

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 2032

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON,

Staff Investigation into Treatment of  
Network Upgrade Costs for QFs.

ORDER

DISPOSITION: MOTIONS FOR RECONSIDERATION OR REHEARING DENIED;  
ORDER CLARIFIED

**I. SUMMARY**

In this order, we deny the parties' requests for reconsideration and rehearing and provide further clarification of Order No. 23-005.

**II. PROCEDURAL HISTORY**

On January 20, 2023, we issued an order addressing the treatment of network upgrade costs for qualifying facilities (QFs) and the interconnection service available to on-system QFs.<sup>1</sup> In that order we affirmed our policy that QFs are responsible for all interconnection costs, including network upgrades, except where demonstrated to be a utility system benefit or an upgrade the utility planned to make in the near-term regardless of the QF interconnection. We directed an informal rulemaking regarding how to improve the availability of information about utility planning. We also determined that standard QFs should interconnect with host utilities using Network Resource Interconnection Service (NRIS) but provided for a limited exception to allow QFs that negotiate non-standard contracts to use Energy Resource Interconnection Service (ERIS) under certain circumstances.

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<sup>1</sup> The prior procedural history of this proceeding is summarized in Order No. 23-005 (Jan. 20, 2023).

On March 17, 2023, the Community Renewable Energy Association, the Northwest & Intermountain Power Producers Coalition, and the Renewable Energy Coalition (together the Interconnection Coalition) filed a motion for clarification, or in the alternative rehearing or reconsideration. On March 21, 2023, PacifiCorp, dba Pacific Power, Portland General Electric Company, and Idaho Power Company (together the Joint Utilities) filed a motion seeking clarification, rehearing, or reconsideration. On April 3, 2023, the Joint Utilities filed a response to the Interconnection Coalition's motion. On April 5, 2023, the Interconnection Coalition, the Oregon Solar + Storage Industries Association (OSSIA), and NewSun Energy LLC (NewSun) each filed a response to the Joint Utilities' motion.

On April 10, 2023, the Interconnection Coalition filed a reply limited to the issues raised in its motion for clarification. On April 12, 2023, the Joint Utilities filed a response, arguing that the rule on motions for reconsideration applies to motions for clarification, and thus no reply was permitted unless requested by the Administrative Law Judge. The Joint Utilities assert the Commission's rules do not formally distinguish between requests for reconsideration and requests for clarification, and that requests for clarification are typically handled under the rule governing reconsideration, particularly when the requests for clarification and reconsideration are presented as alternatives. The Joint Utilities request that the Commission confirm that a reply was not permitted in this circumstance but note that they are not requesting to strike the Interconnection Coalition's reply or to respond to it.

### **III. APPLICABLE LAW**

OAR 860-001-0720(3) provides that the Commission may grant an application for reconsideration or rehearing if the applicant shows that there is:

- (a) New evidence that is essential to the decision and that was unavailable and not reasonably discoverable before issuance of the order;
- (b) A change in the law or policy since the date the order was issued relating to an issue essential to the decision;
- (c) An error of law or fact in the order that is essential to the decision; or
- (d) Good cause for further examination of an issue essential to the decision.

Additionally, the Commission has stated that to support a request for clarification, a party must cite to provisions in an order that are fatally vague or ambiguous and propose changes that correct those deficiencies. A request for clarification may not seek to change the result of the order.

#### IV. INTERCONNECTION COALITION'S MOTION FOR CLARIFICATION, REHEARING, OR RECONSIDERATION

##### A. Positions of the Parties

###### 1. *Interconnection Coalition*

The Interconnection Coalition addresses two issues in its motion. First, it requests that the Commission clarify that, in determining that QFs may seek to connect with ERIS subject to negotiating a non-standard power purchase agreement (PPA), the Commission did not intend to foreclose the use of interconnection service characterized as “lesser” NRIS subject to a non-standard PPA. The Interconnection Coalition seeks to confirm that QFs and utilities are not precluded from negotiating regarding various forms of interconnection service, including a lesser NRIS.

