

**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

REPLY IN SUPPORT OF MOTION FOR
CLARIFICATION OF THE COMMUNITY
RENEWABLE ENERGY ASSOCIATION,
THE NORTHWEST & INTERMOUNTAIN
POWER PRODUCERS COALITION, AND
THE RENEWABLE ENERGY COALITION

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 1

II. REPLY ARGUMENT 1

 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..... 1

 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..... 5

III. CONCLUSION..... 9

I. INTRODUCTION AND SUMMARY

Pursuant to OAR 860-001-0420(5), 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 reply in support of their motion for clarification of the Public Utility Commission of Oregon’s (“Commission” or “OPUC”) Order No. 23-005 (or the “Order”).¹ The Interconnection Customer Coalition’s motion for clarification and/or reconsideration addressed 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. As explained below, the Joint Utilities’² opposition to clarification of these two important issues is without merit, and the Commission should grant the clarifications requested by the Interconnection Customer Coalition.

II. REPLY ARGUMENT

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 Interconnection Customer Coalition continues to request that the Commission clarify certain statements in the Order regarding the determination that qualifying facilities (“QFs”) may

¹ The Commission’s administrative rules do not allow for a reply in support of an application for reconsideration, but the rules permit a reply in support of a motion for clarification. *See* OAR 860-001-0420(5) (reply in support of motions is permitted); OAR 860-001-0720(4) (reply in support of reconsideration is not permitted unless requested by the Administrative Law Judge). Thus, this reply responds only to the portions of the Joint Utilities’ response that oppose clarification.

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

elect to interconnect with ERIS, subject to agreement to a non-standard power purchase agreement (“PPA”). Nothing in the Joint Utilities’ response undermines the need for this important clarification.

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 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.

While the Joint Utilities argue in their response that the PSE tariff will create reliability issues, those assertions are unfounded and should be rejected by the Commission. The Joint Utilities claim that the Interconnection Customer Coalition’s motion for clarification related to interconnection service is a “guise” because the Interconnection Customer Coalition requests “substantive changes to how QF interconnection studies are performed and asks the Commission to approve the use of a novel and untested ‘lesser NRIS’ interconnection study for certain QFs.”³ This is not the case. The Commission directed the utilities to negotiate a non-standard PPA if a QF wishes to interconnect using ERIS and voluntarily agrees to curtailment to avoid the need for Network Upgrades.⁴ The Commission also specifically concluded that:

Where an ERIS and NRIS study together reveal that voluntary curtailment or other solutions to avoiding Network Upgrades may

³ Joint Utilities’ Response to Motion for Clarification or Reconsideration at 2 (Apr. 3, 2023).

⁴ Order No. 23-005 at 33-36 (Jan. 20, 2023).

exist, we favor 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.⁵

The Interconnection Customer Coalition believes the Commission intended to allow various forms of interconnection service, including something similar to PSE’s tariff, as long as the QF was willing to negotiate a non-standard PPA and agree to curtailment.⁶ The Interconnection Customer Coalition is seeking clarification of the Order and confirmation of their understanding, and, if that understanding is incorrect, for the Commission to provide a more specific explanation of what it meant by experimenting with arrangements like the PSE tariff.

The Interconnection Customer Coalition sought clarification now to avoid disputes in the future and make it clear what would be expected of the utilities and a QF, because the Interconnection Customer Coalition is concerned that the utilities would not offer anything other than ERIS to a QF, if they would even offer that.⁷ The Joint Utilities said as much in their response when they stated “[i]f the Commission is inclined to leave open the possibility of ‘lesser NRIS’ in specific circumstances, then it should also be clear that utilities are not *required* to provide ‘lesser NRIS.’”⁸ This appears to demonstrate the Joint Utilities do not intend to offer

⁵ Order No. 23-005 at 34.

⁶ See 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 at 5-7 (Mar. 17, 2023) (hereinafter “Interconnection Customer Coalition’s Motion for Clarification and/or Rehearing”).

⁷ See Joint Utilities’ Motion for Rehearing and/or Clarification at 14; see also Interconnection Customer Coalition’s Response to Joint Utilities’ Motion for Rehearing and/or Clarification at 14-16 (Apr. 5, 2023).

