

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.

STAFF RESPONSE 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.¹ 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),² though that policy has not been put into

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24 ¹ 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 ² *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.³ Third, Staff recommends that the Commission clarify that the calculation of avoided
2 costs should include any avoided interconnection costs.

3 Staff acknowledges that determining what system benefits are provided by Network
4 Upgrades may not be an easy exercise. Accordingly, the second phase of this investigation will
5 be necessary to explore how to identify system benefits of Network Upgrades and how to
6 allocate costs between the interconnecting QF and the host utility.

7 The Renewable Energy Coalition (REC), Community Renewable Energy Association
8 (CREA) and Northwest Intermountain Power Producers Coalition (NIPPC) (together the
9 Interconnection Customers Coalition or “ICC”), NewSun Energy, LLC. (NewSun), and the Joint
10 Utilities (Portland General Electric Company, PacifiCorp, and Idaho Power Company), and Staff
11 have filed testimony and prehearing briefs in this docket and the Alliance of Western Energy
12 Customers has filed a brief. At first glance, it appears all parties base their positions on the
13 premise the beneficiaries of the Network Upgrades should pay for them, disagreeing only on
14 who the beneficiaries are. But Staff does not believe this is an accurate description of the Joint
15 Utilities’ and AWEC’s positions. Instead, these parties argue Commission’s authority over the
16 allocation Network Upgrades is extremely limited under PURPA because a utility’s avoided
17 costs are an overall cap on the costs associated with the purchase of qualifying facility (QF)
18 power that may be passed through to retail customers.⁴

19 The Joint Utilities explain in their prehearing brief that, assuming the Commission
20 requires utilities to reimburse QFs for Network Upgrades that provide “system-wide benefits,”
21 any state regulatory definition of “system-wide benefits” must ensure that the overall cost of QF
22 power does not exceed the utility’s avoided cost, even with that reimbursement.⁵ The Joint
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24 system wide benefits, at which point the Interconnection Customer would be eligible for direct
25 payments from the Transmission Provider in the amount of the benefit.”).

25 ³ Staff/200, Moore/6.

26 ⁴ Joint Utilities’ Prehearing Brief, p. 43.

⁵ Joint Utilities’ Prehearing Brief, pp. 43-44.

1 Utilities argue the Commission must impose a “but for” test to determine the appropriate
2 allocation of Network Upgrades. Under this test, a QF would be allowed to share the costs of
3 Network Upgrades with the purchasing utility **only** if the utility has already determined through
4 its transmission planning process that a particular Network Upgrade is necessary for reliability
5 purposes or for transmission capacity expansion to allow for cost-effective load service.⁶

6 Staff recommends the Commission expressly reject the Joint Utilities’ proposed “but for”
7 test and that it do so in the Commission’s order concluding Phase I of this docket. Staff does not
8 believe Phase II will provide a meaningful opportunity to explore possible methods of cost
9 allocation if the Joint Utilities are allowed to maintain this position regarding the limitations on
10 the Commission’s authority in Phase II.

11 **II. Staff response to arguments made by other parties regarding cost allocation for**
12 **Network Upgrades.**

13 **A. The Commission should reject the Joint Utilities’ arguments regarding limitations**
14 **on the Commission’s discretion to allocate costs of Network Upgrades.**

15 The Joint Utilities argue that “Network Upgrade costs caused by QFs should be allocated
16 to QFs for the following reasons. They argue FERC’s regulatory scheme that gives states
17 authority over QF interconnection costs assumes that QFs will pay these costs, including costs of
18 Network Upgrades.⁷ Second, the Joint Utilities argue PURPA’s customer indifference standard
19 requires the Commission to exercise its authority implement PURPA in a manner that leaves
20 retail customers financially indifferent to the utility purchase of QF power, which requires QFs
21 to pay the costs necessitated by their interconnection. Finally, they assert Commission has an
22 obligation to allocate a QF’s interconnection-driven Network Upgrades to QFs as part of its
23 statutory duty to ensure rates are just and reasonable.⁸

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25 ⁶ Joint Utilities’ Prehearing Brief, p. 44.

26 ⁷ Joint Utilities’ Prehearing Brief, p. 3.

