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September 2, 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 – 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' Posthearing Response Brief.

Please contact this office with any questions.

Sincerely,

Alisha Till
Paralegal

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' POSTHEARING RESPONSE BRIEF

September 2, 2022

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I. INTRODUCTION

The primary issue raised in this docket is who should be required to pay for Network Upgrades necessitated by a Qualifying Facility's (QF) interconnection: the QF or utility customers. As the Joint Utilities explained in their Posthearing Brief, the Public Utility Commission of Oregon (Commission) should (1) adopt Staff's recommendation to reaffirm the Commission's current QF interconnection policies, which require QFs to obtain Network Resource Interconnection Services (NRIS) and presumptively allocate the costs caused by a QF's interconnection to the QF; and (2) evaluate the need for and the scope of a potential Phase II of this docket to address the Commission's "quantifiable system-wide benefits" standard.

With respect to Issue 1 regarding cost-allocation, 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.[1] 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.

[1] 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. Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/7 (quoting *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, Appendix A (QF-LGIP) at 11 (Apr. 7, 2010)).

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With respect to Issue II regarding interconnection service type, NRIS is the only appropriate interconnection service type for QFs. Allowing a QF to obtain Energy Resource Interconnection Service (ERIS) as the QF parties recommend 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 any workable alternative to NRIS.

Finally, a key challenge in this docket continues to be the unclear meaning of the Commission's "quantifiable systemwide benefits standard" and the difficulties associated with its implementation. The Interconnection Customer Coalition (ICC) argues that it is an impossible standard to meet.[2] Rather than proposing a standard that is both workable and fair to customers, the ICC proposes the Commission presume "quantifiable systemwide benefits" exist and shift the burden of disproving such benefits to utilities instead.[3] For their part, the Joint Utilities acknowledge that they are aware of no methodology for determining the financial value of generalized system benefits provided by Network Upgrades, let alone for allocating them with certainty to any specific users of an upgrade.[4] Moreover, review of the parties' proposals for application of the Commission's quantifiable systemwide benefits standard in their Posthearing Briefs illuminated another flaw in the standard: it would require retail ratepayers to pay for any and all transmission system costs that met the standard, without limitation or prioritization of investment. As the Joint Utilities will discuss, such an exercise of Commission authority would be inconsistent with Oregon regulatory policy—even if it were possible to implement the standard with precision.

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[2] ICC's Posthearing Brief at 17 (Aug. 5, 2022).
[3] ICC's Posthearing Brief at 14.
[4] Joint Utilities' Posthearing Brief at 1 (Aug. 5, 2022).

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Therefore, the Joint Utilities recommend the Commission replace its "quantifiable systemwide benefits" standard with the standard proposed by the Joint Utilities: QFs are required to pay for all Network Upgrades caused by their interconnection except Network Upgrades identified in a utility's transmission plan or as necessary for higher-priority service requests. This standard is pragmatic, workable, and based on objective criteria. It comports with Oregon state regulatory policy applicable to utility resource procurement—the yardstick for measuring avoided cost, provides significant benefits to QFs, and prevents utility customers from paying for unnecessary or low priority system investments.

Regardless of whether the Commission concludes this docket after Phase I or desires to further consider the quantifiable systemwide benefits standard in Phase II, as Staff recommends, the Joint Utilities would support investigating whether it is possible to implement a cost-sharing mechanism among QFs for certain interconnection costs—either in Phase II or in a separate docket. As the Joint Utilities have previously noted, sharing costs among interconnecting generators may be the best way to facilitate QF interconnections while maintaining customer indifference.[5]

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

The Joint Utilities recommend that the Commission continue to require QFs to pay for the Network Upgrade costs caused by their interconnection, and clarify that the only exception is Contingent Facilities, i.e., Network Upgrades identified in a transmission plan or in studies for higher-priority requests. A QF is not required to pay for these Network Upgrades or even up-front fund them; the QF is simply exempt for paying for them.

[5] PacifiCorp's queue reform, for example, allows interconnecting generators within a study cluster to share Network Upgrade costs. It also exempts generators contributing less than 2 percent of the generation in the study cluster from any share of those Network Upgrade costs, thus facilitating the interconnection of all generators and providing a viable glidepath for very small generators.

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Staff, the ICC, NewSun, and Oregon Solar+Storage Industries Association (OSSIA) argue that some QF-driven Network Upgrade costs, or perhaps all of them (depending on the proponent), should be recoverable from Oregon ratepayers in rates. The parties' positions vary somewhat. NewSun and OSSIA argue that ratepayers should pay for all QF Network Upgrades.[6] The ICC argues that ratepayers should pay for all QF Network Upgrades unless a utility demonstrates that a QF should be responsible for some amount of its Network Upgrade costs.[7] Finally, Staff argues that Oregon ratepayers should be responsible for *some* amount of QF Network Upgrades based on the financial "benefit" to Oregon retail ratepayers provided by the QF's Network Upgrades, but Staff is uncertain how this should be determined.[8] The Commission should decline to adopt these proposals, which inappropriately mix and match Federal Energy Regulatory Commission (FERC) and state policy to create various standards that depart from Oregon law. Their adoption would result in unjust and unreasonable rates and require Oregon retail customers to subsidize QF development in contravention of state law and PURPA's mandate that ratepayers remain indifferent to the purchase of QF power.

A. The Concepts Underlying FERC Cost-Allocation Policy for Transmission System Investments Have Never Mirrored State Cost Recovery Policy for Utility Resource Procurement, and There Is No Reason to Import Federal Pricing Policy as State Law Now.

In arguing that QFs should be exempted from paying for some or all of the interconnection

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[6] NewSun's Posthearing Brief at 2, 6, 17 (Aug. 5, 2022); OSSIA's Posthearing Brief at 2-3 (Aug. 5, 2022).
[7] ICC's Posthearing Brief at 2. Confusingly, the ICC states in its briefing that, "state jurisdictional interconnection customers include other facilities like community solar facilities, and it is more appropriate to consider the issues in this proceeding with all state-jurisdictional interconnection customers in mind." ICC's Posthearing Brief at 24. To be clear, however, the caption of this docket is "Investigation into Treatment of Network Upgrade Costs ***for QFs***." The Joint Utilities understand that the Commission opened docket UM 2111 to investigate the Commission's more *general* state interconnection policies, including policies associated with non-QFs. This docket is indisputably about *QF* interconnection costs, and the Joint Utilities have litigated and briefed the issues in this docket accordingly.
[8] Staff's Posthearing Brief at 1-2 (Aug. 5, 2022).

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costs they cause, NewSun,[9] ICC,[10] and OSSIA[11] all point to FERC's descriptions of the benefits provided by transmission system Network Upgrades on the interstate transmission system. In particular, they cite to statements from FERC's recent Notice of Proposed Rulemaking proposing interconnection reforms.[12] The parties use FERC's sweeping statements about the benefits of transmission system upgrades–the likes of which FERC has been making since the inception of open access in 1996—to conclude that state policy should incorporate similar presumptions into state resource procurement policy and that QFs should thereby be credited for some unspecified "value" their Network Upgrades provide to retail ratepayers.[13] While Staff does not support a wholesale adoption of FERC's cost-allocation method,[14] Staff too seems to believe that it would be consistent with PURPA and with state regulatory principles to require ratepayers to pay for generic benefits to the transmission system like those embraced by FERC.[15] However, the parties' reliance on FERC policy to guide this Commission's determination of what types of costs are just and reasonable is misplaced.

1. FERC takes a broad view of the term "benefit" and does not require proof of relative value or need, on the theory that "a larger system is a better system," for purposes of wholesale competition.

Since 1996, FERC has attempted to increase wholesale competition in the bulk power markets by requiring public utilities to provide open access to their transmission systems.[16] In

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[9] NewSun's Posthearing Brief at 13-17.
[10] ICC's Posthearing Brief at 18-19.
[11] OSSIA's Posthearing Brief at 2-3.
[12] NewSun's Posthearing Brief at 13; ICC's Posthearing Brief at 19.
[13] NewSun's Posthearing Brief at 14-17; ICC's Posthearing Brief at 17-18, 20; OSSIA's Posthearing Brief at 2-4.
[14] Staff's Posthearing Brief at 8.
[15] Staff's Posthearing Brief at 6-7.
[16] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. and Transmitting Utils.*, 61 Fed. Reg. 21,540, Order No. 888 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, 62 Fed. Reg. 12,274, Order No. 888-A (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, 81 FERC ¶ 61,248, Order No. 888-B (1997), *order on reh'g*, 82 FERC ¶ 61,046, Order No. 888-C (1998).

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doing so, FERC has adopted policies that favor the construction of new transmission facilities. FERC has also concluded that its job will be simpler, and its duties under the Federal Power Act (FPA) better discharged, if it simply presumes that all such construction leads to a wider build-out of the interstate transmission grid, and that a wider build-out of the transmission grid benefits all grid users.[17]

In doing so, FERC has chosen to take a very broad view of the term "benefit." Federal courts have held that FERC has the discretion under the FPA to take a broad view of the term "benefits" and to allow full cost recovery of transmission system Network Upgrades triggered by interconnection and transmission requests, regardless of their cost, regardless of the number of generators seeking interconnection, and with no actual review of the "upgrades" at issue. In 2003, Entergy challenged FERC's policy as it applied to various short-circuit and stability Network Upgrades because, in Entergy's view, there was no factual basis for assuming any other grid users benefited from these limited upgrades.[18] The Court of Appeals for the District of Columbia Circuit described Entergy's challenge as somewhat "problematic" for FERC, conceding there was some merit to Entergy's description of FERC's rationale as "conclusory and circular."[19] The court also agreed that other of Entergy's arguments were logical.[20] Nevertheless, the court concluded that it was required to defer to FERC's expertise in regulating the interstate transmission grid.[21] According to the court, "a larger system is a better system," in FERC's view.[22]

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[17] *Standardization of Generator Interconnection Agreements and Procedures*, 104 FERC ¶ 61,103 (2003) (Order No. 2003).
[18] *Entergy Servs. v. FERC*, 319 F3d 536 at 542 (D.C. Cir. 2003).
[19] *Entergy Servs.*, 319 F3d at 543.
[20] *Entergy Servs.,* 319 F3d at 542.
[21] *Entergy Servs.,* 319 F3d at 544.
[22] *Entergy Servs.,* 319 F3d at 543-544.

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2. State utility commissions do not presume that "a larger system is a better system," but instead require prioritization of investments and scrutinize utility procurement decisions for prudence in scenarios where they have authority to do so.

By contrast, if state retail rate recovery principles were hypothetically applied to FERC-jurisdictional Network Upgrades, state regulatory policy would not presume that any and all transmission system upgrades triggered by interconnection and transmission requests would be prudent and recoverable in Oregon rates, regardless of their number and regardless of their cost. State regulatory policy presumes that "a cost-effective system is a better system," rather than "a larger system is a better system."

Because some transmission system upgrades are mandated by FERC, a utility may be required in some instances to construct transmission system upgrades that will be rolled into utility transmission rate base regardless of state regulatory policy. For example, if an independent power producer (IPP) makes a transmission service request on PacifiCorp's system that requires $100 million in Network Upgrades, FERC may require PacifiCorp to build those Network Upgrades and FERC policy may control the allocation of their costs. But that is not the same thing as saying this Commission would have deemed the construction prudent if the Commission had jurisdiction over the transaction and subjected it to retail rate recovery principles from the outset. In situations where transmission system construction is mandated by FERC, utilities and interconnecting generators can certainly leverage the FERC-mandated transmission construction for cost efficiencies for additional projects, but they cannot prevent the Network Upgrades from being constructed and rolled into transmission rates.

There are, however, instances where the Commission does have some element of authority over Network Upgrade costs, such as voluntary resource procurement and the purchase of QF

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power. In such instances, the Commission has the duty to subject such costs to retail rate recovery principles, and in the case of QFs, to ensure they reflect avoided cost.

a) Even when FERC's cost-allocation policies apply to Network Upgrade costs, this Commission nevertheless has authority to review a utility's all-in procurement costs for prudence.

The FPA grants FERC authority over "the transmission of electric energy in interstate commerce and . . . the sale of electric energy at wholesale in interstate commerce,"[23] and FERC's jurisdiction over the rates, terms, and conditions of interstate transmission service has often been referred to as "exclusive."[24] But there is an important exception to FERC's authority to require state commissions to pass through federally approved costs to retail ratepayers, known as the *Pike County* exception.

As the Supreme Court has explained, although a state utility commission cannot second-guess a FERC-approved rate, a state utility commission "can decide that the utility should not have bought power from [a particular] source at all."[25] The New Hampshire Supreme Court described the exception as follows:

> [A] PUC may always inquire into the reasonableness of a utility's purchasing power under a FERC-approved rate given other purchase options available to the utility.[26]

Thus, FERC cost-allocation policy notwithstanding, a state commission may conclude that a utility acted imprudently by choosing to purchase power from one generator instead of another. And state commissions and state courts have relied on the *Pike County* exception as a basis upon which

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[23] 16 U.S.C. § 824(b)(1) (2012).
[24] *See, e.g., Exxon Mobil Corp. v. FERC,* 571 F3d 1208, 1211 (D.C. Cir. 2009) ("Section 201 of the Federal Power Act (FPA), 16 U.S.C. § 824(b) (2006), grants FERC exclusive jurisdiction over the transmission and sale of electric energy in interstate commerce."); *see also New York v. FERC*, 535 US 1, 20 (2002) ("FERC's jurisdiction over the sale of power has been specifically confined to the wholesale market. However, FERC's jurisdiction over electricity transmissions contains no such limitation.").
[25] *Miss. Power & Light Co. v. Mississippi*, 487 US 354, 385 (1988) (citing *Pike Cnty. Light & Power Co. v. Pa. Pub. Util. Comm'n,* 465 A2d 735, 737-738 (1983)).
[26] *Appeal of Sinclair Machinery Products, Inc*., 498 A2d 696, 699 (N.H. 1985).