⁸ Joint Utilities’ Response to Motion for Clarification or Reconsideration at 8 (emphasis in original).

an interconnection service besides ERIS (even if that). After reviewing the Joint Utilities' pleadings, it has become clear to the Interconnection Customer Coalition that, unless the Commission provides some clarification or direction now, the Joint Utilities will simply refuse to comply with this portion of the Commission's Order and thwart the Commission's desire to allow for more efficient use of the existing transmission system similar to how the WUTC has done. As demonstrated by their filings in this proceeding, the Joint Utilities are not interested in developing any creative solutions that allow for more efficient use of the existing transmission system, but instead want to use this time of increasing constraints as a weapon to stop any new QF development in Oregon. Thus, the Commission should clarify what interconnection service it intended to allow in its Order.

The Joint Utilities continue to claim an interconnection service similar to PSE's tariff would compromise safety and reliability and cause the utilities to ignore North American Electric Reliability Corporation ("NERC") requirements.⁹ This is simply not the case. The Interconnection Customer Coalition explained in its response to the Joint Utilities' motion for rehearing and/or clarification that the PSE tariff would not result in reliability issues because it still complies with NERC's requirements but allows the QF to be curtailed during certain reliability events to avoid expensive Network Upgrades needed for that specific reliability event.¹⁰ The basic concept is that curtailment would occur before any reliability event, thus maintaining NERC's reliability requirements in a more cost effective manner. PSE would not implement an interconnection tariff that would jeopardize its system's reliability or safety.

⁹ Joint Utilities' Response to Motion for Clarification or Reconsideration at 6-8.

¹⁰ See Interconnection Customer Coalition's Response to Joint Utilities' Motion for Rehearing and/or Clarification at 16-18.

In sum, the Commission should grant the Interconnection Customer Coalition’s requested clarification related to lesser NRIS.

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.

The Interconnection Customer Coalition’s reasonable request for clarification on the system benefits issues should also be granted, and the Joint Utilities’ objection to such clarification is misplaced.

Specifically, as explained more fully in the Interconnection Customer Coalition’s motion for clarification and/or rehearing, 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.¹¹ 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.¹²

The Joint Utilities “agree it is reasonable to presume that a QF would not be required to

¹¹ Interconnection Customer Coalition’s Motion for Clarification and/or Rehearing at 7-15 (containing the motion for clarification portion of the request on the system benefits issue).

¹² Order No. 23-005 at 31.

pay for equipment if the transmission provider had firmly committed to replacing the same equipment in the immediate near-term[,]”¹³ but they nevertheless appear to oppose clarification that this is still an issue to be addressed in the informal rulemaking. Their response never reconciles their admission that it is “reasonable” to ensure QFs are not charged for upgrades that are planned or scheduled as part of regular maintenance with their apparent opposition to development of policies and procedures to achieve that outcome.

In any event, the Interconnection Customer Coalition replies briefly here to the primary argument that forms the theme of the Joint Utilities’ opposition to clarification, which is the Joint Utilities’ incorrect characterization of the procedural evolution of this issue. The Joint Utilities claim that the Interconnection Customer Coalition waited until their last round of testimony to present their position that QFs should not be assessed the costs of replacement of aged equipment planned to be replaced in the near term, and thus, according to the Joint Utilities, it is too late to introduce the issue into the case or the upcoming informal rulemaking.¹⁴ The Interconnection Customer Coalition respectfully disagrees with that characterization of the record, which is incomplete at best.

The Interconnection Customer Coalition did not sit on its rights or play “hide the ball” in presenting this important issue and, rather, appropriately highlighted this important issue as part of its response to the Joint Utilities’ proposal. In opening testimony, the Interconnection Customer Coalition generally explained that crediting or reimbursing the QF for the cost of

¹³ Joint Utilities’ Response to Interconnection Customer Coalition’s Motion for Clarification and/or Rehearing at 11.

¹⁴ Joint Utilities’ Response to Interconnection Customer Coalition’s Motion for Clarification and/or Rehearing at 9.

facilities planned for replacement was required under the Commission’s existing policy and proposed to build upon and expand the categories of network upgrades eligible for credit or refund.¹⁵ Thus, from the outset of the case, the proposal that QFs should avoid having to pay for facilities planned to be replaced through regular maintenance was subsumed within the Interconnection Customer Coalition’s larger overall proposal—a presumption the customer should not have to pay for *any* network upgrades.¹⁶

Having made no meaningful proposal at all in their own opening round of testimony, the Joint Utilities’ second round of testimony proposed to relieve QFs of paying for facilities *only* when such upgrades were identified as being planned in a “transmission plan.”¹⁷ Because that testimony was vague, the Interconnection Customer Coalition engaged in extensive discovery into what precisely the Joint Utilities meant by “transmission plans” and whether such plans really capture all upgrades and maintenance to the system that are installed. The discovery revealed—for the first time—that the Joint Utilities really intended to limit credits or refunds to upgrades identified in “local transmission plans” located on OASIS, and that their proposal would require QFs to pay for substantial upgrades planned or undertaken in the course of regular system maintenance conducted outside of those limited OASIS studies for major expansions of the transmission system.¹⁸ Indeed, the phrase “local transmission plans” used in the

¹⁵ Interconnection Customer Coalition/100, Lowe/9 (Oct. 30, 2020).

