

**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

NEWSUN’S POST-HEARING BRIEF

I. INTRODUCTION

NewSun Energy LLC (“NewSun”) hereby submits this Post-hearing Brief in Docket No. UM 2032 regarding the two questions presented for resolution in this Phase I of the docket. Below, NewSun provides practical solutions to the core issues in this docket and recommends that the Commission simply adopt those recommendations in this Phase 1 and simply close the docket. NewSun’s recommendations recognize the unavoidable truth that network upgrades benefit all users of the transmission system and that meeting Oregon’s current 100% clean electricity mandate (which is new since this docket began) will require that all solutions be on the table to bring more renewables online and to address the region’s transmission constraints.

A. Issues Presented

The questions presented for resolution in Phase I are:

1. Who should be required to pay for Network Upgrades necessary to interconnect the [qualifying 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

Depending on the resolution of Phase I, the question for Phase II is:

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?²

B. NewSun's Recommendations

NewSun recommends that the Oregon Public Utility Commission (the "Commission") resolve the legal, policy, and practical issues presented in this docket by:

1. Refunding QF network upgrades over a period not less than 5 years:

Network upgrades initially funded by the QF would be reimbursed by the utility 100% at the time of energization or over 5 years consistent with Federal Energy Regulatory Commission's ("FERC") policies and the practices of the California Independent System Operator ("CAISO") and other transmission providers.

2. Allowing QFs to be studied for both ERIS and NRIS and choose either:

Consistent with FERC policies, QFs would be studied as ERIS, NRIS or both up to the point of the Facilities Study Agreement and the QF could ultimately choose either depending on its business objectives.

3. Specifying that FERC policy and a utility's FERC tariff is the backstop:

A QF would be able to proceed under FERC's or the interconnecting utility's

¹ Ruling at 1-2 (May 22, 2020).

² Ruling at 3 (May 22, 2020).

Open Access Transmission Tariff cost allocation framework applicable to the utility's own resources or other parties' interconnections (if, for example, FERC adopts new positive reforms after the Commission closes this docket).

4. As an interim action, allowing QFs to be studied for both ERIS and NRIS:

There is no practical reason not to allow QFs to be studied for both service types (even if the Commission ultimately decides to require NRIS). It will pose almost no additional burden on utilities but will facilitate QFs having full information about costs should they decide to become FERC-jurisdictional after they receive their system impact (or cluster) study results.

NewSun's recommendations comply with the Public Utility Regulatory Policies Act ("PURPA"), are consistent with FERC policies, reduce opportunities for utilities to discriminate against QFs, and will enable creative solutions to well-recognized transmission constraints, thus allowing Oregon-sited generators to help meet the region's 100% clean electricity mandates.

C. 100% Clean Electricity Context

Since this docket began, the market and need for clean power and solutions to transmission constraints in Oregon has significantly shifted. With the passage of a 100% clean electricity mandate, Oregon utilities indisputably must build spectacular amounts of new renewables in all scales and volumes over the next decade and beyond, and those procurements will require lots of network upgrades throughout the integrated transmission system. The concern about QFs triggering network upgrades is therefore, now a red herring that distracts from and is mooted by the bigger issue of decarbonization and how the state will meet its 100% clean mandate. As such, NewSun recommends that the above policies be adopted and this case closed.

II. BACKGROUND

PURPA was enacted in 1978 with the stated purpose to “encourage” the development of non-utility owned small generation and cogeneration facilities.³ At the time the current PURPA interconnection rules were adopted in 1980, the only statutory means available to obtain transmission service from the incumbent transmission operators were Sections 210, 211, and 212 of the Federal Power Act. As FERC correctly observed, requiring QFs to “go through the complex procedures set forth in Section 210 of the Federal Power Act to gain interconnection would, in most circumstances, significantly frustrate the achievement of the benefits of [PURPA].”⁴ FERC therefore required that an electric utility “make any interconnections with a [QF] which may be necessary to permit purchases from or sales to the [QF],” and provided that “[t]he State regulatory authority. . . must enforce this requirement as part of its implementation of [FERC’s] rules.”⁵

In short, PURPA’s requirement to interconnect QFs was intended as a way to make QF interconnections *less burdensome* than the status quo available to non-QF generators, and the State’s jurisdiction to enforce those interconnections was provided as a means to ensure the regulated utilities did not use the interconnection process to frustrate PURPA’s primary purpose to encourage QF generation. Thus, this context clarifies that the Oregon Commission’s PURPA responsibility here is to ensure that QFs are encouraged and not discriminated against.

The status of transmission interconnections has, of course, been revolutionized since the adoption of Order No. 69. FERC adopted an open access transmission regime in Order No. 888,

³ 16 USC § 824a-3(a).