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to review the prudence of a utility's generation procurement decisions without taking direct aim at the policies within FERC's authority.[27]

As a practical matter, this means that, although FERC cost-allocation policies apply to a regulated utility's interconnection-driven Network Upgrades, a state commission *may* determine that a utility's decision to sign a power purchase agreement (PPA) with a generator that triggers high Network Upgrade costs is imprudent. This Commission reasonably could conclude that, all else being equal, a PPA that triggers $10,000 in Network Upgrades is more valuable to customers than one that triggers $50 million in Network Upgrades, and the Commission could impose a disallowance accordingly reflecting the difference.[28]

Thus, as the Joint Utilities have explained, utilities are cognizant of Network Upgrade costs when they make decisions about what generation to acquire to serve customer load, and they run the risk of disallowance if they elect to purchase generation that triggers significant Network Upgrade costs.[29] The utilities' due diligence, combined with the Commission's prudence review, ensures that utility-selected generation costs are prudent on an all-in basis, and application of FERC cost-allocation policies to non-QF generators does not give utilities free rein to impose Network Upgrade costs on Oregon ratepayers. Therefore, giving QFs free rein to impose their Network Upgrade costs on Oregon ratepayers does not level the playing field; it skews it.

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[27] *See, e.g., Gulf States Utilities Co. v. Pub. Util. Comm'n,* 841 SW2d 459 (Tex. App. 1992); *Pa. Power Co. v. Pa. Pub. Util. Comm'n*, 561 A2d 43 (1989).

[28] Each of the Joint Utilities is the primary user of its transmission system; thus, retail customers are primarily responsible for paying the Joint Utilities' transmission costs. The percentages vary between 70 and 87 percent. Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/21. For the sake of brevity, the Joint Utilities do not note this caveat each time the Joint Utilities discuss the potential ratepayer liability for Network Upgrade costs, but intend that it be understood.

[29] Joint Utilities' Prehearing Brief at 16-17.

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b) The ICC argues that utilities do not ensure their resource acquisition decisions are prudent on an all-in basis, apparently misunderstanding the application of state and federal policies.

The ICC disputes the Joint Utilities' assertion that utilities "take[] steps to ensure the overall costs [of discretionary resource procurement], including interconnection and delivery costs, are, on the whole, prudent."[30] It is unclear why the ICC challenges this assertion, which is supported by unrebutted testimony.[31] The Joint Utilities can only conclude that the ICC is unclear about how a state commission reviews the cost of utility procurement. When it comes to the cost of generation procurement, state regulatory policy requires a utility to compare available resource options and to select the least-cost, least-risk options for customers.

To illustrate the applicability of state and federal law to utility resource procurement decisions, the Joint Utilities describe four scenarios below.

1. A utility signs a PPA with a competitive IPP. In this example, the interconnection-driven Network Upgrades associated with the project are subject to FERC's cost-allocation policies, but the Commission reviews the utility's decision to purchase the power for prudence as permitted by *Pike County*.

    - Here, the Commission has both the *jurisdiction and the duty* to ensure the acquisition as a whole is prudent and results in just and reasonable rates for the utility's retail ratepayers.

    - Prudence is generally determined by reference to alternative options for resources that meet the utility's load service needs (need + competition). The acquisition is typically foreshadowed in an Integrated Resource Plan (IRP) and a Request for Proposals (RFP).

    - Prudence of the acquisition (inclusive of Network Upgrade costs) is generally evaluated in a rate case before cost recovery for the resource is allowed.

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[30] ICC's Posthearing Brief at 36.

[31] Joint Utilities/300, Wilding-Macfarlane-Williams/37-38 ("For example, PacifiCorp is currently conducting an RFP for the acquisition of new renewable resources. Consistent with a typical RFP process, PacifiCorp will select the winning bidders from the pool of eligible bidders based on their competitive pricing. Each of those bidders must also demonstrate that they have reasonable interconnection and transmission costs through the interconnection and transmission studies before PacifiCorp will actually commit to any purchases." (emphasis added)).

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2. A utility builds generation to serve its customers. In this example, the interconnection-driven Network Upgrades associated with the project are subject to FERC's cost-allocation policies, but the Commission reviews the utility's decision to build the generation for prudence as permitted by *Pike County*.

   - In this example, this Commission has both the *jurisdiction and the duty* to ensure the utility investment as a whole is prudent and results in just and reasonable rates for the utility's ratepayers.

   - Prudence is generally determined by reference to alternative options for resources that meet the utility's load service needs (need + competition). The acquisition is typically foreshadowed in an IRP and an RFP.

   - Prudence of the acquisition (inclusive of Network Upgrade costs) is generally evaluated in a rate case before cost recovery for the resource is allowed.

3. A utility purchases power from a directly interconnected QF. In this example, the interconnection-driven Network Upgrades associated with the QF project are subject to this Commission's cost-allocation policies under PURPA and are outside FERC's authority.

   - Here, the Commission has both the *jurisdiction and the duty* to ensure that (1) the utility purchase is prudent as a whole and results in just and reasonable rates, and (2) the purchase is consistent with PURPA's prohibition against requiring retail customers to subsidize QFs.

   - The question of whether costs should be paid by retail ratepayers is generally determined by reference to avoided cost: what retail customers would have paid if the utility had generated the power or purchased it from another source, rather than interconnecting with and purchasing from the QF.

   - Consistency with this legal standard is achieved by the Commission setting an accurate avoided cost price in a PPA with commercially appropriate customer protections and by adopting QF interconnection policies that prohibit subsidization of QFs.

4. An industrial customer purchases power directly from an IPP. In this example, the IPP's interconnection-driven Network Upgrades are subject to FERC's pricing policy.

   - Here, the Commission has *no jurisdiction and no authority* to review the inclusion of the Network Upgrade costs in a utility's transmission rates because the Commission is preempted by federal law.

   - Even if the IPP's interconnection-driven Network Upgrades cost hundreds of millions of dollars, they are subject to FERC's review, not this Commission's.

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- This scenario, where FERC policy governs and the Commission lacks authority to set cost-recovery policy or disallow costs it deems imprudent, is irrelevant to the Commission's policy decision in this docket.

When the Joint Utilities note that their resource procurement decisions must be prudent on an all-in basis, the Joint Utilities are referring to scenarios 1 and 2. When NewSun or the ICC point to scenario 4 to advocate for their preferred Oregon policies, they point to a scenario that is irrelevant to state regulatory policy and the determination of the avoided cost of utility power under PURPA. Scenario 4 is the outlier in this instance and has nothing to do with PURPA, this docket, or state generation-procurement policy.

The ICC also provides the following example in support of its assertion that FERC cost-allocation policies should apply to Oregon QFs: "if an IPP interconnects its new wind facility to PacifiCorp's system and PacifiCorp identifies $100 million in Network Upgrades, FERC policy requires PacifiCorp to refund that $100 million to the IPP where the IPP sells its power in a voluntary agreement with PGE or Idaho Power."[32] The ICC once again draws a conclusion that misses the point. The Network Upgrades at issue in this example are partly outside the control of the Commission and outside the control of the interconnecting utility, and to that extent are irrelevant to Commission policy regarding retail cost recovery. But to the extent the Commission has authority to review other elements of this transaction and apply state policy, it will do so as follows:

- First, FERC policy would require PacifiCorp to build the Network Upgrades for the non-regulated IPP and roll them into PacifiCorp's transmission rates. The Commission may have no authority to second-guess or disallow the costs, even if the Commission considered them excessive, nor would PacifiCorp's transmission function have the power to decline to build the Network Upgrades. In this respect, this scenario is analogous to scenario 4, above.

[32] ICC's Posthearing Brief at 36.

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- Second, the Commission would review PGE's or Idaho Power's PPA with the IPP for prudence to ensure it was prudent on an all-in basis. If the PPA required the purchasing utility to make significant Network Upgrades to its system to accommodate the IPP's power at the point of delivery, the Commission could deem the PPA to be imprudent under *Pike County*.

Thus, it is unclear to the Joint Utilities why this scenario supports the ICC's proposal to force retail ratepayers to fund QF-driven Network Upgrade costs within the Commission's authority.

c) Oregon state regulatory policy does not support retail cost recovery for transmission system upgrades simply because they might provide some system "benefits;" and it should not start doing so for QF upgrades.

In the context of utility resource procurement, the all-in costs of resources are subject to the Commission's prudence review. But outside the context of resource procurement, a utility must decide when to make other types of transmission system investments for reliability and other system needs. As the Joint Utilities have noted, there are countless upgrades that could theoretically improve the operational characteristics of the transmission system in some generalized fashion.[33] FERC would permit such costs to be added to federal transmission rates, but this Commission requires utilities to prioritize discretionary system investments.[34]

The Commission has denied recovery for an investment that provides general reliability benefits to the system but was not shown to be a near-term priority. In 2012, NW Natural sought rate recovery for a natural gas feeder it contended was necessary for reliability.[35] That feeder was an element of NW Natural's Oregon natural gas system subject to state commission authority, and the Commission's analysis of the relevant cost-recovery considerations was thus based on state regulatory policy. There was no dispute that the pipeline provided some level of increased

[33] Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/19.
[34] Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/19.
[35] NW Natural sought to add two phases of its Mid-Willamette Valley Feeder project to its rate base in its 2011 Application for General Rate Revision, filed on Dec. 30, 2011, and docketed as UG 221.

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reliability by providing redundancy and increased capacity in an area served by a single feeder, and thus some benefit to customers.[36] But the Commission *disallowed rate recovery for the entire investment* because NW Natural failed to demonstrate that the pipeline was necessary in the near term or a more important use of ratepayer dollars than other system investments.[37] As Staff explained in that docket, while the feeder obviously provided some reliability benefits to customers by providing redundancy in an area with a single feeder, NW Natural had successfully managed disruptions in the area without the feeder, so it was imperative for the utility to explain why the feeder was "the most efficient and cost-effective" way of addressing reliability issues.[38] But there were no analyses or studies demonstrating that the feeder was the most important upgrade needed for reliability or the most cost-effective way of meeting system needs.[39] Moreover, while NW Natural's IRP identified the project as necessary to meet load growth, it indicated that the upgrade was not needed for several years.[40] Staff thus characterized the investment as imprudent and sought disallowance of the cost of the entire investment on that basis.

Central to Staff's position was the notion that ratepayers do not have an infinite capacity to absorb the costs of even "beneficial" system upgrades and that only cost-effective, appropriately prioritized investments should be included in retail rates. In the end, the Commission agreed with Staff. The Commission concluded that NW Natural had failed to demonstrate the cost-effectiveness or imminent need for the upgrade and disallowed the costs of the project, reasoning

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[36] *In re NW Nat. Gas Co. Request for a Gen. Rate Revision*, Docket UG 221, Order No. 12-437 at 11-12 (Nov. 16, 2012).
[37] *See* Order No. 12-437 at 16-17.
[38] Order No. 12-437 at 11-12.
[39] Order No. 12-437 at 12, 16-17.
[40] Order No. 12-437 at 16.

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that although the upgrade provided some benefits, it nevertheless represented a poor use of ratepayer money.[41]

Similarly, an endless stream of lower-priority investments across a transmission system triggered by QF interconnections would result in unjust and unreasonable rates, even if those investments somehow improved the system. Therefore, the NW Natural example illustrates why FERC's cost-allocation policies are inconsistent with state regulatory policy.[42] Yet Staff, ICC, NewSun, and OSSIA ask the Commission to require ratepayers to fund some (or all) QF-driven investments anytime, anywhere on the system, at a QF's discretion, simply because the upgrades might provide some generalized system benefits. If the Commission were to adopt such a policy, it would represent a significant departure from the Commission's historical view that its statutory duties require it to ensure that ratepayers fund only cost-effective upgrades needed to meet system demands. Any such policy would be particularly problematic given that Network Upgrades driven by QF interconnection are likely to be far more costly than the natural gas feeder at issue in NW Natural's case.[43]

In short, the Commission recognizes that ratepayers should not be forced to pay for infrastructure costs that, while perhaps beneficial in some manner, have not been demonstrated to be a prudent or timely expenditure of resources to meet system needs. As the Joint Utilities have explained, utilities are required to engage in system planning through state IRPs and FERC-mandated studies and Transmission Plans to identify the highest priority system investments

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[41] Order No. 12-437 at 16-17.
[42] While the Commission may not in all instances have authority to apply retail cost recovery principles to transmission system investments in the first instance, it should act consistently with state regulatory law when it does.
[43] The project at issue in the NW Natural case was $32.6 million. As Staff has noted, QF interconnection costs can significantly exceed this amount. Staff/100, Moore/10-11, 24; Staff/200, Moore/9.

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necessary in the near-term.[44] For example, a utility could spend hundreds of millions of dollars building a transmission line to connect a load pocket to its contiguous transmission system—as the ICC seems to suggest it should[45]—or the utility could invest those same ratepayer dollars on system upgrades identified as higher system priorities by FERC-mandated studies. Requiring utilities to prioritize system investments—rather than simply green-lighting all system improvements—is an important element of the Commission's discharge of its duties to ensure retail rates are just and reasonable, and it is inconsistent with policies proposed in this docket that would require Oregon ratepayers to fund system upgrades anywhere and anytime a QF chooses to build a project.

d) PacifiCorp's last rate case illustrates the fact that the Commission scrutinizes Network Upgrade costs to ensure they are justified; the Commission does not simply presume they should be included in retail rates.

In support of their argument that retail customers should pay for QF Network Upgrades, the ICC and NewSun point to testimony in PacifiCorp's last rate case, where PacifiCorp sought cost recovery for various transmission system upgrades. The ICC and NewSun note that PacifiCorp's testimony in that docket described the systemwide benefits provided by its transmission system investments, and they seem to leap to the conclusion that PacifiCorp concedes that the Commission should adopt FERC's cost-allocation policy, or some variation thereof, as state PURPA policy.[46] While PacifiCorp did, indeed, note that transmission system investments

[44] Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/24. Utilities are required to demonstrate the prudence of their discretionary resource acquisitions. They typically demonstrate prudence through competition, and are subject to disallowances if their projects are overpriced relative to other options to meet the same needs.
[45] ICC's Posthearing Brief at 16.
[46] NewSun's Posthearing Brief at 16-17; ICC's Posthearing Brief at 19-20.

