BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

Docket No. UM 2032

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Investigation into the Treatment of Network Upgrade Costs for Qualifying Facilities	COMMUNITY RENEWABLE ENERGY ASSOCIATION, NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION, AND RENEWABLE ENERGY COALITION'S RESPONSE TO JOINT UTILITIES' MOTION FOR REHEARING AND/OR CLARIFICATION

I. INTRODUCTION AND SUMMARY

Pursuant to OAR 860-001-0720(4) and OAR 860-001-0420(4), the Community Renewable Energy Association ("CREA"), the Northwest & Intermountain Power Producers Coalition ("NIPPC"), and the Renewable Energy Coalition (the "Coalition") (collectively the "Interconnection Customer Coalition") respectfully submit this response to the Joint Utilities'[1] motion for rehearing and/or clarification of the Public Utility Commission of Oregon's ("Commission" or "OPUC") Order No. 23-005 (or the "Order").

The Joint Utilities challenge the Commission's decision to allow for qualifying facilities ("QFs") to utilize Energy Resource Interconnection Service ("ERIS"). The alternative to ERIS is Network Resource Interconnection Service ("NRIS"), which often entails insurmountable network upgrade costs imposed on a QF. The Order authorized a limited use of ERIS by conditioning such use on the QF's agreement to negotiate a non-standard power purchase

[1] The Joint Utilities are PacifiCorp, Portland General Electric Company ("PGE"), and Idaho Power Company ("Idaho Power").

agreement ("PPA") with the utility to take into account the limitations of ERIS, such as implementation of non-standard curtailment protocols or adjustments to avoided cost capacity pricing. Given that the Order rejected nearly all of the QF parties' proposals to mitigate the cost of network upgrades utilities are entitled to impose on QFs under NRIS, the limited opportunity to attempt to move a project forward with ERIS and a non-standard PPA may prove to be one of the only viable options for certain projects to successfully develop on-system renewable energy projects in Oregon with the Public Utility Regulatory Policies Act of 1978 ("PURPA").

Having failed in their unreasonable attempt to completely bar use of ERIS by QFs after a full opportunity to litigate the issue, the Joint Utilities now seek to relitigate the issue on rehearing and again urge the Commission to bar QFs from having use of anything other than full NRIS. While the Interconnection Customer Coalition sought clarification of certain statements related to the Order's authorization of ERIS, the Joint Utilities' request is an attempt to completely undo the Commission's decision, and it should be denied. As explained below, the Joint Utilities' motion simply rehashes their prior arguments to the Commission, which are no more convincing than they were the first time the Commission rejected them. They misread the applicable rules and orders of the Federal Energy Regulatory Commission ("FERC") and ask for clarifications that would undermine the potential benefits of the new ERIS option. Their motion for rehearing and/or clarification fails the applicable legal and policy standards and should be denied.

II. LEGAL STANDARD

While the Joint Utilities' motion recites the applicable rehearing and clarification standards, the rest of their motion does not engage with those applicable legal standards in any

meaningful way.

The Commission may grant rehearing only if the applicant follows the procedural requirements in the Commission's rules. The Commission's administrative rules provide that the Commission may grant an application for rehearing if the applicant shows that there is, inter alia, "[a]n error of law or fact in the order that is essential to the decision" or "[g]ood cause for further examination of an issue essential to the decision."[2] The administrative rules further provide that the application must identify: (a) the portion of the challenged order that the applicant contends is erroneous or incomplete; (b) the portion of the record, laws, rules, or policy relied upon to support the application; (c) the change in the order that the Commission is requested to make; (d) how the applicant's requested change in the order will alter the outcome; and (e) one or more of the grounds for rehearing in the administrative rules.[3] But the Joint Utilities' motion does not explain each of these elements required in the rules for each of their requested rehearing bases, especially the last two elements, and the Commission should reject their motion on that basis alone.

The Commission may also clarify a final order if the scope and effect of the order is unclear.[4] But, as explained below, the Joint Utilities do not ask for clarification of unclear parts of the Order. They ask for changes to the Order that would undermine the ultimate effect and usefulness of the new ERIS option created by the Order. Thus, the clarification requests are really requests for rehearing, which do not meet the requirements for rehearing.

