conference Memorandum and the ALJ's Ruling on May 31, 2022, in the above-referenced docket, the Alliance of Western Energy Consumers ("AWEC") files this Prehearing Brief with the Oregon Public Utility Commission ("Commission"). On May 22, 2020, the ALJ issued a Ruling adopting Staff's recommendation that the initial phase of this docket be limited to the following two questions:

1. Who should be required to pay for Network Upgrades necessary to interconnect the Qualified 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]

As set forth in this Prehearing Brief, AWEC addresses only question 1, which AWEC interprets to be a primarily legal question. AWEC recommends that the Commission's current QF interconnection cost-allocation policy be maintained.

To determine the answer to question 1, the Commission must ascertain whether Network Upgrades are required but for the QF's interconnection with the host utility. If Network Upgrades are required regardless of the QF, these are system-wide benefits and therefore the Network Upgrades should be included in avoided costs. If the QF's interconnection alone

[1] Docket No. UM 2032, Ruling, at 2 (May 22, 2020).

necessitates the Network Upgrades, then customers would not be indifferent to the QF's interconnection, and the QF should pay these costs.

Because AWEC has limited its participation in this proceeding to legal argument, and has not provided a witness, it does not intend to participate in the June 16, 2022 hearing but does intend to file a closing brief and will participate in oral argument if one is scheduled.

II. BACKGROUND

Oregon's current large QF interconnection policies apply to QFs larger than 20 megawatts ("MW") interconnecting with a utility's transmission or distribution system. These policies are comprised of Oregon's QF Large Generator Interconnection Procedures ("LGIP") and QF Large Generator Interconnection Agreement ("LGIA").[2] Pursuant to Order No. 10-132, the Oregon QF-LGIP and QF-LGIA were revised and adopted in Docket No. UM 1401. Among other things addressed in Order No. 10-132 was the allocation of Network Upgrade costs associated with large QFs. There, the Commission explained that "transmission costs and network upgrades are included in the calculation of avoided cost rates. Consequently, QFs are currently compensated for these costs pursuant to the rates established in their respective purchased power agreements with the utilities."[3] Therefore, the QF-LGIA was modified "such 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."[4]

[2] See Docket No. UM 1401, Order No. 10-132, Appendix A and B (April 7, 2010).
[3] Order No. 10-132, at 3 (April 7, 2010) ("Order No. 10-132").
[4] Id.

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Oregon's QF-LGIA and QF-LGIP are based upon the standard Federal Energy Regulatory Commission ("FERC") Large Generating Interconnection Agreement and Procedures.[5] FERC has long held that Network Upgrades "provide a system-wide benefit," and therefore "expenses associated with owning, maintaining, repairing, and replacing them shall be recovered from all Transmission Customers rather than being directly assigned to the Interconnection Customer."[6] However, in accordance with the Public Utility Regulatory Policies Act ("PURPA"), utilities have an obligation to purchase the output from QFs at no more than the avoided costs.[7] FERC's policy regarding Network Upgrades does not take into consideration PURPA's must-purchase obligation.

Therefore, in Order No. 10-132, the Commission found arguments in support of requiring Transmission Providers to pay for Network Upgrades in accordance with FERC's Network Upgrade policy to be "not persuasive" because "[n]one of the authorities cited [were] related to facilities governed by PURPA and thus none faced the limitation of the avoided cost rate."[8]

III. ARGUMENT

Parties to this proceeding propose varying cost allocation methods for Oregon QFs with respect to Network Upgrades. Staff proposes that Network Upgrade costs "be allocated to QFs and other users of the transmission system commensurately with the benefits that the Network Upgrades provide. From Staff's perspective, this approach is consistent with

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5 Id. at 1.
6 106 FERC ¶ 61,220, Order No. 2003-A, at 89:424 citing 104 FERC ¶ 61,103, Order No. 2003, at 694.
7 18 CFR 292.303(a); 18 C.F.R. § 292.304.
8 Order No. 10-132, at 4.

the Commission's existing guidance, but has not been implemented by the utilities."[9] Staff therefore recommends that the Commission adopt a sharing formula for QF Network Upgrades in order to "accurately reflect the Commission policy to allocate costs to those that benefit from the upgrades…[and] encourage both the Transmission Provider to make prudent determinations when identifying deliverability constraints and associated upgrades and the QF to make efficient siting decisions."[10]

