

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1930

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON,

Community Solar Implementation.

COMMENTS OF THE NORTHWEST
AND INTERMOUNTAIN POWER
PRODUCERS COALITION, THE
RENEWABLE ENERGY
COALITION, AND THE
COMMUNITY RENEWABLE
ENERGY ASSOCIATION ON
STAFF’S DRAFT PROPOSAL FOR
COMMUNITY SOLAR
INTERCONNECTION

I. INTRODUCTION

The Northwest & Intermountain Power Producers Coalition (“NIPPC”), the Renewable Energy Coalition (the “Coalition”), and the Community Renewable Energy Association (“CREA”) (collectively the “QF Trade Associations”) submit these comments in response to Staff’s Draft Proposal for Community Solar Interconnections (“Staff’s Draft Proposal”). The QF Trade Associations members consist of independent power producers (“IPPs”), qualifying facilities (“QFs”) under the Public Utility Regulatory Policies Act (“PURPA”), and local governmental entities including counties, cities, water control districts, and irrigation districts. The QF Trade Associations appreciate the efforts from the Oregon Public Utility Commission (“Commission”), Staff, and stakeholders that have gone into this process thus far and appreciate this opportunity to submit comments.

The interconnection process in Oregon has the practical impact of stalling, burdening, and altogether blocking the development of QFs. The QF Trade Associations

and their counsel have either jointly and/or individually raised these points during their participation in other dockets related to interconnection issues. These dockets include: 1) AR 521, the Small Generator Interconnection Rulemaking; 2) UM 1401, the Large Generator Interconnection Investigation; 3) the Federal Energy Regulatory Commission's ("FERC's") recent rulemaking, RM17-8-000, to reform Large Generator Interconnection Procedures and Agreements; 4) the Commission's recent interconnection data transparency effort in UM 2001; 5) the Commission's continued and ongoing efforts related to Oregon Small Generator Interconnection in UM 2000; and 6) the Commission's recently-commenced investigation into distribution system planning in UM 2005. Because many of the interconnection issues raised in Staff's draft proposal relate to and overlap with these other dockets, the QF Trade Associations submit these comments to offer support for a viable Community Solar Program ("CSP") and to provide recommendations on the CSP interconnection implementation and coordination with other dockets.

The interconnection process in Oregon has been an often insurmountable roadblock for QFs in both PacifiCorp's and Portland General Electric Company's ("PGE's") service territories. Interconnections are one of the two primary factors contributing to PacifiCorp's lack of new QF activity.¹ PacifiCorp has only entered into one QF contract with a new project (a 200 kilowatt irrigation district hydro project) since

¹ The other is that the Commission has artificially set PacifiCorp's avoided cost rates far below actual avoided cost by underpaying QFs for the capacity value they provide and refusing to compensate QFs for avoided transmission costs.

June 2016 and the last new solar QF PPA was in August of 2015.² Portland General Electric Company's ("PGE") interconnection process has also become very problematic, including but not limited to major errors in studies, required over-building of interconnection facilities, excessive delays in queue processing and in construction, unreasonable cost estimates, billings for work not performed, across-the-board refusals to allow the use of third-party consultants, and the imposition of significant additional costs after interconnection agreements have been executed. PGE's interconnection process is the primary reason that many QFs will miss their commercial operation dates, or fail to operate at all.

The Commission has had ample opportunity over the years to fix the interconnection process for QFs, but has refused to do so and, without exception, has ruled against QFs on interconnection matters for at least the last decade. The Commission's latest order on the topic, issued in Docket No. UM 1967, has even gone as far as saying that QFs have no effective remedies where a utility engages in unreasonable actions in its interconnection process, except in the limited instances where reasonable behavior is expressly required.³

Interconnection issues are finally being treated as a serious problem. However, this seems to have come about only after it became apparent that the interconnection

² See *In Re Pacific Power – Qualifying Facility Contracts*, Docket No. RE 142.