---

2 OAR 860-001-0720(3).

3 OAR 860-001-0720(2).

4 *See In re Investigation into the Use of Virtual NPA/NXX Calling Patterns*, Docket No. UM 1058, Order No. 04-704 at 3 (Dec. 8, 2004) (clarifying the scope and effect of a final order).

III. ARGUMENT

As explained at the outset of the Interconnection Customer Coalition's own motion for clarification and/or reconsideration, the Commission should act consistent with the overarching policy objectives promoting the development of renewable energy facilities. The overarching policy objective of FERC's implementing regulations being applied here under PURPA is to "encourage" development and operation of QFs.[5] Similarly, the Oregon legislature has gone even further in enacting its own goal in its PURPA statute to "[p]romote the development of a diverse array of permanently sustainable energy resources using the public and private sectors *to the highest degree possible*" and to "*[i]ncrease the marketability* of electric energy produced by qualifying facilities[.]"[6] Under those applicable policy standards, the Commission should have done far more to encourage QFs in Oregon in this docket, such as adopting the presumption that network upgrades have a systemwide benefit as proposed by the Interconnection Customer Coalition. Instead, the Commission mostly adopted the proposals of the Joint Utilities in this docket, which will frustrate, impede, and discourage QF development. The Joint Utilities' further rehearing argument to undo the limited ERIS ruling in favor of the QF parties should be considered within the framework of these important policy goals, which strongly support denying the Joint Utilities' motion.

A. The Commission Should Deny the Joint Utilities' Request to Reverse the Decision to Allow QFs to Interconnect with ERIS.

The Joint Utilities' request for rehearing relies on their ongoing misinterpretation of

---

5 16 USC § 824a-3(a).

6 ORS 758.515(2)(a) & (3)(a) (emphasis added).

FERC's *Pioneer Wind Park* decision.[7] They argue that *Pioneer Wind Park* disallows any curtailment of QF output beyond system emergencies, even if the QF specifically agrees to the curtailment to avoid paying for costly network upgrades that would be required with full NRIS. In effect, the Joint Utilities argue that *Pioneer Wind Park* repealed, *sub silentio*, the long-standing rule, in 18 CFR § 292.301(b), that QFs may waive the rights available to them in FERC's must-purchase rules and enter into an alternative purchase and sale arrangement with the utility. The Joint Utilities made these same incorrect arguments before the Commission issued its Order, and the Commission should again reject these arguments. The Interconnection Customer Coalition supports the Commission's decision to allow QFs to use ERIS and, as explained below, that decision was legally sound.

The Order requires a QF that utilizes ERIS to negotiate a non-standard PPA that takes into account the unique circumstances created by ERIS. As the Order states, "[w]hen an ERIS and NRIS study together reveal that voluntary curtailment or other solutions to avoided Network Upgrades may exist, we favor experimenting, as the [Washington Utilities and Transportation Commission ('WUTC')] has, with voluntary arrangements between QFs and utilities that allow for more efficient use of the existing transmission system at a time of increasing constraints."[8] Thus, the Commission directed that "when requested by a QF, to negotiate a non-standard contract that implements a QFs' decision, after review of both reports, to interconnect with a host utility using ERIS in exchange for the QF's voluntary commitment to allow curtailment at a level

[7] *See* Joint Utilities' Motion for Rehearing and/or Clarification at 7-10 (Mar. 21, 2023) (discussing *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 (Dec. 16, 2013)).

[8] Order No. 23-005 at 34 (Jan. 20, 2023).

that the utility agrees obviates the need for Network Upgrades identified in a NRIS report and can be accommodated through appropriate transmission service (e.g., non-firm or PTP)."[9] In addition to curtailment, the Order further explains, "we anticipate that negotiations may need to address the avoided cost rate impacts of any reduction in the QF's capacity value."[10]

Importantly, under the framework adopted by the Order, the QF still has the option to commit to full NRIS service and be paid the avoided cost rates calculated at the time of the obligation for energy and capacity, pursuant to 18 CFR 292.304(d), without any curtailment beyond that allowed for system emergencies, pursuant to 18 CFR 292.307(a)(2). That is entirely permissible under FERC's PURPA rules. Specifically, where the QF elects the new ERIS options, the limited curtailment allowances and standard pricing provisions elsewhere in the PURPA rules do not necessarily apply because the QF is proceeding under 18 CFR § 292.301(b). Section 292.301(b) provides as follows:

> (b) Negotiated rates or terms. Nothing in this subpart [i.e., Subpart C, 18 CFR §§ 292.301- 292.315]:
>
> (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
>
> (2) Affects the validity of any contract entered into between a qualifying facility and an electric utility for any purchase.[11]

The QF—by electing to go down the ERIS road—is engaging in a negotiation under 18 CFR 292.301(b) to *voluntarily* forego what it could insist upon under the other PURPA rules in

---

9 Order No. 23-005 at 34.
10 Order No. 23-005 at 34.
11 18 CFR § 292.301(b).

Subpart C. The Commission's Order itself refers to the QF's "*voluntary*" agreement to the curtailment six different times in the single page where it directs adoption of this new curtailment option.[12]

It is true that FERC held in *Pioneer Wind Park* that the normally applicable purchase provisions in Subpart C of its PURPA rules generally proscribe curtailment of QFs electing to sell under long-term avoided cost rates calculated at the time of the obligation, except in very limited circumstances of system emergencies.[13] But nothing in *Pioneer Wind Park* overrules the right of the QF to agree to a different curtailment arrangement, pursuant to 18 CFR § 292.301(b), to avoid paying insurmountable network upgrade costs. Contrary to the Joint Utilities' ongoing suggestions, nothing in *Pioneer Wind Park* repeals 18 CFR § 292.301(b) or confines all QFs to use of full NRIS with curtailments limited to system emergencies. Such a reading would paradoxically lead to the circumstance where the QF could not move forward because it has no flexibility to agree to limited curtailment that obviates the need for network upgrades that are so costly that they would make the project uneconomic.

The Joint Utilities' characterization of *Pioneer Wind Park* is a series of out-of-context quotations designed to suit their own agenda and confine all QFs to use of full NRIS with no exceptions whatsoever. It is ironic that the Joint Utilities rely on *Pioneer Wind Park*—a decision that found PacifiCorp to be frustrating QF development—as a basis to deny ERIS options that multiple QF parties argue to be necessary to move QF development forward. The Joint Utilities

---

12 Order No. 23-005 at 34 (emphasis added) (using the words "voluntary" or "voluntarily" six times).

13 *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at PP 36-37.

largely quote from PacifiCorp's pleadings to FERC in the *Pioneer Wind Park* case, not the words in FERC's order itself which control the meaning of the precedent.[14] They even include a lengthy block quote containing over a full page of allegations from PacifiCorp's pleading which appear to have been mostly rejected by FERC's order.[15] PacifiCorp's unsuccessful pleading is not FERC's order. Thus, the Joint Utilities are asking the Commission to read words and facts into the *Pioneer Wind Park* decision that are simply not there.

There are also key facts omitted from the Joint Utilities' presentation of *Pioneer Wind Park* that materially distinguish it from the circumstances at issue here. *First,* unlike the QFs that will use the new ERIS option here, Pioneer Wind was ***not interconnecting with ERIS***. Rather, the FERC order explained that Pioneer Wind's "LGIAs provide[d] that ***Pioneer Wind will receive Network Resource Interconnection Service***."[16] Pioneer Wind argued its NRIS "(1) will allow Pioneer Wind to integrate the Pioneer Wind Project with PacifiCorp's transmission system 'in a manner comparable to that in which [PacifiCorp] integrates its generating facilities to serve native load customers;' and (2) will allow the Pioneer Wind Project to be designated by PacifiCorp as a Network Resource, up to the Pioneer Wind Project's net output, on the same basis as existing Network Resources interconnected to PacifiCorp's transmission system."[17] *Second,* despite the fact that Pioneer Wind had NRIS LGIAs, PacifiCorp proposed to violate

---

14 *See* Joint Utilities' Motion for Rehearing and/or Clarification at 8 & n.19 (quoting PacifiCorp's Motion to Intervene and Answer); Joint Utilities' Motion for Rehearing and/or Clarification at 9-10 & n.20 (same).

15 Joint Utilities' Motion for Rehearing and/or Clarification at 9-10 & n.20.

16 *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at P 3 (emphasis added).

17 *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at P 3.

PURPA by curtailing Pioneer Wind before PacifiCorp Energy's other network resources.[18]

Thus, PacifiCorp's assertion in its rehearing filing that FERC "rejected" any use of "a combination of ERIS plus curtailment" is wrong.[19] *Pioneer Wind Park* did not reject the use of a combination of ERIS plus curtailment, which is indeed allowed by 18 CFR § 292.301(b), because *Pioneer Wind Park* did not address the combination of ERIS plus curtailment, much less how such a combination could possibly violate 18 CFR § 292.301(b) where the QF has voluntarily agreed to it.

