

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**Docket No. UM 2032**

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON,

Investigation into the Treatment of Network  
Upgrade Costs for Qualifying Facilities

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MOTION FOR CLARIFICATION, OR IN  
THE ALTERNATIVE, APPLICATION FOR  
RECONSIDERATION OF THE  
COMMUNITY RENEWABLE ENERGY  
ASSOCIATION, THE NORTHWEST &  
INTERMOUNTAIN POWER PRODUCERS  
COALITION, AND THE  
RENEWABLE ENERGY COALITION

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MOTION FOR CLARIFICATION, OR IN THE ALTERNATIVE, APPLICATION FOR RECONSIDERATION OF THE COMMUNITY RENEWABLE ENERGY ASSOCIATION, THE NORTHWEST & INTERMOUNTAIN POWER PRODUCERS COALITION, AND THE RENEWABLE ENERGY COALITION

## I. INTRODUCTION AND SUMMARY

Pursuant to ORS 756.561, OAR 860-001-0720, and OAR 860-001-0420, the Community Renewable Energy Association (“CREA”), the Northwest & Intermountain Power Producers Coalition (“NIPPC”), and the Renewable Energy Coalition (the “Coalition”) (collectively the “Interconnection Customer Coalition”) respectfully move for clarification, and/or in the alternative, apply for rehearing or reconsideration of the Public Utility Commission of Oregon’s (“Commission” or “OPUC”) Order No. 23-005 (or the “Order”). This filing addresses two substantive issues addressed by the Order—an Energy Resource Interconnection Service/Network Resource Interconnection Service (“ERIS” and “NRIS”) issue, and a system benefits test issue.

*First*, the Interconnection Customer Coalition requests that the Commission clarify certain statements in the Order regarding the determination that qualifying facilities (“QFs”) may elect to interconnect with ERIS, subject to agreement to a non-standard power purchase agreement (“PPA”). Specifically, the Commission should clarify that in directing that such QFs may use ERIS instead of NRIS, the Commission did not intend to foreclose the possibility of such QFs utilizing a form of interconnection service more properly characterized as a lesser NRIS, subject to the agreement to a non-standard PPA. The Puget Sound Energy (“PSE”) tariff cited and relied upon by the Order is characterized as a lesser NRIS, not necessarily as ERIS, and the Interconnection Customer Coalition seek to clarify the Order does not preclude the Oregon utilities from developing such a lesser NRIS under the new framework created by the Order.

*Second*, the Interconnection Customer Coalition seeks clarification, or in the alternative reconsideration and/or rehearing, regarding the test for whether network upgrades benefit the

system and thus should not be the sole responsibility of the interconnection customer. Among other things, the Commission’s pre-existing policy declared that the interconnection customer should not be responsible for upgrades “that the public utility planned to make regardless of the small generator interconnection.”<sup>1</sup> In the Interconnection Customer Coalition’s view, that policy absolved interconnection customers of paying for facilities and upgrades that would have occurred without their interconnection, whether such facilities or upgrades were contained in a formally written plan or not. And, in this proceeding, the Interconnection Customer Coalition presented evidence, including the Joint Utilities’<sup>2</sup> own admissions, that many upgrades for regular maintenance and replacement of aged equipment are not included in written plans anywhere because they are replaced in accordance with much less formal replacement schedules for old equipment. Yet, certain statements in the Order suggest that QFs will only be afforded a refund for network upgrades that are identified in “local transmission plans,”<sup>3</sup> and the Order does not specifically address the related issue of whether, under the new framework to be developed in an informal rulemaking, interconnection customers will be relieved of funding the replacement of aged facilities and equipment that would have been replaced in the near term through regular maintenance even in the absence of the interconnection.

Thus, the Interconnection Customer Coalition seeks clarification that the Commission intends to continue, and improve transparency under, its past policy that interconnection

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<sup>1</sup> Order No. 23-005 at 8 (quoting *In the Matter of a Rulemaking to Adopt Rules Related to Small Generator Interconnection*, Docket No. AR 521, Order No. 09-196, at 5 (June 8, 2009)).

<sup>2</sup> The Joint Utilities are PacifiCorp, Portland General Electric Company (“PGE”), and Idaho Power Company (“Idaho Power”).