The Interconnection Coalition contends the Commission’s order could be interpreted as allowing use of either ERIS or full NRIS, but nothing in between. The Interconnection Coalition argues, however, that it believes that the Commission intended more flexibility and stated that it “favor[ed] experimenting, as the [Washington Utilities and Transportation Commission (WUTC)] has, with voluntary arrangements between QFs and utilities that allow for more efficient use of the existing transmission system at a time of increasing constraints.”<sup>2</sup> The Interconnection Coalition explains that the Puget Sound Energy (PSE) interconnection tariff cited in the order is NRIS with curtailments and allows the QF to avoid specific network upgrades by opting for curtailment. The Interconnection Coalition seeks to confirm that, where the QF is willing to voluntarily curtail and negotiate a non-standard contract, the QF has the ability to discuss interconnection options with the utility rather than being limited to ERIS.

Second, the Interconnection Coalition requests clarification that under the system benefit test a QF should not be responsible for network upgrades that a utility planned to make regardless of the QF’s interconnection and that exclusion from responsibility for these costs should not be limited to the upgrades included in local transmission plans. Specifically, the Interconnection Coalition requests clarification that QFs should not be charged or should be refunded the costs for upgrades related to regular maintenance and replacement of aged equipment that the utility would have replaced in the near term regardless of the interconnection. The Interconnection Coalition also requests that the Commission clarify that the rulemaking will address how to increase transparency into the age and replacement schedule for the equipment a utility identifies for replacement or upgrade in an interconnection study.

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<sup>2</sup> Interconnection Coalition Motion at 6 (Mar. 17, 2023) (quoting Order No. 23-005 at 34).

The Interconnection Coalition argues to the extent the Commission intended to limit the upgrades subject to refund to those identified in the local transmission plans that this would represent a change from the Commission's prior policy. The Interconnection Coalition contends that the Joint Utilities argued in this docket that QFs should only avoid paying for upgrades identified in the host utility's transmission plan, limited to the plans available on the Open Access Same-Time Information System (OASIS) website or other websites, which exclude maintenance activities. The Interconnection Coalition asserts that it addressed this issue in testimony and briefing, and that it demonstrated that the amounts associated with upgrades not included in such plans was significant. The Interconnection Coalition argues that the Commission's order did not directly address this issue and contains language that could be interpreted as excluding regular maintenance upgrades from the system benefits test. The Interconnection Coalition explains that what upgrades are identified in "a host utility's near-term, local transmission plan" is ambiguous, and that the vast majority of routine replacements likely are not included in any such plans.<sup>3</sup> The Interconnection Coalition requests clarification that the Commission intended to limit QF responsibility to "the upgrades that are truly beneficial only to them and prioritized only by them, and not the wider system" by confirming this includes the type of upgrades included in formally written local transmission plans as well as replacements due in the near term, even if not included in the written plans.<sup>4</sup> The Interconnection Coalition requests rehearing or reconsideration if the Commission did intend such a change.

## 2. *Joint Utilities*

The Joint Utilities oppose the Interconnection Coalition's motion. They assert that the issue of lesser NRIS was raised too late in the proceeding and that the evidentiary record does not address what lesser NRIS is in detail. The Joint Utilities contend that lesser NRIS is untested and has the potential to compromise transmission system reliability and safety, potentially resulting in violations of North American Electric Reliability Corporation (NERC) standards. The Joint Utilities argue that the order affirmed the requirement to use NRIS with an exception to allow QFs to pursue ERIS in limited circumstances and subject to retail customer protections in the PPA. The Joint Utilities argue that the order did not approve use of lesser NRIS and thus the Interconnection Coalition's request is outside the scope of the order. The Joint Utilities also argue that the order did not specifically endorse the PSE tariff and did not resolve the issues raised by the Joint Utilities regarding adoption of that approach. The Joint Utilities argue that the record does not address what lesser NRIS entails or how it would be implemented. They assert that lesser NRIS appears to require the utility to ignore certain NERC reliability and safety issues caused by the QF in the interconnection process. The Joint

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<sup>3</sup>*Id.* at 12-13.

<sup>4</sup>*Id.* at 11.

