

1 **BEFORE THE PUBLIC UTILITY COMMISSION**  
2 **OF OREGON**  
3 **UM 2032**

4 In the Matter of  
5 PUBLIC UTILITY COMMISSION OF  
6 OREGON,  
7 Investigation into the Treatment of Network  
8 Upgrade Costs for Qualifying Facilities.

**FINAL STAFF BRIEF**

9 **I. Introduction.**

10 In this docket, the Commission is investigating whether to require qualifying facilities  
11 (QFs) to interconnect with host utilities (utilities that purchase the output of interconnected QFs)  
12 with Network Resource Interconnection Service (NRIS) as opposed to Energy Resource  
13 Interconnection Service (ERIS) or Small Generator Interconnection Service (SGIS) and how to  
14 allocate costs of interconnection-related Network Upgrades between host utilities and qualifying  
15 facilities.<sup>1</sup> In testimony and its prehearing brief, Staff makes three recommendations.

16 First, Staff recommends that the Commission require that QFs interconnect with host  
17 utilities using NRIS. Second, Staff recommends that the Commission determine that  
18 interconnection-related Network Upgrade costs that exceed the host utilities' avoided Network  
19 Upgrade costs should be allocated between QFs and interconnecting utilities commensurately  
20 with the benefits that the Network Upgrades provide. From Staff's perspective, this approach is  
21 consistent with the Commission's stated policy for interconnections under Oregon's Large  
22 Generator Interconnection Procedures (LGIP),<sup>2</sup> though that policy has not been put into

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24 <sup>1</sup> For purposes of this docket, Staff's references to "Network Upgrades" include Network  
25 Upgrades to the host utility's transmission system for large generators and System Upgrades to  
the host utility's transmission system for small generators.

26 <sup>2</sup> *In the Matter of Staff Investigation into Interconnection of PURPA Qualifying Facilities with a  
nameplate capacity of 10 megawatts to a public utility's transmission or distribution system,*  
Docket No. UM 1401, Order No. 10-132, p. 3. (April 7, 2010) ("Interconnection Customers are  
responsible for all costs associated with network upgrades unless they can establish quantifiable

1 practice.<sup>3</sup> Third, Staff recommends that the Commission clarify that the calculation of avoided  
2 costs should include any avoided interconnection costs.

3 Staff believes its second and third recommendations may have been misinterpreted or  
4 conflated. To clarify, Staff's second recommendation concerns the Network Upgrade costs  
5 subject to allocation under 18 C.F.R. § 292.306, which are the costs for QF-driven Network  
6 Upgrades that exceed those accounted for in the calculation of avoided cost prices. For example,  
7 assume a utility's avoided cost prices include a cost input of \$100,000 for avoided Network  
8 Upgrades and assume that Network Upgrades for the QF's actual interconnection with the host  
9 utility cost \$200,000. In this scenario, the QF must absorb the first \$100,000 of Network  
10 Upgrade costs because QF is being compensated for \$100,000 of Network Upgrade costs  
11 through the avoided cost prices. These costs cannot be allocated to the purchasing utility  
12 because doing so would require the utility to pay twice. In fact, 18 C.F.R. § 292.306 does not  
13 authorize the Commission to allocate Network Upgrade costs that do not exceed the costs of  
14 Network Upgrades included in the calculation of avoided cost prices.<sup>4</sup>

15 The only costs at issue in Staff's second recommendation are the actual costs of Network  
16 Upgrades for a QF interconnection that exceed those assumed in the utility's avoided cost prices,  
17 i.e., the second \$100,000 in the scenario above. Staff believes these costs should be allocated  
18 commensurately with the benefits they provide.

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20 system wide benefits, at which point the Interconnection Customer would be eligible for direct  
21 payments from the Transmission Provider in the amount of the benefit.”).

21 <sup>3</sup> Staff/200, Moore/6.

22 <sup>4</sup> (7) Interconnection costs means the reasonable costs of connection, switching, metering,  
23 transmission, distribution, safety provisions and administrative costs incurred by the electric  
24 utility directly related to the installation and maintenance of the physical facilities necessary to  
25 permit interconnected operations with a qualifying facility, *to the extent such costs are in excess*  
26 *of the corresponding costs which the electric utility would have incurred if it had not engaged in*  
*interconnected operations, but instead generated an equivalent amount of electric energy itself*  
*or purchased an equivalent amount of electric energy or capacity from other*  
*sources. Interconnection costs do not include any costs included in the calculation of avoided*  
*costs. (Emphasis added.)*

1 Staff’s third recommendation concerns the utility’s avoided Network Upgrade costs. Staff  
2 is not aware if the utilities uniformly include avoided Network Upgrade costs in the calculation  
3 of their avoided cost prices. Staff’s third recommendation is for the Commission to require  
4 utilities to do so.