⁴ Order No. 69, *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, 45 Fed. Reg. 12,214, 12,221 (1980)).

⁵ *Id.*

along with specific requirements for large and small generation interconnections in Order Nos. 2003 and 2006, and has continued to refine those programs in, for example, Orders No. 890 and 845. FERC's recent transmission and interconnection Notice of Proposed Rulemakings promise that more reforms to transmission and interconnection policy are in the offing.⁶

The Commission should adapt its policies to reflect new reforms adopted by FERC in the federal interconnection process so that state-jurisdictional QF interconnections are no more burdensome than FERC interconnections. For example, in the transmission ANOPR, FERC proposed several reforms that remove at least some of the burden to pay for network upgrades from interconnecting generators. If FERC adopts such positive reforms in the future, or IOUs otherwise reform their own tariffs and reduce interconnection burdens on generators, the Commission should follow suit.

Finally, the context of decarbonization has evolved since this docket commenced. At the same time the energy sector is also building more renewables at an increasing pace to comply with looming statutory mandates and corporate commitments to meet the electricity supply with 100% clean power and to curb the onset of climate change, there are also significant transmission constraints facing the industry and the region. These clean energy requirements mean that all solutions must be on the table, from significantly building out the transmission network, to innovative solutions to better utilize existing transmission, to simply enabling projects to be interconnected closer to load to reduce or eliminate the reliance on expensive transmission. If

⁶ *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 87 Fed. Reg. 26504 (proposed May 4, 2022) (to be codified at 18 CFR pt. 35); *Improvements to Generator Interconnection Procedures and Agreements*, 87 Fed. Reg. 39934 (proposed July 5, 2022) (to be codified at 18 CFR pt. 35).

Oregon-sited projects are to play any role in the transition to a 100% clean electricity sector, then the Commission’s interconnection service and cost allocation policies need to be reformed.

III. ARGUMENT

The Commission should, consistent with FERC policy and the policy of independent transmission organizations like the CAISO, resolve question one by making QFs initially responsible for funding the cost of network upgrades and providing for a reimbursement of those costs upon energization or over a 5-year period and in all cases not worse than or burdensome than would be available to the utility’s own generation or development or other parties’ interconnections. The Commission should resolve question two by requiring that utilities allow QFs to be studied as ERIS or NRIS at their choice up to the point of the Facilities Study Agreement and to elect either depending on their business objectives. Both recommendations mirror FERC’s *pro forma* Open Access Transmission Tariff (OATT) provisions, are not prohibited by PURPA, further this state’s 100% clean electricity standard, and would result in more level playing field between QF and utility-owned generation. Again, given that FERC first established the State’s enforcement authority over PURPA interconnections to provide a *less burdensome* interconnection pathway for QFs and to ensure that regulated utilities do not use the interconnection process to frustrate PURPA’s primary purpose to “encourage” QF generation, state jurisdictional QF interconnection customers should be no worse off than if the QF interconnected under FERC’s policies.

A. Type of Interconnection Service

1. PURPA Does Not Prevent this Commission From Allowing QFs to Choose ERIS or NRIS

PURPA does not require a QF to interconnect with NRIS and no party appears to argue otherwise. Rather, the Joint Utilities and Staff recommend the use of NRIS as the “most

appropriate” or “efficient” interconnection service based on their understanding of FERC’s *Pioneer Wind Park I, L.L.C.*, (“*Pioneer Wind*”) case.⁷ Staff acknowledges that “ERIS could be considered as an alternative mechanism to overcome issues related to QF Network Upgrades,”⁸ but states that “NRIS is the most appropriate interconnection service for QFs wishing to enter a fixed-price term PURPA Power Purchase Agreement.”⁹ The Joint Utilities assert *Pioneer Wind* requires a QF to be delivered on firm transmission and that only NRIS studies the QF for deliverability.¹⁰

This misperceives the purpose of NRIS. NRIS does not convey firm transmission service. Instead, it studies whether the aggregate of generation in the local area can be delivered to the aggregate of the *utility’s native load* consistent with reliability criteria and procedures.¹¹ Any firm transmission for delivery from the generating facility would need to be subsequently acquired in the transmission service request process.¹² *But there is no requirement that a utility purchasing the output of a PURPA project deliver that output to its native load.* On the contrary, once the QF power is delivered, the utility has the option to deliver the power to load, to deliver it to another utility, or sell it into the wholesale markets—all of which are core functions of the

⁷ 145 FERC ¶61,215 (2013).

⁸ Staff/300, Moore/16.

⁹ Staff Prehearing Brief at 15.

¹⁰ Joint Utilities’ Prehearing Brief at 33.