Utilities argue that this would either increase the likelihood of reliability events on the system or shift the need to fund the reliability and safety upgrades to the next service request or the transmission provider. The Joint Utilities argue that to the extent the use of lesser NRIS would be voluntary on the part of the utilities, they are not comfortable with studying their systems without considering all NERC reliability standards. They contend that if the Commission leaves open any possibility of lesser NRIS, it should confirm utilities are not required to provide it and that any experimentation with QF interconnection should not compromise the safety and reliability of the transmission system or create the potential for non-compliance with NERC standards.

The Joint Utilities also oppose the Interconnection Coalition's request for clarification regarding the treatment of routine maintenance upgrades under the system benefit test. The Joint Utilities argue that during the course of this case the Interconnection Coalition sought a shift in the Commission's existing policy by recommending in the final round of testimony that a QF should not be responsible for upgrades including the replacement of equipment under the utility's general maintenance program. The Joint Utilities assert that they opposed the Interconnection Coalition's recommendation, arguing that it raised concerns about public disclosure of sensitive information, the potential for disputes regarding the utilities' prioritization of maintenance, and timing and cost allocation issues that are likely to require case-by-case adjudication. The Joint Utilities maintain that, as a result, they argued for the Commission to either reject the proposal or address it in a phase II of the proceeding. The Joint Utilities explain that they generally agree it is reasonable to presume a QF would not be required to pay for equipment if the transmission provider "had firmly committed to replacing the same equipment in the immediate near term."<sup>5</sup> However, they argue that implementation would be more complicated as applied to maintenance upgrades. The Joint Utilities thus contend that further investigation would be needed in informal rulemaking or elsewhere before adopting such a policy.

## **V. JOINT UTILITIES' MOTION FOR RECONSIDERATION, REHEARING, OR CLARIFICATION**

### **A. Positions of the Parties**

#### ***1. Joint Utilities***

In their motion, the Joint Utilities request that the Commission reconsider the decision to allow a QF to connect with ERIS, arguing that it creates significant legal and economic risk in QF contracts. The Joint Utilities assert that allowing interconnection via ERIS is inconsistent with the Public Utility Regulatory Policies Act of 1978 (PURPA) and

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<sup>5</sup> Joint Utilities' Response at 11 (Apr. 3, 2023).

FERC's decision in *Pioneer Wind Park I, L.L.C.*,<sup>6</sup> and likely to increase disputes. The Joint Utilities contend that QF interconnection via ERIS is inappropriate for any long-term contract for power intended to serve load because the utility will need to rely on non-firm transmission service to move the QF power. The Joint Utilities argue that utilities will be burdened with long-term contracts for resources that they may not have transmission capacity for at any given moment. They contend that the avoided cost and value to customers for such power would be impacted. Additionally, they argue that *Pioneer Wind I* requires a utility to deliver QF power on firm transmission.

In the alternative, the Joint Utilities seek clarification on certain issues regarding implementation. The Joint Utilities request confirmation that any QF opting for ERIS in an area with no existing capacity will be delivered on non-firm transmission service and a delivering utility will not be required to specify when or how often that non-firm service will be available. The Joint Utilities argue that the order appears to contemplate that ERIS and/or NRIS studies contain information about the risk of curtailment under ERIS. They maintain, however, that ERIS and NRIS studies do not address how often non-firm transmission may be available on the transmission system. The Joint Utilities argue that interconnection studies identify facilities that must be constructed for an interconnection request and cannot analyze how often non-firm transmission capacity will be available on a transmission system at any time. They request rehearing if the Commission does intend to require utilities to offer assurances about availability of non-firm transmission in negotiating with QFs. They assert that non-firm transmission service is only available if there is excess capacity after all firm transmission customers have been served, and thus there is no way of knowing when such capacity will be available.

The Joint Utilities argue that even in a location where non-firm transmission is generally widely available now, that availability cannot be guaranteed at any given time, nor can it be guaranteed over the term of a QF contract. Thus, the Joint Utilities contend the parameters of any curtailment agreement must be clear with the QFs seeking interconnection via ERIS to bear the risk of transmission unavailability.

