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August 5, 2022

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PUBLIC UTILITY COMMISSION OF OREGON,
Investigation into the Treatment of Network Upgrade Costs for Qualifying
Facilities.
Docket No. UM 2032

Dear Filing Center:

Please find enclosed the Post-Hearing Brief of the Alliance of Western Energy
Consumers in the above-referenced docket.

Thank you for your assistance. If you have any questions, please do not hesitate
to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

**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.)
_____)

**POST-HEARING BRIEF
ON BEHALF OF THE
ALLIANCE OF WESTERN ENERGY CONSUMERS**

August 5, 2022

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I. INTRODUCTION

Pursuant to the Administrative Law Judge’s (“ALJ”) November 29, 2021 Prehearing Conference Memorandum and the ALJ’s Ruling on May 31, 2022, in the above-referenced docket, the Alliance of Western Energy Consumers (“AWEC”) files this Post Hearing Brief with the Oregon Public Utility Commission (“Commission”). On May 22, 2020, the ALJ issued a Ruling adopting Staff’s recommendation that the initial phase of this docket be limited to the following two questions:

1. Who should be required to pay for Network Upgrades necessary to interconnect the Qualified Facility (“QF”) to the host utility?
2. Should on-system QFs be required to interconnect to the host utility with Network Resource Interconnection (“NRIS”) or should QFs have the option to interconnect with Energy Resource Interconnection Service (“ERIS”) or an interconnection service similar to ERIS?¹

As explained in AWEC’s Prehearing Brief, AWEC continues to address only question 1, which AWEC interprets to be a primarily legal question. AWEC recommends that the Commission maintain its current QF interconnection cost allocation policy. AWEC’s recommendation is simple. To determine who should be required to pay for Network Upgrades necessary to interconnect the QF to the host utility, the Commission must determine whether Network Upgrades are required but for the QF’s interconnection with the host utility. If Network

¹ Docket No. UM 2032, Ruling, at 2 (May 22, 2020).

Upgrades are required regardless of the QF, these are system-wide benefits and therefore the Network Upgrades should be included in avoided costs. If the QF's interconnection alone necessitates the Network Upgrades, then customers would not be indifferent to the QF's interconnection and the QF should pay these costs. AWEC's recommendation ensures that retail customers are not unreasonably burdened with QF interconnection costs.

II. ARGUMENT

Parties' positions continue to diverge regarding the proper allocation method for QF interconnection costs. Of main concern to AWEC is the Community Renewable Energy Association, the Northwest & Intermountain Power Producers Coalition, and the Renewable Energy Coalition (collectively the Interconnection Customer Coalition ("ICC")) and NewSun's failure to recognize the customer impacts of their recommendations. ICC argues that "retail customers, who are the users and beneficiaries, should be required to pay for interconnection upgrades, with the limited exception that utilities should be provided the limited opportunity to rebut this presumption."² NewSun argues that the Commission should adopt the Federal Energy Regulatory Commission's ("FERC") approach, in which "the interconnection customer initially funds network upgrades but receives reimbursement."³ NewSun further recommends "that the Commission adopt a refund methodology which mirrors other interconnection authorities by allowing refunds of 100% upon the upgrade reaching commercial operation or over 5 years as is done by the California Independent System Operator ("CAISO")."⁴

² ICC Prehearing Brief, at 4.

³ NewSun Prehearing Brief, at 2.

⁴ *Id.*

Staff's position set forth in briefing appears to have strayed from their position in testimony. In testimony, Staff found that "the Commission's existing policies for the treatment of Network Upgrades appropriately protect ratepayers and strike a reasonable balance between the interests of QFs and ratepayers. QFs should be responsible for Network Upgrade costs that exceed the utilities' avoided Network Upgrade costs. For the increment of Network Upgrades for which QFs are responsible, QFs should be compensated if the Network Upgrades provide a system benefit."⁵ Staff now simply asserts that "costs of interconnection-related Network Upgrades should be allocated to the beneficiaries of the Upgrades," but because "Staff is not persuaded that any of the other parties has hit upon a reasonable method for identifying or allocating these costs," Staff "recommends further investigating what might be an appropriate methodology in Phase II."⁶

Finally, the Joint Utilities assert that "QFs should be required to pay for Network Upgrades necessary to interconnect the QF to the host utility."⁷

A. The Commission's Network Upgrade cost allocation policy should be maintained.

Based on evidence in the record, AWEC continues to recommend that the Commission's cost allocation policy be maintained. As AWEC explain in its Prehearing Brief, question 1 is better framed as whether Network Upgrades are required but for the QF. Under AWEC's recommendation, system-wide benefits are assumed if Network Upgrades are required regardless of the QF's interconnection with the host utility. However, if the QF's

⁵ Staff/100 Moore/6:9-15.