¹¹ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103 at PP. 754-756 (2003), *order on reh’g*, Order No. 2003-A, 106 FERC ¶ 61,220 (2004), *order on reh’g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh’g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008). It also assumes that some portion of the capacity of existing network resources is displaced by the new generating facility.

¹² *Id.*

*utility and consistent with their daily activities.*¹³ These things are not the QF’s obligation or can be imposed on them as a means to subvert their PURPA must purchase obligation. The assertion that PURPA requires NRIS is therefore simply incorrect. Therefore, a facility is only required to be designated as a network resource if the purchasing utility elects to deliver the power to its own load. And NRIS is not required for a resource to be designated to serve network load.¹⁴ PGE’s Port Westward 2 generating facility, for example, is interconnected with ERIS and designated as a network resource.¹⁵ Accordingly, because this choice belongs to the utility, the utility should be required to pay the incremental cost of upgrades that are required to designate a resource as a network resource.

NewSun disagrees that giving QFs fewer and more expensive interconnection options is the most appropriate or efficient outcome. First, if a QF elects to sell off-system rather than to the utility with which it directly interconnects, the interconnection process is subject to FERC

¹³ *PaTu Wind Farm, LLC v. Portland General Electric Co.*, 150 FERC ¶61,032 at PP. 53-54 (2015) (“If . . . Portland General were permitted . . . to refuse to accept PaTu’s entire net output, Portland General . . . could routinely escape their PURPA mandatory purchase obligation . . . by imposing overly restrictive or un-meetable scheduling requirements, or by the purchasing electric utility’s failing to arrange the necessary transmission service to dispose of its purchase of the QF’s entire net output once it has been delivered to the utility.”) (“It is Portland General’s merchant function’s decision, once PaTu’s net output is delivered to Portland General’s Troutdale substation, to then choose how to subsequently deliver that net output to Portland General’s load . . . But, regardless of the transmission service that Portland General’s merchant function uses to subsequently deliver the net output to Portland General’s load, Portland General must take from PaTu its *entire* net output (all energy less onsite uses and losses) delivered and to do so at avoided cost rates.”) (citing *Entergy Services, Inc.*, 137 FERC ¶61,199, at P. 52 (2011) (finding that Entergy’s statutory obligation to purchase unscheduled QF energy is not subordinate to tariff considerations and once that energy is purchased, it is Entergy’s responsibility to deliver that energy to its load (or otherwise manage the energy))).

¹⁴ NewSun’s Prehearing Brief at 12.

¹⁵ NewSun/400, Andrus/3 (additionally Idaho Power lists five ERIS generators receiving firm transmission service).

jurisdiction.¹⁶ Hence, a QF can avoid onerous state requirements by simply by electing to sell off-system (or even a portion of their output to someone other than the interconnecting utility). Rather than encouraging QFs to sell to distant utilities, which only increases transmission congestion and undercuts the Commission’s obligation to encourage development of renewable generation that benefits Oregonians, the Commission should avoid any outcome that makes the state interconnection process more difficult or expensive than the federal process.

Second, under PURPA and Oregon law a QF can choose to negotiate a variety of purchase and sale arrangements. Under PURPA, a QF may sell to a utility under standard rates for purchases, or it may negotiate a rate.¹⁷ It may provide energy as it determines such energy to be available with the rates calculated at the time of delivery, or it may provide energy or capacity or both over a specified term with the rates calculated at the time of delivery or at the time the obligation is incurred.¹⁸ Further,

Nothing in [the Commission’s PURPA] rules limits the authority of a public utility or a qualifying facility to agree to a rate, terms, or conditions relating to any purchase, which differ from the rate or terms or conditions that would otherwise be provided by these rules, provided such rate, terms, or conditions do not *burden* the public utility’s customers.¹⁹

Pioneer Wind stands for the proposition that a utility cannot *require* a QF to agree to greater curtailment than is permissible under PURPA, but as just noted above, a QF may choose to negotiate something different than what it is legally entitled to under PURPA. In *Pioneer Wind*, the QF asked FERC to find that “PacifiCorp’s *refusal* to execute a Power Purchase Agreement (PPA) . . . unless [the QF] agrees to allow PacifiCorp to curtail the [QF] ahead of other generators”

¹⁶ Order No. 2003 at P. 814.

¹⁷ 18 CFR 292.304(d).

¹⁸ 18 CFR 292.304(c).

¹⁹ OAR 860-029-0005(2) (emphasis added).

is inconsistent with PURPA.²⁰ FERC agreed that the curtailment provision violated PURPA and FERC's PURPA regulations.²¹ *Pioneer Wind* therefore stands for nothing more than the basic premise that a utility cannot refuse to purchase a QF's net output unless the QF agrees to additional curtailment. However, as long as the QF still has an option to invoke its full rights under PURPA, then the QF may choose to negotiate something different. And Oregon's rules confirm that a QF and utility may agree to something different.