5 **II. Cost allocation for Network Upgrades.**

6 **A. The Commission should adopt Staff’s recommendation to reject other parties’**  
7 **proposed methodologies and open Phase II of this investigation.**

8 NewSun Energy, LLC (NewSun) and the Solar + Storage Industries Association (OSSIA)  
9 argue the Commission should adopt the Federal Energy Regulatory Commission (FERC)’s  
10 “crediting policy” that is required for interconnections to vertically-integrated public utilities  
11 under FERC’s Large Generator Interconnection Procedures (LGIP). Under this policy, QFs  
12 would provide the upfront capital for any necessary Network Upgrades but would be reimbursed  
13 by the host utility. Under the proposal of NewSun and OSSIA, QFs would be reimbursed over a  
14 period no longer than five years.<sup>5</sup>

15 The Interconnection Customers Coalition (“ICC”), comprising the Renewable Energy  
16 Coalition, the Community Renewable Energy Association, and the Northwest & Intermountain  
17 Power Producers Coalition, propose that the Commission adopt a modified version of FERC’s  
18 crediting policy. Under the ICC proposal, there would be a rebuttable presumption that all  
19 system users benefit from Network Upgrades and that all Network Upgrades should be paid for  
20 by all users and beneficiaries of the system. If the host utility rebutted the presumption by  
21 showing the Network Upgrades do not provide the assumed benefits, the costs of the Network  
22 Upgrades would be split between the utility and QF based on the benefits that are provided.

23 The Joint Utilities and the Alliance of Western Energy Consumers (AWEC) recommend  
24 the Commission adopt a “but for” test to allocate costs of Network Upgrades.<sup>6</sup> Under this  
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26 <sup>5</sup> NewSun Post-hearing Brief, p. 2; OSSIA Posthearing Brief, pp. 3-4.

<sup>6</sup> AWEC Post Hearing Brief, pp. 4-5; Joint Utilities’ Posthearing Brief, p.19.

1 proposal, the only interconnection-related Network Upgrade costs that could be allocated to the  
2 host utility are costs of Network Upgrades that are already planned for by the utility in the  
3 utility’s IRP or Transmission Plan. The “but-for” test is essentially the “participant funding”  
4 method FERC allows independent transmission providers to use to allocate costs of Network  
5 Upgrades.

6 Staff proposes the Commission establish a cost allocation method that is more closely tied  
7 to an examination of the actual, rather than assumed, system benefits that Network Upgrades  
8 provide. Staff has not proposed a specific methodology in Phase I but recommends exploring  
9 how to identify system benefits and the design of a methodology in Phase II of this docket.

10 Staff recommends the Commission reject the proposals offered by NewSun, OSSIEA,  
11 AWEC and the Joint Utilities in Phase I of this proceeding because they are not based on an  
12 evaluation of the actual system benefits of Network Upgrades. The NewSun proposal is based  
13 on the irrebuttable presumption all interconnection-related Network Upgrades provide system  
14 benefits and the Joint Utilities’/AWEC proposal is based on the irrebuttable presumption no QF  
15 Network Upgrades provide system benefits, or alternatively, that the only Network Upgrades that  
16 provide system benefits are those the host utility already planned for. Staff believes neither  
17 presumption is warranted.

18 Staff recognizes that ICC’s cost allocation proposal could ultimately be based on the  
19 benefits Network Upgrades provide. However, Staff recommends that the Commission direct  
20 parties to explore a methodology that does not begin with an all or nothing presumption about  
21 the benefits of Network Upgrades, and accordingly recommends the Commission also reject  
22 ICC’s proposal in Phase I of this proceeding.

23 The Joint Utilities appear to concede that a cost allocation methodology like what Staff  
24 suggests could be consistent with the ratepayer indifference standard but argues such a  
25 methodology would not work because it would be too difficult to implement.