Further, given that the purpose of PURPA is for QFs to displace non-QF generation, it is unsurprising that FERC found PacifiCorp's discriminatory curtailment proposal to be unlawful where the QF already received NRIS LGIAs. FERC explained:

> PacifiCorp's proposed section 4.4(b) curtailment provision would provide PacifiCorp with the right to curtail Pioneer Wind's QF output *before* any existing PacifiCorp Network Resource, which was designated as a Network Resource prior to execution of the PPA, and, importantly, *regardless* of whether the purchase from Pioneer Wind contributes to the emergency at issue. Moreover, this proposed curtailment provision violates the non-discrimination protections for QFs, included in PURPA and the Commission's PURPA regulations, by granting a preference in curtailment priority to PacifiCorp's existing Network Resources, which were designated as Network Resources prior to execution of the PPA with Pioneer

---

[18] *See Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at P 4 ("Pioneer Wind explains, however, that PacifiCorp is refusing to execute this PPA unless Pioneer Wind agrees to include in the PPA a curtailment provision that would allow PacifiCorp to curtail the Pioneer Wind Project ahead of other generators for the period of time before PacifiCorp's Transmission Energy Gateway Segment D transmission project (which is not required as a Network Upgrade under the LGIA) begins service."); *see also Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at P 4 (quoting PacifiCorp's proposed PPA curtailment provision as stating: "Seller shall be curtailed pursuant to Section 4.4 (a) before PacifiCorp is required to curtail any existing PacifiCorp Network Resource that was designated as a Network Resource prior to execution of the Agreement.").

[19] Joint Utilities' Motion for Rehearing and/or Clarification at 10.

Wind, as compared to Pioneer Wind.[20]

While PacifiCorp attempted to justify its negotiation proposals as attempts to utilize 18 CFR § 292.301(b), the best reading of FERC's order is that it rejected PacifiCorp's argument that 18 CFR § 301(b) applied because the QF had expressed an interest in a fixed-price contract under 18 CFR § 304(d)(2)(a) *without* curtailment, consistent with its NRIS LGIAs.[21] Thus, FERC held that PacifiCorp could not curtail the QFs, except during system emergencies.[22] However, FERC held that any network transmission constraints could be taken into account in calculating the QFs' avoided cost rates.[23]

After the *Pioneer Wind Park* decision, PacifiCorp cured its previous, unlawful practices by filing an amendment to its network operating agreement that properly now requires PacifiCorp to curtail PacifiCorp Energy's non-QF schedules for network transmission before QF schedules.[24] As FERC explained, citing *Pioneer Wind Park*, "PacifiCorp's proposed amendment complies with these requirements because it would obligate PacifiCorp Energy to curtail the schedules of non-QFs before the schedules of any QFs during normal operating conditions."[25]

---

20 *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at P 37 (emphasis in original).

21 *See Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at P 36.

22 *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at PP 36-37.

23 *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at P 41 (stating: "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.").

24 *PacifiCorp*, 151 FERC ¶ 61,170 (May 21, 2015).

25 *Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at P 27; *see also Pioneer Wind Park I, LLC*, 145 FERC ¶ 61,215 at P 6 ("The proposed amendment would allow PacifiCorp to grant additional designated network resource applications on behalf of PacifiCorp Energy in order to enable firm delivery from QFs even if there is no ATC, provided that PacifiCorp Energy agrees

The revision to PacifiCorp's network operating agreement only put the QFs ahead of PacifiCorp Energy's other non-QF network resources, not third-party network resources.[26] This is consistent with the principle and purpose of PURPA to have the QF power displace the utility's existing generation and corrects the violation found in *Pioneer Wind Park* of curtailing QF network resources ahead of PacifiCorp Energy's network resources.

Applied here, the Commission's Order fits neatly within the applicable FERC rules and precedent. As noted above, the Order expressly recognizes that the QF would be *voluntarily* agreeing to the non-standard ERIS framework. The Order further notes all QF parties' agreement that "*Pioneer Wind*, while preventing a utility from unilaterally requiring curtailment, does not stand for the proposition that PURPA is violated when a QF voluntarily agrees within a negotiated PURPA PPA to allow the utility to curtail delivery in order to reduce the QF's interconnection costs."[27] The Joint Utilities' arguments to the contrary are wrong, and their request for rehearing should be denied.