Hence, even if the Commission agrees with the claim that firm delivery requires NRIS, the Commission should recognize that something less than fully firm delivery service can be negotiated by the QF. The Commission should therefore, at a minimum, permit flexibility that will allow QFs to avoid such expensive and unnecessary costs by agreeing to ERIS and to curtailment regimes that avoid expensive Network Upgrades.

2. Allowing QF to Be Studied for and Choose Between ERIS and NRIS Offers Greater Flexibility

ERIS allows an interconnection customer to interconnect and be eligible to deliver the facility's electric output using existing firm or nonfirm capacity on the transmission provider's transmission system on an as available basis.²² Under FERC's *pro forma* Large Generator Interconnection Procedures ("LGIP"), an interconnection customer may request ERIS or NRIS at the time of its application, and if it chooses NRIS, it may also be concurrently studied for ERIS up until the point that a Facilities Study Agreement is executed.²³ At that point, the interconnection customer must elect to proceed with NRIS or a lower level of interconnection

²⁰ *Pioneer Wind* at P. 1 (emphasis added).

²¹ *Id.* at P. 36.

²² NewSun/100, Rahman/13.

²³ FERC's *Pro forma* LGIP at §3.2 available at <https://www.ferc.gov/sites/default/files/2020-04/LGIP-procedures.pdf>.

service to the extent that only certain upgrades will be completed.²⁴ An ERIS study identifies network upgrades needed to allow the generating facility to operate at full output, and must identify the maximum allowed output without network upgrades.²⁵ This study process, therefore, does not “hide” costs as the Joint Utilities assert, but rather offers the generator greater information to decide what type of offtake arrangement might work best within the existing conditions.

In constrained transmission systems, very few projects interconnect using NRIS. For example, in California, there has been a massive influx of solar generation over the last 10 years which has largely consumed available system capacity. Consequently, the costs for NRIS has significantly increased to the point that “*nearly all generators select to go with ERIS type interconnection.*”²⁶

Further, in PacifiCorp’s recent 2020 All-Source RFP, none of the resources on the final shortlist chose NRIS.²⁷ The only two shortlisted projects listed with an NR service type are classified as QFs on PAC’s OASIS,²⁸ and therefore, were not given a choice for ER service under the Joint Utilities’ current practices.²⁹ One QF is located in Oregon, and the other is in Wyoming (although it is not clear how that project is a QF since it is listed as having a capacity

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Id.

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Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003-A, 106 FERC ¶ 61,220, at P. 499 (Mar. 5, 2004).

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NewSun/100, Rahman/17 (emphasis in original).

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NewSun/604, 1 (PacifiCorp Response to NewSun Data Request 48); *See also Compare* NewSun/602, 15 (PacifiCorp 2020 All-Source RFP Final Shortlist Presentation, Docket No. UM 2059 (July 30, 2021)) *with* NewSun/601, 1 (PacifiCorp “Executed but Not In Service” Interconnection Queue as of 5/13/22 (accessed on 5/24/22)).

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Id.

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Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/8 (“Both PacifiCorp and Idaho Power interconnect QFs using NRIS consistently across their service territories.”).

of 280 MW).³⁰ Given that each of these QFs may now enter into a non-PURPA offtake arrangement, their network upgrades may now become refundable under FERC's interconnection policies.³¹ And every project PacifiCorp ultimately contracts with will be designated by PacifiCorp's Merchant function to serve its network load so deliverability related network upgrades will need to be identified in the transmission service request ("TSR") process. Therefore, all projects on the shortlist with the option to do so have chosen to interconnect with ERIS and the TSR process will be utilized to identify deliverability related network upgrades, and PacifiCorp finds this to be a reasonable approach. This demonstrates that it is discriminatory to require QFs alone to use NRIS. It also demonstrates that requiring NRIS for QFs is likely to cripple PURPA development in Oregon. Finally, it demonstrates that greater optionality leads to more renewable generation development.

B. Cost Allocation

1. PURPA Does Not Prevent This Commission From Allocating Network upgrade Costs Necessitated by a QF Interconnection to the Utility

NewSun agrees with Staff that PURPA does not require a QF to be 100% responsible for paying the costs of network upgrades necessitated by its interconnection.³² The Joint Utilities' position is overly simplistic because it ignores the benefits of network upgrades as well as the beneficiaries of those upgrades.³³ What the Joint Utilities ignore is that in virtually all circumstances, network upgrades (regardless of who triggers them) bring significant benefits to the transmission system and all users and beneficiaries of that system and lower transmission

³⁰ NewSun/604, 1; *See also Compare* NewSun/602, 15 *with* NewSun/601, 1.