<sup>3</sup> Order No. 23-005 at 32.

customers should not be charged, or should be refunded, the costs of aged facilities and equipment that would have been replaced in the near term even without the interconnection. The Commission should further clarify that the informal rulemaking will therefore include the issue of how to increase the transparency of the age and replacement schedule for facilities and equipment a utility proposes to be replaced or upgraded by a QF in an interconnection study.

In the alternative, to the extent the Commission intended to abandon its prior policy and to leave interconnection customers to now pay for facilities and equipment that would be replaced within the near term without the interconnection, the Interconnection Customer Coalition seeks reconsideration and/or rehearing. Such a determination lacks any rational justification in the Order and thus fails the requirement that the Commission's orders contain findings of fact and substantial reason supporting their determinations.

## II. LEGAL STANDARD

The Commission may clarify a final order. The Commission has done so in the past where, *inter alia*, the scope and effect of the order is unclear.<sup>4</sup>

The Commission may also grant rehearing or reconsideration of any order “if sufficient reason therefor is made to appear.”<sup>5</sup> The Commission's administrative rules provide that the Commission may grant an application for rehearing or reconsideration if the applicant shows that there is, *inter alia*, “[a]n error of law or fact in the order that is essential to the decision” or “[g]ood cause for further examination of an issue essential to the decision.”<sup>6</sup> The administrative

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<sup>4</sup> See *In re Investigation into the Use of Virtual NPA/NXX Calling Patterns*, Docket No. UM 1058, Order No. 04-704 at 3 (Dec. 8, 2004) (clarifying the scope and effect of a final order).

<sup>5</sup> ORS 756.561(1).

<sup>6</sup> OAR 860-001-0720(3).

rules further provide that the application must identify: (a) the portion of the challenged order that the applicant contends is erroneous or incomplete; (b) the portion of the record, laws, rules, or policy relied upon to support the application; (c) the change in the order that the Commission is requested to make; (d) how the applicant’s requested change in the order will alter the outcome; and (e) one or more of the grounds for rehearing or reconsideration in the administrative rules.<sup>7</sup>

### III. ARGUMENT

At the outset, the Interconnection Customer Coalition reminds the Commission that the overarching policy objective of the Federal Energy Regulatory Commission’s (“FERC’s”) implementing regulations being applied here under the Public Utility Regulatory Policies Act of 1978 (“PURPA”) is to “encourage” development and operation of QFs.<sup>8</sup> Similarly, the Oregon legislature has gone even further in enacting its own goal in its PURPA statute to “[p]romote the development of a diverse array of permanently sustainable energy resources using the public and private sectors *to the highest degree possible*” and to “[i]ncrease the marketability of electric energy produced by qualifying facilities[.]”<sup>9</sup> The modest requests for clarification, or alternatively reconsideration and/or rehearing, set forth below should be considered within the framework of these important policy goals, which strongly support granting clarification, or alternatively, reconsideration and/or rehearing.

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<sup>7</sup> OAR 860-001-0720(2).

<sup>8</sup> 16 USC § 824a-3(a).

<sup>9</sup> ORS 758.515(2)(a) & (3)(a) (emphasis added).

**A. ERIS/NRIS Issue: The Commission Should Clarify that, in Approving Use of ERIS for QFs Entering into a Non-Standard PPA, its Order Did Not Intend to Disallow the Use of Lesser NRIS for QFs Entering into a Non-Standard PPA.**

The Commission should clarify and confirm the Order allows and does not preclude a QF to enter into discussions with a utility to interconnect using various forms of interconnection service, including but not limited to lesser forms of NRIS and ERIS. In its order, the Commission recognized the importance of efficiently interconnecting to the current grid. Specifically, the Commission stated “[w]e recognize the value of more efficiently optimizing the existing transmission system[.]”<sup>10</sup> The Commission directed the utilities to allow a QF to interconnect using ERIS if the QF is willing to voluntarily curtail and negotiate a non-standard contract.<sup>11</sup> Specifically, the Commission stated:

we further direct the utilities, when requested by a QF, to negotiate a nonstandard contract that implements a QF’s decision, after review of both reports, to interconnect with a host utility using ERIS in exchange for the QF’s voluntar[y] commitment to allow curtailment at a level that the utility agrees obviates the need for the Network Upgrades identified in a NRIS report and can be accommodated through appropriate transmission service (e.g., non-firm or PTP).<sup>12</sup>

\* \* \* \*

The utilities are directed to negotiate a non-standard contract implementing a QF’s decision, after review of both ERIS and NRIS reports, to interconnect with a host utility using ERIS, so long as the QF voluntarily commits to allow curtailment at a level that obviates the need for the Network Upgrades identified in a NRIS report.<sup>13</sup>

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<sup>10</sup> Order No. 23-005 at 2.