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1 Staff and ICC both lean on FERC’s statements about the generalized benefits of  
2 transmission system investments to argue that QFs should be compensated for some sort  
3 of value attributed to their Network Upgrades, even if it is not a pass-through of the full  
4 cost. Neither Staff nor ICC propose a method for identifying or quantifying such values.  
5 *Conceptually, the Joint Utilities do not disagree with the concept that, if a QF were able  
6 to demonstrate that the Network Upgrades triggered by its interconnection provided  
7 quantifiable financial benefits to retail customers, the benefits of those upgrades could  
8 make retail customers indifferent to the purchase of QF power in the amount of the  
9 demonstrated benefit, and the Joint Utilities have stated as much. The challenge is in  
10 the implementation.*<sup>7</sup>

7 Staff believes it is premature to conclude a cost-allocation methodology like what Staff  
8 proposes is an unattainable objective. To date, the parties have not focused their attention on  
9 how to identify system benefits. Staff believes it is worth pursuing this investigation and that the  
10 investigation will be more productive if the Commission determines in its order concluding this  
11 phase of the proceeding that is not willing to accept FERC’s crediting method as proposed by  
12 NewSun and OSSIEA, the Joint Utilities’/AWEC “but for” test method, or a method that starts  
13 with a rebuttable presumption that all costs of all Network Upgrades should be allocated to one  
14 interconnecting party or another.

15 **B. The Joint Utilities are incorrect that the Commission’s allocation of Network**  
16 **Upgrade costs is limited by PURPA’s cap on avoided cost rates.**

17 As noted above, the Joint Utilities appear to concede that PURPA would allow a cost  
18 allocation methodology that compensates QFs for the value of system benefits provided by QF-  
19 driven Network Upgrades but argue such a mechanism is too hard to implement because of the  
20 difficulty in quantifying system benefits.<sup>8</sup> The Joint Utilities argue that to ensure QFs are  
21 compensated only for Network Upgrades that provide system benefits, reimbursement under the  
22 methodology should be limited by its “but for” test methodology.<sup>9</sup> Under this methodology only  
23 the costs for Network Upgrades the host utility already planned to do are eligible for

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25 <sup>7</sup> Joint Utilities’ Posthearing Brief, pp. 20-21 (emphasis added); See also Joint Utilities’  
Posthearing Brief, p. 10, n 29.

26 <sup>8</sup> Joint Utilities’ Posthearing Brief, pp. 20-21.

<sup>9</sup> Joint Utilities’ Posthearing Brief, pp. 28-29.

1 reimbursement from the host utility. To the extent the Joint Utilities argue the Commission  
2 should adopt their proposed “but for” test methodology because it is the only practical solution,  
3 Staff disagrees because it is too early to reach that conclusion.

4         However, the Joint Utilities also appear to support their proposal for the “but for” test  
5 methodology with the argument the Commission’s authority to allocate Network Upgrade costs  
6 is limited by PURPA’s cap on avoided cost prices.<sup>10</sup> Under this argument, the only QF-driven  
7 Network Upgrade costs that are eligible for reimbursement are those the utility actually planned  
8 and therefore actually avoids.<sup>11</sup> Staff also disagrees with this rationale for the Joint Utilities’  
9 proposed “but for” test methodology.

10         Interconnection costs subject to allocation by the Commission under 18 C.F.R. § 292.306  
11 are those that exceed those accounted for in avoided cost rates. The express language of 18  
12 C.F.R. § 292.306 does not compel or even suggest that states’ authority over interconnection-  
13 related Network Upgrade costs is limited to ensuring the costs are passed on to QFs. If FERC  
14 intended to significantly limit states’ authority with respect to the allocation of interconnection  
15 costs, it failed to do so with the express language of the rule.

16         Contrary to the Joint Utilities’ assertion, Staff has not missed the context of the rule that  
17 is apparent in FERC Order No. 69 adopting the PURPA rules.<sup>12</sup> This context does in fact  
18 suggest, as the Joint Utilities argue, that FERC anticipated, and possibly intended, that states  
19 would allocate costs of interconnection to QFs. However, the context relied on by the Joint  
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22 <sup>10</sup> See e.g., Joint Utilities’ Posthearing Brief, p 4 (“However, the Joint Utilities clarify their  
23 position that, as a matter of law, any QF-driven costs allocated to retail customers must be just  
24 and reasonable and must comport with “the limitation of the avoided cost rate.” Any costs that  
25 exceed these ceilings must be allocated to QFs.”); Joint Utilities’ Posthearing Brief, p. 7 (“In  
short, the overall cost of QF power—including any interconnection costs—can be no higher than  
the overall cost of non-QF utility-acquired or -generated power.”); Joint Utilities’ Posthearing  
Brief, p. 12 (“Importantly, FERC’s regulations assume QFs will pay for their own  
interconnection costs, not retail customers.”).

26 <sup>11</sup> Joint Utilities’ Prehearing Brief, pp. 43-44.

<sup>12</sup> Joint Utilities’ Posthearing Brief, p. 10.

1 Utilities does not change the broad discretion given states under the express language of the rule  
2 adopted by FERC.