The Joint Utilities assert that, as addressed in *Pioneer Wind I*, FERC prohibits the delivery of QF power on non-firm transmission and contends that allowing QFs to interconnect via ERIS would be in violation of FERC's order. The Joint Utilities contend that the Commission's decision to allow for delivery of QF power on non-firm transmission and encouraging parties to experiment with creative solutions could lead to requests for interconnection arrangements that are inconsistent with federal law. The Joint Utilities request confirmation that utilities need not agree to contract terms that would otherwise violate FERC statutes, order, rules, regulations, or tariffs. The Joint

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<sup>6</sup> *Pioneer Wind Park I L.L.C.*, 145 FERC ¶61,215 (Dec. 16, 2013).

Utilities contend that the directive to experiment with the use of the transmission system could lead to misunderstanding. The Joint Utilities also dispute that Section 301(b) of FERC's PURPA regulations, which allows parties to agree to terms and conditions inconsistent with PURPA addresses their concerns regarding *Pioneer Wind I*. They contend that *Pioneer Wind I* represents one set of facts under which FERC has rejected a combination of ERIS and curtailment in the context of Section 301(b). Further, they contend that allowing ERIS interconnection with the utility relying on non-firm transmission service to move the power undermines PURPA's intent, complicates contracting, and will lead to disputes about the value of the QF power and allocation of risks associated with long-term contracts that cannot be relied upon to serve load.

Finally, the Joint Utilities request confirmation that the Commission is not endorsing the PSE tariff for QF curtailment as a model for similar tariffs in Oregon or requiring the filing of a tariff. The Joint Utilities explain their understanding of the order as requiring them to negotiate contractual solutions that allow for QF curtailment rather than tariff implementation. If the Commission does intend for the utilities to file such tariffs, the Joint Utilities seek reconsideration of that decision or clarification that the utilities will not be legally or financially responsible for any resulting cost-shifting or reliability issues.

## 2. *Interconnection Coalition*

The Interconnection Coalition opposes the Joint Utilities' motion and asserts that they seek to relitigate earlier arguments and fail to meet the applicable standard for clarification and reconsideration. Procedurally, the Interconnection Coalition argues that the Joint Utilities' motion fails to address the elements required by rule.

The Interconnection Coalition contends that the Commission's decision to allow QFs to interconnect via ERIS was legally sound and that the Joint Utilities' interpretation of *Pioneer Wind I* would have effectively repealed 18 CFR § 292.301(b).<sup>7</sup> The Interconnection Coalition asserts that under the Commission's order QFs still have the option to select full NRIS service and be paid the avoided cost rates calculated at the time of the obligation for energy and capacity, pursuant to 18 CFR § 292.304(d), without any curtailment beyond that allowed for system emergencies, pursuant to 18 CFR § 292.307(a)(2). However, the Interconnection Coalition asserts that when the QF opts for ERIS, the limited curtailment allowances and standard pricing provisions elsewhere in the PURPA rules do not necessarily apply because the QF is proceeding under 18 CFR § 292.301(b). The Interconnection Coalition argues that by choosing ERIS, the QF is

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<sup>7</sup> "Nothing in this subpart \* \* \* (1) Limits the authority of any electric utility or any qualifying facility to agree to a rate for any purchase, or terms or conditions relating to any purchase, which differ from the rate or terms or conditions which would otherwise be required by this subpart."

voluntarily foregoing what it would be entitled to under the other PURPA rules in order to negotiate other terms.

The Interconnection Coalition also contends that the circumstances of *Pioneer Wind I* are distinguishable because, in that case, Pioneer Wind was connecting with NRIS, and despite that, PacifiCorp proposed to curtail Pioneer Wind before other network resources. The Interconnection Coalition argues that FERC did not address the combination of ERIS plus curtailment, particularly where the QF has voluntarily agreed to it.