<sup>11</sup> Order No. 23-005 at 34.

<sup>12</sup> Order No. 23-005 at 34.

<sup>13</sup> Order No. 23-005 at 36.

The Interconnection Customer Coalition believes the Commission intended to allow various forms of interconnection service and the QF to enter discussions with the utility as long as the QF is willing to agree to voluntary curtailment and enter into a non-standard contract. The Commission said 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>14</sup> This is consistent with PSE’s interconnection tariff at the WUTC, which the Order references and discusses.<sup>15</sup> However, an entity could interpret the Commission’s Order and directive as only allowing the QF to choose between using full NRIS or ERIS, nothing in between, which would preclude a lesser form of NRIS such as the PSE tariff.

The PSE interconnection tariff is NRIS that allows for deliverability even though it is not full NRIS.<sup>16</sup> According to PSE’s filing, the PSE interconnection tariff allows the QF to be fully deliverable, but allows the QF to avoid specific, high-cost Network Upgrades. Specifically, the PSE interconnection tariff allows the QF to request that PSE not construct facilities that would be necessary to address North American Electric Reliability Corporation P6 N-1-1 issues if the QF agrees to curtailment when certain System Emergency or Reliability Conditions are met.<sup>17</sup> PSE described the tariff as allowing the QF to “opt for curtailment instead of paying the upfront

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<sup>14</sup> Order No. 23-005 at 34.

<sup>15</sup> Order No. 23-005 at 24.

<sup>16</sup> Interconnection Customer Coalition/301, Lowe/1, 9.

<sup>17</sup> Interconnection Customer Coalition/301, Lowe/9.



costs of those Network Upgrades and still maintain a level of service on par with Network Interconnection Service (but for this curtailment).”<sup>18</sup> It is described as NRIS with curtailments.<sup>19</sup>

The Interconnection Customer Coalition wants to ensure that QFs have the ability to discuss interconnection options with the utility and not be limited to ERIS if the QF is willing to agree to curtailment and negotiates a non-standard PPA.<sup>20</sup> The Interconnection Customer Coalition believes the Commission intended for this result, but the order could be interpreted to only allow ERIS. Thus, the Interconnection Customer Coalition requests the Commission clarify its order so that it is clear a QF can interconnect using lesser forms of NRIS similar to PSE’s tariff or ERIS if the QF is willing to agree to curtailment and negotiates a non-standard contract.

**B. System Benefits Test Issue: The Commission Should Clarify that It Did Not Intend to Foreclose a Finding of System Benefits for Upgrades that Replace Aged Facilities and Equipment and that Increasing Transparency of the Utilities’ Maintenance and Replacement Schedules Is a Subject for Further Investigation in the Informal Rulemaking.**

**1. Background On System Benefits Issue**

As noted above, the Commission’s pre-existing policy declared that the small generator interconnection customer should not be responsible for upgrades “that the public utility planned to make regardless of the small generator interconnection.”<sup>21</sup> Further, the Commission’s existing

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<sup>18</sup> Interconnection Customer Coalition/301, Lowe/9.

<sup>19</sup> Interconnection Customer Coalition/301, Lowe/9.

<sup>20</sup> The Interconnection Customer Coalition notes that QFs selling power to PSE under the lesser form of NRIS still can enter into a PSE’s standard contract and do not have their avoided cost rates adjusted. The Interconnection Customer Coalition is not seeking reconsideration or challenging the Commission’s decision that a QF that seeks to interconnect at less than full NRIS must negotiate a non-standard contract.

<sup>21</sup> *In re Rulemaking to Adopt Rules Related to Small Generator Interconnection*, Docket No. AR 521, Order No. 09-196 at 5 (June 8, 2009).

policy for large generators is that “Interconnection Customers are responsible for all costs associated with network upgrades unless they can establish quantifiable system-wide benefits.”<sup>22</sup> Thus, even before this proceeding, interconnection customers should have been absolved of paying for facilities and upgrades that would have occurred without their interconnection, whether such facilities or upgrades were contained in any particular type of formally written plan or not.