B. The Commission Should Deny the Joint Utilities' Request to Reverse the Decision that the Utility Must Offer Curtailment at a Level "that the Utility Agrees Obviates the Need for Network Upgrades."[28]

The Joint Utilities' next argument related to their inability to agree to a certain level of

---

to operate its portfolio of designated network resources in the affected area within system reliability limits and curtail QF power last, even if that is out of economic merit order.").

[26] *PacifiCorp*, 151 FERC ¶ 61,170 at P 29 (rejecting UAMPS' concern regarding impact to its resources and explaining: "To the extent generation will be curtailed to accommodate these additional network resources, it will be the generation of PacifiCorp Energy, not the generation of any third party, that will be curtailed.").

[27] Order No. 23-005 at 34.

[28] Joint Utilities' Motion for Rehearing and/or Clarification at 10 (quoting Order No. 23-005 at 2).

curtailment should also be rejected. As noted above, the Commission's Order appropriately requires the utility to agree to negotiate a non-standard PPA implementing the level of curtailment necessary with use of ERIS. This is a reasonable and adaptable standard to apply to a variety of circumstances that could arise in negotiations, and there is no basis to revise it in the record.

The Joint Utilities present the issue as if it will always be the case that it is completely impossible to predict the amount of curtailment that will be necessary with ERIS service, and that it is essentially not possible to purchase power from QFs utilizing ERIS. But these arguments are unsupported in the record. This section of the Joint Utilities rehearing filing contains extensive technical assertions without citations to anywhere in the record supporting the assertions.[29] The Joint Utilities also include as an attachment a single PacifiCorp interconnection study that they allege supports their claim. The Commission should disregard all of these assertions. In general, the Joint Utilities witnesses' testimony on this point was all premised on the incorrect legal conclusion that ERIS plus curtailment was illegal under PURPA.[30] Nowhere does the rehearing motion cite, or have the Interconnection Customer Coalition found, any

[29] Joint Utilities' Motion for Rehearing and/or Clarification at 12 & n.26 (providing a single interconnection study to support the Joint Utilities' arguments); Joint Utilities' Motion for Rehearing and/or Clarification at 13 (containing extensive technical and factual assertions with no citation to support it in the record).

[30] *See* Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/28-30 (disagreeing with ERIS plus curtailment proposal due to belief that "PURPA obligates a utility to take all of a QF's net output" and "a utility may not economically curtail a QF"); Joint Utilities/500, Vail-Bremer-Foster-Larson-Ellsworth/12-13 (asserting that "Staff's hypothetical path forward for ERIS would require the Commission to assume that fundamental elements of PURPA are eliminated, including the must-take obligation, the standard contract, and the need to ensure deliverability to retail load using firm transmission service").

testimony in the record supporting the Joint Utilities' new assertion that it will always be impossible to identify a level of curtailment that will enable an ERIS plus curtailment solution. Indeed, the Joint Utilities' witnesses only went so far as to assert that if ERIS plus curtailment is lawful, its implementation would be more "complicated, time-consuming, and ultimately impractical" than use of NRIS, and thus they proposed NRIS.[31] The Joint Utilities had the opportunity to submit multiple rounds of testimony and the opportunity to cross examine the QF parties' witnesses at hearing. It is too late now to buttress the factual record with new technical assertions that the Interconnection Customer Coalition and other QF parties have no opportunity to test through discovery, responsive testimony, and cross examination at an evidentiary hearing.

In any event, the Joint Utilities' sweeping assertions are wrong. The Joint Utilities' arguments are belied by the record evidence that demonstrates the Joint Utilities *have used ERIS for QFs and non-QFs to obtain firm transmission to deliver power to load.*[32] All three of the Joint Utilities agreed in discovery that using ERIS does not, standing alone, preclude a facility from being designated as a network resource or otherwise being delivered with firm transmission to load.[33] There is simply no basis to conclude that ERIS is categorically incompatible with QF interconnections. There are a variety of circumstances in with ERIS could be used to allow projects to move forward in ways that may have been impossible with NRIS.[34] For example, in

---

31 Joint Utilities/500, Vail-Bremer-Foster-Larson-Ellsworth/14-15.

32 NewSun/400, Andrus/3-4.

33 NewSun/400, Andrus/3-4; *see also* Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/27 (stating: "ICC and NewSun are correct that the OATT does not require a customer requesting firm transmission service to secure NRIS as a prerequisite.").