The Interconnection Coalition asserts that requiring the utility to negotiate a non-standard PPA implementing the level of curtailment necessary with use of ERIS is a reasonable and adaptable standard to apply to the range of circumstances that could arise in negotiations. The Interconnection Coalition disputes that the Joint Utilities cannot ever identify a level of curtailment necessary to enable use of ERIS absent evidence and contend the utilities have an inherent incentive not to facilitate purchases from QFs. The Interconnection Coalition argues that there is no evidence that it is impossible to predict the level of curtailment that would be necessary with ERIS and contends that the record demonstrates the Joint Utilities have used ERIS for QFs and non-QFs to obtain firm transmission to deliver power to load.<sup>8</sup> The Interconnection Coalition argues that ERIS may be able to be implemented in a variety of ways where the level of curtailment is predictable. The Interconnection Coalition asserts that ERIS can be used to allow projects to proceed that would not have been possible with NRIS. The Interconnection Coalition provides an example where a project would need to achieve commercial operation in the near term to achieve other development deadlines (*e.g.*, tax credits or permitting requirements) but the project cannot be designated as a network resource until a few years later, once planned upgrades are completed. In this instance, the Interconnection Coalition explains that the use of ERIS could allow partial operation prior to full network resource status being achieved.

The Interconnection Coalition also disputes the Joint Utilities' position that allowing use of ERIS will lead to additional disputes. The Interconnection Coalition argues that any such negotiation disputes can be addressed by the Commission based on the circumstances of the proposed use of ERIS and contend that resolving negotiation and pricing disputes under PURPA is one of the important functions assigned to the Commission by the federal and state government. The Interconnection Coalition asserts that removing options available through use of ERIS from consideration in order to avoid potential disputes is not a reasonable implementation of PURPA or the policy of promoting development of QFs.

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<sup>8</sup> Interconnection Coalition Response at 13 (Apr. 5, 2023) (citing NewSun/400, Andrus/3-4).



The Interconnection Coalition opposes the Joint Utilities' request to clarify the ERIS plus curtailment option to the extent that they are not required to otherwise violate FERC statutes, rules, orders, or regulations. It characterizes this request as an attempt by the utilities to obtain discretion to unilaterally refuse to implement ERIS in most circumstances. The Interconnection Coalition argues that the order is lawful and reasonable, and that the Joint Utilities' position is based on an incorrect reading of *Pioneer Wind I*.

The Interconnection Coalition also disputes the Joint Utilities' concerns regarding the PSE tariff and argues that the Commission should not discourage Oregon parties from developing similar tariffs.

### 3. *NewSun Energy LLC*

NewSun argues that the Commission should deny the Joint Utilities' motion and maintain its directive for the utilities to negotiate non-standard contracts with QFs for ERIS. NewSun disputes that any clarification of this directive is warranted but argues the Commission should clarify that the Joint Utilities are expected to negotiate these contracts in good faith. NewSun asserts that the utilities have the best information about their own systems and should not use this information imbalance to delay or obstruct formation of a contract. NewSun contends that utilities should propose reasonable terms to address the issues applicable to the relevant QF contract.

NewSun asserts that in *Pioneer Wind I* FERC determined that a utility cannot require a QF to agree to greater curtailment than is allowed under PURPA. NewSun maintains that a QF can still choose to deliver less than its full output. Thus, NewSun contends that a QF may opt to deliver its output at a level that avoids the need for certain network upgrades. NewSun recommends that the Commission reject the Joint Utilities' argument that an NRIS interconnection is a prerequisite to their mandatory purchase obligation.

NewSun further argues that it is undisputed that interconnection and transmission services are addressed via different processes and that an interconnection study cannot award transmission service. NewSun maintains that whether a QF selects ERIS or NRIS service, the transmission service request is separately submitted, and the type of interconnection service does not require any specific type of transmission service.

NewSun argues that the Joint Utilities' remaining requests for clarification are unwarranted. It maintains that the order does not violate *Pioneer Wind I* and that the Commission does not need to state that the utilities are required to comply with laws. NewSun also contends that the order is clear that no tariff filings are required.

NewSun states that to the extent the Commission has remaining implementation questions NewSun is willing to participate in workshops with the parties and Commission to address those questions.

**4. *Oregon Solar + Storage Industries Association***

OSSIA contends that in *Pioneer Wind I* FERC determined that a utility cannot require inclusion of a curtailment provision on a QF, but asserts this does not preclude a QF from choosing to deliver less than its full output. OSSIA asserts that rather than create litigation risk, permitting use of ERIS allows QFs to avoid expensive network upgrades and make efficient use of a constrained transmission system.