Yet, the Joint Utilities argued in this proceeding that interconnection customers should only be absolved of paying for upgrades identified in “the host utility’s transmission plan.”<sup>23</sup> The Joint Utilities sought this ruling as a clarification and limitation on the Commission’s existing policy that was not limited by its express terms or logical application to upgrades that the utility had included in a formally written plan.

However, the Interconnection Customer Coalition presented evidence, including the Joint Utilities’ own admissions, that many upgrades for regular maintenance and replacement of aged equipment are not included in formally written plans anywhere because they are replaced in accordance with much less formal replacement schedules for old equipment. Specifically, the Joint Utilities clarified, through discovery, that what they really meant to limit the system benefit test to was transmission plans publicly available on their Open Access Same-Time Information System (“OASIS”) websites or other websites.<sup>24</sup> And, when pressed further, the Joint Utilities

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<sup>22</sup> *In re Investigation into Interconnection of PURPA Qualifying Facilities with Nameplate Capacity Larger than 20 Megawatts to a Public Utility’s Transmission or Distribution System*, Docket No. UM 1401, Order No. 10-132 at 3 (Apr. 7, 2010).

<sup>23</sup> Order No. 23-005 at 14 (citing Joint Utilities’ Post-Hearing Resp. Br. at 25 (Aug. 5, 2022)); *see also* Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/21-22.

<sup>24</sup> Interconnection Customer Coalition/300, Lowe/9-10 (citing responses to data requests).

further admitted that these “plans” to which they referred “*do not include all additions to transmission rate base; for example, transmission maintenance activities would not be included in these planning documents.*”<sup>25</sup> The Interconnection Customer Coalition’s witness, John Lowe, explained that a high level review of OASIS plans referenced by the Joint Utilities “indicates that they are limited to major transmission plans for major transmission projects.”<sup>26</sup> In contrast, Mr. Lowe explained that the Joint Utilities had “indicated that there are no plans in place for run of-mill maintenance activities which make up much of the additions to transmission and distribution plant each year[.]”<sup>27</sup> To the extent such maintenance upgrades are written into plans anywhere other than an excel spreadsheet, “the utilities further indicated that such maintenance plans are not publicly available to verify or check whether the upgrades paid for by a QF may have been included in such a plan.”<sup>28</sup>

To illustrate the problem, Mr. Lowe provided a hypothetical situation: “Thus, for a hypothetical example, if a QF’s interconnection triggered the replacement of aged equipment, such as a set of 50-year old transmission structures, that were past their useful life and needing to be replaced in the near term, say within a year, the utilities’ suggestion that the Commission could rely solely on transmission plans and prior interconnection studies would result in no refund being provided to the QF, even though such a refund would clearly be justified.”<sup>29</sup>

Mr. Lowe’s testimony further displayed the expenditures reported by each of the Joint

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<sup>25</sup> Interconnection Customer Coalition/300, Lowe/10 (emphasis added) (quoting responses to data requests).

<sup>26</sup> Interconnection Customer Coalition/300, Lowe/10.

<sup>27</sup> Interconnection Customer Coalition/300, Lowe/10 (citing responses to data requests).

<sup>28</sup> Interconnection Customer Coalition/300, Lowe/10-11 (citing responses to data requests).

<sup>29</sup> Interconnection Customer Coalition/300, Lowe/11.

Utilities on upgrades not included in the types of transmission plans to which they referred. Those amounts were very significant and included: up to \$47,607,420 in one year by Idaho Power, up to \$57,102,908 in one year by Portland General Electric Company, and up to \$506,244,740 in one year by PacifiCorp.<sup>30</sup> From this evidence, Mr. Lowe recommended that “The Commission’s policy should certainly provide a refund if the QF replaces equipment that would have been replaced in the near term even without the interconnection, including the substantial avoided expenditures on regular maintenance and replacement of any equipment that would be replaced soon even without the QF interconnection.”<sup>31</sup> The Interconnection Customer Coalition also addressed this issue in their briefing.<sup>32</sup>

The Order does not specifically cite or discuss the portion of the Interconnection Customer Coalition’s testimony or briefing arguing this issue, and it contains potentially contradictory statements as to whether it intended to adopt the Interconnection Customer Coalition’s recommendation. On the one hand, the Order states that it “affirms our current policy that QFs are responsible for all interconnection costs, including Network Upgrades, except to the extent the upgrades can be demonstrated to be a benefit to the utility system.”<sup>33</sup> As noted above, had the Joint Utilities been acting transparently, the pre-existing policy should certainly have absolved the interconnection customer of paying to replace aged facilities scheduled for replacement in the near term, suggesting the Order adopted the Interconnection Customer Coalition’s position on the point. On the other hand, however, the Order later uses

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<sup>30</sup> Interconnection Customer Coalition/300, Lowe/11-12.