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provide systemwide benefits, that is not the basis on which PacifiCorp sought retail cost recovery for those assets.

As the Joint Utilities have explained, certain types of transmission system investments are mandated by federal law, and thus must be included in PacifiCorp's transmission rates (and retail rates) as a matter of law.[47] For other investments, PacifiCorp must demonstrate why the investment is appropriate for retail rate recovery before PacifiCorp will be authorized to recover its costs. The Joint Utilities have described in detail how utilities must demonstrate the prudence of their transmission system investments and will not repeat that testimony here.[48] But suffice to say, generic utility statements about FERC presumptions are insufficient to demonstrate that transmission system investments subject to this Commission's review are eligible for retail cost recovery.

For all of these reasons, parties' proposals to require customers to pay for some or all QF-driven Network Upgrade costs on the theory that they expand the transmission system or provide generalized benefits of the type that FERC considers should be rejected. Such an approach is inconsistent with this Commission's framework for determining those prudent system investments for which customers should be required to pay.

B. The Joint Utilities' Proposal Is the Only Workable and Legally Supportable Approach to Allocating QF Network Upgrade Costs Provided To-Date.

In addition to inappropriately relying on FERC policy, the other parties' proposals to require customers to pay some or all of the cost of system investments that have not been shown to be necessary, near-term priority projects would also violate PURPA's customer indifference

[47] For example, a utility is required to ensure its transmission system complies with NERC reliability requirements.
[48] Joint Utilities/300, Wilding-Macfarlane-Williams/24-25, 38; Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/19.

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requirement and this Commission's obligation to ensure that retail customers pay only just and reasonable rates. Moreover, Staff's and ICC's proposals assume that the benefits of such investments can be quantified—despite the Joint Utilities stating that they are aware of no methodology for quantifying or allocating the value of generalized grid benefits.[49] In contrast, the Joint Utilities' proposal to exempt QFs from the costs of only those Network Upgrades identified in a utility's transmission plan or as necessary for a higher-priority service request avoids all of these issues and is thus the only legal and workable proposal in this docket. Therefore, the Joint Utilities recommend that the Commission adopt their proposal in Phase I.

1. Staff's proposal is flawed because customer indifference is not maintained if customers must pay for Network Upgrades that utilities would not otherwise make absent the QF interconnection.

Staff takes the position that retail customers should be required to pay for some QF-driven Network Upgrades—those that provide benefits commensurate with their cost.[50] While Staff acknowledges that the customer indifference standard limits the Commission's authority to allocate QF-driven Network Upgrade costs to customers,[51] Staff appears to argue that customer indifference does not require QF-driven interconnection costs paid for by customers to remain below the costs the QF sale allows the utility to avoid.[52] Staff claims that if the Commission is forbidden from allocating to customers QF-driven interconnection costs beyond "what is owed to the QF as the utility's avoided cost," then the regulation authorizing the Commission to allocate interconnection costs is meaningless, and therefore, "Staff does not believe this Commission's

[49] Joint Utilities' Posthearing Brief at 25.
[50] Staff's Posthearing Brief at 1.
[51] *See* Staff's Posthearing Brief at 6 ("Staff does not dispute that the Commission's authority is circumscribed by its adherence to the ratepayer indifference standard previously relied on by the Commission.").
[52] *See* Staff's Posthearing Brief at 6 ("Staff does not believe the ratepayer indifference standard means that QFs should only be compensated for interconnection related Network Upgrades that fall below the utility's avoided costs.").

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authority over the allocation of Network Upgrade costs is strictly limited by the PURPA avoided cost cap on prices for capacity and energy."[53] The Joint Utilities disagree with Staff's unreasonably limited interpretation of "avoided cost," which cannot be reconciled with the customer-indifference requirement.

Both FERC and this Commission have made clear that ensuring customers remain indifferent requires examination of more than just the prices paid to a QF for its energy and capacity. This Commission has recognized the need to ensure that the terms and conditions of PURPA PPAs—not just the prices—hold ratepayers financially indifferent.[54] And the Commission adopted its current Network Upgrade cost-allocation policy after acknowledging "the limitation of the avoided cost rate."[55] "Avoided cost" in this context refers not just to the price paid *to* the QF but rather to all of the costs imposed on the utility by virtue of the PURPA-mandated QF purchase. FERC precedent confirms that the Commission must look holistically to determine whether customers are being held indifferent, and that the Commission has flexibility to assess QF-caused costs to QFs via a reduction to the avoided cost prices paid *to* the QF or separately as interconnection costs paid *by* the QF.[56] Regardless of how the costs are accounted for, if a QF's

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[53] Staff's Posthearing Brief at 6; *see also* Staff's Prehearing Brief at 10-12; Staff/100, Moore/18 (noting that customers should be indifferent to the purchase of QF power but arguing that QFs may not be appropriately compensated for a utility's avoided Network Upgrade costs in current avoided cost calculations or for the benefits provided by QF-driven Network Upgrades).

[54] *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."); *see also In re Staff's Investigation Relating to Elec. Util. Purchases from Qualifying Facilities,* 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.").

[55] *See* Order No. 10-132 at 4.

[56] *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at P 38 n.73 (2013) (*Pioneer Wind*) ("[I]mplicit in the Commission's regulations, 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.").

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interconnection imposes costs on customers beyond what they would otherwise pay absent the QF, then customers are not being held indifferent as PURPA requires.[57]

Contrary to Staff's claim, limiting the QF-driven interconnection costs borne by customers to those the utility would have incurred absent the QF interconnection does not make meaningless 18 CFR 292.306's authorization to state commissions to allocate interconnection costs.[58] As discussed above, 18 CFR 292.306 and FERC's other PURPA rules and policies give states discretion to account for QF costs in avoided cost prices or via interconnection costs. Moreover, under 18 CFR 292.306, states have discretion to determine what interconnection costs are reasonable and necessary as a result of utility purchases from the QF (versus the utility sale *to* the QF) and the manner of payment for interconnection costs.[59] Thus, states have significant discretion under 18 CFR 292.306, but that discretion is bounded by the requirement that customers remain indifferent and pay no more than they would absent the QF interconnection and purchase.

Having abandoned the avoided-cost limitation on interconnection costs, Staff reasons that customer-indifference is maintained so long as customers receive some benefit from the QF-driven Network Upgrade that is commensurate with its costs.[60] The ICC argues similarly but more broadly that the customer-indifference standard is satisfied so long as customers pay only for

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[57] *Small Power Production and Cogeneration Facilities—Qualifying Status*, 45 Fed. Reg. 17,959, 17,965 (1980) (Order No. 70) (subsequent history omitted) (stating that FERC's PURPA regulations do not require a utility "to incur ***any additional costs*** by reason of interconnected operation with [QFs]."") (emphasis added)).

[58] Staff's Posthearing Brief at 6.

[59] *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Pub. Util. Regulatory Policies Act of 1978*, 45 Fed. Reg. 12,214, 12,230 (1980) (Order No. 69) (state commissions have responsibility and authority to determine interconnection requirements are reasonable and legitimate); Order No. 69 at 12,217 (recognizing that some interconnection costs may result from sales from the utility to the QF and stating that 18 CFR 292.306(a) requires a state to assess interconnection costs "on a nondiscriminatory basis with respect to other customers with similar load characteristics"); Order No. 69 at 12,230 (clarifying that the appropriate comparator when considering nondiscriminatory practices is any customer in the same class who does not generate electricity); *see also* Order No. 69 at 12,217 (stating that FERC's definition of "interconnection costs" is intended to give states "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 under § 292.306.").

[60] Staff's Posthearing Brief at 6.

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Network Upgrades that provide systemwide benefits.[61] As explained in detail above and in prior testimony and briefing, the Joint Utilities disagree that customers should be allocated potentially very significant Network Upgrade costs on the theory that the Network Upgrades provide some generalized or hypothetical benefit to the system. While, in theory, a QF-driven Network Upgrade could provide demonstrable benefits to retail customers specifically, the value of which holds customers indifferent to the purchase, no party has identified a workable approach to identifying and quantifying such a benefit. Nor is it reconcilable with Commission precedent to suggest that forcing ratepayers to pay for an unlimited number of generalized but non-priority "benefits" would result in just and reasonable rates.

Because of the challenges presented by the quantifiable systemwide benefits standard, the Joint Utilities have proposed that the only QF-driven Network Upgrades for which customers should be required to pay are those the utility already planned to make absent the QF interconnection and sale—i.e., those identified in a transmission plan or in studies for higher-priority requests.[62] At minimum, in the absence of a well-developed record regarding the types of benefits customers should be required to pay for and how those benefits should be quantified, the Joint Utilities recommend that the Commission refrain from declaring, as Staff requests,[63] that the Commission has authority to allocate to customers QF-driven interconnection costs that exceed the utility's avoided cost rate.

[61] ICC's Posthearing Brief at 21.
[62] Joint Utilities' Posthearing Brief at 2.
[63] Staff's Posthearing Brief at 2-3.

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2. The ICC's proposed cost-allocation policy would not protect Oregon customers from unreasonable costs.

The ICC recommends that the Commission presume that QF-driven Network Upgrades provide benefits for which retail customers should pay unless the utility shows that the Network Upgrades do not benefit other users or provide only partial benefits.[64] According to the ICC and OSSIA, FERC's requirement that generators upfront fund their Network Upgrade costs is a sufficient incentive for QFs to efficiently site projects because a QF will be reimbursed for its Network Upgrade costs only if the QF successfully brings the project online,[65] thereby further reducing ratepayer risk.[66] However, the Joint Utilities disagree that FERC Network Upgrade cost-allocation policy would adequately protect retail customers from unjust and unreasonable rates and that allowing utilities to rebut the presumption of benefits is a viable solution.

a) FERC policy does not protect Oregon customers from unjust and unreasonable Network Upgrade costs related to generation procurement; this Commission does.

The ICC advocates that the FERC cost-allocation policy applicable to IPPs should be adopted for Oregon QFs. The Joint Utilities have detailed the key, significant differences between competitive IPPs and QFs in testimony and will not repeat them all here.[67] At a high level, an IPP must compete on an all-in basis with other generators or demonstrate that its project is cost-effective before it can obtain a PPA with a utility. Moreover, utilities can and do structure competitive PPAs contingent on interconnection and transmission service studies demonstrating that the IPP project is located in a cost-effective location.[68] A QF, by contrast, need not compete

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[64] ICC's Posthearing Brief at 13.
[65] ICC's Posthearing Brief at 32; OSSIA's Posthearing Brief at 4.
[66] ICC's Posthearing Brief at 30-31.
[67] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/28-30, 32-33; Joint Utilities/200, Wilding-Macfarlane-Williams/7-8.
[68] Joint Utilities' Prehearing Brief at 26-28; *see* Joint Utilities/300, Wilding-Macfarlane-Williams/38.

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on any metric whatsoever—including Network Upgrade costs—before forcing a utility to sign a binding PPA. Indeed, Oregon QFs have taken the position that they are entitled to a binding and enforceable PPA before they even know what their Network Upgrades will be.[69] Thus, PURPA's mandatory purchase obligation alone puts customers at significantly higher risk from QF project costs.

The ICC nevertheless suggests that the risk of customers bearing significant QF Network Upgrade costs under its proposal is low because "no developer of a renewable energy facility, QF or otherwise, would knowingly choose a location [with extensive upgrades] that will take longer to bring online."[70] While the Joint Utilities agree that a QF would not "knowingly" choose such a location, the critical question for this Commission is what will happen when a QF does. Again, the QF developer will be entitled to a binding PPA even if its Network Upgrades are unreasonably expensive. If a QF PPA gives a QF four years to come online, but the Network Upgrades are significant and take five years to build, the only consequence under the PPA provision being discussed in docket AR 631 is that the QF would get fourteen years of fixed pricing under the PPA rather than fifteen.[71] This remedy is cold comfort to the ratepayer who, if the ICC gets its way, would be required to pay fourteen years of stale avoided cost pricing *and* foot the bill for the QF's Network Upgrades—an unreasonable result.

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[69] *See, e.g.*, *In re PacifiCorp dba Pac. Power Application for an Order Approving Queue Reform Proposal*, Docket UM 2108, The Interconnection Customer Coalition's Application for Rehearing or Reconsideration of Order No. 20-268 at 4 (Oct. 12, 2020) (objecting to proposal to prevent a QF from executing a PPA if the QF has not obtained an interconnection study).

[70] ICC's Posthearing Brief at 32.

[71] *In re Rulemaking to Address Procedures, Terms and Conditions Associated with Qualifying Facilities (QF) Standard Contracts*, Docket AR 631, Joint Utilities' Initial Comments at 20-21 (Mar. 11, 2022). The Joint Utilities have argued that this provision is unreasonable and inconsistent with commercially reasonable and prudent utility PPAs. The Joint Utilities have also offered calculations in docket AR 631 demonstrating how little this non-standard contractual remedy actually protects customers from the impact of stale avoided cost pricing. But the limits of this remedy could be even more problematic for customers if the Commission were to adopt FERC's cost-allocation for QF Network Upgrades, or any portion thereof. Docket AR 631, Joint Utilities' Comments in Response to Draft Rules, Attachment B (Aug. 12, 2021).

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In short, QFs and competitive IPPs do not see the same pricing signals or face analogous challenges when developing projects. Competitive IPPs sited in poor locations will not secure PPAs with utilities that put utility customers at risk of unreasonable Network Upgrade costs. And yet, a QF would be entitled to the same PPA as a matter of law. When an IPP *does* get a PPA, the IPP takes on the risk of complying with commercially responsible contract terms intended to protect customers from project failure and to ensure retail customers obtain the benefit of the bargain. If an IPP cannot meet those conditions, the project fails. None of these things are true for QFs, who continue to resist analogous PPA requirements.[72] If the Commission adopts ICC's preferred cost-allocation policy, retail customers will be responsible for significant and unreasonable Network Upgrade costs.

b) The ICC's proposal to allow utilities a "limited opportunity to rebut" a presumption that Network Upgrades are prudent does not save its proposal.