³ See e.g., *Sandy River, LLC v. PGE*, Docket No. UN 1967, Order No. 19-218 at 1 (June 24, 2019) (concluding that OAR 860-082-0060(8)(f) does not require the utility to reasonably exercise its discretion to agree to hire a third-party consultant to complete interconnection facilities and system upgrades because it is not expressly stated in that OAR subsection.).

policies that have so effectively thwarted QF development will also likely foil the Community Solar Program (“CSP”). If the Commission only adopts remedies for the CSP, but not other QFs, the message will be even more unmistakably clear that the Commission is permitting the utilities to weaponize the interconnection process to thwart PURPA, and only make changes when its policies risk harming the CSP.⁴ The Commission has an opportunity to change this narrative and finally adopt policies that provide some relief to all QFs in the interconnection process. Even more importantly, applying these changes to only the CSP would violate Oregon’s law prohibiting discrimination against similarly situated customers, especially those small QFs that are directly interconnected to the distribution system of the utility to which they are selling their net output.

II. COMMENTS

A. Summary Recommendations

While there are many more interconnection issues and possible solutions that the Commission will need to address in this proceeding and UM 2000, in this docket, the QF Trade Associations recommend that the Commission adopt Staff’s proposals for all QFs and:

⁴ These actions on interconnections must also be viewed in the overall context in which Oregon’s PURPA implementation has recently surpassed Washington and Idaho as the most hostile state in the Pacific Northwest and Rocky Mountain West toward QFs. Washington has historically been the most hostile state towards PURPA implementation, but has recently revised its rules with the intention of allowing new PURPA development. Idaho has completely shut down new wind and solar, but has at least adopted policies that strongly support operating projects and new hydro, biomass and cogeneration.

- Allow all QFs to interconnect with Energy Resource Interconnection Service (“ERIS”) with transmission system upgrade costs allocated pursuant to the utilities’ Open Access Transmission Tariff (“OATT”);
- If the Commission does not allow all QFs to interconnect with ERIS, then require the utilities to implement a cost sharing mechanism for the costs of Network Upgrades⁵ at and beyond the point of interconnection;
- Require the utilities to implement a cost sharing mechanism for distribution system upgrade costs at and beyond the point of interconnection for all QFs;
- If the Commission does not apply these changes to all QFs, at least apply them to all QFs 3 MWs and smaller that directly interconnect to the purchasing utility’s distribution system; and
- Require that utilities file a plan to address the backlog of studies for all QFs.

B. Resolving Interconnection Barriers is Critical for All QF Types

As Staff’s Draft Proposal identifies, the problems with the interconnection process necessarily overflow into the CSP because any CSP projects are required to interconnect as QFs.⁶ The issues identified by staff flow from the current practices of:

- Requiring the QF to pay “system upgrade” costs with no mechanism for sharing costs with the utility or other generators that may benefit from the upgrade;

⁵ The QF Trade Associations position in UM 2000 will likely be that, if the Commission does not allow QFs to interconnect with ERIS, then the Commission should require that all Network Upgrades be reimbursed to the QF. The QF Trade Associations, however, are not taking that position in this proceeding because we do not want to expand the scope of this proceeding outside of Staff’s recommendations, and we understand that Staff is not taking that position at this time. The QF Trade Associations’ primary recommendation is that whatever interim interconnection solutions the Commission adopts in this proceeding should apply to all QFs.

⁶ Staff Draft Proposal at 2.

- Requiring the QF to pay “transmission system upgrade” costs, which are in conflict with FERC’s rules which allocate such costs to the transmission provider rather than the interconnecting customer;
- Requiring the QF to interconnect under “Network Resource Interconnection Service” (“NRIS”) and bear the costs of all system upgrades which are in conflict with FERC’s small generator rules which only provide for ERIS;
- Requiring that costs be allocated among QFs in serial order (or a lower-queued project must assume a higher-queued project’s costs in order to come online first) without any mechanism for cost sharing between or among QFs interconnecting in a similar area;
- Limiting the QFs’ access to information and control over interconnection costs including sufficient information to verify study results and a realistic ability to hire third-parties; and
- Delaying the studies and interconnection process.⁷

While Staff appropriately identifies many of the barriers QFs face in the interconnection process, many more exist as recently articulated in the QF Trade Associations’ comments submitted in UM 2000 and UM 2001,⁸ and identified as potential roadblocks in AR 521 and UM 1401.⁹

⁷ *Id.* at 8-11.