34 *See* NewSun/100, Rahman/14-18 (explaining the example of ERIS use in an economic dispatch scenario being acceptable for solar where its dispatch is likely during certain times of

the scenario where the project would need to achieve commercial operation in the near term to achieve other development deadlines (e.g., tax credits or permitting requirements) but the project cannot be designated as a network resource until a few years thereafter once planned upgrades are completed, the use of ERIS may allow partial operation for a period of time prior to full network resource status being achieved. Once such an ERIS facility is designated as a network resource by the utility, the risk of curtailment should be no less than that for any other QF that interconnected through NRIS prior to being designated as a network resource. There are many circumstances where ERIS may be able to be implemented in a way where the level of curtailment is predictable, and the Joint Utilities' assertions to the contrary are unfounded and contradicted by the record.

Moreover, the Commission should not accept the Joint Utilities' assertions that they cannot ever identify a level of curtailment necessary to enable use of ERIS in the absence of any evidence on the point. The Joint Utilities have an inherent incentive not to facilitate purchases from QFs, and the Commission's endorsement of the Joint Utilities' sweeping and completely unsupported claim that they can never forecast necessary levels of curtailment on their own systems would provide them with another tool to frustrate QF development.

The Joint Utilities also complain that allowing use of ERIS will force them to negotiate with QFs and will thus lead to disputes. Importantly, the Order does not mandate any specific terms of a non-standard PPA, and if the parties to such non-standard PPA negotiation cannot agree, the Commission can resolve such negotiation disputes under the unique circumstances of

---

the day and noting that in California virtually all solar generators have opted for ERIS due to the costs of NRIS); NewSun/400, Andrus/1-8 (providing additional discussion).

the proposed use of ERIS. While it is true that such a regime could lead to disputes reaching the Commission, that is the framework that exists in the world of regulated monopolies. The Joint Utilities could proactively seek to minimize and reduce the possibility of disputes by making good faith proposals to implement the Commission's Order rather than focusing on reversing the Order. The Interconnection Customer Coalition would welcome an effort by the Joint Utilities to leap at this possibility to allow QFs to use ERIS to resolve a difficult interconnection problem, and are confident that if the Joint Utilities put as much effort into implementing the Order as they have put into opposing any and all efforts in this case to remove interconnection obstacles, then there would be both fewer disputes and more QF interconnections. However, if the Joint Utilities do not make internal, business decisions to change their approach, then it is possible that there may be additional disputes. However, resolving negotiation and pricing disputes under PURPA is one of the important functions assigned to the Commission by the federal and state government. The Joint Utilities' answer is to take an entire field of options available through use of ERIS off the table to avoid disputes. But that is not a reasonable implementation of PURPA and the policy of promoting development of QFs.

C. The Commission Should Deny the Joint Utilities' Other Proposed Clarifications.

The Joint Utilities request two further clarifications of the Order, but neither is necessary or appropriate.[35] The Commission should deny both of these additional clarification requests.

[35] Joint Utilities' Motion for Rehearing and/or Clarification at 14-17.

1. The Joint Utilities provide insufficient support for their proposal that the terms and conditions of a non-standard PPA with curtailment must allow a utility to comply with FERC statutes, orders, rules, regulations, and tariffs.

The Joint Utilities' ask for clarification that they must only implement the new ERIS plus curtailment option to the extent that it does not violate "FERC statutes, orders, rules, regulations, and tariffs."[36] They presumably make this request to enable themselves to unilaterally refuse to implement the new ERIS plus curtailment option in most, or perhaps all cases, where requested by a QF. This clarification request appears, therefore, to be little different from the Joint Utilities' opening request to wholesale reverse the Commission's adoption of the ERIS plus curtailment option. It is premised on the incorrect legal arguments and interpretations of *Pioneer Wind Park* addressed above. As previously argued, the framework adopted by the Order is lawful and reasonable. If a utility acts unreasonably in implementing it, the utility is subject to a potential complaint from a QF and resolution by the Commission. It is unnecessary, and would be unwise, to grant clarification giving the Joint Utilities the sole discretion to refuse to implement the new option whenever they believe it would violate the law. The Commission should deny this request.