The ICC continues to argue that Oregon customers should be presumptively responsible for all QF Network Upgrades, while utilities retain a limited opportunity to rebut this presumption by demonstrating that the upgrades do not provide <u>any</u> (or at least "only partial") benefits to other users.[73] The ICC claims this will ensure that rates remain consistent with PURPA's customer indifference mandate.[74]

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[72] *See, e.g.*, Docket AR 631, QF Trade Associations' Reply Comments on Group 1 Issues at 12 (Mar. 25, 2022) ("The Joint Utilities argue that the standard contract PPA terms must be the same as non-QF PPAs in order to achieve customer indifference standard. This is a radical departure from precedent and a novel argument. *The Joint Utilities do not cite any support besides the indifference standard in general for [their argument that] '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*.'" (emphasis added)).

[73] ICC's Posthearing Brief at 13.

[74] ICC's Posthearing Brief at 21.

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The Joint Utilities disagree. The Joint Utilities are aware of no methodology that would allow a utility or any other party to "quantify" the value of the types of generalized grid benefits touted by the ICC, NewSun, and Staff, such as increased capacity or reliability benefits.[75] Shifting the burden of proof to utilities simply saddles Oregon ratepayers with significant, unnecessary, and unreasonable costs. Moreover, a utility is obligated to ensure investments made on behalf of customers are prudent to ensure they are eligible for cost recovery. Therefore, the outcome of shifting the burden to utilities is likely to be endless, complex litigation—a concern Staff shares.[76] In sum, the ICC's recommendation is factually unsupportable, pragmatically unworkable, and inconsistent with this Commission's duty to protect customers.

3. Parties' citations to cost-allocation policies in other states are unpersuasive.

In support of their arguments that the Commission should require customers to bear some or all QF Network Upgrade costs, Staff points to decisions from the Georgia Public Service Commission and the Montana Supreme Court regarding allocation of QF Network Upgrade costs,[77] and NewSun argues that the California Independent System Operator (CAISO) provides

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[75] Joint Utilities' Posthearing Brief at 25; Joint Utilities/500, Vail-Bremer-Foster-Olennikov-Ellsworth/8; Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/10.

[76] *See* Staff/200, Moore/11. Moreover, utilities carry the burden of proof to demonstrate that rates they file in a rate case are just and reasonable. *See* ORS 757.210; *In re PacifiCorp, dba Pac. Power, Request for a Gen. Rate Revision,* Docket UE 374, Order No. 20-473 at 5 (Dec. 18, 2020). But utilities do not bear the burden of demonstrating that costs *other parties* seek to impose on retail customers should be disallowed. If QFs seek to impose costs on customers, QFs should bear the burden of proof. *See, e.g.*, *In re the Application of Scottish Power PLC and PacifiCorp for an Order Authorizing Scottish Power plc to Exercise Substantial Influence Over the Policies and Actions of PacifiCorp*, Docket UM 918, Order No. 99-616 at 19 (Oct. 6, 1999) (noting that if Staff or a third-party initiates an overearnings investigation, the burden of proof would rest on the party initiating the investigation); *In re a Rulemaking Proceeding to Adopt Procedures and Standards for Reviewing Gas Util. Rates in the Context of Purchased Gas Adjustment Mechanisms*, Docket AR 357, Order No. 99-284 at 6 (Apr. 21, 1999) (stating that a utility will have the burden of proof only if the utility initiated the rate filing or rate increase).

[77] Staff's Posthearing Brief at 6-7.

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refunds to QFs for Network Upgrade costs.[78] However, these examples do not suggest that this Commission should change its cost-allocation policy.

NewSun's reference to CAISO is inapt. As the Joint Utilities' testimony explained, benefits associated with increasing transmission capacity in an integrated ISO or regional transmission organization (RTO) with centralized economic dispatch are not a useful analogue for evaluating the benefits of generic transmission expansion for Oregon's vertically integrated utilities, which are not in organized markets.[79] Moreover, PURPA includes an exemption from the mandatory purchase obligation for utilities in integrated markets.[80]

The Georgia decision noted by Staff neither binds this Commission nor provides a rationale for adopting Georgia policy in Oregon. As PURPA implicitly acknowledges by delegating implementation to the states, individual states establish their own regulatory policies for determining what costs are just and reasonable for retail ratepayers to bear in the context of utility resource procurement. This determination in turn affects what costs can be avoided by purchasing power from a QF, rather than the utility, and thus defines the utility's avoided cost and dictates what treatment for QFs meets the customer indifference mandate. Theoretically, a state could conclude that, under its individual organic statutes and retail cost-recovery policies, it is unnecessary for utilities to demonstrate that system investments are needed or appropriately prioritized before they are allowed in retail rates. In such a case, all investments that provide generalized benefits to ratepayers could be deemed eligible for rate recovery, and extending that same policy to QFs would not violate the customer indifference mandate. Because each state's

[78] NewSun's Posthearing Brief at 2.
[79] Joint Utilities/300, Wilding-Macfarlane-Williams/29; Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/16.
[80] *See* 16 U.S.C. § 824a-3(m).

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law and policy are different, however, FERC simply left it to the states to implement PURPA based on their own individual yardsticks for avoided cost.

The Joint Utilities are not sufficiently familiar with Georgia regulatory law to offer an opinion about whether the Georgia decision is consistent with PURPA. However, because Network Upgrade costs were not a central issue in the case, and it is clear the Georgia Commission's decision was not grounded in a robust record or thorough briefing, the decision simply may not reflect careful consideration of applicable law.[81]

The Montana Supreme Court's decision also is not persuasive in this docket for several reasons. First, the court appeared to believe that Network Upgrades cannot be "interconnection costs"[82] However, both ERIS and NRIS Network Upgrades are well within FERC's PURPA definition of "interconnection costs," the allocation of which are left to state commissions.[83] Indeed, 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.[84]

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[81] The QF developer that raised the Network Upgrade cost-allocation issue argued that utilities are paid twice for Network Upgrades if QFs fund them, because the QF pays for the upgrade and the utility also includes the upgrade in its rate base. While it is unclear from the record in that case whether the developer accurately depicted Georgia law and policy, this argument is inapplicable in Oregon—none of Oregon's utilities included QF-funded Network Upgrades in rate base.

[82] *See CED Wheatland Wind, LLC v. Mont. Dep't of Pub. Serv. Regulation*, 408 Mont 268, 280-81 (2022) ("*Wheatland Wind*") ("It is important to distinguish interconnection costs from network upgrade costs, rather than jumbling their meanings, because they express two distinct concepts.").

[83] 18 CFR 292.306 (state regulatory authority may assess interconnection costs to QFs); 18 CFR 292.101 (defining "interconnection costs" under PURPA). When adopting its definition of "interconnection costs," FERC explained that interconnection costs "may include, but are not limited to, operating and maintenance expenses, **the costs of installation of equipment elsewhere on the utility's system necessitated by the interconnection**[.]" Order No. 69 at 12,217 (emphasis added). "Equipment elsewhere on a utility's system" is a Network Upgrade, i.e., equipment beyond the point of interconnection. The Montana court erred in effectively concluding that when FERC defined Network Upgrades in Order No. 2003, FERC also implicitly amended the definition of interconnection costs found in its PURPA regulations to limit those costs to only facilities installed between the generator and the point of interconnection. But there is no support for this claim in Order No. 2003 or FERC's PURPA regulations, particularly because FERC did not modify its PURPA regulations and made Order No. 2003 expressly not applicable to QFs.

[84] *PacifiCorp*, FERC Letter Order, Docket No. ER 12-2223 (Sept. 6, 2012).

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The caption of that letter order was "Agreement for Reduction of Network Upgrade Credit Repayment," and it acknowledged that the QF would no longer be refunded for its *interconnection-driven Network Upgrades* after electing to operate as a state-jurisdictional QF. The court thus committed a significant error of law that infects the remainder of its decision (as well as Staff's argument that the case is somehow instructive).

Second, starting from this erroneous definition, the court then concluded that the Network Upgrades triggered by the QF's interconnection were not "necessary" costs of the interconnection.[85] In addition to holding a misplaced view of "Network Upgrades," the *Wheatland Wind* court also failed to discuss the unique operational requirements associated with the purchase of QF power. In any event, the court did not ultimately make a determination about what portion of the Network Upgrade costs associated with the $267 million transmission line should be allocated to retail customers. It remanded the issue to the Wyoming PSC to make that determination. However, this Commission's current QF cost allocation policies are already consistent with the principle that only "necessary" costs of interconnection should be allocated to a QF. As the robust record in this docket demonstrates, and as the Commission has long recognized, a QF's interconnection with the utility triggers a must-purchase obligation and a simultaneous obligation to deliver the QF's power on firm transmission. In recognition of these requirements, QF interconnection studies in Oregon are in fact scoped to identify only the Network

[85] *Wheatland Wind*, 408 Mont at 281-282.

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Upgrades needed to allow the QF's power to be delivered to the purchasing utility's system on firm transmission, as required by PURPA [86]

Third, the court also made a determination based on individualized facts of that case that are not relevant to the Commission's policy determination here. The court appeared to misunderstand the serial-queue interconnection process and took issue with assigning to the QF the full cost of a new transmission line triggered by the QF's NRIS interconnection request. The court concluded, without clear support, that the utility had a need for the additional capacity that would be created by the new transmission line and remanded to the Montana PSC to determine what portion of the new line was necessary to accommodate the QF's output such that the cost should be fairly borne by the QF.[87] In sum, contrary to Staff's suggestion, the court did not actually decide that QF-driven Network Upgrade costs could be paid by ratepayers in contravention of PURPA's customer indifference mandate.[88]

If the Commission is inclined to look to other states for assistance determining the appropriate policy, it should consider that Oregon's policy requiring QFs to bear their Network Upgrade costs is consistent with the well-reasoned decision of the Utah Public Service Commission in a thoroughly litigated case.[89] The Utah PSC reasoned that Network Upgrade costs fall within FERC's definition of "interconnection costs" and that the PSC was responsible for

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[86] These Network Upgrade costs should be allocated to the QF unless they have already been identified as priority upgrades in a transmission plan or higher-priority request. It is unclear from the Montana decision whether this transmission line had already been identified in the utility's transmission plan or not, and thus unclear whether the Joint Utilities' proposed cost-allocation standard would exempt Oregon QFs from paying for these costs, as has been the case with respect to PacifiCorp's planned Gateway South.

[87] *Wheatland Wind,* 408 Mont at 283-85.

[88] Staff's Posthearing Brief at 6-7.

[89] *Glen Canyon Solar A, LLC and Glen Canyon Solar B, LLC's Request for Agency Action to Adjudicate Rights and Obligations under PURPA, Schedule 38, and Power Purchase Agreements with Rocky Mountain Power*, Utah Pub. Serv. Comm'n Docket No. 17-035-36, Consolidated Order at 30-32 (Dec. 22, 2017) (Glen Canyon Order).

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ensuring such costs are assessed to QFs.[90] In reaching its conclusion, the Utah PSC asked the following question where a QF sited in a constrained area that would require $400 million in Network Upgrades to deliver its output:

> [D]oes PURPA contemplate the QF may . . . unilaterally elect to site in the transmission constrained area, force [the utility] to invest more than $400 million to upgrade its transmission network to accommodate the QF's output and see those costs passed through to [the utility] and its ratepayers? We conclude the answer is "no." Allowing QFs to make inefficient siting decisions and to shift the attendant costs to ratepayers is inconsistent with the primary objective of ratepayer indifference.[91]

This Commission should similarly decline to adopt a policy that could shift massive Network Upgrade costs to ratepayers.

4. Contrary to the ICC's statements, QFs are not subsidizing utility transmission system build-out; QFs are paying costs for non-priority investments that ratepayers would otherwise not incur.

The ICC argues that the Commission's current QF interconnection cost-allocation policies force QFs to subsidize transmission system buildout.[92] This assertion is based on the unfounded assumptions that customers want or need the Network Upgrades triggered by QFs, that the Network Upgrades would otherwise be built absent the QF, and that including the Network Upgrades in customer rates would be prudent. None of these assumptions are correct.

As noted previously, there are countless upgrades that could theoretically improve the operational characteristics of the transmission system in some generalized fashion, but they are not *all* a prudent use of customer dollars.[93] Despite some parties' assertions that any and all Network Upgrades provide generalized benefits such as increased reliability or additional system

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[90] Glen Canyon Order at 30. The Utah PSC also stated, "The proposition that interconnection costs should include any otherwise unnecessary investments in transmission facilities should not be controversial." *Id.* at 30.
[91] Glen Canyon Order at 30.
[92] ICC's Posthearing Brief at 12-13.
[93] Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/19.

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capacity, and that such benefits justify some level of QF reimbursement, there is no reason to believe the Network Upgrades triggered by QF interconnections are cost-effective solutions to any specific reliability or system capacity needs. Nor is there any reason to believe that if the Joint Utilities made the random transmission system investments necessitated by QF interconnection, the Commission would allow them to be recovered in rates. Therefore, *QFs are appropriately deemed the beneficiaries* of such Network Upgrades, and QFs should pay for them.

5. The Joint Utilities' proposal protects retail customers from bearing potentially significant costs, and criticisms of the Joint Utilities' proposal are unfounded.

The Joint Utilities propose to exempt QFs from paying for those Network Upgrades that are already identified in a utility's transmission plan or in studies for higher-priority service requests; that is, Network Upgrades that studies show are mandated by law or are prudent near-term utility investments and thus appropriately included in retail customer rates. This proposal addresses the issues of prioritization and need in workable manner. If Network Upgrades triggered by a QF are already identified in a utility's transmission plan or in studies for higher-priority service requests—objective indications that the upgrades are appropriately prioritized or mandated—*customers are appropriately deemed the beneficiaries* of the Network Upgrades and QFs should not pay for them. Thus, the Joint Utilities' proposed standard corrects for the problem with the ICC's proposal by eliminating the risk that retail customers will be required to pay higher and higher rates for low-priority transmission system investments. Moreover, the Joint Utilities' proposal avoids the need to quantify generic grid benefits and identify beneficiaries, as is required under Staff's proposal. The Joint Utilities' proposal is therefore simple, implementable, and fair to customers and QFs.

