

**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

NIPPC, THE COALITION AND  
CREA COMMENTS ON STAFF'S  
PROPOSED ISSUES LIST

**I. INTRODUCTION**

The Northwest & Intermountain Power Producers Coalition (“NIPPC”), the Renewable Energy Coalition (“the Coalition”), and the Community Renewable Energy Association (“CREA”) (collectively “the Industry Associations”) hereby respond to the Oregon Public Utility Commission (“Commission”) Staff’s Amended Proposed Issues List for this docket filed on April 28, 2020 (“Staff’s Proposed Issue List”). The Industry Associations urge the Administrative Hearings Division (“AHD”) to expand the scope of this docket beyond the issues articulated by Staff to encompass the additional discrete issues discussed below because they address the industry’s concerns over the most egregious and unreasonable utility behaviors in the interconnection process, relate to the network upgrades issues proposed by Staff, and can be considered in isolation from the remaining concerns with the interconnection process. The Commission should provide prompt and meaningful relief to interconnection customers who have heretofore been denied the fair, just and reasonable rates and terms of service.

Further, this docket should proceed with all issues on Staff’s Proposed Issues List and the additional discrete issues proposed by Industry Associations in a single phase because the line between Staff’s Issues No. 1 and No. 3 are not so easily separated. In addition, this docket anticipates a full evidentiary docket to address the issues that will review all of the issues, and it would be a waste of limited intervenor time and resources to address Staff’s issues in different phases.

Finally, if AHD chooses not to proceed with a single phase or include the Industry Associations’ proposed additional issues in Phase I of this docket, then those issues should be addressed in a new process commenced expeditiously and run contemporaneously with this docket rather than await a Phase II.

## II. COMMENTS

### A. **A Few Discrete Additional Issues Should Be Included in This Docket Which Address the Most Egregious and Unreasonable Utility Behaviors**

As more fully explained in the Industry Associations’ April 9, 2020 comments, the limited additional issues are extremely important for the interconnection of QFs. The Commission wanted a narrow scope for this docket but agreed that AHD could consider adding a few discrete, limited issues.<sup>1</sup> The Commission made this modification to the Staff recommendation at the pleading of interconnection customers for relief, and should again modify Staff’s narrow Proposed Issues List to include other issues critical to the development of small scale Oregon based renewable energy.

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<sup>1</sup> *In re Pub. Util. Comm’n of Or, Request to Adopt a Scope & Process for the Investigation Into PURPA Implementation*, Docket No. UM 2000, Order No. 19-254 at Appendix A at 1 (July 31, 2019).

Interconnection customers have suffered in the interconnection process and need the Commission to act expeditiously to protect those customers. The Commission has a statutory obligation to “represent the customers of any public utility . . . and the public generally in all controversies respecting rates, valuations, service and all matters of which the [C]ommission has jurisdiction” and shall “protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.”<sup>2</sup> The Commission’s rules clarify that an interconnection customer is “a person with one or more small generator facilities interconnected to a public utility’s transmission or distribution system” and that takes interconnection service from a public utility.<sup>3</sup> While interconnection customers may look different than other utility customers such as ratepayers, they are still subject to the same issues that a customer experiences when faced with a monopoly utility with exclusive control over the supply of a commodity or service. An interconnection customer has no alternative to the incumbent utility except to move, just like a ratepayer, and deserves to have its moment to address, at a minimum, its most pressing concerns surrounding unjust and unreasonable utility behaviors.

While the Industry Associations have a laundry list of concerns, this docket should include only the issues that are most pressing.<sup>4</sup> The Commission should review the limited additional issues surrounding:

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<sup>2</sup> ORS 756.040(1).

<sup>3</sup> OAR 860-082-0015(14) & (17).

<sup>4</sup> Staff’s Proposed Issue List identifies four issues raised by the Industry Associations that should be addressed in Phase II. The Industry Associations have raised significantly more issues, and are proposing that Phase II addresses

1. The interconnection customer's option to build (or hire third parties to build) interconnection facilities and network upgrades;
2. The interconnection customer's opportunities to hire third parties to perform interconnection studies; and
3. A process through which an interconnection customer may challenge utility cost estimates and propose alternatives.

These three issues are all related to each other and are primarily concerned with the interconnection customer's ability to check the utility's work and possibly reduce the cost of the interconnection. A fourth issue, noted in Staff's proposed issue list regarding whether the utility is using the appropriate power flow analysis, is necessarily included within these three issues. This is because, if the interconnection customer has a meaningful opportunity to present third-party studies showing different results and to propose alternatives, then such a process can act as a check on utility behavior and help determine whether the utility's analysis did, in fact, result in upgrades that are necessary and prudently designed. So that issue should also be included within that context, because while phrased more as a technical question, is really also a question of whether there is a meaningful opportunity to present alternatives.