<sup>31</sup> Interconnection Customer Coalition/300, Lowe/12.

<sup>32</sup> Interconnection Customer Coalition Post-Hearing Br. at 26-28 (Aug. 5, 2022).

<sup>33</sup> Order No. 23-005 at 1.

language that could be understood to be similar to the proposal put forth by the Joint Utilities by stating, “We confirm and clarify our understanding that a QF is not financially responsible for any Network Upgrade appearing *in a host utility’s near-term, local transmission plans*, or that it would be responsible only for accelerating such plans.”<sup>34</sup>

While unclear, the Interconnection Customer Coalition’s understanding based on the former language and additional context in the Order is that the Commission did not intend any changes to either the quantifiable system benefit test for large generator interconnections or the requirement that small generators are not responsible for upgrades that the public utility planned to make regardless of the interconnection. The Order expresses dissatisfaction with using the Joint Utilities’ existing transmission plans as a basis to identify all upgrades with a system benefit, which is consistent with the Interconnection Customer Coalition’s recommendation. The Commission faults the lack of transparency in the current form of the “near- and longer-term system upgrade needs and plans” and states the Commission “seek[s] to relieve QFs of bearing the costs of any infrastructure associated with their interconnection that appears in, or reasonably should appear in, those plans.”<sup>35</sup> Ultimately, the Order expresses the goal of ensuring that “QFs will only pay for the upgrades that are truly beneficial only to them and prioritized only by them, and not the wider system.”<sup>36</sup> To address that goal, the Commission directed the opening of “an informal rulemaking docket to examine opportunities to facilitate better information being produced and potentially made available from utility transmission and system

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<sup>34</sup> Order No. 23-005 at 32 (emphasis added).

<sup>35</sup> Order No. 23-005 at 32.

<sup>36</sup> Order No. 23-005 at 32.

planning processes.”<sup>37</sup>

**2. Request for Clarification: The Commission Should Clarify that the Order Intends to Absolve Interconnection Customers of the Cost of Facilities and Equipment that Would Have Been Replaced in the Near Term Even Without the Interconnection.**

The Commission should clarify its Order to avoid confusion in the upcoming informal rulemaking proceeding by stating that the Commission’s policy remains that interconnection customers should be relieved of paying for upgrades that replace aged facilities and equipment that would have been replaced even without the interconnection. The Commission should further clarify that the informal rulemaking will therefore include the issue of how to increase the transparency of the age and replacement schedule for facilities and equipment a utility proposes to be replaced or upgraded by a QF in an interconnection study. This requested clarification is entirely consistent with the Commission’s overall goal of “providing better information about the transmission system and utility transmission planning” to improve QF siting decisions and reduce costs of network upgrades.<sup>38</sup>

As noted above, the record amply supports the Interconnection Customer Coalition’s position on this point. Indeed, absolving QFs of paying for upgrades that were slated to be replaced in the near term is necessary as a simple matter of fairness. Based on the Joint Utilities’ own discovery responses, these types of regular maintenance upgrades are not of the type that are included in a formally written plan. Rather, they are facilities that are more likely replaced by utility employees pursuant to some internal maintenance protocols, likely depending on the age

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<sup>37</sup> Order No. 23-005 at 32.