³¹ NewSun/402, Andrus/7; NewSun/403, Andrus/6.

³² *See* Staff Prehearing Brief at 10-11; *See also* Staff/300, Moore/16 ("Staff is open to the QF Parties' proposal to allow ERIS. . . ERIS could be considered an alternative mechanism to overcome issues related to QF Network Upgrades.").

³³ Further, the Joint Utilities' assertions of a customer indifference standard misstates the avoided cost rule that applies under PURPA and in Oregon.

rates. When QFs fund those upgrades but are not reimbursed for them, the utility customers are, in fact, significantly better off than they would have been without that power. And according to FERC's Transmission ANOPR, they may actually be worse off if the network upgrade is ultimately not funded and constructed.³⁴

2. FERC's Network Upgrade Framework is Based on Evidence that Network Upgrades Benefit Transmission Customers and the Transmission System as a Whole

The questions asked in this docket have already been addressed by FERC and Oregon does not need to reinvent the wheel. In Order No. 2003 and subsequent orders on rehearing, FERC adopted its current policy in which the cost of network upgrades would be initially funded by the interconnection customer but reimbursed over time.³⁵ Prior to formally adopting this policy, FERC developed the same policy over time through a series of individually litigated evidentiary proceedings.³⁶ In those cases, FERC “developed a simple test for distinguishing Interconnection Facilities from Network Upgrades,” which is that network upgrades “include only facilities at or beyond the point where the Interconnection Customer's Generating Facility

³⁴ Advanced Notice of Proposed Rulemaking, *Building for the Future Through Elec. Reg. Transmission Planning and Cost Allocation and Generator Interconnection*, 176 FERC ¶ 61,024 at P.40 (2021) (“At the time that the Commission issued Order No. 2003, it was less likely that interconnection customers would be assigned significant interconnection-related network upgrades through the interconnection study process. Now, however, there is little remaining existing interconnection capacity on the transmission system, particularly in areas with high degrees of renewable resources that may require new resources to fund interconnection-related network upgrades that are more extensive and, as a result, more expensive. The more significant the interconnection-related network upgrades needed to accommodate a new resource, the greater the potential that such upgrades may benefit more than just the interconnection customer. Where an interconnection customer elects not to pursue a generating facility with system-wide benefits that exceeds such facility's cost, net beneficial infrastructure would not be developed, potentially leaving a wide range of customers worse off as a result”).

³⁵ Order No. 2003 at PP. 693-696.

³⁶ Order No. 2003 at P. 21; *See also* Order 2003-A at P. 694 (noting that continued reliance on evidentiary proceedings will not ensure new interconnections are timely completed).

interconnects to the Transmission Provider’s Transmission System.”³⁷ In support, FERC noted that:

Most improvements to the Transmission System, including Network Upgrades, benefit all transmission customers, but the determination of who benefits from such Network Upgrades is often made by a non-independent transmission provider, who is an interested party. In such cases, the Commission has found that it is just and reasonable for the Interconnection Customer to pay for Interconnection Facilities but not for Network Upgrades. Agreements between the Parties to classify Interconnection Facilities as Network Upgrades, or to otherwise directly assign the costs of Network Upgrades to the Interconnection Customer, have not been found to be just and reasonable and have been rejected by the Commission.³⁸

FERC was not persuaded by and rejected arguments that it employ a “system-wide benefits test” as an alternative to its “at or beyond” test.³⁹ A number of petitioners—*just like the Joint Utilities here*—argued on rehearing that only the interconnection customer benefits from network upgrades, and therefore that the interconnection customer should be directly assigned those benefits.⁴⁰ *FERC disagreed.* FERC’s approach took “a less cramped view of what constitutes a ‘benefit.’”⁴¹ FERC found that “the reliability benefits of a stronger transmission infrastructure” supported its bright line at-or-beyond test and made the “policy determination that a competitive transmission system, with barriers to entry removed or reduced, is in the public interest.”⁴² Further, FERC noted that:

[FERC] has long held that the Transmission System is a cohesive, integrated network that operates as a single piece of equipment, and that network facilities are not “sole use” facilities but facilities that benefit all Transmission Customers. The Commission has reasoned that, even if a customer can be said to have caused the

³⁷ Order No. 2003 at P. 21 (citing *Entergy Gulf States, Inc.*, 98 FERC ¶ 61,014 at 61,023, reh’g denied, 99 FERC ¶ 61,095 (2002); see *Public Service Co. of Colorado*, 59 FERC ¶ 61,311 (1992), reh’g denied, 62 FERC ¶ 61,013 at 61,061 (1993)).