3 Further, the context relied on the Joint Utilities is more than forty-years old. FERC has  
4 issued no order since it adopted 18 C.F.R. § 292.306 that supports the Joint Utilities’  
5 interpretation of the limitation on states’ authority under that rule. Most notably, in Order No.  
6 2003, FERC decided that its new rule adopting the crediting policy for allocation of Network  
7 Upgrades applies to QFs whose interconnections are subject to FERC jurisdiction.<sup>13</sup>  
8 Accordingly, for QF interconnections subject to FERC jurisdiction, costs of interconnection-  
9 related Network Upgrades are assumed to benefit the entire system and QF and are reimbursed  
10 by the purchasing utility for the cost of the Upgrades. If PURPA is interpreted as argued by the  
11 Joint Utilities, FERC’s own cost allocation method is inconsistent with the rule.

12 The Oregon Commission has made clear that it **will** apply the ratepayer indifference  
13 standard to every element of all transactions between QFs and Joint Utilities. However, Staff  
14 does not think the Commission has interpreted the ratepayer indifference standard to mean all  
15 costs related to all QF transactions with purchasing utilities are subject to the avoided cost cap  
16 that applies to prices paid for electricity and capacity under 18 C.F.R. §292.304. Instead, Staff  
17 believes the ratepayer indifference standard has sufficient flexibility to allow the Commission to  
18 require a utility to reimburse a QF for benefits that QF-driven Network Upgrades provide to the  
19 utility’s transmission or distribution system.

20 **III. Staff recommends the Commission require QFs to interconnect with NRIS.**

21 NewSun, the ICC and OSSIA urge the Commission should allow QFs to interconnect  
22 with ERIS because it would enable creative solutions to transmission constraints. These parties  
23 do not take into account the legal complication of PURPA’s must-take obligation. A utility

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24 <sup>13</sup> *Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003,*  
25 *104 FERC P 61,103 (2003), order on reh’g, Order No. 2003-A, 106 FERC P 61,220, order on*  
26 *reh’g, Order No. 2003-B, 109 FERC P 61, 297 (2004), order on reh’g, Order No. 2003-C, 111*  
*FERC P 61, 401 (2005) (Stating new FERC rule regarding allocation of costs for*  
*interconnection-related Network Upgrades applies to QFs when the interconnections are subject*  
*to FERC jurisdiction.)*

1 cannot curtail a QF for circumstances other than those expressly allowed in FERC’s regulation.<sup>14</sup>  
2 Neither the Commission nor a utility can require a QF to accept curtailment as an alternative to  
3 Network Upgrades.<sup>15</sup> Accordingly, Staff sees no viable way for the Commission to adopt a rule  
4 or policy that conditions a QF’s ability to interconnect with ERIS on the QF’s agreement to be  
5 curtailed.

6 The QFs that urge the Commission to allow interconnection with ERIS also do not take  
7 into account limitations posed by the timing of negotiations of power purchase and  
8 interconnection agreements and utility requests for transmission service. A host utility cannot  
9 procure transmission service for a QF until the utility has executed a contract for the purchase of  
10 energy. This limitation is intended to ensure vertically-integrated utilities keep their merchant  
11 and transmission functions separate and do not have the ability to hoard transmission capacity.  
12 Accordingly, a QF will not know if it can procure point-to-point transmission service from a host  
13 utility until after it has executed a PURPA contract. And, once a PURPA contract is executed, a  
14 utility cannot unilaterally modify it to account for transmission-related Network Upgrade costs  
15 the utility might have to incur to move the QFs output to load.

16 These circumstances create risk for ratepayers. Staff believes the best way to minimize

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23 <sup>14</sup> *Excelon Wind I*, 140 FERC 61,152 at P 50 (recognizing that the circumstances in which QF  
24 purchases may be curtailed is limited under PURPA and FERC’s PURPA regulations, and that  
FERC has rejected attempts by purchasing utilities to curtail QFs in other circumstances beyond  
those limited exceptions).

25 <sup>15</sup> *Pioneer Wind Park I, LLC*, 145 FERC P 612152013 WL 6637352 (December 16, 2013)  
26 (FERC issuing opinion that contract provision offering a QF the option of accepting curtailment  
or the cost of Network Upgrades is not permissible under FERC).

1 risk to ratepayers is to require QFs that enter into firm power purchase agreements to  
2 interconnect with NRIS.

3 DATED this 2<sup>nd</sup> day of September, 2022.

4 Respectfully submitted,  
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6 Attorney General

7 */s/ Stephanie Andrus*

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