<sup>38</sup> Order No. 23-005 at 31.

and location of the equipment as logged in the utilities' records. For example, Idaho Power explained: "Regular maintenance-type projects will generally not be identified in publicly available planning documents such as Transmission System Planning or Local Transmission Plan studies, as they are simply required to maintain the existing system."<sup>39</sup> In the case of these extensive regular maintenance upgrades, Idaho Power stated:

Each project will be identified, budgeted, scoped, designed, and built through the Company's asset management processes. The timeframe over which the Company identifies, budgets, scopes, designs, and builds maintenance projects can be spread over a 3- to 5-year window. The Company identifies these projects through periodic inspection of various equipment across its system.<sup>40</sup>

PGE and PacifiCorp provided similar descriptions of their maintenance and replacement planning process.<sup>41</sup> From the Joint Utilities' descriptions, it appears to be unlikely that such information would ever be published in something as formal as a "local transmission plan." But as the evidence demonstrates, these types of upgrades to the system are extensive and ongoing.

However, the language of the Order could be used to argue that such regular maintenance upgrades are not qualified for system benefits status under the Commission's policy any longer. The risk for misunderstanding arises from the Order's suggestion that QFs should only be relieved of upgrades identified in "a host utility's near-term, local transmission plans."<sup>42</sup> This

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<sup>39</sup> Interconnection Customer Coalition/303, Lowe/13.

<sup>40</sup> Interconnection Customer Coalition/303, Lowe/13.

<sup>41</sup> Interconnection Customer Coalition/302, Lowe/12 (PacifiCorp discovery response explaining its maintenance activities are developed in an "internal document" that is "compiled in spreadsheet format" in accordance with "individual inspection and maintenance policies and procedures"); Interconnection Customer Coalition/304, Lowe/11 (PGE discovery response stating it "does have advance written plans for regular maintenance projects" but these "maintenance plans are used for internal planning purposes and are not publicly available").

<sup>42</sup> Order No. 23-005 at 32.

language is ambiguous because the Order does not define what it means by “near-term, local transmission plans.” Indeed, the Order only uses the term “local transmission plans” once,<sup>43</sup> and no parties’ briefs used the phrase or defined it either. The term “local transmission plan” appears in the record only as part of the Joint Utilities’ explanation in discovery of one type of transmission plan available on OASIS which they sought to serve as the sole basis for a network upgrade crediting policy for QFs.<sup>44</sup> Thus, absent clarification, the Joint Utilities could argue the Order intended to adopt their unreasonably constrained view that only upgrades set forth in formally written plans on OASIS will ever be qualified for system benefits status and not any of the other vast upgrades the Joint Utilities undertake every year as part of their regular maintenance routines.

In any event, regardless of the Order’s intent, the Interconnection Customer Coalition suspects that the vast majority of upgrades that replace aged equipment according to regular maintenance schedules cannot reasonably be expected to be included in the types of local transmission plans the Order identifies. Indeed, the Joint Utilities have already confirmed as such in discovery contained in the record and cited above. If the Commission’s goal is to limit QFs’ cost responsibility to “the upgrades that are truly beneficial only to them and prioritized only by them, and not the wider system[,]”<sup>45</sup> then the Commission should clarify that includes not only the types of upgrades currently included in the Joint Utilities’ formally written local

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<sup>43</sup> Order No. 23-005 at 32.

<sup>44</sup> See Interconnection Customer Coalition/302, Lowe/6 (PacifiCorp’s discovery response, which identifies certain “local transmission plans” on OASIS); Interconnection Customer Coalition/303, Lowe/9 (same for Idaho Power); Interconnection Customer Coalition/304, Lowe/7-8 (same for PGE).

<sup>45</sup> Order No. 23-005 at 32.



transmission plans, but also any upgrades to replace equipment that is due to be replaced in the near term even if not of the type included in such plans.

Assuming the Commission grants the clarification sought, the Interconnection Customer Coalition believes that there are ways to address their concern in the informal rulemaking. For example, given that it is unlikely that the utilities will publish the age and scheduled retirement date of all equipment on its system, the Interconnection Customer Coalition would propose that the utility provide such information for all equipment being replaced in the interconnection study for an individual QF. Doing so would provide transparency to the QF and also force the utility's employees to consider whether the equipment being replaced is subject to the system benefit credit to the QF. However, without the clarification, the Interconnection Customer Coalition is concerned that confusion and disagreement will ensue in the upcoming informal workshop as to its proper scope on this point. Accordingly, the Interconnection Customer Coalition request that the Commission clarify the Order.

**3. Request for Reconsideration and/or Rehearing: The Order Contains Legal Errors to the Extent that It Intended to Reverse the Commission's Pre-Existing Policy Absolving Interconnection Customers of Paying for Aged Equipment that Would Have Been Replaced Soon Without the Interconnection.**

In accordance with OAR 860-001-0720, this section identifies the elements necessary for rehearing or reconsideration on this point.