³⁸ *Id.* at P. 21 (citing *Illinois Power Co.*, 103 FERC ¶ 61,032 (2003); *American Electric Power Service Corp.*, 101 FERC ¶ 61,194 (2002)).

³⁹ See *Id.* at P. 684; Order No. 2003-A at PP. 424, 583-84.

⁴⁰ Order No. 2003-A at P. 583.

⁴¹ *Id.* at P. 584 (quoting in part *Entergy Services, Inc. v. FERC*, 319 F.3d 536 (D.C. Cir. 2003) at 543-44).

⁴² *Id.*

addition of a grid facility, the addition represents a system expansion used by and benefiting all users due to the integrated nature of the grid. For this reason, the Commission has consistently priced the transmission service of a non-independent Transmission Provider based on the cost of the grid as a whole, and has rejected proposals to directly assign the cost of Network Upgrades.⁴³

Finally, FERC found that in most instances network upgrades from a new interconnection customer will generally result in a lower transmission rate for remaining customers. FERC observed:

Our experience indicates that the incremental rate associated with network upgrades required to interconnect a new generator (dividing the costs of any necessary network upgrades by the projected transmission usage by the new generator) will generally be less than the embedded average cost rate (including the costs of the new facilities in the numerator and the additional usage of the system in the denominator). In other words, *in most instances, the additional usage of the transmission system by a new Interconnection Customer will generally cause the average embedded cost transmission rate to decline for all remaining customers.*⁴⁴

FERC further noted that:

Continued reliance on the use of evidentiary proceedings, case-by-case adjudication of Interconnection Requests, or other third party review procedures will not ensure that new interconnections are completed in a timely manner by the nonindependent Transmission Provider. Speeding up the interconnection process is a primary goal of this proceeding. Administrative review of complex technical matters is costly and time consuming. In today's competitive power market environment, allowing a Transmission Provider that is also a competitor in the wholesale power market to delay competitive entry or to propose subjective and potentially discriminatory pricing policies is unacceptable. Therefore, we continue to require the non-independent Transmission Provider to adhere to the Commission's 'higher of' pricing policy.⁴⁵

In this case, while the Commission indicated that this question only "requires some evidence and elucidation to evaluate,"⁴⁶ it has sufficient experience and evidence here that network upgrades benefit transmission customers and the transmission system as a whole (i.e.,

⁴³ *Id.* at P. 585 (internal citations omitted).

⁴⁴ Order No. 2003-A, 106 FERC ¶ 61,220 at P. 581 (emphasis added).

⁴⁵ *Id.* at 694.

⁴⁶ Order No. 21-343 at 5-6.

other users and beneficiaries) and therefore those users and beneficiaries should pay for those benefits. In establishing its bright-line “at or beyond” test and its funding and reimbursement policy, FERC relied, in part, on its experience in individually litigated evidentiary proceedings to determine the cost allocation for various types of interconnection facilities and transmission system upgrades. It determined that formally adopting a bright-line policy would expedite interconnection processing times and be in the public interest. Here, while the Oregon Commission does not have a history of litigated QF interconnection proceedings on which to rely, it can rely on FERC’s knowledge and experience as elucidated above, the Commission’s own experience in utility rate cases with similar investments to the transmission system and network upgrades, as well as on the evidence entered into the record here as laid out in NewSun’s testimony and prehearing brief.⁴⁷

In utility rate cases, utilities routinely submit evidence to this Commission regarding the benefits Oregon ratepayers enjoy from various upgrades to the transmission system including network upgrades. As illustrated in NewSun’s prehearing brief, benefits from investments in the transmission system can include added or enhanced operational function, resolving overloading issues, decreasing the risks of equipment failures, improved clearing times for protective relaying schemes, and to compliance with reliability requirements, among others.⁴⁸ Further, during the pendency of this docket, the Joint Utilities’ Witness Vail submitted testimony in PacifiCorp’s current ongoing rate case that:

all transmission system capacity increases provide benefits to customers by increasing reliability and allowing more generation to interconnect to serve

⁴⁷ See NewSun’s Prehearing Brief at 3-9.

⁴⁸ *Id.* at 6.

customer load, as well as allowing [the utility] flexibility in designating generation resources for reserve capacity to comply with mandatory reliability standards.⁴⁹

Many network upgrades funded by QFs could similarly expand the capacity of the transmission system and provide these benefits. Specifically, as pertains to network upgrades necessitated by a generation interconnection request, Witness Vail goes on to say that “Network upgrades . . . are *those assets that benefit all customers using the transmission system.*”⁵⁰ Therefore, given the evidence that network upgrades benefit all users, this Commission should allocate the cost of those upgrades to all users. To do otherwise violates basic principles of cost causation that require the beneficiaries of system upgrades to pay for the costs of those system upgrades. Further, forcing QFs to pay the costs of network upgrades forces those QFs to subsidize benefits to all utility customers, again violating basic principles of cost causation and utility ratemaking.