⁶ Staff Prehearing Brief, at 8:15-17; 10:17-18

⁷ Joint Utilities Prehearing Brief, at 3:5-6.

interconnection alone would necessitate the Network Upgrades, then it is the QFs, not the customers, who benefit and should accordingly be allocated the costs. AWEC's recommendation therefore furthers Staff, ICC and NewSun's position that costs of QF Network Upgrades should be allocated to beneficiaries of the upgrades.

AWEC's recommendation further resolves parties' concerns regarding identification and allocation of these costs, thereby mitigating the need for this issue to be addressed in phase 2 of this docket. Under AWEC's proposal, utilities would utilize their Integrated Resource Plan ("IRP") or Transmission Planning process to determine whether Network Upgrades are required but for a QF's interconnection. If, as shown in an IRP or Transmission Planning process, Network Upgrades are required for the utility to meet its obligations, there are system-wide benefits and customers should pay interconnection costs. Conversely, if, as shown in the IRP or Transmission Planning process, Network Upgrades are not required for the utility to meet its obligations, but the utility nonetheless must purchase from the QF under PUPRA's must-purchase obligation, the Network Upgrades do not provide system-wide benefits and QFs should pay.

NewSun offers the following three reasons in support of its recommendation that the Commission adopt FERC's framework: "it is easy to implement, it aligns with the practical reality that 'Network upgrades . . . are those assets that benefit all customers using the transmission system, and it places QFs on the same footing as other generators.'"⁸ Contrary to NewSun's reasoning, it is AWEC's recommendation, not NewSun's, that is easy to implement.

⁸ NewSun Prehearing Brief, at 3 (internal citations omitted).

Maintaining the Commission’s current cost allocation policy would require no transition to a new cost allocation policy. In fact, as noted by ICC, FERC is currently investigating FERC-jurisdictional interconnection issues, including cost allocation. As FERC has stated, “[t]he proposed reforms are intended to remedy deficiencies in the Commission’s existing regional transmission planning and cost allocation requirements to ensure that Commission-jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential.”⁹ It is unclear why NewSun is recommending the Commission adopt FERC’s framework if it is currently under review for deficiencies. Further, NewSun fails to cite any FERC precedent beyond FERC Order No. 2003-A in support of its recommendation. Notably, FERC Order 2003-A does not address Network Upgrades as related to QFs. FERC Order 2003-A briefly addresses QFs and Network Resource Interconnection Service¹⁰ as well as FERC jurisdiction over QFs seeking interconnection to a non-OATT distribution facility.¹¹ NewSun’s reliance on FERC Order 2003-A is misplaced. NewSun’s lack of evidence in support of FERC’s framework supports maintaining the Commission’s current cost allocation policy.

Regarding NewSun’s second reason and in accordance with AWEC’s Prehearing Brief, it is unnecessary for the Commission to resolve whether Network Upgrades provide system-wide benefits; if Network Upgrades would not have been required but for the QF’s interconnection, the Commission should presume that system-wide benefits do not exist.

⁹ ICC Prehearing Brief, at n.1. citing *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17-000, 179 FERC ¶ 61,028 at P. 1 (emphasis added) (Apr. 21, 2022).

¹⁰ FERC Order 2003-A, at 120:551; 559. (FERC responded to stakeholders’ request for clarification “as to how...QFs under the...PURPA are to obtain Network Resource Interconnection Service.”).

¹¹ *Id.* at n.168.

Finally, NewSun’s reasoning that FERC’s framework should be adopted because it places “on-system QFs on an equal footing with other generators and other QFs”¹² is misguided at best. Under PURPA, host utilities must purchase the output of QFs and thereby, customers must pay for that power.¹³ Under FERC’s rules, the other generators and other QFs discussed by NewSun “receive full reimbursement for their network upgrades.”¹⁴ NewSun provides examples of other generators and other QFs, citing one project that has a “QF self-certification on file at FERC, but it entered into a non-[Public Utility Regulatory Policies Act (“PURPA”)] agreement with [the utility] at prices higher than [the utility’s] PURPA rates in Idaho at the time.”¹⁵ According to NewSun, “it makes no practical sense to single out those QFs that sell 100% of their output to their interconnecting utility under a PURPA must-take agreement for differential treatment.”¹⁶