⁸ Joint Utilities Prehearing Brief, pp. 3-4.

1 **1. The Commission’s authority under 18 C.F.R. 292.306 is not limited to allocating**
2 **costs to QFs.**

3 The Joint Utilities’ argument that the Commission should allocate costs of Network
4 Upgrades to QFs because this is what FERC intended when it adopted its rules implementing
5 PURPA is not persuasive. The pertinent rule is 18 C.F.R. § 292.306, which provides:

- 6 (a) Obligation to pay. Each qualifying facility shall be obligated to pay any
7 interconnection costs which the State regulatory authority (with respect to any
8 electric utility over which it has ratemaking authority) or nonregulated
9 electric utility may assess against the qualifying facility on a
10 nondiscriminatory basis with respect to other customers with similar load
11 characteristics.
12 (b) Reimbursement of interconnection costs. Each State regulatory authority
13 (with respect to any electric utility over which it has ratemaking authority)
14 and nonregulated utility shall determine the manner for payments of
15 interconnection costs, which may include reimbursement over a reasonable
16 period of time.

13 The express language of the rule does not compel, or even suggest, the conclusion that states’
14 authority over interconnection-related Network Upgrade costs is limited to the authority to make
15 sure all interconnection costs are passed on to QFs. If FERC intended to significantly limit
16 states’ authority with respect to the allocation of interconnection costs, it failed to do so with the
17 express language of the rule.

18 The Joint Utilities’ support their arguments regarding states’ limited discretion with
19 statements in the FERC order adopting 18 C.F.R. § 292.303 and statements in a FERC Staff
20 Report prepared around the time the FERC rules were adopted.⁹ However, these comments,
21 made more than forty years ago, do not change the language of the rule adopted by FERC
22 Further, FERC has issued no order since it adopted 18 C.F.R. § 292.306 that supports the
23 conclusion that FERC intended to limit states discretion as argued by the Joint Utilities. In fact,
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25 ⁹ See Joint Utilities Brief, p. 7, n. 17 (citing to statement in Order No. 69 responding to questions
26 about how electric utilities would be reimbursed for interconnection costs to support conclusion
that states are required by the rule to allocate all costs to QFs); Joint Utilities Brief, p. 6 (citing to
statements in a FERC Staff Paper from 1979).

1 as acknowledged by the Joint Utilities, FERC has on more than one occasion declined to
2 interfere with states' authority over interconnections.¹⁰

3 Furthermore, the Joint Utilities' reliance on decades-old statements of FERC
4 Commissioners and FERC Staff regarding 18 C.F.R. § 292.306 must be rejected in light of
5 FERC's own cost allocation methodology for interconnections between purchasing utilities and
6 QFs that are subject FERC jurisdiction. In Order No. 2003, FERC decided that its new rule
7 regarding cost allocation for Network Upgrades applies to QFs whose interconnections are
8 subject to FERC jurisdiction.¹¹ Accordingly, for QF interconnections subject to FERC
9 jurisdiction, costs of interconnection-related Network Upgrades are assumed to benefit the entire
10 system and QF and are reimbursed by the purchasing utility for the cost of the Upgrades. If
11 PURPA is interpreted as argued by the Joint Utilities, FERC's own cost allocation method is
12 unlawful.

13 **2. The ratepayer indifference standard does not mandate the Commission ignore**
14 **the system benefits provided by Network Upgrades when allocating costs under**
15 **18 C.F.R. §292.306.**

16 The Joint Utilities argue that PURPA's avoided cost cap prevents the Commission from
17 allocating to a host utility any costs of Network Upgrades that exceed the host utility's avoided
18 costs. The Joint Utilities' argument presents a Catch-22. Interconnection costs subject to
19 allocation under 18 C.F.R. § 292.306 are specifically defined as the costs to interconnect that
20 **exceed a utility's avoided costs.**¹² If the Commission really has no discretion over the
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22 ¹⁰ Joint Utilities Prehearing Brief, p. 7. *See also Standardization of Generator Interconnection*
23 *Agreements and Procedures*, Order No. 2003, 104 FERC P 61,103 (2003), order on reh'g, Order
24 No. 2003-A, 106 FERC P 61,220, order on reh'g, Order No. 2003-B, 109 FERC P 61, 297
25 (2004), order on reh'g, Order No. 2003-C, 111 FERC P 61, 401 (2005)(Reiterating that
interconnections between purchasing utilities and qualifying facilities when the qualifying
facility sells its entire output to the purchasing utility are subject to state jurisdiction.)