There are several interconnection cases filed before the Commission, that illustrate just how salient these issues are for the industry, and how the introduction of third-party analysis and/or a review of alternatives can help reach better results. In the case of *Madras Solar, LLC ("Madras") v. Portland General Electric Company ("PGE")*,

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approximately 12 issues, plus whatever additional issues the utilities have. Thus, the Industry Associations are requesting that only a small set of issues be considered on a timely basis.

PGE initially provided a System Impact Study showing an estimated interconnection cost of \$343.7 million to interconnect under Network Resource Interconnection Service (“NRIS”).<sup>5</sup> Madras disputed the legitimacy of those costs, in response to which PGE provided a revised study reducing the costs for NRIS down to \$27 million, having apparently revised its interpretation of its Open Access Transmission Tariff.<sup>6</sup> While that case involves a large generator interconnection, it is illustrative of the benefits that even small generators can have by bringing in other experts and challenging the utility’s analysis. There is currently no process within which to do so other than by filing a complaint with the Commission.

The *Sandy River Solar, LLC vs. PGE* case illustrates the need for revisions to the process for allowing the interconnection customers to hire third-parties. In that case, the Commission found that simply because the rule only said that the utility “may” agree to allow the interconnection customer to hire a third-party and did not explicitly include a reasonableness requirement, that the utility is not obligated to act reasonably in refusing to give its consent.<sup>7</sup> In that case, the interconnection customer was seeking to hire a third-party to perform the interconnection work,<sup>8</sup> but the rule regarding the customer’s ability to hire a third-party to perform interconnection studies includes similar language

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<sup>5</sup> See *Madras v. PGE*, Docket No. UM 2009, Madras Solar’s Response to PGE’s Motion to Strike at 6 (Nov. 26, 2019).

<sup>6</sup> *Id.*

<sup>7</sup> *Sandy River Solar, LLC v. PGE*, Docket No. UM 1967, Order No. 19-218 at 1 (June 24, 2019) (“we do not interpret OAR 860-082-0060(8)(f) as either requiring that PGE reasonably exercise its discretion to agree to, or indicating that we have the authority to direct PGE to, hire a third-party facilities and system upgrades.”).

<sup>8</sup> *Id.*

and may be subject to a similar interpretation by the Commission.<sup>9</sup> The Federal Energy Regulatory Commission’s (“FERC’s”) large generator interconnection procedures illustrate a stark contrast, where an interconnection customer may elect an option to build without any utility discretion at all. While there is an existing rule allowing interconnection customers an unfettered right to provide independent system impact studies,<sup>10</sup> even there, interconnection customers have had a hard time getting a utility to reasonably cooperate by providing relevant system information for the independent study.<sup>11</sup> In the end, the Commission’s workload will be reduced if it promptly adopts new rules improving the interconnection process for customers.<sup>12</sup> Therefore, at a

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<sup>9</sup> Compare OAR 860-082-0060(8)(f) (“A public utility and an applicant *may* agree in writing to allow the applicant to hire a third-party consultant to complete the interconnection facilities and system upgrades, subject to public utility oversight and approval.”) (emphasis added), with OAR 860-082-0060(9) (“A public utility and an applicant *may* agree in writing to allow the applicant to hire a third-party consultant to complete a feasibility study, system impact study, or facilities study, subject to public utility oversight and approval.”) (emphasis added).

<sup>10</sup> See OAR 860-082-0060(7)(h) (“If an applicant provides an independent system impact study to the public utility, then the public utility must evaluate and address any alternative findings from that study.”).

<sup>11</sup> See *Waconda Solar, LLC v. PGE*, Docket No. UM 1971, First Amended Complaint at ¶ 94 (“Prior to Waconda Solar commencing this action, PGE refused to provide Waconda Solar with data sufficient to have an independent engineer perform a System Impact Study in addition to PGE’s own System Impact Study.”)

<sup>12</sup> In addition to *Madras Solar*, *Sandy River Solar*, and *Waconda Solar*, there have been numerous interconnection related complaints on similar issues, some of which may not have been filed with better rules. *E.g.*, *Pac. Nw. Solar, LLC (Amity Project) v. PGE*, Docket No. UM 1902, Complaint at 1-3 (Oct. 9, 2017); *Butler Solar*, Docket No. UM 1903, Complaint at 1-3 (Oct. 9, 2017); *Pac. Nw. Solar, LLC (Duus Project) v. PGE*, Docket No. UM 1904, Complaint at 1-3 (Oct. 9, 2017); *Pac. Nw. Solar, LLC (Stringtown Project) v. PGE*, Docket No. UM 1907, Complaint at 1-3 (Oct. 9, 2017); *Pac. Nw. Solar, LLC (Starlight Project) v. PGE*, Docket No. UM 1906, Complaint at 1-3 (Oct. 9, 2017); *Dunn Rd. Solar v. PGE*, Docket No. UM 1963, Complaint at 1-3 (July 26, 2018); *St. Louis Solar, LLC v. PGE*, Docket No. UM 2057, Complaint at 1-4 (Feb. 3, 2020); *Zena Solar*,

minimum, there should be a change to the rules requiring a reasonable process for state-jurisdictional interconnections.