However, NewSun’s argument merely demonstrates that QFs have options at their disposal to determine the optimal economic path to sell their output. A QF may choose how and whom they sell their output, including where to locate their facility, whether to sell under PURPA or through a negotiated PPA, and whether to wheel through to another utility to take advantage of different avoided cost rates. As stated in NewSun’s testimony and reiterated in its prehearing brief, “projects can switch between being a QF or not, in order to gain more favorable treatment.”¹⁷ As such, the Commission’s existing rule that allocates interconnection costs to the QF is simply one factor a QF may consider when making a decision that is in their best economic

¹² NewSun Prehearing Brief, at 7.

¹³ 18 C.F.R. § 292.304(a)(2); 18 C.F.R. § 292.101(b)(6).

¹⁴ NewSun Prehearing Brief, at 9.

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 9.

¹⁷ NewSun/400 Andrus/15:15-16; *see also* NewSun Prehearing Brief, at 8.

interest. Notably, unlike QFs, ratepayers are not afforded such optionality. Costs associated with NewSun’s proposal will ultimately be borne by ratepayers.

Similarly, ICC asserts that “as FERC has long recognized, it is well established that most Network Upgrades provide some benefit to the system, and thus the presumption should require the utility to disprove that ordinary expectation.”¹⁸ Both NewSun and ICC fail to acknowledge that in Order No. 10-132, the Commission found arguments in support of requiring Transmission Providers to pay for Network Upgrades in accordance with FERC’s Network Upgrade policy to be “not persuasive” because “[n]one of the authorities cited [were] related to facilities governed by PURPA and thus none faced the limitation of the avoided cost rate.”¹⁹

B. Maintaining the Commission’s Network Upgrade cost allocation policy adheres to PURPA and the ratepayer indifference standard.

Pursuant to PURPA, the ratepayer indifference standard requires that customers do not pay for Network Upgrade costs if those costs would result in them paying more for QF power than they would pay from another reasonably available source. Commission orders “implementing PURPA reflect [the Commission’s] efforts to balance encouraging QF development with maintaining ratepayer indifference.”²⁰ Under AWEC’s recommendation, customers pay only for Network Upgrades that would be required regardless of whether the utility purchases from a QF or alternative source, thereby ensuring that customers pay no more than the avoided cost rate in accordance with PURPA.

¹⁸ ICC Prehearing Brief, at 9.

¹⁹ Docket No. UM 1401, Order No. 10-132, at 4 (Apr. 7, 2010).

²⁰ Docket No. UM 1894, Order No. 18-025, at 4 (Jan. 25, 2018).

According to Staff, “PURPA’s ratepayer indifference standard is [not] violated when the users of the transmission system (primarily the host utility’s retail customers), are required to pay for the benefits to the system from Network Upgrades.”²¹ Staff’s assertion is incomplete and thereby misleading. In order to maintain ratepayer indifference, customers are statutorily prohibited from paying for Network Upgrades costs if those costs would result in them paying more for QF power than they would pay from another reasonably available source, as confirmed by the U.S. Supreme Court.²² Therefore, under PURPA, the more accurate statement is that PURPA’s ratepayer indifference standard is not violated when the users of the transmission system (primarily the host utility’s retail customers) are required to pay no more than the avoided cost rate.

Finally, NewSun and ICC continue to recommend that the utility should bear the burden of proving who benefits from Network Upgrades.²³ In accordance with AWEC’s recommendation, determining whether Network Upgrades are required but for the QFs’ interconnection resolves the issue of determining who benefits from the Network Upgrades. As explained in AWEC’s Prehearing Brief, QFs should carry this burden to ensure ratepayers pay no more than the full avoided cost for QF power, including Network Upgrades. Such a recommendation is reasonable and adheres to PURPA and U.S. Supreme Court precedent.²⁴

AWEC therefore continues to recommend that the burden to demonstrate that Network Upgrades

²¹ Staff’s Prehearing Brief, at 12:14-16.

²² *Am. Paper Inst. v. Am. Elec. Power Corp.*, 461 U.S. 402, 417, 103 S. Ct. 1921, 1930 (1983) (A utility’s avoided cost is the “maximum rate authorized by PURPA.”).

²³ NewSun Prehearing Brief, at 5; ICC Prehearing Brief, at 8.