C. QF Interconnection Customers Must Be Treated in a Non-Discriminatory Manner

The Oregon Commission has an obligation under PURPA that rates for purchases by electric utilities “shall not discriminate against [QFs].”⁵¹ In Oregon, public utilities must not “give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.”⁵² Further, while FERC’s implementing regulations have an explicit non-discrimination provision as between QFs and other customers with similar load characteristics,⁵³ FERC has also stated that this Commission (as well as other State regulatory authorities) has the

⁴⁹ NewSun/600 at 4 (*PacifiCorp Request for a General Rate Revision*, Docket No. UE 399, Direct Testimony of Richard A. Vail (Mar. 1, 2022)) (emphasis added).

⁵⁰ *Id.* at 11 (emphasis added).

⁵¹ 16 USC 824a-3(b)(2); 18 CFR 292.304(a)(ii).

⁵² ORS 757.325.

⁵³ 18 CFR 292.306; *See also* FERC Order 69 at 12230 (“the correct reference for nondiscrimination is the practice of the utility in relation to customers in the same class who do not generate electricity.”)

responsibility and authority to protect QFs from harassment by the utilities in the form of unnecessary requirements and ensure that interconnection requirements are reasonable and associated costs are legitimately incurred.⁵⁴

Under Oregon’s current interconnection regime, utilities are allowed to discriminate against QFs by granting a preference to its own resources or other generation resources. As noted above, non-QFs in recent interconnection and RFP proceedings have almost universally chosen ERIS rather than NRIS. Oregon-jurisdictional QF interconnection requirements are far more onerous than FERC’s policies are for non-QFs and even for QFs that sell off-system—a fact that is well-established in this case. Aside from that however, a utility can simply classify a negotiated power purchase agreement with a QF counter-party as a “non-PURPA” contract, and allow that QF to interconnect under the more-favorable FERC interconnection regime. For example, while Neal Hot Springs is self-certified as a QF with FERC (FERC Docket QF12-389), Idaho Power interconnected Neal Hot Springs “pursuant to Idaho Power’s OATT because it is not selling its output to Idaho Power pursuant to a QF PPA.”⁵⁵ The contract that Idaho Power executed with Neal Hot Springs actually has a longer term and higher prices than comparable PURPA contracts.⁵⁶ Further, PacifiCorp’s Pryor Mountain Wind project was originally developed as a QF, but then once PacifiCorp purchased the project, it became eligible for more favorable FERC interconnection rules including the option to choose ERIS and receive reimbursement for the cost of its network upgrades.⁵⁷ Therefore, all things considered, Oregon’s divergent interconnection policies as compared to FERC’s allow a utility to grant a preference to

⁵⁴ FERC Order 69 at 12230.

⁵⁵ NewSun/400, Andrus/16; NewSun/402, Andrus/7.

⁵⁶ NewSun/400, Andrus/16.

⁵⁷ NewSun/400, Andrus/16.

some QFs over others by simply classifying its agreement with that QF as a “non-PURPA” contract or negotiating to outright purchase that facility. Such preferential treatment is impermissible under PURPA.

By aligning Oregon with FERC, however, the Commission can help to ensure that Oregon jurisdictional QF interconnection customers are treated comparably with other QFs and other generators, including the utility’s own resources. As detailed in NewSun’s prehearing brief, many other QF-types also get more favorable treatment under FERC’s process including off-system QFs and QFs that sell only a portion of their output to their interconnecting utility.⁵⁸ If Oregon-jurisdictional QFs also have the option to select either ERIS or NRIS and receive reimbursement for the cost of their network upgrades, then the utility will have less of an incentive to skirt their PURPA purchase obligation by offering higher prices to some QFs in non-PURPA contracts or otherwise purchasing a QF and seeking rate recovery. If projects like Neal Hot Springs and Pryor Mountain are worthy of being procured under a non-PURPA contract or added to the utility rate base, then there should be no reason why they are not also worthy of being acquired or interconnected under a PURPA contract. Therefore, aligning the Commission’s policies with FERC’s will help to ensure that utilities cannot discriminate against QFs by granting a preference to some projects over others.