26 ¹¹ *Id.* (Stating new FERC rule regarding allocation of costs for interconnection-related Network
Upgrades applies to QFs when the interconnections are subject to FERC jurisdiction.)

¹² 18 C.F.R. § 292.101(7).

1 allocation of interconnection costs that exceed what is owed to the QF as the utility's avoided
2 cost, there is little reason for the authorization in 18 C.F.R. § 292.306.

3 Staff is not aware of a FERC or court issued an order since the FERC rules were adopted
4 that limits states' authority over interconnection costs as described by the Joint Utilities, i.e., that
5 limits the states' authority to do no more than pass through costs of interconnection to QFs.
6 Instead, FERC has reiterated that it gave states authority over the allocation of Network Upgrade
7 costs and has declined to take that authority away.

8 18 C.F.R. § 292.306 makes clear that the allocation of interconnection costs is separate
9 from the calculation of avoided costs. Accordingly, Staff does not believe this Commission's
10 authority over the allocation of Network Upgrade costs is strictly limited by the PURPA avoided
11 cost cap on prices for capacity and energy. Staff does not dispute that the Commission's
12 authority is circumscribed by its adherence to the ratepayer indifference standard previously
13 relied on by the Commission.¹³ Contrary to any suggestion by the Joint Utilities, however, Staff
14 does not believe the ratepayer indifference standard means that QFs should only be compensated
15 for interconnection related Network Upgrades that fall below the utility's avoided costs. Instead,
16 Staff believes the standard can be satisfied if customers receive benefits from the Network
17 Upgrades and the Commission's allocation of costs to utilities and their customers is
18 commensurate with the benefits received.

19 This is the conclusion reached by Georgia Public Service Commission in a 2021 order
20 rejecting utilities' arguments that reimbursing QFs for the cost of interconnection-related
21 Network Upgrade is an impermissible subsidy that violates the ratepayer indifference standard.¹⁴

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24 ¹³ See e.g., *Portland Gen. Elec. Co. v. Pac. Nw. Solar, LLC*, Docket UM 1894, Order No. 18-025
25 at 7 (Jan. 25, 2018) (“[O]ne critical feature of our implementation of PURPA, including (but not
26 limited to) the terms and conditions of our regulated PURPA contracts, is the need to ensure that
ratepayers remain financially indifferent to QF development.”).

¹⁴ *Capacity and Energy Payments to Cogenerators under PURPA*, 2021 WL 1224144
(Ga.P.S.C.), pp. 4-5 (March 21, 2021).

1 The Georgia PSC noted that FERC had concluded that reimbursements for Network Upgrade
2 under the policy adopted in Order No. 2003 did not constitute a subsidy because Network
3 Upgrades benefit all users of the transmission system.¹⁵ Similarly, the Supreme Court of
4 Montana also determined that requiring the public utility to reimburse QF Wheatland Wind for
5 cost of Network Upgrades was necessary to “fairly balance the interests of [the public utility’s]
6 ratepayers with that of the QF such that it complies with PURPA and encourages QF
7 development while making the ratepayer indifferent as to the energy source.”¹⁶

8 **3. The Joint Utilities’ proposal for allocation of Network Upgrade costs is not**
9 **necessary to ensure just and reasonable rates for retail customers.**

10 The Joint Utilities’ “but for” test for cost allocation of Network Upgrades is essentially
11 FERC’s “participant funding” method for allocating costs. FERC does not allow vertically
12 integrated utilities to use this funding method given the subjectivity of the test and the ability of
13 an integrated utility to use the method to its own advantage.¹⁷ And, FERC has asked in its
14 Advance Notice of Proposed Rulemaking regarding generation interconnection costs whether it
15 is reasonable to continue to allow independent transmission providers to use the participant
16 funding method to allocate costs.