OSSIA also contends that interconnection via ERIS does not establish transmission service, which is subject to a separate process. OSSIA, however, asserts that the utility is in the best position to determine the transmission capacity available and the proper curtailment level because of their access to information that the QFs do not have. Thus, OSSIA requests clarification that utilities are required to negotiate potential use of ERIS in good faith under the Commission's earlier order.

**B. Resolution**

We deny the parties' requests for rehearing or reconsideration but provide clarification of our order in response to the Interconnection Coalition and Joint Utilities' motions.

**1. *Clarification Regarding ERIS or "Lesser" NRIS Service***

The intent of our decision to expand QF interconnection options beyond full NRIS is to provide for flexibility in interconnection and transmission arrangements via non-standard contracts. Transmission options across the region are narrow and constrained, and major upgrades to improve capacity are expensive. Although the language of our order focused on allowing the use of ERIS, we did not intend to limit this flexibility to just ERIS or foreclose QFs and utilities from developing other solutions that encourage QF development by making efficient use of the existing network while preserving reliability and protecting utility customers from unreasonable costs, which may or may not include the service that the Interconnection Coalition characterizes as "lesser" NRIS. By generally allowing utilities and QFs to agree to other interconnection options in the context of a non-standard contract, we are intending to enable negotiations to identify ways to use lesser forms of interconnection service at lower costs and to maximize efficient use of the system to advance the objective of bringing more resources online.

We find that our order was clear that these directives applied to voluntary arrangements via non-standard contracts and did not direct the filing of any tariff. However, consistent with our purpose to encourage experimentation with use of the transmission system via these non-standard contracts, if a new approach is developed through this experimentation that facilitates agreements and resource additions while effectively balancing relevant cost, reliability, and legal considerations, we would then encourage utilities to make tariff filings to implement that successful approach more broadly. We purposely did not order this option to be made available through a standard contract because our intent was to enable discussion of new options in negotiations. We find that the non-standard negotiated contract will allow parties to address in a customized manner the issues that may emerge in the effort to negotiate the contract parameters surrounding use of a lesser form of interconnection service. We expect negotiations to recognize that our decision to expand this option is based on our policy determination favoring creative solutions to more efficiently use the existing network, including by approaching interconnection and transmission service differently.

We recognize that parties have different assumptions about what combination of arrangements are physically and legally possible. We do not resolve those factual or legal questions in this clarifying order but emphasize that our priority in this decision is to encourage the efficient use of varying transmission and interconnection options to maximize use of the system. We recognize that this creates the potential for disputes but addressing those disputes as necessary will help inform our future understanding of the possibilities and limitations in use of the system through more creative approaches to interconnection and transmission service.

We disagree with the Joint Utilities that *Pioneer Wind I* should be read to prohibit a QF from voluntarily entering into a contract for something less than the maximum protections it may be entitled to under PURPA with respect to firm transmission and limited curtailment. We also find it unnecessary to clarify that we are not directing a utility to enter into a contract that is unlawful or inconsistent with otherwise applicable FERC or NERC requirements. This, however, should not be interpreted to narrow potential viable solutions.

While we are not directing the use of any particular arrangements, essential to the success of this endeavor is our expectation that utilities engage in good faith negotiations about experimenting with options to enable QF interconnection with the appropriate transmission service. In particular, we request that utilities are clear with counterparties when objections to a specific proposal are based on legal or policy grounds, as opposed to engineering, reliability, or service-related grounds. In the future it may be important to distinguish the practical or physical limitations on a potential solution from limitations based on policy. Our expectation is that the utility's merchant function would

communicate any and all available transmission options applicable to the interconnection service being negotiated.