²⁴ *Am. Paper Inst. v. Am. Elec. Power Corp.*, 461 U.S. 402, 417, 103 S. Ct. 1921, 1930 (1983).

would have been incurred regardless of whether the utility purchases from the QF or an alternative reasonably available source be on the QF.

C. Maintaining the Commission’s Network Upgrade cost allocation policy ensures that costs are not unreasonably shifted to ratepayers.

As the only party to this contested case representing customers, AWEC is concerned that the practical consequences to ratepayers of NewSun and ICC’s recommendations are being overshadowed by theoretical policy discussions. As noted above, Staff initially filed testimony asserting that the Commission’s existing policies protect ratepayers while balancing the interests of QFs and ratepayers. AWEC agrees. In order to ensure this balance is maintained, the Commission should not deviate from its current cost allocation policy.

Evidence in the record shows that NewSun and ICC’s proposals would result in rate shock to customers. For example, in response to Staff’s Data Requests, “Idaho Power identified \$86.8 million of Network Upgrades assigned to the 215 MW of Oregon QF interconnection requests between 2014 and 2019.”²⁵ As Staff explained, “[u]sing FERC’s allocation approach to reimburse these upgrades would increase the transmission ratebase by roughly \$79.4 million (approximately \$55.6 million allocated to Idaho Power customers), which would increase transmission rates by roughly 6.9 percent.”²⁶ Further, “PacifiCorp identified \$1.3 billion in deliverability-driven Network Upgrades assigned to 550 MW of Oregon QF between 2014 and 2019.”²⁷ Again, as Staff explained, “[u]sing FERC’s allocation approach to reimburse these upgrades would increase transmission ratebase by \$160 million. This would shift \$34

²⁵ Staff/100 Moore/24:1-3.

²⁶ *Id.* at 24:3-7.

²⁷ *Id.* at 24:8-10.

million to Oregon ratepayers (2.59 percent rate impact) under a multi-state allocation or \$130 million (9.84 percent rate impact) if allocated situs.”²⁸

ICC’s recommendation that the Commission should “*assume* that all system users benefit from Network Upgrades, and that all Network Upgrades should be paid by all users and beneficiaries of the system,”²⁹ is asking the Commission to adopt a policy that, based on an assumption, would result in substantial rate increases for retail customers, as shown in response to Staff’s Data Requests.

Staff explains that under NewSun and ICC’s proposals, “if QFs are reimbursed for the capital costs of Network Upgrades, they will bear no cost responsibility for the Network Upgrades even though they are beneficiaries of the Upgrades. This complete lack of cost responsibility may lead to uneconomic siting decisions for generating facilities and presents considerable financial risk to the utility’s retail customers who are responsible for 70-87 percent of the utilities’ transmission revenue.”³⁰ It is clear that under NewSun and ICC’s recommendations, retail customers would bear unreasonable costs associated with QFs’ interconnection. Further, NewSun argues that FERC’s allocation method “is the best approach because it is easy to implement.”³¹ Even if NewSun was correct, ease of implementation should not take priority over ensuring that ratepayers are not burdened with immense rate increases.

The impact to ratepayers under NewSun and ICC’s proposals cannot be understated. As the Commission is aware, it is statutorily obligated to “represent the customers

²⁸ *Id.* at 24:10-14.

²⁹ ICC Prehearing Brief, at 7 (emphasis added).

³⁰ Staff’s Prehearing Brief, at 9:6-11.

³¹ NewSun Prehearing Brief, at 3.

of any public utility...and the public generally in all controversies respecting rates, valuations, service and all matters of which the commission has jurisdiction. In respect thereof the [C]ommission shall make use of the jurisdiction and powers of the office to 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.”³² To meet this statutory obligation, the Commission must consider the rate impacts on customers of NewSun and ICC’s recommendations.

III. CONCLUSION

For the foregoing reasons, AWEC recommends that the Commission grant the following relief, which protects ratepayers from unreasonable cost shifts, is consistent with Commission policy, PURPA, and will ensure customer indifference.

- (1) Require QFs to pay for Network Upgrade costs that would not have been incurred but for the QF’s interconnection,
- (2) Require QFs to continue to carry the burden of proof to show that Network Upgrades are required regardless of the QF’s interconnection with the host utility, and
- (3) Any other relief the Commission deems just and proper.

Dated this 5th day of August, 2022.

Respectfully submitted,

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³² ORS §765.040(1).

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