17 At the time that the Commission issued Order No. 2003, it was less likely that
18 interconnection customers would be assigned significant interconnection-related
19 network upgrades through the interconnection study process. Now, however,
20 there is little remaining existing interconnection capacity on the transmission
21 system, particularly in areas with high degrees of renewable resources that may
22 require new resources to fund interconnection-related network upgrades that are
23 more extensive and, as a result, more expensive. The more significant the
24 interconnection-related network upgrades need to accommodate a new resource,
25 the greater the potential that such upgrades may benefit more than just the
26 interconnection customer. Where an interconnection customer elects not to pursue
a generating facility with system-wide benefits that exceeds such facility’s cost,

25 ¹⁵ *Id.*, citing FERC Order No. 2003 (68 Fed. Reg. at 49,899).

26 ¹⁶ *CED Wheatland Wind, LLC v. Montana Department of Public Service Regulation*, 408 Mont.
268, 282 (May 10, 2022).

¹⁷ Order No. 2003, 104 FERC par. 61,220 at P 696, n11.

1 net beneficial infrastructure would not be developed, potentially leaving a wide
2 range of customers worse off as a result.¹⁸

3 Given that the Joint Utilities are all non-independent transmission providers, there is little
4 support for the argument that using FERC’s participant funding mechanism to allocate costs
5 of Network Upgrades is necessary to obtain just and reasonable rates.

6 **B. Staff does not support NewSun’s and the ICC’s recommendation to adopt FERC’s**
7 **method for allocating costs of Network Upgrades.**
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9 NewSun recommends that the Commission adopt FERC’s “crediting policy” for cost
10 allocation.¹⁹ Under the crediting policy, which FERC requires for vertically-integrated utilities
11 interconnection customers front the cost of interconnection related Network Upgrades and are
12 reimbursed over time either by transmission service credits or cash payments. NewSun notes
13 that FERC’s approach is easy to implement, aligns the costs and benefits, and puts QFs whose
14 interconnections are subject to state jurisdiction on equal footing with all other QFs and
15 generators. NewSun further recommends that the Commission adopt a refund methodology
16 which mirrors other interconnection authorities by allowing refunds of 100 percent upon the
17 upgrade reaching commercial operation or over five years.

18 Staff does not support adoption of the current FERC method of allocation. This
19 allocation methodology does not account for the fact QFs are not transmission customers.
20 Accordingly, if the crediting method is used, QFs would not pay any of the costs of Network
21 Upgrades. Further, Staff believes this allocation method would not incent economic citing
22 decisions and poses risk to utility customers of unreasonable costs.

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25 ¹⁸ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*
26 *and Generator Interconnection*, Advanced Notice of Proposed Rulemaking, 176 FERC P 61024,
61, 263, 2021 WL 3013526, p. 12 (July 15, 2021).

¹⁹ NewSun’s Prehearing Brief, pp. 3-5.

1 The Interconnection Customer Coalition (ICC) recommends a variation of FERC’s
2 crediting methodology. Under the ICC’s proposal, the Commission would adopt an allocation
3 method that begins with a rebuttable presumption that all system users benefit from Network
4 Upgrades, and that the cost of all Network Upgrades should be paid by all users and beneficiaries
5 of the system. However, utilities could rebut that presumption by demonstrating the Network
6 Upgrades do not provide any benefits to other users or at least provide only partial benefits.²⁰

7 Staff appreciates that the ICC and Staff share the position that costs of interconnection-
8 related upgrades should be allocated commensurately with the benefits. However, as discussed
9 in its opening brief, Staff believes it is premature to adopt a specific methodology for cost
10 allocation and Staff at this time is not willing to recommend ICC’s version of FERC’s crediting
11 methodology.

12 **C. Staff does not agree with AWEC’s arguments regarding limitations on the**
13 **Commission’s authority to allocate costs of Network Upgrades.**

14 AWEC’s position regarding allocation of costs for Network Upgrades is very similar to
15 the Joint Utilities. AWEC argues the Commission has correctly recognized that requiring
16 Transmission Providers to pay for Network Upgrades caused by a QF potentially affects the
17 avoided cost rate in a way that would impose higher costs on the ultimate ratepayer and that if a
18 QF induces Network Upgrades that would not have otherwise been required for the purchase of
19 an equivalent amount of energy and capacity from an alternative reasonably available source,
20 then those Network Upgrades are incremental to a utility’s avoided cost, and customers would be
21 harmed if they were required to pay for them. Conversely, if Network Upgrades are required
22 regardless of whether the utility purchases from a QF or an alternative source, then the cost of
23 these Network Upgrades should be included in the avoided cost calculation because customers
24 would have incurred that cost anyway.²¹

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26 ²⁰ ICC Brief Prehearing Brief, pp. 7-9.