**B. The Industry Associations’ Additional Proposed Issues Can be Considered in Isolation from a Broader Investigation**

The Industry Associations’ additional issues can be considered apart from a broader review of interconnection changes. Staff believes the “issues identified by the QFs are appropriately addressed in a broader investigation of interconnection issues that is not tied to the timeline to resolve the specific Network Upgrade issues.”<sup>13</sup> First, while there may be circumstances where a change to one portion of the interconnection process may have implications for other parts of the process, that is not the case here. The rules on an interconnection customer’s ability to hire a third-party are currently addressed in only three subsections of the Commission’s small generator interconnection rules,<sup>14</sup> and it is not apparent what other sections may be impacted by simply proposing changes to those discrete sections. Further, there is currently no process for an interconnection customer to identify alternatives, so that could simply be added in. In addition, FERC has already previously considered these issues, and other state jurisdictions may have also addressed the concerns raised by the Industry Associations. Therefore, adding these issues to this docket would not require a lot of additional process.

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*LLC v. PGE*, Docket No. UM 2074, Complaint at 1-5 (Mar. 27, 2020); *In re Carnes Creek Solar Petition for Waiver of OAR 860-082-0025(b)&(c)*, Docket No. UM 1631, Petition at 1-2 (Apr. 23, 2020).

<sup>13</sup> Amended Staff Proposed Issues List at 3, lines 10-12.

<sup>14</sup> See OAR 860-082-0060(7)(h), (8)(f), and (9).

Second, the fact that the Industry Associations' additional issues may be of interest to net metering or community solar projects is not a reason to exclude them. Staff notes that "[t]he questions raised by the QFs are technical and of interest to all interconnection customers subject to the Commission's jurisdiction, including Community Solar Program projects and net metering customers." Staff appears to be concerned about bringing in these other stakeholder groups to this docket for fear of bogging this docket down. However, the same risk is present for any future docket reviewing these issues because the Commission has already established separate processes for net metering and community solar outside of the small and large interconnection processes. Because net metering and community solar already have their separate processes, the Commission could easily exclude them from this docket, or alternatively include them at the same risk of bogging down this docket as with any future proceeding. Further, because community solar projects are required to be QFs anyway, they may already be subject to decisions made in this docket, so including them on the additional issues proposed by the Industry Associations would not change the dynamics.

**C. All of the Issues Related to Network Upgrades and the Industry Associations Additional Issues Should Be Addressed in One Phase**

The Industry Associations agree with Staff that the issues should be stated broadly but suggest that all of the issues be addressed in one phase. Staff proposes that Phase I include a review of:

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



2. Should on-system QFs be required to interconnect to the host utility with Network Resource Interconnection Service (NRIS) or should QFs have the option to interconnect with Energy Resource Interconnection Service (ERIS) or an interconnection service similar to ERIS?<sup>15</sup>

And that Phase II address:

3. If the answer to Issue No. 1 is that users and beneficiaries of Network Upgrades, (which typically are primarily utility customers), should pay for the Network Upgrades necessary to interconnect the QF to the host utility, how should that policy be implemented? For example, should utility customers, and other beneficiaries and/or users, fund the cost of the Network Upgrades upfront or should the QF provide the funding for the Network Upgrade subject to reimbursement from utility customers? Should the QF, utility customers, and other beneficiaries and users, if any, share the costs of Network Upgrades?<sup>16</sup>

First, Staff’s proposed Issue No. 1 should be phrased as: “How should the cost of Network Upgrades be allocated?” Such phrasing encompasses both Staff’s proposed Issue No. 1 and Issue No. 3. The question of who should “pay” is not as relevant as who is ultimately responsible for the cost, and whether the party that initially pays for it is then reimbursed by other users and beneficiaries. Staff’s Issue No. 3 appears to simply re-ask the Phase I question of “who pays” in a more practical way: “Should the QF, utility customers, and other beneficiaries and users, if any, share the costs of Network Upgrades?” The Industry Associations simply do not understand how the Commission can answer the question “who pays” without meaningful consideration of “cost sharing”, and Staff’s bi-furcation is likely to result in unnecessary procedural disputes among the parties about which Network upgrade “paying” or “cost allocation” issues are in Phase I or II. This illustrates how interconnected Staff’s proposed issues are, and therefore, the

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<sup>15</sup> Amended Staff Proposed Issues List at 2, lines 6-9.