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The ICC argues that the Joint Utilities' proposal is "unreasonable and oversimplifies the issue[.]"[94] The ICC is incorrect. The Joint Utilities' standard applies some of the same indicia of prudence the utilities use to justify inclusion of costs in rates to QF Network Upgrades, thus ensuring any QF Network Upgrade costs borne by customers comport with state regulatory cost-recovery policy. Moreover, its simplicity is a benefit. In this docket, the Commission is setting broad policy applicable to all QFs in the state. The Joint Utilities assume the Commission does not intend to adopt a policy that would require case-by-case litigation and fact-finding each time a QF wishes to interconnect a project—as is likely if utilities are charged with quantifying and allocating generic system benefits.[95]

The ICC also complains that the Joint Utilities' proposal is unfair because, under the proposal, QFs will "always pay for the Network Upgrades regardless of whether there were any system-wide benefits."[96] This too is incorrect. The Joint Utilities' proposal provides substantial financial benefits to QFs and exempts them from significant Network Upgrade costs. For instance, PacifiCorp has never required any QF (or non-QF) project to upfront fund any portion of the cost of its well-known Gateway South transmission line because the line is identified in its long-term transmission plan. At one point, PacifiCorp had more than 600 MWs of executed QF interconnection agreements granting highly sought-after interconnection service contingent on Gateway South without requiring any contribution to Gateway South's costs.[97]

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[94] ICC's Posthearing Brief at 24.
[95] *See* Joint Utilities' Posthearing Brief at 25.
[96] ICC's Posthearing Brief at 25.
[97] Several QF projects have subsequently requested that their QF interconnection agreement be converted to a FERC-jurisdictional agreement, so the number of currently executed QF interconnection agreements dependent on Gateway South is lower.

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As another example, an Oregon QF developer that submitted multiple projects currently under study in PacifiCorp's interconnection cluster process received a study report that identified two significant contingent facilities (costing $7.5 million and $50 million) that were necessary to provide the QF interconnection service, but for which the QF would ***not*** be financially responsible under the Joint Utilities' proposal.[98] To be clear, the QF does not upfront fund the contingent facility Network Upgrades subject to later refund, but rather *the QF does not fund them at all*. As these examples show, the Joint Utilities' proposal provides significant financial benefit to QFs, while at the same time giving this Commission confidence that the Network Upgrades that ratepayers are forced to fund will provide systemwide benefits that justify their inclusion in rates because they are priority resources that are important to build *now*, rather than ten years from now. Stated differently, the Joint Utilities' proposal allows the Commission to be sure the Network Upgrades at issue are not ad hoc system gold plating.

The ICC further argues that the Joint Utilities' plan is too narrow because it does not adequately capture "all additions to a utility's transmission system" that interconnection customers may allow the utilities to avoid incurring.[99] While the ICC is correct that utilities spend money on facilities not included in their transmission plans, some of those upgrades are contingent facilities for higher-priority projects. As noted above, these upgrades show up in interconnection and

[98] In particular, the study listed the following contingent facilities as necessary to interconnect 329 MW: (1) a 115 kV transmission line identified in PacifiCorp's Transmission Plan, with an estimated cost of $7.5 million; and (2) a 230 kV transmission line required for a higher-priority request, with an estimated cost of $50 million. In addition to these contingent facilities, the study identified approximately $50 million in Network Upgrades for which the QF *was* financially responsible because they were not required by higher-priority requests or PacifiCorp's long-term transmission plan. After examining its initial cluster study report, the QF was able to reduce both its total proposed generation size, as well as its number of points of interconnection, which meant the QF could completely avoid the need for the $50 million contingent facility altogether and eliminate approximately half of the cost of the non-contingent Network Upgrades, arriving at approximately $24 million for 240 MW. The referenced studies and restudies are available on PacifiCorp's OASIS page under cluster area reference number TCA08.

[99] ICC's Posthearing Brief at 26.

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transmission service studies, not in a utility's transmission plan, and QFs would not be required to pay for, or even upfront fund, these Network Upgrades under the Joint Utilities' standard.

The ICC also argues that QFs should be exempt from paying for "equipment that would have been replaced in the near term even without the interconnection."[100] The Joint Utilities believe this new proposal is problematic for several reasons, but because the ICC did not raise this issue in testimony, the Joint Utilities' witnesses were unable to address its complexities. At a high level, however, this proposal raises concerns regarding sharing sensitive system information publicly; the potential for dispute regarding utilities' prioritization of maintenance tasks; and potentially complex timing and cost-allocation questions that are likely to be fact-specific and to require case-by-case adjudication. Therefore, the Joint Utilities recommend the Commission reject this proposal. If, however, the Commission chooses to open a Phase II of this proceeding, the Joint Utilities would be happy to provide additional factual testimony on this issue.

Finally, contrary to the ICC's suggestion, the Joint Utilities' position would not allow utilities to make QFs pay for "unreasonable" interconnection costs.[101] The ICC argues that a utility could require an interconnection customer to pay for any Network Upgrade it deems "necessitated" by the QF's interconnection "even if those upgrades and costs are unreasonable."[102] This statement is unsupported and illogical. "Necessitated" means necessary or required.[103] Unreasonable requirements are, by definition, not necessary. The ICC's concern is unfounded.

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[100] ICC's Posthearing Brief at 2.
[101] ICC's Posthearing Brief at 22.
[102] ICC's Posthearing Brief at 22.
[103] *Necessitate*, Merriam-Webster Dictionary, available at: https://www.merriam-webster.com/dictionary/necessitate (last visited Aug. 30, 2022).

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6. Oregon's 100 percent clean energy mandate does not overcome PURPA's requirements, and NewSun has not demonstrated that requiring retail customers to subsidize all QF Network Upgrades is the most cost-effective path to 100 percent clean energy.

NewSun argues that with Oregon's new requirement of 100 percent clean electricity, "[t]he concern about QFs triggering network upgrades is . . . now a red herring that distracts from and is mooted by the bigger issue of decarbonization."[104] Contrary to NewSun's suggestion, however, the state clean-energy mandate does not somehow override the federal PURPA requirements.[105] The Joint Utilities do not dispute that additional transmission will likely be required to meet the state's goals. But there is no reason to believe—and NewSun has not shown—that requiring customers to fund all QF-driven Network Upgrades is the most viable or cost-effective means of expanding the transmission system. Indeed, given the significant amount of system investments that will be needed to manage the clean-energy transition, the Commission should redouble its efforts to send clear signals about the investments it believes should be prioritized and the need to invest in the most cost-effective resources needed. Turning a blind eye to total resource cost by requiring uneconomic Network Upgrades for small scale QF development undermines, rather than advances, state energy policy and will make it more difficult to achieve the state's ambitious emission-reduction goals.

C. Conclusion

The Joint Utilities have offered the only approach to allocating QF-driven Network Upgrade costs that is consistent with PURPA's customer indifference standard. This proposal is easily implementable and fair to both QFs and retail customers because it incentivizes cost-effective project development to ensure customer rates remain just and reasonable, consistent with

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[104] NewSun's Posthearing Brief at 3.
[105] *See* U.S. Const. Art. VI., Cl. 2.

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the incentives imposed on regulated utilities and non-QF generators whose transactions are within this Commission's jurisdiction.

In contrast, Staff, ICC, NewSun, and OSSIA's proposals should be rejected because they rely upon the presumption that general modifications to the transmission system may benefit retail customers in a manner that justifies their inclusion in retail rates, which is inconsistent with this Commission's approach to analyzing prudent utility investment. Moreover, Staff's proposal assumes that such benefits can be quantified, and the costs allocated, which the Joint Utilities believe will be very difficult if not impossible. However, if the Commission wishes to provide clarification on its quantifiable systemwide benefits standard and order the parties to address implementation of that standard in Phase II, the Joint Utilities will work in good faith to implement that direction.[106]

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

Commission policy currently requires QFs directly interconnecting with a purchasing utility's system[107] to obtain NRIS, a comprehensive level of interconnection service. NRIS is

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[106] The ICC argues for the first time in its Posthearing Brief that Phase II should consist of comments, rather than testimony and a hearing. ICC's Posthearing Brief at 5. However, it would be premature for the Commission to require a specific procedure for Phase II at this time. Once the Commission determines whether Phase II is necessary and if so, what its scope will be, then the parties can weigh in regarding the appropriate process and the Administrative Law Judge can resolve any disagreements that arise.
The ICC also suggests comments would expedite the resolution of this docket and that no evidentiary hearing will be required because parties waived the hearing in Phase I. ICC's Posthearing Brief at 9-10. However, the Joint Utilities expect that any Phase II could be processed more efficiently than Phase I, even if a hearing is required. The Joint Utilities acknowledge that this docket has proceeded slowly to date, but that has been the result of a delayed motion to compel and various counsels' availability—not the fact that this docket's schedule included testimony and a hearing. *See* Joint Utilities' Response to NewSun's Motion to Compel Discovery (July 20, 2021) (noting that NewSun filed its motion to compel more than five months after the ALJ stayed the docket schedule to allow it to do so). The docket was stayed on January 21, 2021, the motion to compel was filed on May 28, 2021, and the motion was denied on October 22, 2021.

[107] While FERC ordinarily has jurisdiction over a generator's interconnection with a utility's 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. 18 CFR 292.303; 18 CFR 292.306; Order No. 2003 at PP 813-814.

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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 while this Commission still has control over the allocation of interconnection costs. The Commission should retain its current policy.

A. NRIS Is the Only Type of Interconnection Service that Accurately Reflects QF Demands on a Utility's System and Identifies the Network Upgrade Costs Associated with a Utility's Purchase of QF Power.

The ICC, NewSun, and OSSIA continue to argue that QFs should not be required to obtain NRIS. However, NRIS is the only type of interconnection service that accurately reflects QF demands on the utility system, and NRIS is the only type of interconnection service that identifies the Network Upgrade costs associated with a utility's purchase of QF power, while the Commission still has authority to address those costs under PURPA. It is thus critical that QFs obtain NRIS.

NRIS is a comprehensive interconnection service intended to make an interconnecting generator eligible to deliver its output to load on a firm basis.[108] Firm network transmission service (or firm network service) is used by utilities to integrate, economically dispatch, and regulate current and planned resources to serve load, and ensures that power can be delivered where it is needed to reliably serve retail customers.[109] Utilities use firm transmission service to serve customers from all types of resources. In the context of QF power delivery, FERC has made clear that firm transmission service is mandatory.[110] When a QF interconnects with a purchasing

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[108] *See, e.g.*, Order No. 2003 at PP 768, 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.").
[109] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/18.
[110] *Pioneer Wind,* 145 FERC ¶ 61,215.

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utility's system, it is important for the utility, the QF, and this Commission to understand what Network Upgrades will be necessary to accommodate the QF and ensure its power can be reliably used to serve the purchasing utility's customers. From a timing perspective, it is important to understand this issue at the interconnection stage, when the Commission has authority over the allocation of interconnection costs.

NRIS is the only type of interconnection service that can provide this transparency. NRIS studies identify Network Upgrades that are needed to ensure the aggregate of the generation in the area where the generator proposes to interconnect can be reliably delivered to the aggregate load on the transmission provider's system.[111] ERIS, by contrast, turns a blind eye to whether potential deliverability issues exist in the area of the generator's chosen interconnection site.[112] If QFs are entitled to obtain only ERIS studies, costly but necessary deliverability upgrades remain invisible until later in the process, when the utility's merchant function[113] must seek firm transmission service needed to deliver the QF generation to load.[114] Once transmission service studies are conducted, the utility's merchant function may discover that costly Network Upgrades are needed

[111] Order No. 2003, Appendix C at 16 (*pro forma* LGIP) (3.2.2.2). Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/16-17. 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. Order No. 2003, Appendix C at 9 (*pro forma* LGIP) ("Network Resource Interconnection Service"). An NRIS study does not necessarily identify *all* barriers to delivery, as some 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.

[112] Order No. 2003, Appendix C at 14-15 (*pro forma* LGIP) (3.2.1).

[113] As previously noted, Idaho Power has a load-serving, rather than merchant, function. For purposes of this brief, however, references to "merchant function" are intended to refer to Idaho Power's load-serving function.

[114] *See, e.g.,* Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/32-33.

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before the QF power can be used to serve the utility's customers.[115]

The Commission's current policy requiring QFs to obtain NRIS allows deliverability Network Upgrades to be identified early in the process. By requiring this transparency, and by requiring QFs to pay for the Network Upgrades they trigger, the Commission's current policy allows reasonable, cost-effective QF development to continue while protecting customers from unreasonable costs.[116] Requiring NRIS is therefore intended to protect utility customers, not penalize QFs.

1. A utility must be able to reliably serve load with QF power; NRIS identifies the deliverability Network Upgrades needed to do so.

NewSun argues that requiring QFs to obtain NRIS is unnecessary because QF generation does not actually need to be delivered to the utility's customers.[117] Instead, NewSun posits that utilities could simply deliver QF output to another utility or sell it into the wholesale market.[118] Implicit in NewSun's proposal is the assumption that deliverability Network Upgrades identified

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[115] As the Commission noted in *Blue Marmot*, a case involving an *off-system* QF, "we conclude that we cannot alter the avoided costs established in the Blue Marmots' LEOs to incorporate additional direct or indirect transmission-related costs, given that our interconnection process for QFs does not identify and capture the transmission-related costs that an off-system QF's delivery to a POD constrained by a transmission management decision may cause." *Blue Marmot V LLC et al. v. Portland Gen. Elec. Co.*, Docket UM 1829, Order No. 19-322 at 8 (Sept. 30, 2019). As the Commission noted, however, "[f]or the more common on-system QFs, transmission issues would have been identified through the separate interconnection process that is a precondition to commercial operation, not to contract execution." *Id.* at 16, n.33. To be clear, these "transmission issues" would only be identified through a *NRIS study*, *they would not show up in an ERIS study*. Moreover, requiring the QF to seek NRIS interconnection service *as soon as possible* will help the utility effectuate the Commission's directive in *Blue Marmot* that "[a] utility should review significant proposed QF delivery terms as early as possible, and ideally well before providing a final draft executable contract." *Id.* at 16. As the Joint Utilities have noted, it is difficult to ascertain with certainty what delivery constraints exist until appropriate engineering studies are completed. Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/35.