2. The Commission should not dissuade Oregon parties from developing tariffs similar to the innovative Puget Sound Energy tariff.

Finally, the Joint Utilities' proposed clarification related to the Puget Sound Energy ("PSE") tariff should be denied. The Joint Utilities claim that the PSE tariff would decrease reliability by ignoring "[North American Electric Reliability Corporation ('NERC')] reliability

---

[36] Joint Utilities' Motion for Rehearing and/or Clarification at 14.

and safety issues[.]"[37] But that is simply not the case. The PSE tariff still allows for deliverability and would only curtail a QF during a System Emergency or Reliability Condition and would not result in reliability issues.[38] The PSE tariff still complies with NERC requirements, but it allows the QF to avoid costly Network Upgrades to avoid a NERC N-1-1 outage by giving the utility curtailment rights during that type of event until the utility can safely and reliably restore interconnection service to the QF.[39] PSE would not design a tariff that would jeopardize its system reliability.

The Joint Utilities also claim that "the [PSE] tariff seems designed to drive down reliability *while still requiring QFs to bear the costs of the most expensive types of Network Upgrades*."[40] This is inaccurate as the PSE tariff is designed to help alleviate some of the costs of expensive Network Upgrades. PSE provided a summary of the potential savings that could result from its tariff. For the example PSE provided with a point of interconnection ("POI") at a substation connected with two transmission lines and part of PSE's aggregate load, PSE's tariff could help the QF avoid the need to construct a third line of a 12-mile 115-kV transmission line.[41] For a POI at a substation connected with one transmission line and part of PSE's aggregate load, PSE's tariff could help the QF avoid the need to construct a third line of a 12-mile 115-kV transmission line.[42] For a POI at a substation connected with three transmission lines and away from PSE's aggregate load with no available transfer capacity, PSE's tariff could

---

37 Joint Utilities' Motion for Rehearing and/or Clarification at 16-17.
38 Interconnection Customer Coalition/301, Lowe/1.
39 Interconnection Customer Coalition/301, Lowe/9.
40 Joint Utilities' Motion for Rehearing and/or Clarification at 17 (emphasis added).
41 Interconnection Customer Coalition/301, Lowe/11.
42 Interconnection Customer Coalition/301, Lowe/13.

provide more options to the QF other than the NRIS required upgrade such as securing transmission service through point-to-point service or network service through another system or other options on a case-by-case basis.[43] This does not mean that in every instance the PSE tariff would allow the QF be able to avoid costly Network Upgrades,[44] but the PSE tariff at least would reduce costly interconnections in some circumstances, including completely eliminating some upgrades and allowing use of other delivery methods in others.

The Interconnection Customer Coalition fully supports the Commission's Order's endorsement of "experimenting, as the WUTC has, with voluntary arrangements between QFs and utilities that allow for more efficient use of the existing transmission system at a time of increasing constraints."[45] At a time when it is difficult to interconnect many projects without cost-prohibitive network upgrades, the Commission's willingness to encourage such experimentation to enable development of renewable energy facilities is not just reasonable; it is required by the underlying PURPA policies at stake. The Joint Utilities' rehashing of their prior arguments regarding the Puget Sound Energy tariff does not warrant clarification or rehearing.

IV. CONCLUSION

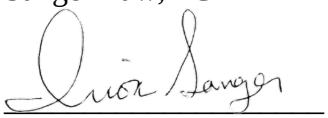
For the reasons stated above, the Commission should deny the Joint Utilities' motion for rehearing and/or clarification.

43 Interconnection Customer Coalition/301, Lowe/12.
44 Interconnection Customer Coalition/301, Lowe/14-15.
45 Order No. 23-005 at 34.

Respectfully submitted on the 5th day of April 2023.

Respectfully submitted,

Sanger Law, PC



Irion A. Sanger
Ellie Hardwick
Sanger Law, PC
4031 SE Hawthorne Blvd.
Portland, Oregon 97214
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for the Northwest & Intermountain Power Producers Coalition and the Renewable Energy Coalition

Gregory M. Adams
Richardson Adams, PLLC
515 N. 27th Street
Boise, ID 83702
Telephone: 208-938-2236
Fax: 208-938-7904
greg@richardsonadams.com

Of Attorneys for the Community Renewable Energy Association