We further clarify that our order does not include any requirement for the utility to provide specific assurances beyond identifying what would be consistent with the transmission services available to deliver the QF power. In doing so, we emphasize that the utility merchant function should communicate all available transmission service options, with appropriate terms to be negotiated. Our order did not specify what type of transmission service may be appropriate to deliver power from a QF interconnected through ERIS.<sup>9</sup> We are not inclined to take up further specification of the types of transmission service that may be appropriate to deliver power from a given ERIS-interconnected resource, without knowing the unique contractual arrangements surrounding the ERIS interconnection. We do clarify, however, that we did not intend any firm limitation to any particular type of transmission service.

## ***2. Clarification Regarding Policy on Planned Upgrades and Investments***

As summarized in Order No. 23-005, our existing policy is that QFs larger than 20 megawatts (MW) may be reimbursed for the portion of network upgrades demonstrated to provide “quantifiable system benefits.”<sup>10</sup> For QFs under 20 MW, our policy limits the ability of a utility to allocate costs to the QF “for the cost of system upgrades that primarily benefit the utility or other small generator facilities, or that the public utility planned to make regardless of the small generator interconnection.”<sup>11</sup>

The Joint Utilities generally agree it is reasonable to presume a QF would not be required to pay for equipment if the transmission provider “had firmly committed to replacing the same equipment in the immediate near term”<sup>12</sup> but argue that implementation issues including handling of sensitive information, the potential for disputes regarding the utilities’ prioritization of maintenance, and timing and cost allocation issues require further investigation before adopting such a policy.

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<sup>9</sup> See Order No. 23-005 at 34 (authorizing the negotiation of agreements that “can be accommodated through appropriate transmission service (e.g., non-firm or PTP).”)

<sup>10</sup> Order No. 23-005 at 6-7 (citing *In re Pub. Util. Comm 'n of Or. Investigation into Interconnection of PURPA Qualifying Facilities with Nameplate Capacity Larger than 20 Megawatts to a Pub. Util. 's Transmission or Distribution System*, Docket No. UM 1401, Order No. 10-132 at 3 (Apr. 7, 2010)).

<sup>11</sup> Order No. 23-005 at 7-8 (citing *In the Matter of a Rulemaking to Adopt Rules Related to Small Generator Interconnection*, Docket No. AR 521, Order No. 09-196 at 4 (Jun. 8, 2009)).

<sup>12</sup> Joint Utilities Response to Joint Utilities Motion for Rehearing and/or Reconsideration at 11 (Apr. 3, 2023).

We clarify that Order No. 23-005 did not alter our fundamental prior policy or limit the system benefit test to consider only those upgrades contained in the transmission plan or any other specific document. Thus, we clarify that the costs for upgrades associated with regular maintenance and replacement of aged equipment that the utility would have been replaced in the near term regardless of the interconnection should not be allocated to QFs.

We recognize the complexities associated with achieving greater transparency on utility planning and decision making, and we expect that taking steps to more actively implement this existing policy will not be simple. Regardless, we think the basic rule is clear and, as stated above, expect the utilities to implement it in good faith. We find that the informal rulemaking directed in Order No. 23-005 should address these issues of most efficiently implementing this policy. We note that the ongoing distribution system planning processes may also provide relevant insight into utility planning processes. We recognize that implementation will likely generate legitimate disputes about the timing or changes in prioritization for some investments but, again, expect the parties to engage with one another in good faith to reach resolution based on the particular circumstances of each interconnection request.


Where a particular investment is identified for upgrade or replacement in the utility's normal course of business within a reasonable time horizon, the QF should have some ability to consider already-planned maintenance activities for purposes of cost allocation. While the Joint Utilities raise issues regarding public disclosure of sensitive information, we find that providing information to a requesting QF, subject to appropriate confidentiality requirements, in response to an interconnection request about the facility replacements identified in that interconnection study to be a reasonable solution, subject to further development in the rulemaking.

**VI. ORDER**

IT IS ORDERED that:

1. The Joint Utilities' motion for rehearing, or reconsideration is denied. The Joint Utilities' motion for clarification is granted in part.
2. The Interconnection Coalition's motion for rehearing or reconsideration is denied. The Interconnection Coalition's motion for clarification is granted.

Made, entered, and effective May 09 2023.



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**Megan W. Decker**  
Chair



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**Letha Tawney**  
Commissioner



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**Mark R. Thompson**  
Commissioner



A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.