[116] Indeed, if a generator sites in an economically efficient location, there is little or no difference between the Network Upgrade costs required for ERIS and for NRIS. *See* Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/33 (explaining that in areas where there are no significant deliverability issues associated with QF interconnection, "NRIS and ERIS studies would be expected to show similar or identical interconnection results.").

[117] NewSun's Posthearing Brief at 7.

[118] NewSun's Posthearing Brief at 7.

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in NRIS studies are unnecessary because there is no need to use QF power to serve load. This is incorrect for many reasons.

First, utilities are not wholesale marketers, they are load-serving entities required to acquire cost-effective resources to serve their customers.[119] Oregon utilities are tasked with ensuring that retail customers are served with least-cost, least-risk resources, and this Commission is tasked with making sure they do.[120] These least-cost, least-risk resources acquired by utilities set the avoided cost under PURPA.[121] Avoided cost is defined in both FERC's regulations and Oregon law as the incremental costs to an electric utility that, but for the purchase from the QF, the utility would *generate* itself or *purchase* from another source.[122] To ensure that customers "remain indifferent to QF development,"[123] the Commission must ensure that when utility customers are forced to purchase QF power, they get the same benefit of the bargain they obtain from non-QF power: cost-effective generation that can be used to serve customer load.

Indeed, when FERC adopted its PURPA rules in 1980, it made clear that its "rules impose no requirement on the purchasing utility to deliver unusable energy or capacity to another utility

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[119] *See* Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/10.

[120] *See, e.g.*, *In re Least-cost Planning for Resource Acquisitions,* Docket UM 180, Order No. 89-507 at 2-3 (Apr. 20, 1989) (adopting least-cost planning for all energy utilities in Oregon and stating, "Least-Cost Planning is an approach to utility planning which requires consideration of all known resources for meeting the utility's load. . . ").

[121] Avoided cost prices are, by definition, based on the cost of alternative resources the utility would otherwise use to serve load.

[122] 18 CFR 292.101(b)(6); ORS 758.505(1).

[123] *See* 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)."); 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* Order No. 18-025 at 7 ("[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.").

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for subsequent sale."[124] This Commission has also found that requiring a resale "violate[s] the definition of avoided cost found in both federal and state law."[125] Moreover, the Utah PSC considered and soundly rejected a proposal that a utility should be required to sell into the market the QF output it cannot use due to lack of transmission capacity, stating that the QF in that case "offers no legal basis to support this extraordinary claim, and we conclude no such requirement exists."[126] This Commission should similarly reject NewSun's suggestion that utilities should be required to re-sell QF output to avoid the need for NRIS.

If, as NewSun suggests, a QF can force a utility to pay for power that cannot be used to serve customers, the customers will be objectively worse off as a result of the QF purchase. If, as NewSun suggests, a QF can force utility customers to purchase power at avoided cost and then *also* pay for any and all Network Upgrades needed to modify the transmission system so that QF power can be reliably used to serve customer load, the customers will again be objectively worse off as a result of the QF purchase.

Even if a utility could be forced to purchase QF power that it would simply have to turn around and sell somewhere, there is no way to guarantee that the purchasing utility will be able to obtain sufficient transmission capacity to deliver the QF output to a wholesale market hub where it can actually be sold, particularly if the QF is located in a constrained location and interconnected with ERIS. As the Joint Utilities' transmission witnesses noted, "in many cases, constraints that

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[124] Order No. 69 at 12,219; *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, 117 FERC ¶ 61,078, P 24 (2006) (Order No. 688) (utilities not obligated to pay for QF energy that is not needed) (citing *S. Cal. Ed. Co.*, 70 FERC ¶ 61,215, 61,677-78, reh'g denied, 71 FERC ¶ 61,269, 62,078 (1995)).

[125] *In re Investigation of Avoided Costs and of Cost Effective Fuel Use and Resource Development*, Docket UM 21, Order No. 84-720 at 22 (Sept. 12, 1984) (using resale prices as avoided costs "would push the price paid to QF's above the cost of alternative resources available to the utility. The ratepayers would pay more for the output of the QF than they would have paid for resources absent the QF purchase.").

[126] Glen Canyon Order at 21.

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prevent a QF's power from being delivered to load without the construction of Network Upgrades will also prevent delivery to hypothetically available 'markets' without the construction of Network Upgrades."[127] Moreover, an overabundance of non-curtailable resources in a constrained area, such as generation in a load pocket that cannot be exported out, can create reliability issues on the utility's system and adjacent systems.[128] This would require a utility to address delivery constraints associated with the need to move QF power in any event.[129] In short, NewSun's proposed solution is no solution at all.

Further, even if NewSun's proposed re-sales were possible, they would impose additional costs on the utility, which would harm utility customers in violation of PURPA. For example, the utility would need to expend resources to acquire the transmission service to a market or third-party and would likely incur costs to facilitate the re-sale. In addition, a re-sale into the market would almost certainly be at a lower price than that paid to the QF during times when QF prices include a capacity payment, and when market pricing is negative, the re-sale would actually impose *additional* costs on the utility.

If the Commission were to eliminate the requirement that QFs obtain NRIS, as NewSun recommends, retail customers would become the primary funders of the Network Upgrades required at the QF's location, regardless of their magnitude. The Joint Utilities have referred to this as the "ERIS cost-shifting problem."[130] NewSun does not seem to dispute the cost-shifting issue; it simply seems to disagree that it is a problem. In fact, it would be unjust, unreasonable,

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[127] Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/420.
[128] In this scenario, the addition of QF power could force the utility to curtail other renewable resources in the load pocket, assuming they were curtailable. It seems unlikely that Congress intended this result when it passed PURPA, and unlikely that the Commission would view this as a cost-effective path forward to carbon reduction.
[129] Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/1.
[130] Joint Utilities' Posthearing Brief at 36.

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and inconsistent with PURPA's customer indifference mandate to require utilities to purchase QF power at avoided cost when, by virtue of transmission delivery constraints at the QF's chosen location, that power may provide limited or no value to customers.

2. QF power must be delivered on firm transmission and cannot be curtailed to avoid the need for NRIS.

In order to reliably serve the customers who are forced to purchase it, QF power must be delivered on firm transmission.[131] 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, rather than curtailing the QF.[132] As a result, the utility's merchant function, in its role as the transmission customer, must obtain firm transmission service to deliver the directly interconnected QF's power to load.

FERC's decision in Pioneer Wind demonstrates FERC's intolerance for curtailment negotiations in lieu of PURPA-compliant options. That decision holds that a purchasing utility may curtail a QF's output in only two circumstances: (1) in system emergencies, pursuant to 18 CFR 292.307(b); or (2) in light load periods, pursuant to 18 CFR 292.304(f), if the QF is selling its output on an "as available" basis.[133] NewSun and ICC do not appear to disagree with the Joint Utilities' description of FERC's holding. They simply argue that, despite *Pioneer Wind's* holding, a QF has the right to negotiate curtailment under 18 CFR 292.301(b).[134] Specifically, NewSun argues that a QF may negotiate curtailment provision so long as the QF retains the right "to invoke its full rights under PURPA."[135] Thus, NewSun concludes, "something less than fully firm

[131] This is not unique to QFs; utilities use firm transmission service to serve load as a matter of course.
[132] *Pioneer Wind,* 145 FERC ¶ 61,215; Joint Utilities' Prehearing Brief at 33-34.
[133] *Pioneer Wind* at P 36.
[134] ICC's Posthearing Brief at 45-46; NewSun's Posthearing Brief at 9-10.
[135] NewSun's Posthearing Brief at 10.

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delivery service can be negotiated by the QF."[136] The ICC makes a similar argument.[137] The ICC and NewSun appear to believe that the Commission should eliminate its NRIS requirement, allow the QF to obtain ERIS, and simply order the QF and utility to agree to curtailment provisions rather than address the need for system upgrades. The Joint Utilities respectfully disagree that the ICC and NewSun proposals are legal or operationally practical.

FERC's *Pioneer Wind* order must be read in the context of the facts of that case, which demonstrate that NewSun and ICC are incorrect. The *Pioneer Wind* dispute arose nearly ten years ago,[138] when PacifiCorp's system was becoming constrained[139] and when PacifiCorp and its state commissions had little experience addressing the reliability and ratepayer issues that would arise when a QF sited its project in a constrained area. Pioneer Wind was an 80 MW QF[140] that developed its project behind a significant transmission constraint. As a result, the QF's power was trapped in the constrained area and could not be exported to PacifiCorp's wider system.[141] While PacifiCorp understood that it was obligated to take Pioneer Wind's power, it also understood that the QF's power was not particularly valuable to customers. Therefore, PacifiCorp availed itself of the negotiation process contemplated by 18 CFR 292.301(b), which states:

> (b) **Negotiated rates or terms.** Nothing in this subpart:
>
> > (1) Limits the authority of any electric utility or any qualifying facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by this subpart; or

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[136] NewSun's Posthearing Brief at 10.
[137] ICC's Posthearing Brief at 45-46.
[138] Pioneer filed its petition in October 2013.
[139] *Pioneer Wind* at P 11; *Pioneer Wind*, Motion to Intervene and Answer of PacifiCorp in Opposition (PacifiCorp's Answer) at 7 (Oct. 23, 2013).
[140] *Pioneer Wind* at P 2, *Pioneer Wind,* Pioneer Wind Park I, LLC's Petition for Declaratory Order and Request for Expedited Consideration (Pioneer Wind's Petition) at 4 (Oct. 2, 2013).
[141] *Pioneer Wind* at P 12; *Pioneer Wind*, PacifiCorp's Answer at 8.

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> (2) Affects the validity of any contract entered into between a qualifying facility and an electric utility for any purchase.[142]

PacifiCorp believed there were two options for addressing Pioneer Wind's situation appropriately.[143] One was straightforward: PacifiCorp could offer the QF a PPA with a low avoided cost price that accurately reflected the value of the QF's power within the constrained area.[144] In PacifiCorp's view, this option was consistent with Wyoming's avoided cost methodology and thus was intended to be consistent with FERC's PURPA regulations, rather than a non-compliant term negotiated under 18 CFR 292.301(b).[145] PacifiCorp could also offer the QF a PPA with a high avoided cost price coupled with a "priority curtailment" provision that would allow PacifiCorp to curtail the QF ahead of preexisting generators when the QF's power could not be exported.[146] PacifiCorp's expectation was that the constraint bottling up Pioneer Wind's power would be relieved during the term of the PPA when a segment of PacifiCorp's Gateway project was scheduled to come online, at which point the QF would enjoy a higher price for the remainder of the PPA term.[147] PacifiCorp offered this innovative solution under 18 CFR 292.301(b), believing the higher avoided cost price might be preferable to Pioneer Wind.[148]

However, Pioneer Wind did not like the curtailment provision. In response to Pioneer Wind's objections, PacifiCorp advised Pioneer Wind that it would offer Pioneer Wind a PPA

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[142] 18 CFR 292.301(b).
[143] *Pioneer Wind* at PP 10, 25; *Pioneer Wind*, PacifiCorp's Answer at 9.
[144] *Pioneer Wind* at P 12; *Pioneer Wind*, PacifiCorp's Answer at 7. Within the constrained area, the only resources PacifiCorp could back down and thus avoid were lower-cost resources.
[145] *Pioneer Wind* at P 12; *Pioneer Wind*, PacifiCorp's Answer at 9. While Wyoming's methodology has changed over time, the availability of transmission capacity can affect a QF's avoided cost stream. *See In re Application of Rocky Mountain Power to Implement a Permanent Avoided Cost Methodology for Customers that do not Qualify for Tariff Schedule 37 - Avoided Cost Purchases from Qualifying Facilities*, Wyo. Pub. Serv. Comm'n Docket No. 20000-388-EA-11, Record No. 12750, Memorandum Opinion, Findings and Order at 18-22 (Nov. 4, 2011) ("Schedule 38 Order").
[146] *Pioneer Wind* at P 13; *Pioneer Wind*, PacifiCorp's Answer at 9.
[147] *See Pioneer Wind* at P 13 and n.20; *Pioneer Wind*, PacifiCorp's Answer at 11-12.
[148] *See Pioneer Wind* at P 32; *Pioneer Wind*, PacifiCorp's Answer at 16, n.25.

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without the curtailment provision but with a lower avoided cost price.[149] Pioneer Wind did not like the idea of a lower avoided-cost price, either. Instead of continuing negotiations with PacifiCorp, and instead of invoking the Wyoming process for dispute resolution (a process that would have allowed the Wyoming Public Service Commission (PSC) to weigh in on the avoided cost price issue),[150] Pioneer Wind instead filed a complaint at FERC alleging that PacifiCorp was forcing it to accept priority curtailment.[151] To be clear, the alleged "force" was simply the lower price in the alternative, PURPA-compliant, draft PPA. Pioneer Wind argued that PacifiCorp was instead required to accept the first PPA *with* the high avoided cost price *but without* the curtailment provision.[152]

PacifiCorp viewed the filing of the complaint as inconsistent with 18 CFR 292.301(b), as well as with the Wyoming PSC's authority to determine Pioneer Wind's appropriate avoided cost price, and PacifiCorp emphasized these points at FERC.[153] PacifiCorp argued that it was entitled to offer the QF a curtailment option, given that 18 CFR 292.301(b) allows parties to negotiate PPA provisions.[154] PacifiCorp's point was that if parties were permitted to negotiate under 18 CFR 292.301(b), there would be periods of disagreement before they ultimately reached consensus. Given the significant contingencies and operational issues in Pioneer Wind's location, PacifiCorp

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[149] *Pioneer Wind* at P 13 and n.21 and 22; *See Pioneer Wind,* PacifiCorp's Answer at 8.
[150] At the time, PacifiCorp's Wyoming Schedule 38 contained the following provision: "*Before filing a complaint with the Wyoming Public Service Commission on any specific power purchase agreement term not agreed upon between the counterparty and the Company, a counterparty must wait 60 calendar days from the date it notifies the Company in writing that it cannot reach agreement on a specific term*." PacifiCorp d/b/a Rocky Mountain Power's Wyoming Schedule 38, "Avoided Cost Purchases from Non-Standard Qualifying Facilities" ("Schedule 38") (2013). *Pioneer Wind,* PacifiCorp's Answer at 15. PacifiCorp's current Schedule 38 contains similar language. *See* Rocky Mountain Power Schedule 38, available at: https://www.rockymountainpower.net/content/dam/pcorp/documents/en/rockymountainpower/rates-regulation/wyoming/rates/038_Avoided_Cost_Purchases_from_Non_Standard_Qualifying_Facilities.pdf.
[151] Pioneer Wind's Petition was filed on Oct. 2, 2013, and docketed as EL14-1-000.
[152] *Pioneer Wind* at PP 8 and 24. Pioneer believed its legally enforceable obligation entitled it to a higher avoided cost price; PacifiCorp believed Pioneer was entitled to a lower avoided cost price.
[153] *Pioneer Wind* at PP 15 and 16.
[154] *Pioneer Wind* at P 16; *Pioneer Wind,* PacifiCorp's Answer at 20.