²¹ AWEC Prehearing Brief, p. 5.

1 Like the Joint Utilities, AWEC ignores the discretion given to states to allocate cost of
2 interconnection and the system benefits that Network Upgrades can provide to the utility's
3 transmission system.

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

5 NewSun asserts that the Commission should allow QFs to interconnect with ERIS
6 because it would enable creative solutions to transmission constraints, also puts QFs on equal
7 footing with other generators, and there is no practical reason that prevents it. NewSun explains
8 that “[d]epending on the business objectives of the generator, NRIS may be unnecessary and a
9 QF could agree to terms and conditions in their power purchase agreement that would make
10 NRIS unnecessary. For example, from a practical perspective, a QF could decide to only deliver
11 within a time frame during which the system is not constrained or could agree to voluntary
12 curtailments.”

13 The ICC also recommends the Commission allow QFs to interconnect with ERIS, also
14 asserting that interconnections with ERIS could lead to innovative and cost-effective solutions to
15 addressing high interconnection costs.²² The ICC argues also argue a QF interconnection with
16 ERIS could obtain firm transmission service by purchasing Point-to-Point to transmission service
17 from the host utility or another transmission provider.²³ Like NewSun, the ICC suggests ERIS
18 would allow QFs and host utilities to use creative solutions such as curtailment to address
19 capacity concerns, rather than simply requiring QFs to pay for interconnection-related upgrades
20 necessary for NRIS.²⁴

21 NewSun and ICC ignore the legal complication of PURPA's must-take obligation. A
22 utility cannot curtail a QF for circumstances other than those expressly allowed in FERC's
23 regulation.²⁵ Neither the Commission nor a utility can require a QF to accept curtailment as an

24 ²² ICC Brief, p. 19.

25 ²³ ICC Prehearing Brief, pp. 18-20.

26 ²⁴ ICC Prehearing Brief, pp. 19-20.

²⁵ *Excelon Wind I*, 140 FERC 61,152 at P 50 (recognizing that the circumstances in which QF purchases may be curtailed is limited under PURPA and FERC's PURPA regulations, and that

1 alternative to Network Upgrades.²⁶ Accordingly, Staff sees no viable way to implement
2 NewSun’s and ICC’s proposal to allow QFs to interconnect with ERIS to allow creative
3 solutions to transmission capacity constraints.

4 NewSun’s and ICC’s proposals regarding ERIS and point-to-point transmission service
5 also fail to take into account the circumstances surrounding interconnections and subsequent
6 requests for transmission service. A host utility cannot procure transmission service for a QF
7 until the utility has executed a contract for the purchase of energy. This limitation is intended to
8 ensure vertically-integrated utilities keep their merchant and transmission functions separate and
9 do not have the ability to hoard transmission capacity. Accordingly, a QF will not know if it can
10 procure point-to-point transmission service from a host utility until after it has executed a
11 PURPA contract. And, once a PURPA contract is executed, a utility cannot unilaterally modify
12 it to account upgrade costs the utility might have to incur to move the QFs output to load.
13 These circumstances create risk for ratepayers. Staff believes the best way to minimize risk to
14 ratepayers is to require QFs to interconnect with NRIS.

15 DATED this 5th day of August 2022.

16 Respectfully submitted,

17 ELLEN F. ROSENBLUM
18 Attorney General

19 /s/ *Stephanie Andrus*

20 _____
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22 Sr. Assistant Attorney General
23 Of Attorneys for Staff of the Public Utility
24 Commission of Oregon

24 _____
25 FERC has rejected attempts by purchasing utilities to curtail QFs in other circumstances beyond
26 those limited exceptions).

25 ²⁶ *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).