**a. The portion of the challenged order that the applicant contends is erroneous or incomplete with respect to issue**

The portion of the Order that is erroneous or incomplete is the portion of the Order suggesting that QFs should only be relieved of upgrades identified in "a host utility's near-term,

local transmission plans” to the extent this portion of the Order is intended to reverse current Commission policy and require QFs to pay for upgrades the utility would have completed in the near term just because they are not included in a formally written “local transmission plan.”<sup>46</sup>

**b. The portion of the record, laws, rules, or policy relied upon to support the application with respect to issue**

As explained below, to the extent the Commission’s Order intended to reverse its prior policy, the Order erred by lacking the necessary findings of fact, sufficient evidence, and substantial reason to ignore the Interconnection Customer Coalition’s evidence and argument on the subject.

**c. The change in the order that the Commission is requested to make**

The Interconnection Customer Coalition requests that the Order be revised to state that the Commission’s policy remains that interconnection customers should be relieved of paying for upgrades that replace aged facilities and equipment that would have been replaced even without the interconnection, and that the system benefits test is not limited solely to upgrades included in a publicly available and formally written transmission plan. The Commission should further state that the informal rulemaking will therefore include the issue of how to increase the transparency of the age and replacement schedule for facilities and equipment a utility proposes to be replaced or upgraded by a QF in an interconnection study.

**d. How the applicant’s requested change in the order will alter the outcome**

The Interconnection Customer Coalition’s requested change would alter the outcome by

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<sup>46</sup> Order No. 23-005 at 32.

affirming the Commission’s pre-existing policy that QFs should be absolved of paying for upgrades that replace aged equipment that would have been replaced even without the interconnection, and that the system benefits test is not limited solely to upgrades included in a publicly available transmission plan. To the extent the Order concluded otherwise, the outcome would be changed in that respect.

**e. One or more of the grounds for rehearing or reconsideration in the administrative rules**

To the extent that it intended to reverse the Commission’s pre-existing policy absolving interconnection customers of paying for aged equipment that would have been replaced soon without the interconnection, the Order exhibits multiple legal errors, and good cause exists to reconsider it. As explained below, the legal errors include the failure to include findings of fact on the issue and a lack of sufficient evidence and reasoning to decide to reverse existing policy and ignore the record evidence presented by the Interconnection Customer Coalition.

**i. The Order violates law because it contains no findings of fact on the Interconnection Customer Coalition’s testimony.**

The Commission’s orders must include complete findings of fact, which are essential to the parties’ understanding of the Commission’s decision and the ability of a court to review such decision.<sup>47</sup> The Oregon Court of Appeals has explained: “Where there are no findings of fact or they are insufficient to advise the courts of the facts found to be true to which the law has been applied, the courts will not choose between conflicting inferences and guess as to the facts which

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<sup>47</sup> ORS 756.558(2); *Bekins Moving & Storage Co. v. Pub. Util. Comm’n*, 19 Or App 762, 765-769, 529 P2d 413 (1974).

influenced the judgment of the administrative body.”<sup>48</sup> It is a basic tenet of administrative law that an agency’s obligation to provide complete findings responding to the evidence goes beyond that imposed upon trial courts, and an agency’s failure to address uncontested evidence requires reversal.<sup>49</sup> The court has explained that “[t]he recitation of finding must be sufficiently specific in order that the reviewing court does not have to delve into the record to discern the inferences the commissioner may have drawn in arriving at his conclusion.”<sup>50</sup> The Commission’s orders “must contain sufficient findings and conclusions to enable us to determine that the reasoning is rational and that [the] PUC acted within its grant of power.”<sup>51</sup>

The Order here plainly fails the requirement to contain findings of fact on the Joint Utilities’ transmission plans, including the undisputed fact that those plans do not contain regular maintenance upgrades. Nor does the Order contain any findings of fact related to the undisputed evidence cited above regarding the substantial cost of the regular upgrades excluded from the Joint Utilities’ transmission plans. Further, the Order contains no findings of fact that cut against the evidence the Interconnection Customer Coalition presented on these points. The Order essentially ignores the evidence on this point without even discussing it.