PacifiCorp d/b/a Pacific Power, Portland General Electric Company, and Idaho Power Company (collectively, the "Joint Utilities") argue that "the Commission's current policies, which allocate the costs of a QF's interconnection-driven Network Upgrades to the QF that causes them, are consistent with the customer indifference standard and critical to ensure the economically efficient development of QFs."[11] Therefore, the Joint Utilities recommend that the Commission "reaffirm its existing QF interconnection cost-allocation policy, which allocates the cost of QF Network Upgrades to QFs, while allowing 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.'"[12]

The Interconnection Customer Coalition ("ICC") 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-identified costs for those Network Upgrades, and allow utilities to rebut that presumption by demonstrating that a

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9 Staff/300, Moore/8:5-9 (internal citations omitted).
10 Id. at 11:16-19.
11 Joint Utilities/500, Vail-Bremer-Foster-Olennikov-Ellsworth/2:2-5.
12 Id. at 10:13-16 (internal citations omitted).

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specific QF Network Upgrade does not provide system-wide benefits at all or in part."[13] NewSun argues that "[h]ost utilities should ultimately pay for the network upgrades necessary to interconnect the QF. That is, QFs should be treated the same as any other generator type, with refunds of any network upgrade costs they might pay up front."[14] According to NewSun, "QFs should be reimbursed for all system upgrades other than those that demonstrably benefit only a single facility."[15]

A. The Commission's current QF interconnection cost-allocation policy is consistent with PURPA and should be maintained.

AWEC does not dispute that Network Upgrades may provide system-wide benefits, although parties to this proceeding recognize the difficulties in determining how to quantify system-wide benefits.[16] However, it is not necessary for the Commission to resolve this issue in Phase I of this proceeding in order to determine who should be required to pay for Network Upgrades necessary to interconnect a QF to the host utility.

Rather, the issue is better framed as whether Network Upgrades are required but for the QF. PURPA mandates that utilities purchase energy from QFs at a rate which cannot "exceed[] the incremental cost to the electric utility of alternative electric energy."[17]

In arguing that Network Upgrades presumptively provide system benefits, the ICC and NewSun fail to recognize that QFs are fundamentally different from other generators by

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13 Interconnection Customer Coalition/100, Lowe/21:6-10.

14 NewSun/100, Rahman/4:7-11.

15 NewSun/200, Andrus/18:23-24.

16 See Staff/300, Moore/9:14-16 ("[T]he parties seem to agree that it will be difficult, if not impossible, to develop a more specific avoided network upgrade and quantifiable system benefits test for QF Network Upgrades.").

17 16 U.S.C. § 824a-3(b).

virtue of PURPA's must-purchase requirement. This requirement means that a QF could necessitate Network Upgrades where the purchase of an equivalent amount of energy and capacity from another source would not require the same Network Upgrades (or Network Upgrades at all).[18]

Consequently, the Commission has correctly recognized that requiring Transmission Providers to pay for Network Upgrades caused by a QF potentially affects the avoided cost rate in a way that would impose higher costs on the ultimate ratepayer.[19] If a QF induces Network Upgrades that would not have otherwise been required for the purchase of an equivalent amount of energy and capacity from an alternative reasonably available source, then those Network Upgrades are incremental to a utility's avoided cost, and customers would be harmed if they were required to pay for them. Conversely, if Network Upgrades are required regardless of whether the utility purchases from a QF or an alternative source, then the cost of these Network Upgrades should be included in the avoided cost calculation because customers would have incurred that cost anyway.

AWEC does not oppose Staff's recommendation that "QFs should be responsible for Network Upgrades above the utilities' avoided Network Upgrade costs[.]"[20] However, Staff further proposes that QFs be "compensated for any additional system-wide benefits"[21] and suggests a "simpler, quicker percentage allocation formula."[22] According to Staff, its proposed

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18 This is in contrast to a generator that is selected through a request for proposal ("RFP") process, where the cost of transmission, including any Network Upgrades, is factored into a utility's bid-cost scoring. In this situation, the cost of Network Upgrades is included in a least-cost competitive solicitation.