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argued, allowing parties to discuss alternative solutions was appropriate. Yet as PacifiCorp explained to FERC, Pioneer Wind not only declined to finish the negotiations before filing a complaint, it also failed to give the Wyoming PSC any chance to weigh in on the dispute at all.[155] PacifiCorp emphasized that FERC should dismiss the complaint as premature to allow negotiations of various PPA options to be completed, as Wyoming PURPA schedules required, and to allow the Wyoming PSC the opportunity to address the parties' dispute.

Without even acknowledging 18 CFR 292.301(b), without acknowledging the Wyoming PSC's authority over the terms and conditions of QF PPAs, and without acknowledging the fact that Pioneer Wind had received an *alternative* PPA from PacifiCorp without a curtailment provision, FERC simply shut down the curtailment discussion:

> We find that the proposed section 4.4(b) curtailment provision violates PURPA and the Commission's PURPA regulations. The Commission's PURPA regulations permit a purchasing utility to curtail a QF's output in two circumstances: (1) in system emergencies, pursuant to section 292.307(b) of the Commission's regulations; or (2) in light load periods, pursuant to section 292.304(f) of the Commission's regulations, but only if the QF is selling its output on an "as available" basis.
>
> It is undisputed here that Pioneer Wind and PacifiCorp intend to enter into a long-term, fixed rate PPA based on avoided costs calculated at the time the obligation is incurred . . . . Under these circumstances, the Commission's PURPA regulations only permit PacifiCorp to curtail Pioneer Wind's QF output during system emergencies, pursuant to section 292.307(b) of the Commission's regulations.[156]

FERC explained that the parties should focus their negotiations on avoided cost instead.

> [I]n response to our decision here, we would expect that the proposed section 4.4(b) curtailment provision will be removed from the draft PPA, and that PacifiCorp and Pioneer Wind will be able to negotiate PPA prices reflective of each party's view as to fluctuations in the value of capacity and energy, and as to the costs avoided by PacifiCorp as a result of the purchase from Pioneer Wind. We note that it is the

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[155] *Pioneer Wind* at 15; *Pioneer Wind*, PacifiCorp's Answer at 2. Pioneer Wind filed its Petition at FERC prior to invoking the dispute resolution provisions of PacifiCorp's Schedule 38 on file with the Wyoming PSC.
[156] *Pioneer Wind* at P 36.

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> state's responsibility in the first instance to determine an avoided-cost rate consistent with the Commission's PURPA regulations.[157]

The parties went back to Wyoming to determine the appropriate PPA terms and conditions without curtailment, and without further discussion of curtailment options, consistent with FERC's order. Thus, PacifiCorp's experience with Pioneer Wind shows that the ICC's and NewSun's idea that freely negotiated curtailment is a viable option is simply not true.

Even if Pioneer Wind permitted QF curtailment, which it does not, neither the ICC nor NewSun address the impracticality of implementing meaningful curtailment provisions that would eliminate the need for NRIS. As an initial matter, the QF and the utility would have to agree upon such provisions. The Commission should note that NewSun describes Section 301(b) as a provision that gives negotiation rights to the QF.[158] In fact, the provision requires *mutual* agreement by the QF and the utility.[159] Thus, if utilities were actually permitted to curtail QFs under PURPA, which they are not, the Joint Utilities would not agree to curtailment provisions unless those provisions were sufficiently robust to mitigate the ERIS cost-shifting problem and ensure ratepayers were protected from the financial liability associated with an obligation to purchase QF power that cannot be economically used to serve load. Given that NewSun does not believe there are any ratepayer considerations that bear on this issue at all, as well as NewSun's view that utilities should be forced to purchase and dump undeliverable QF power, the Joint Utilities question whether a negotiation under Section 301(b) would be fruitful, or whether NewSun would simply exercise its right to "invoke its full rights under PURPA"[160] as Pioneer did.

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[157] *Pioneer Wind* at P 41.
[158] NewSun's Posthearing Brief at 9-10.
[159] 18 CFR 292.301(b).
[160] NewSun's Posthearing Brief at 10.

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Moreover, the Joint Utilities have described a number of practical challenges associated with implementing meaningful curtailment provisions.[161] Neither the ICC nor NewSun address these issues in testimony or briefing; consequently, the Joint Utilities are unclear at this late juncture how the QFs would propose to resolve them. In any event, as the Joint Utilities' transmission witnesses have noted, if QF curtailment were legal under *Pioneer Wind*, a QF agreeing to voluntary curtailment could, in theory, be delivered on non-firm transmission service, which could potentially prevent the need for a transmission provider to perform a deliverability analysis or identify deliverability-related Network Upgrades.[162] The use of non-firm transmission, of course, would mean that the QF power may be unable to flow when utility customers need it most. But from an operational perspective, even if a utility were to secure non-firm transmission service to deliver the QF's power, the periods when that non-firm transmission service is unavailable would be driven by system conditions that could change over time. Thus, the utility's need to curtail a QF may not always coincide with the periods when a QF believes curtailment should occur.[163]

For example, under a hypothetical QF PPA with curtailment provisions, the QF's power might be able to flow on non-firm transmission for some period of the PPA term. But factors such as system changes and firm customer use of the system during the term of the PPA could create constraints that require significant QF curtailment, through no fault of the utility. If QF power were suddenly unable to flow in year three, perhaps because more wind or solar resources came online and were using the transmission system during the same time periods, the QF may suddenly find itself curtailed on a regular basis. If the QF is unable to generate the income it anticipated,

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[161] Joint Utilities' Posthearing Brief at 47; Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/29.
[162] Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/249.
[163] Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/249.

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the QF—like the QF in *Pioneer Wind*—might suddenly "take back" the curtailment provision it agreed to under Section 301(b) or seek its reinterpretation.[164]

The only concrete example of how QF curtailment might be achieved provided by the QF parties is the Puget Sound Energy (PSE) Tariff cited by the ICC.[165] As the Joint Utilities explained in their Posthearing Brief, that tariff appears legally suspect; moreover, it appears to provide little or no relief from significant Network Upgrade costs because it requires a QF to demonstrate its "deliverability."[166] Thus, the sole example provided by QF parties appears ineffective as a potential solution for the types of deliverability-driven Network Upgrades that drive interconnection costs in Oregon.

In the end, neither the ICC nor NewSun provides a solution to the legal issue caused by *Pioneer Wind,* or the practical problems caused by Section 301(b) and QF curtailment. Their arguments in support of permitting QF curtailment should be rejected. QF power must be delivered using firm transmission service, and only NRIS studies will identify deliverability Network Upgrades that must be resolved before firm transmission service can be used to deliver QF power from the QF's chosen location to customer load.

B. QFs Have Articulated No Workable Alternative to NRIS.

1. Transmission providers cannot simply offer "creative solutions" to solve challenges caused by FERC requirements.

The ICC continues to assert that utilities are obligated to come up with "innovative and cost-

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[164] Finally, these operational challenges are compounded by implementation problems. QF parties have consistently stated that they need a signed PPA to obtain financing, and that they are entitled to a PPA with fixed prices as soon as possible – including before they have any idea what their Network Upgrades might be. The solutions proposed by QFs would require repeated, specific, individualized negotiations that are fraught with implementation challenges.
[165] ICC's Prehearing Brief at 21 (*citing* Interconnection Customer Coalition/301, Lowe/1-17 (*citing* PSE's Schedule 153 QF Transmission Interconnection Service Tariff and additional explanatory materials, and WUTC Staff Memorandum for Dec. 23, 2021 Open Meeting)).
[166] *See* Joint Utilities' Posthearing Brief at 43-48.

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effective solutions" to high interconnection costs and criticizes them for failing to do so.[167] The Joint Utilities have addressed the ICC's arguments about various potential alternative arrangements in prior briefing and will not repeat all of those points here.[168] But it should be noted in response to the ICC's criticism that the federal transmission system is highly regulated, as are the requirements for obtaining firm transmission service.[169] Transmission service is not generally susceptible to innovative new ideas implemented at the discretion of individual transmission providers, particularly ideas that would undermine the reliability of load service or advantage a specific class of generators.

Moreover, the conservative requirements associated with firm transmission service were not created to stifle QF development. They are intended to ensure energy is reliably available during times of peak capacity, when it is needed most.[170] The fact is, when a generator sites in a constrained area and the utility must take and reliably deliver that generator's power to load, the Network Upgrades needed to enable that delivery can be expensive.[171] The Joint Utilities are aware of no "innovations" that can solve this practical reality.

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[167] ICC's Posthearing Brief at 39.
[168] Joint Utilities' Posthearing Brief at 36-49.
[169] Utility transmission planning requirements, transmission service requests, and regulatory requirements for reserving and using transmission service are highly regulated by FERC. Moreover, utilities are subject to penalties for noncompliance with FERC's regulations, NERC reliability requirements, and OATT requirements. The Joint Utilities invite the Commission to review any of the Joint Utilities' FERC-jurisdictional OATTs. *See, e.g.,* PacifiCorp's OATT at https://www.oasis.oati.com/woa/docs/PPW/PPWdocs/20220831_OATTMaster.pdf. The Commission will see a great level of detail mandating precisely how transmission service must be addressed by transmission providers. The OATT defines transmission products, provides detailed procedures for seeking transmission service, sets out requirements for receiving and processing transmission service requests in an exceptional level of detail, establishes study requirements, and a great deal more.
[170] An NRIS study evaluates whether the aggregate of generation in the area where the generator proposes to interconnect can be reliably delivered to the aggregate of load on the transmission provider's system during peak load conditions. This ensures the interconnecting generator's power "can flow during peak load conditions rather than being bottled up." Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/ 17.
[171] *See e.g., Entergy Servs., Inc.,* 137 FERC ¶ 61,199 at P 52 (2011); *Exelon Wind,* 140 FERC ¶ 61,152 at P 50 (2012).

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2. Using firm point-to-point transmission service does not solve the ERIS cost-shifting problem.

The ICC repeats its assertion that the ERIS cost-shifting problem could be avoided by allowing QF generation to be delivered using firm point-to-point transmission service, while still designating the QF as a network resource.[172] But simply switching a transmission service request from firm Network Service to firm point-to-point service solves neither the deliverability nor cost-shifting issues associated with QF siting.[173] If transmission constraints prevent the delivery of a QF's power to load, 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.[174] It is deliverability constraints that prevent the firm deliverability of power—not the type of firm transmission service selected.

The ICC also suggests, as it has throughout this proceeding, that the Commission should simply allow a QF in a utility load pocket to obtain ERIS and force the utility to use point-to-point transmission service to wheel the QF power elsewhere.[175] As the Joint Utilities have explained, however, third-party transmission may be available across non-contiguous portions of a utility's system in some instances, but that is not always the case. If third-party transmission is not available and the purchasing utility is required to rely on its own transmission system to export the power, it may be forced to build new transmission to move power out of that load pocket—not only to accommodate the QF purchase, but also to address the reliability issues the QF power may create if it cannot be exported.[176] As the Joint Utilities have explained, transmission lines needed

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[172] ICC's Posthearing Brief at 40; Interconnection Customer Coalition/100, Lowe/25.
[173] *See* Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/31.
[174] *See* Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/31.
[175] ICC's Posthearing Brief at 43.
[176] *See* Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/30-31.

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to export power out of a load pocket can be the most expensive type of Network Upgrades identified in NRIS studies, sometimes costing hundreds of millions of dollars.[177] QFs, not Oregon ratepayers, should bear this financial risk.

As the Joint Utilities noted in their Posthearing Brief, there may be a workable option for a QF that wishes to interconnect using ERIS in a load pocket or other area from which its power would need to be exported. If the QF is willing to (1) make its own firm point-to-point transmission service arrangements[178] to deliver its power from the point of interconnection to an unconstrained area of the purchasing utility's system,[179] and (2) bear all risk that the transmission needed to deliver the QF power might become unavailable during the term of the PPA, such an arrangement could potentially be workable. The Joint Utilities emphasize, however, that the QF's PPA would need to clearly reflect the QF's obligation to deliver its full output to a location where it can be economically used to serve load, as well as meaningful remedies for the purchasing utility if the QF does not or cannot do so.[180]

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[177] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/20; Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/30-31.

[178] In this example, the QF would typically need firm, PTP transmission service on the interconnecting utility's system to the edge of the interconnecting utility's system, and then a second firm, PTP wheel across another transmission provider's system to an unconstrained location on the purchasing utility's system, along with necessary ancillary services and other delivery requirements established for Oregon off-system QFs.

[179] *See e.g.,* Order No. 19-322 at 7 (stating that "neither FERC precedent nor Oregon law require a utility to accept an off-system QFs unilateral choice of delivery point, regardless of transmission constraints and legitimate competing uses of reserved transmission[]"); Order No. 19-322 at 12 (holding that "FERC precedent does not require utilities to accept an off-system QFs [point of delivery] where legitimate constraints exist").