Accordingly, the Commission should grant rehearing or reconsideration due to the lack of findings of fact addressing the Interconnection Customer Coalition’s argument.

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<sup>48</sup> *Bekins Moving & Storage Co.*, 19 Or App at 769 (internal quotation omitted).

<sup>49</sup> *Bekins*, 19 Or App at 765; *see also Hertel v. Emp’t Div.*, 80 Or App 784, 788, 724 P2d 338, *rev den*, 302 Or 456 (1986) (agency’s failure to “specifically address [petitioner’s] contention . . . renders its order incomplete and, therefore, insufficient”).

<sup>50</sup> *Calpine Energy Solutions, LLC v. PUC*, 298 Or App 143, 158, 445 P3d 308 (2019) (quoting *Publishers Paper Co. v. Davis*, 28 Ore. App. 189, 194, 559 P2d 891 (1977)).

<sup>51</sup> *Id.* (internal quotations omitted).

**ii. The order violates law because it is supported by insufficient evidence and lacks substantial reasoning to ignore the evidence presented by the Interconnection Customer Coalition and reverse pre-existing policy.**

In addition to findings of fact, the Commission’s orders must be supported by substantial evidence rationally supporting the findings and decision.<sup>52</sup> As the Court of Appeals explained, “[s]ubstantial evidence supports the PUC’s findings ‘when the record, viewed as a whole, would permit a reasonable person to make that finding.’”<sup>53</sup> Additionally, substantial evidence review requires the court to take into account whatever evidence detracts from the weight of the evidence that supports the agency order.<sup>54</sup> And the agency’s order must contain “substantial reasoning” that connects the facts to the ultimate conclusion.<sup>55</sup>

First, the Commission’s Order is supported by insufficient evidence. There was no evidence presented that it would be infeasible to identify facilities and equipment slated for replacement in the near term and to proscribe utilities from charging interconnection customers from such replacements through the interconnection process. Nor was any other evidence presented to contradict the Interconnection Customer Coalition’s testimony that interconnection customers should be absolved of paying for such upgrades.

Second, even if it were possible to locate some evidence supporting the decision to ignore the Interconnection Customer Coalition’s position, the Commission’s Order fails the substantial reason test, which applies with even more force when an agency is departing from its past

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<sup>52</sup> ORS 183.482(8)(c).

<sup>53</sup> *Calpine Energy Solutions, LLC*, 298 Or App at 159 (quoting ORS 183.482(8)(c)).

<sup>54</sup> *Castro v. Bd. of Parole*, 232 Or App 75, 82-83, 220 P3d 772 (2009).

<sup>55</sup> *Castro*, 232 Or App at 83.

practice or official policy.<sup>56</sup> The Commission’s Order does not even restate, and certainly does not address, the Interconnection Customer Coalition’s argument that “Commission’s policy should certainly provide a refund if the QF replaces equipment that would have been replaced in the near term even without the interconnection, including the substantial avoided expenditures on regular maintenance and replacement of any equipment that would be replaced soon even without the QF interconnection.”<sup>57</sup> That argument was consistent with the Commission’s own pre-existing policy and was further supported with direct evidence and admissions by the Joint Utilities that the replacement and maintenance upgrades are both very substantial and not included, or likely to ever be included, in any formally written transmission plan posted publicly on OASIS or elsewhere. If the Commission intended to overrule its prior policy, it did so in violation of law by failing to even address this issue or provide any reasoned basis not to adopt the Interconnection Customer Coalition’s reasonable proposal.

In sum, rehearing or reconsideration is warranted because the Commission’s Order is supported by insufficient evidence and lacks substantial reason.

#### **IV. CONCLUSION**

For the reasons articulated herein, the Commission should grant clarification or, in the alternative, reconsideration and/or rehearing of Order No. 23-005.

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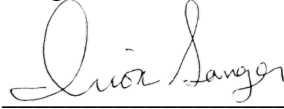
<sup>56</sup> See ORS 183.482(8)(b)(B) (court must remand an agency order if the agency’s exercise of discretion is “[i]nconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency”).

<sup>57</sup> Interconnection Customer Coalition/300, Lowe/12.

Respectfully submitted on this 17th day of March 2023.

Respectfully submitted,

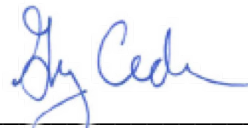
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