19 Order No. 10-132, at 3.

20 Staff/300, Moore/17:5-6.

21 Id. at 17:6-7.

22 Id. at 9:12.

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sharing formula would "roughly approximate[] the system benefits of QF Network Upgrades. For example, a QF is reimbursed for 25 percent, 50 percent, or 75 percent of Network Upgrades."[23] Staff states that "a sharing formula for QF Network Upgrades would more accurately reflect the Commission policy to allocate costs to those that benefit from the upgrades. It will encourage both the Transmission Provider to make prudent determinations when identifying deliverability constraints and associated upgrades and the QF to make efficient siting decisions."[24]

Staff's arbitrary sharing formula is concerning and should not be adopted. Although "developments within this investigation, state policy, and federal policy lead Staff to support quick and simple implementation of this cost allocation policy rather than a protracted investigation in Phase II,"[25] AWEC cautions against deviating from Commission precedent and implementing Staff's sharing formula without the evidence to support such a decision.[26]

Unlike AWEC's recommendation, Staff's arbitrary sharing formula to "roughly approximate" the system benefits of QF Network Upgrades may result in rates for purchases from QFs that exceed avoided costs, thereby violating PURPA's customer indifference mandate. Conversely, AWEC's proposal that customers pay only for Network Upgrades that would be required regardless of whether the utility purchases from a QF or an alternative source ensures that customers pay no more than the avoided cost rate and therefore adheres to federal law and

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23 Id. at 11:10-13.
24 Id. at 11:15-19.
25 Id. at 17:9-11.
26 Docket No. UM 1610, Order No. 14-058, at 1 (Feb. 24, 2014) ("While considering these proposals…[the Commission] remain[s] grounded in the policies [it] articulated in previous orders addressing these issues, and decline[s] to make changes without compelling evidence of a need for the proposed revision.").

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guarantees that customers will remain indifferent to the QF's interconnection as required by PURPA.

B. QFs should carry the burden to demonstrate that Network Upgrades would be incurred regardless of interconnection with the host utility.

The ICC and NewSun argue that the Commission should assume that all Network Upgrades provide system-wide benefits and that the utility should bear the burden of demonstrating that Network Upgrades do not provide quantifiable system-wide benefits.[27] However, the QF Parties' fail to recognize that PURPA prohibits avoided costs from exceeding "the incremental cost to the electric utility of alternative electric energy."[28] Notably, the U.S. Supreme Court has confirmed that a utility's avoided cost is the "maximum rate authorized by PURPA."[29] Given this requirement, the burden to demonstrate that Network Upgrades would have been incurred regardless of whether the utility purchases from the QF or an alternative reasonably available source should be on the QF.

Further, the Commission has repeatedly "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.'"[30] As such, the Commission recognizes that in encouraging QF development, it must also "maintain ratepayer indifference."[31] In order to maintain ratepayer indifference customers

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27 Interconnection Customer Coalition/100, Lowe/19:3-4; NewSun/100, Rahman/11:8-11; Interconnection Customer Coalition /100, Lowe/19:9-11; NewSun/200, Andrus/16:1-13.

28 16 USCS § 824a-3(b).

29 Am. Paper Inst. v. Am. Elec. Power Corp., 461 U.S. 402, 417, 103 S. Ct. 1921, 1930 (1983).

30 Docket No. UM 1894, Order No. 18-025, at 4 (Jan. 25, 2018).

31 Id. citing In re Public Utility Commission of Oregon, Investigation Relating to Electric Utility Purchases from Qualifying Facilities, Docket No. UM 1129, Order No. 06-538 at 8 (Sep 20, 2006), citing Order No. 05- 584 at 1 and Order No. 81-319 at 3.

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are statutorily prohibited from paying for Network Upgrades costs if those costs would result in them paying more for QF power than they would pay from another reasonably available source.

IV. CONCLUSION

For the foregoing reasons, AWEC recommends that the Commission grant the following relief, which is consistent with Commission policy, PURPA, and will ensure customer indifference.

(1) Require QFs to pay for Network Upgrade costs that would not have been incurred but for the QF's interconnection,

(2) Require QFs to continue to carry the burden of proof to show that Network Upgrades are required regardless of the QF's interconnection with the host utility, and

(3) Any other relief the Commission deems just and proper.

Dated this 3rd day of June, 2022.

Respectfully submitted,

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