[180] In this instance, the QF would effectively be treated as an off-system QF. Again, for *standard* QFs, the standard off-system QF PPA would need to be modified to reflect new requirements. For non-standard QFs, the QF would need to accept the risk and responsibility for firm delivery of its generation to an unconstrained point of delivery and comply with any other obligations needed to adhere to legal requirements and/or hold customers harmless. For example, assuming such an interconnection were FERC-jurisdictional and to PacifiCorp, the QF would need to demonstrate commercial readiness as part of PacifiCorp's cluster-study process.

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C. NewSun's Comparisons to Non-QF or FERC-Jurisdictional Generators Are Irrelevant and Its Claims of Discrimination Unfounded.

1. Requiring NRIS does not "discriminate" against QFs.

Requiring QFs to obtain NRIS does not illegally discriminate against QFs, despite NewSun's arguments.[181] First, FERC's regulations allow states to determine and assess interconnection costs for directly interconnected QFs, while FERC's policies govern all other generators. It is not discriminatory for the state to adopt its own policies governing those interconnections over which it has jurisdiction, particularly when FERC has made clear that FERC's own policies do not govern them.[182] As FERC has noted, a "QF selling at retail is not eligible to interconnect under . . . Order No. 2003" because "such interconnections are governed by state law."[183] One would assume FERC believed that individual state policies could and would differ from FERC's.

Second, the Joint Utilities have explained why PURPA and state regulatory policy require QFs to obtain NRIS, while non-QFs need not obtain NRIS.[184] The difference is due to the different regulatory requirements (FERC or state) imposed on QF and non-QF transactions, which are necessary to account for the specific demands QFs place on the system, and to financially level the playing field with respect to the overall cost of resource procurement that can be imposed on retail ratepayers for QF and non-QF generation. The Commission's current QF interconnection policies ensure that all utility resource procurement—including procurement from QFs—consistently result in just and reasonable rates.

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[181] NewSun's Posthearing Brief at 18.
[182] 18 CFR 292.306; Order No. 2003 at PP813-814.
[183] *Standardization of Small Generator Interconnection Agreements and Procedures*, 111 FERC ¶ 61,220 (2005) (Order No. 2006), order on reh'g, 113 FERC ¶ 61,195 at P 102 (2005) (Order No. 2006-A).
[184] These include, for example, 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. *See, e.g.*, Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/28-30, 32-33; Joint Utilities/200, Wilding-Macfarlane-Williams/7-8; Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/7-8.

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Third, state interconnection policy—the policy applicable to QFs—makes all state-jurisdictional generators responsible for the costs they cause. Even without PURPA's customer indifference mandate, Oregon state regulatory policy would require QFs to pay for the interconnection costs they cause. Finally, the fact that some QFs may elect to become non-QFs, or vice versa, as NewSun describes at length,[185] or the fact that some QFs may decide to bid into an RFP, while others may not, is not evidence of discrimination and does not change the fundamental policy principles underlying this Commission's appropriate discharge of its duties to retail customers.

2. The fact that an off-system QF can select ERIS is irrelevant to policy considerations for on-system QFs.

NewSun also explains that an off-system QF "can avoid onerous state requirements" by electing to sell off-system (or even by selling a portion of its output to someone other than the interconnecting utility).[186] NewSun is referring to the fact that the interconnections of off-system QFs are FERC-jurisdictional, not state-jurisdictional. Thus, when a QF interconnects with a *non-purchasing* utility and uses that utility's transmission system to wheel its power to a *purchasing utility* (presumably an Oregon utility), FERC cost-allocation policy applies to that QF's interconnection-driven Network Upgrade costs. In such a scenario, the QF can, indeed, require the *non-purchasing* utility to upgrade its transmission system and roll the costs of the upgrades into its transmission rates. That interconnecting transmission provider might be an Oregon transmission provider, it might be BPA, or it might be a transmission provider in another state.

[185] NewSun's Posthearing Brief at 18.
[186] NewSun's Posthearing Brief at 9.

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Regardless of which transmission provider the QF chooses to interconnect with, the state has no authority to allocate the Network Upgrade costs caused by the QF on that third-party's system.

In the context of a QF's off-system sale, the state commission reviews different elements of the transaction: the PPA of the Oregon purchasing utility and the potential constraints or Network Upgrades needed at the QF's chosen point of delivery. In this scenario, the Commission exercises its authority to ensure the PPA comports with PURPA's mandates and that the QF delivers its power to a location where it can economically be used to serve customers.[187] In short, in the case of an off-system QF, the Commission exercises all the authority it possesses to protect the purchasing utility's customers. While it is true that PURPA does not give a state commission authority over one leg of an off-system QF's transaction—the interconnection and wheel—the Joint Utilities are puzzled by NewSun's suggestion that the Commission should therefore voluntarily abdicate its duty to protect customers in cases where it *does* have jurisdiction (that is, in the case of directly interconnected QFs).

In any event, as the Joint Utilities have explained, off-system QFs are different from on-system QFs in meaningful ways. An off-system QF can certainly interconnect with ERIS, but once an off-system QF interconnects with a non-purchasing utility's system, the off-system QF is responsible for *making its own firm transmission arrangements* to deliver its power to the purchasing utility's system.[188] If the QF sites in a constrained area, firm transmission service—

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[187] *See* Order No. 19-322 at 16.

[188] 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 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). As is self-evident, however, this tool does not work unless firm-third-party transmission happens to be available. Moreover, 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 QFs to obtain NRIS as a policy matter.

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point-to-point or otherwise—may simply be unavailable.[189] If that is the case, the QF's choice of ERIS will mean it can interconnect but it cannot deliver its power to the purchasing utility.

Fortunately, in the case of an off-system QF, the Network Upgrades triggered by the QF's interconnection will be the QF's problem, as they may create practical limits to its ability to deliver generation to the purchasing utility on firm transmission. Moreover, an off-system QF, unlike an on-system QF, is required to pay for and use the transmission service its Network Upgrades require, and thus the QF funds a share of system costs. Importantly for purposes of this docket, any costs related to an off-system QF's need for firm transmission will not be imposed on the purchasing utility's retail customers.[190] For the purchasing utility, the ERIS cost-shifting problem simply never arises.[191] Thus, an off-system QF's selection of ERIS or NRIS is irrelevant for a purchasing utility and its customers.[192]

3. The fact that a utility's non-QF resources can select ERIS is irrelevant to policy considerations for on-system QFs.

NewSun further notes that a generator does not need to be a designated network resource to serve a utility's load and points to designated network resources that interconnected with ERIS to support its position that Oregon QFs should be allowed to interconnect with ERIS.[193] According

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[189] Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/20-21 and Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/37 ("Deliverability constraints do not simply disappear because a utility chooses a different form of firm transmission service[]").

[190] Joint Utilities' Posthearing Brief at 41. The third-party transmission provider may, of course, need to upgrade its system. In PGE's case, this is frequently BPA.

[191] While an off-system QF will not trigger interconnection-driven Network Upgrades with the purchasing utility, it may trigger the need to construct Network Upgrades to relieve transmission constraints at the QF's chosen point of delivery, an issue this Commission addressed in its *Blue Marmot* order. In that order, the Commission made clear that QFs do not have unlimited discretion to choose where to deliver their power, and that retail customers should not be exposed to financial liability for a QF's decision to deliver power at a constrained point of delivery. Order No. 19-322.

[192] If that off-system QF is located in a constrained area of a third-party transmission provider's system, the QF may be out of luck trying to deliver the power to the purchasing utility on a firm basis, making efficient siting a priority for off-system QFs, as well as on-system QFs.

[193] NewSun's Posthearing Brief at 8.

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to NewSun, the utility chooses whether to designate a QF as a network resource, so the utility should pay for the cost of any Network Upgrades necessary to do so.[194] These arguments are beside the point, however. No matter how a QF is interconnected to a utility's system, the purpose of a QF PPA is to serve customers, and the purpose of designating the QF PPA as a network resource is to enable the utility to use the QF PPA to serve load.[195] Firm network transmission service is how utilities typically integrate, economically dispatch, and regulate current and planned resources to serve load.[196] Thus, it is nonsensical to say it is the utility's "choice" to designate the QF as a resource to be used to serve load; ensuring the QF PPA can be used for load service is the very point of the PPA.

The Joint Utilities have never contended that a generator that obtains ERIS cannot be a designated network resource or otherwise be used to serve load on a firm basis—rather, the Joint Utilities have explained in testimony that generators that obtain ERIS do not identify and pay for the Network Upgrades required to reliably reach load during the interconnection process.[197] This creates a cost-shifting problem when the interconnecting generator and the entity acquiring the transmission service are not the same.[198]

4. For non-QF generators, the selection of ERIS or NRIS has no financial impact on customers; non-QF purchases are evaluated as a whole to ensure they are prudent, least-cost, least-risk resources.

When utilities purchase power from *non*-QF generators, a state commission has no jurisdiction over the allocation of the Network Upgrades identified in the generator's interconnection studies *or* its associated transmission service request. Both are FERC-

[194] NewSun's Posthearing Brief at 8.
[195] *See* Joint Utilities' Posthearing Brief at 7-9.
[196] *See, e.g.*, Joint Utilities/100, Vail-Bremer-Foster-Larson-Ellsworth/17.
[197] Idaho Power requires all resources that will be designated as a network resource to interconnect with NRIS.
[198] Joint Utilities' Posthearing Brief at 35-36.

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jurisdictional. A state commission therefore ensures that the costs associated with non-QF acquisitions are just and reasonable and fair to customers by reviewing all elements of the acquisition for prudence—including the costs associated with both interconnection and delivery. As the Joint Utilities have explained, when utilities execute PPAs voluntarily with non-QFs, utilities take steps to ensure those PPAs are prudent on an all-in basis, including interconnection and delivery costs.[199] For example, PacifiCorp's recent RFP not only required bidders to demonstrate that their price of power was competitive, but also PacifiCorp would not commit to purchase from any bidder until studies were conducted to ensure that, even with interconnection and transmission costs, the transaction was prudent on an all-in basis.[200]

Consequently, a utility can require as part of its resource procurement process that a non-QF generator obtain NRIS, as Idaho Power does, to ensure the generator's power can be delivered to load. Alternatively, a utility's resource acquisition arm may allow the non-QF generator to obtain ERIS, as PGE and PacifiCorp do, and pair the ERIS interconnection request with a subsequent request for firm transmission service. Both methods ensure the firm delivery of the generator's power to the utility's customers. Neither has a different impact on retail customers.

D. NewSun's Proposal to Allow QFs to Be Studied for NRIS and ERIS Should Be Considered in Docket UM 2111.

NewSun argues the Commission should allow a QF to be studied for both ERIS and NRIS to allow QFs subject to Oregon's jurisdiction to decide whether they would prefer to sell power as a QF or non-QF.[201] NewSun argues that "developers may be considering alternative offtake

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[199] *See* Joint Utilities/300, Wilding-Macfarlane-Williams/38.
[200] 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.
[201] NewSun's Posthearing Brief at 21.

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arrangements at the time they enter the interconnection queue."[202] The Joint Utilities do not object in theory to the idea that a QF should be able to understand both its ERIS and NRIS costs as part of an interconnection study. However, because NewSun's proposal is beyond the scope of this docket, the Joint Utilities recommend that the Commission consider the proposal in its general interconnection investigation, docket UM 2111.[203]

E. Conclusion

All theoretical solutions offered by the ICC and NewSun that would allow QFs to obtain ERIS are beset with legal or implementation issues. Some ignore operational and financial realities, while others ignore fundamental PURPA obligations and requirements. The Joint Utilities strongly object to any Commission policy that would exempt a QF from understanding the deliverability costs associated with its project. Rather, a QF considering selling power to utility customers under PURPA's must-purchase requirement *must* be required to obtain an NRIS study that advises the QF and the purchasing utility what Network Upgrades will be needed to accommodate that QF. As the Commission noted in *Blue Marmot*,[204] a utility should advise a QF about the costs associated with development of its project "as soon as possible." And as the Joint Utilities' transmission witnesses have explained, it is not possible to determine the costs associated with project interconnection until appropriate engineering studies have been conducted.[205] Therefore, the Joint Utilities continue to agree with Staff that NRIS is the most efficient way to

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[202] NewSun's Posthearing Brief at 21.
[203] PacifiCorp recently revised its interconnection procedures to move to a cluster study process. PacifiCorp's cluster study reports break out both ERIS and NRIS costs, so long as there are generators seeking both ERIS and NRIS within a single cluster. PacifiCorp would be willing to break out ERIS and NRIS costs in all cluster studies going forward.
[204] 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* Order No. 19-322 at 16 ("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.").
[205] Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/35.

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identify deliverability limitations and the costs associated with a QF's chosen location in a timely manner. And QFs must not only seek NRIS, they should also seek interconnection early in the contracting process so they are able to understand the costs associated with developing their projects.

If the Commission is interested in exploring ideas proffered by the ICC or NewSun, such as the ICC's proposal to implement interconnection procedures similar to the community solar process, the Commission should open an additional investigation. Such investigation would need to address complex timing and study issues related to the disconnect in timing between PPA negotiations and transmission service study requests, as well as other issues, which would presumably require modification to standard QF PPAs to make them contingent on the outcome of transmission service study requests.[206] It would also require QFs to make significant concessions in their PPAs to ensure risk factors are mitigated before those PPAs become fully effective. But implementation of PURPA policies involving these types of complex workarounds is likely to be fraught with complexities, impose significant additional burdens on transmission service providers already laboring to manage busy interconnection queues, and result in "even greater disputes, delays, and uncertainty."[207] For these reasons, the Joint Utilities recommend that the Commission retain its current policy of requiring QFs to obtain NRIS.

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[206] *See, e.g.*, *In re PacifiCorp dba Pac. Power Information Filing of Qualifying Facility Contracts or Summaries per OAR 860-029-0020(1)*, Docket RE 142, PacifiCorp's Informational Filing on Qualifying Facility Transactions - Skysol, LLC at 16-17, Section 4.2 (Apr. 24, 2020) (conditional designation as network resource (DNR) provision).
[207] *See, e.g.*, Joint Utilities/500, Vail-Bremer-Foster-Olennikov-Ellsworth/13-61.

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