<sup>16</sup> *Id.* at 2, lines 13-17.

Commission needs to consider all the issues together to understand everything and adopt a comprehensive policy.

The Industry Associations additional issues are also implicated in Staff's Phase I questions. The ability to have third-party checks on the utility to verify costs and identify alternatives is related to the question of how interconnection-related upgrades are recovered. Indeed, Staff's initial draft issues list circulated informally contemplated that this docket would entail a review of "industry trends and varying state approaches for how interconnection-related upgrades are recovered" including whether "3rd party-studies from engineering firms [are] used to verify or establish costs for network upgrades and interconnection facilities and to identify alternatives."<sup>17</sup> Therefore, if the parties are already going to be reviewing these industry trends in this docket, the Commission might as well additionally consider whether those approaches should be adopted for Oregon.

While Staff does not describe the process it anticipates for this docket, the parties discussed process in an informal stakeholder workshop, and both Staff and the utilities agreed that a full evidentiary docket would be necessary to fully develop the issues. If a full evidentiary process is to be used, why not include all of the issues in one phase? Staff's proposed Phase I issues (Issues No. 1 and No. 2) implicate more policy and legal questions about whether the Public Utility Regulatory Policies Act requires that QFs be treated a particular way, and the Phase II issue (Issue No. 3) asks more of the technical question related to *how* such policies would be implemented. Therefore, it is really at

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<sup>17</sup> See Attachment \_\_\_\_.

Phase II, Issue No. 3 where the evidentiary process is needed. To split the issues up in a Phase I with a full evidentiary process and then a Phase II with a full evidentiary process would push out the ultimate resolution of this docket so far into the future that it would not provide much meaningful relief. However, if there is already going to be a full evidentiary process for Phase I, there is no reason not to include all of the issues related to network upgrades.

This proposed single phase docket would also include a review of the additional discrete issues proposed by the Industry Associations and further discussed above.

**D. Additional Rules Revisions Should Be Considered in a Phase II or Separate Docket, Whichever Occurs First**

The Industry Associations' prior comments submitted in response to Staff's initial draft issues list noted that the Commission should consider revisions to the small generator interconnection rules in a Phase II and determine what rules apply to interconnections sized between 10 and 20 MW.<sup>18</sup> At this time, Industry Associations do not have a strong preference regarding whether the Commission considers these issues in a Phase II in this docket or a separate process as suggested by Staff, provided that they consider these issues as fast as possible in whichever process occurs first.

However, if the AHD decides not to include the additional discrete issues proposed by the Industry Associations in Phase I of this docket, then those issues should be addressed in a separate process to be commenced expeditiously and run contemporaneously with this docket rather than await a Phase II.

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<sup>18</sup> NIPPC, The Coalition, and CREA Comments on Staff's Draft Issues List at 8-11 (Apr. 9, 2020).

Finally, Industry Associations would posit that, rather than addressing revisions to the interconnection rules in a general investigation, Staff consider a rulemaking process instead, so that at the docket conclusion the industry will have revised rules to look to rather than needing to await the conclusion of a second process to incorporate any policy changes into the generator interconnection rules. Industry Associations think that there is no doubt that a general investigation will result in policy changes that necessitate rules changes, and therefore a rulemaking process would be more appropriate. In addition, a rulemaking will allow broader participation by interested stakeholders that may find it difficult to participate in a contested case proceeding.

### III. CONCLUSION

For the reasons articulated above, the issues to be reviewed in Phase I of this docket should include a review of all of Staff's proposed issues and those from the Industry Associations, and in Phase II or new docket, the Commission should clean up and modernize the interconnection rules and processes.

Dated this 4th day of May 2020.

Respectfully submitted,

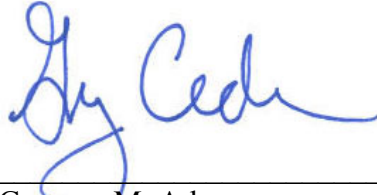
Sanger Law, PC



Irion A. Sanger  
Marie P. Barlow  
Sanger Law, PC  
1041 SE 58th Place  
Portland, OR 97215  
Telephone: 503-756-7533  
Fax: 503-334-2235  
irion@sanger-law.com

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

RICHARDSON ADAMS, PLLC



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Gregory M. Adams  
OSB No. 101779  
515 N. 27<sup>th</sup> Street  
Boise, Idaho 83702  
Telephone: (208) 938-2236  
Fax: (208) 938-7904  
greg@richardsonadams.com

Of Attorneys for the Community Renewable  
Energy Association