¹⁶ Interconnection Customer Coalition/100, Lowe/7-22.

¹⁷ Joint Utilities/400, Vail-Bremer-Foster-Larson-Ellsworth/21-22 (Dec. 11, 2020) (suggesting that QFs should only be relieved of paying for upgrades that are identified in “either a utility’s transmission plan or as a necessary upgrade in the study of a previous service request”).

¹⁸ See Interconnection Customer Coalition’s Motion for Clarification and/or Rehearing at 8-9.

Commission’s Order appears in the record only in the discovery the Joint Utilities produced upon the Interconnection Customer Coalition’s inquiry into the Joint Utilities’ proposal.¹⁹

Thus, in response to the Joint Utilities’ proposal to rely on “local transmission plans,” the Interconnection Customer Coalition’s final round of testimony pointed out the flaws in that proposal. Specifically, the Interconnection Customer Coalition’s final round of testimony included the Joint Utilities’ newly provided discovery responses and pointed out that if the Joint Utilities’ proposal to rely on transmission plans was adopted it needed to be clarified in a manner that would ensure QFs are relieved of the cost of regular maintenance upgrades, consistent with the pre-existing policy.²⁰

As the above recitation of the record demonstrates, this whole line of argument was not the Interconnection Customer Coalition’s lead “proposal” and, instead, it was a response to the Joint Utilities’ vague proposal in their own second round of testimony. It was also an attempt to at least preserve one important aspect of the Commission’s pre-existing policy if the Commission ultimately elected to rely on the Joint Utilities’ proposal to use transmission plans as the basis to identify network upgrades qualifying for credit or a refund. If the record is correctly framed as above, the Joint Utilities’ new argument that the Interconnection Customer Coalition waived this issue until its final round of testimony fails. The issue was not waived or unreasonably withheld by the Interconnection Customer Coalition. Additionally, the Joint Utilities had ample opportunity to further explore the issue through cross examination at an evidentiary hearing but waived the right to do so—further undermining their argument that they

¹⁹ See Interconnection Customer Coalition’s Motion for Clarification and/or Rehearing at 13-14.

²⁰ Interconnection Customer Coalition/300, Lowe/9-12 (Jan. 19, 2022).

have been prejudiced.

Even if the Joint Utilities were somehow correct that the Interconnection Customer Coalition delayed in presenting their position on this issue, the scope of the upcoming investigation has not yet been determined, and there is no reason to preclude consideration of this issue. In fact, if it was not raised until late in the proceeding (by either party) or not addressed by the Commission, then that would support *including* this issue in the upcoming investigation.

Finally, all the Interconnection Customer Coalition seeks through its motion for clarification is to keep the issue alive into the informal rulemaking where proposals for how to address it through interconnection studies or otherwise can be addressed. The Joint Utilities appear to concede that treatment of aged facilities planned to be replaced is an issue that could be addressed in the informal rulemaking, which makes their opposition very confusing.²¹

In sum, therefore, the Commission should grant the Interconnection Customer Coalition's request for clarification on the system benefits issue.

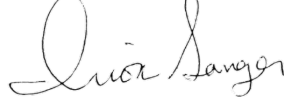
III. CONCLUSION

For the reasons articulated herein, the Commission should grant the clarifications of Order No. 23-005 requested above.

²¹ Joint Utilities' Response to Interconnection Customer Coalition's Motion for Clarification and/or Rehearing at 9.

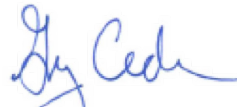
Respectfully submitted on this 10th day of April 2023.

Sanger Law, PC



Irion A. Sanger
Ellie Hardwick
Sanger Law, PC
4031 SE Hawthorne Blvd.
Portland, Oregon 97214
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

Of Attorneys for the Northwest & Intermountain
Power Producers Coalition and the Renewable
Energy Coalition



Gregory M. Adams
Richardson Adams, PLLC
515 N. 27th Street
Boise, ID 83702
Telephone: 208-938-2236
Fax: 208-938-7904
greg@richardsonadams.com

Of Attorneys for the Community Renewable Energy
Association