D. QFs Have a Critical Role to Play Any Role in Oregon’s 100% Clean Electricity Future, and Oregon’s Interconnection Policies Must Be Reformed

Oregon’s 100% clean electricity mandate requires a massive buildout of renewables and that resources be constructed in a manner that provides direct benefits to Oregon communities. Early estimates from the Joint Utilities regarding how much renewable and non-emitting

⁵⁸ NewSun Prehearing Brief at 8.

capacity they will need to acquire in the 2020s alone are significant.⁵⁹ The 2021 Northwest Power Plan estimated 3,500 MW by 2027 and 14,000 MW by 2040 *without accounting for the effect of Oregon HB 2021*, and a separate study by Evolve Energy Research found that deeply decarbonizing all sectors in the Northwest would require 100,000 MW of new resources by 2050.⁶⁰ It is well-recognized that the transmission system will play a key role in meeting these clean energy mandates.⁶¹ This Commission recognizes the importance of transmission and developing alternatives “that may deliver a significant portion of the value that some resources offer the system.”⁶² And finally, Oregon’s HB 2021 directs that it is the policy of the State of Oregon that:

[E]lectricity generated in a manner that produces zero greenhouse gas emissions also be generated, to the maximum extent practicable, in a manner that provides additional direct benefits to communities in this state in the forms of creating and sustaining meaningful living wage jobs, promoting workforce equity and increasing energy security and resiliency.⁶³

Here, by aligning Oregon’s interconnection policies with FERC, Oregon can help to ensure that Oregon-sited projects contribute to this state’s 100% clean electricity future and to creating and sustaining meaningful living wage jobs, workforce equity, and energy security and resiliency. NewSun’s recommendation would place Oregon-jurisdictional QFs on an equal

⁵⁹ See Newsun/400, Andrus/18-19.

⁶⁰ Jason Eisdorfer, NIPPC Policy Brief: The Role of Competition in the Pacific Northwest Clean Energy Transition at 15 (July 2022) available at <https://nippc.org/wp-content/uploads/2022/07/NIPPC-Brief-Competition-in-NW-Clean-Energy-Transition-July-2022.pdf> (Citing The 2021 Northwest Power Plan, pages 71-76, available at 2021powerplan_2022-3.pdf (nwcouncil.org) and Evolved Energy Research, Northwest Deep Decarbonization Pathways Study at 73-74 (May 2019), available at Clean Energy Transition Institution (cleanenergytransition.org)).

⁶¹ *Id.* at 19.

⁶² *In re PacifiCorp, dba Pacific Power, Application for Approval of 2022 All-Source Request for Proposals*, Docket No. UM 2193, Order No. 22-130 at 3 (Apr. 28, 2022) (noting that this is “particularly” a concern “on the west side of the PacifiCorp system”)

⁶³ Section 2, paragraph 2 of HB 2021, codified at ORS 469A.405(2).

footing with other generators and other QFs. It would enable QFs to develop more creative solutions to meeting the transmission constraints facing the region and allow them to deliver a significant portion of the value those resources to the system. And given the massive volume of procurement necessary, NewSun's recommendation would allow all resources to be on the table as potential options to contribute to meeting the statutorily mandated clean electricity targets.

E. It Makes Practical Sense to Allow QFs to be Studied for Both ERIS and NRIS

Finally, there is no reason why the Commission cannot allow QFs to be studied for both ERIS and NRIS. Given that projects may switch between being FERC- or Oregon-jurisdictional depending on their offtake intentions, it makes practical sense to allow QFs subject to Oregon's jurisdiction to be studied for both. Often developers may be considering alternative offtake arrangements at the time they enter the interconnection queue. Currently, utilities require an interconnection customer to state their intention at the time of the interconnection application to place them in either the FERC- or State-jurisdictional queue. However, projects are permitted to change their mind mid-course.

Even if the Commission later decides in this docket to refuse to allow a QF to select ERIS, it can help provide greater interconnection efficiencies if it at least permits the QF to be studied for ERIS in addition to NRIS. That way, if the State-jurisdictional study identifies significant upgrades at the NRIS level and the QF decides to change its offtake arrangement and move into the FERC-jurisdictional queue, it will already have information to help it determine whether that is feasible. Otherwise, it might need to wait for additional study results at the FERC level, and ultimately withdraw.

Allowing the QF to be studied for ERIS should not create an additional burden on utilities because a NRIS study considers ERIS. NewSun's recommendation would simply

require the utilities to specify which upgrades would be required under the two different interconnection service levels.

IV. CONCLUSION

In conclusion, the Commission should resolve both questions one and two by adopting FERC's approach to cost allocation and giving Oregon-jurisdictional generators the option to be studied for both NRIS and ERIS up to the point of the Facilities Study Agreement and to allow a QF to select either interconnection service type.

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Respectfully submitted,

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