⁸ *See e.g., Staff Investigation into Broad PURPA Investigation of PURPA*, Docket No. UM 2000, Comments of NIPPC, REC, and CREA in Response to OPUC Workshop at 10 (July 9, 2019) (“For example, the Commission can avoid disputes by establishing more enforceable timelines, requiring utilities to act reasonably, providing specifics regarding when a QF can hire a third-party consultant, providing a process for disputing interconnection requirements, and reviewing possible lower cost alternatives. The Commission can also make some very minor changes to update its reference to the IEEE 1547 standard used for interconnections, to require that the utilities post their interconnection standards, and to determine which rules apply to the 10-20 MW sized projects.”) (citations omitted).

⁹ *See e.g., In re Rulemaking to Adopt Rules Related to Small Generator Facility Interconnection*, Docket No. AR 521, Industrial Customers of Northwest Utilities Comments (Aug. 12, 2008) (explaining the need for reasonableness requirements

The QF Trade Associations support Staff’s recommendation in this docket to provide immediate, near-term changes to the interconnection process that address the issues and create a functional interconnection process. The interconnection process has been bogged down and will continue to be a breeding ground for disputes, and, without near-term changes, the process will become more complicated and congested. However, the Commission should apply these improvements equally to all QFs because failure to do so would result in an unfair and unwarranted continued harm to non-CSP QFs, and amounts to unlawful discrimination. All QFs face interconnection issues and there is no reason to elevate CSP projects above other QF types. The CSP is an important State program worthy of the Commission’s attention, as the Oregon Legislature has directed the Commission to establish the program, incentivize consumers to be subscribers, minimize cost shifting and ensure that owners and subscribers bear the costs of construction and operation, and to protect the public interest.¹⁰ These statutory directives, however, are no different from and even *less* protective of CSP projects than the Oregon Legislature’s directives to promote the development of all PURPA QFs, increase the marketability of all QF energy, create a settled and uniform institutional

and that the proposed rules differ from FERC and that they may require interconnection customers to bear system upgrade costs that primarily benefit other customers or the utility); *See also In re Staff Investigation into Interconnection of PURPA Qualifying Facilities with Nameplate Capacity Larger than 10 Megawatts to a Public Utility’s Transmission or Distribution System*, Docket No. UM 1401, Reply Comments of the Industrial Customers of Northwest Utilities (Aug. 13, 2009) (explaining that that the proposed guidelines differ from FERC and that they may require interconnection customers to bear the costs of Network Upgrades that provide system-wide benefits).

¹⁰ ORS 757.386.

climate for all QFs, and insure that rates paid to all QFs be equal to the applicable utility's avoided costs, and be just and reasonable and in the public interest.¹¹

Meaningful change for all QF types can be accomplished by applying the proposed CSP interconnection improvements to all QFs before the end of 2019. The Commission already has Small Generator Interconnection Rules and Large Generator Interconnection Guidelines that will serve as an appropriate baseline for improvement on an expedited basis, and given that FERC has already considered and decided upon a number of the issues identified by Staff, it can be resolved quickly.¹² With a few narrowly-tailored revisions to these existing policies, the Commission can offer substantial relief to the industry. Further, there is nothing unique about the CSP projects that make them more suitable to “test” the various solutions proposed by Staff using the CSP as a type of a pilot program. If the Commission desires to create a pilot program to test interconnection solutions, then it should similarly be an option for all QFs.

C. Staff's Proposed Solutions Are on the Right Track

Staff's proposed solutions move the needle in the right direction, but more changes will be necessary to create a balanced and functional interconnection process.

Staff proposes to adopt a new rule, for CSP projects only, that:

- Allows a CSP QF to interconnect with ERIS with upgrades to the transmission system allocated pursuant to the applicable utility's Open Access Transmission Tariff (“OATT”);

¹¹ ORS 758.515-525.

¹² The QF Trade Associations reserve the right to argue that more significant changes to Oregon's interconnection policies and rules be made in UM 2000 (e.g., replacing the Oregon small generator interconnection rules with the FERC rules).

- Requires utilities to implement a cost sharing mechanism for distribution system upgrade costs at and beyond the point of interconnection for CSP QFs;
- Limits the above changes to only a time-and-capacity-limited pilot for CSP QFs;
- Requires that the QF interconnect under the Commission's current Small Generator Interconnection Procedures if it ultimately does not become a CSP QF; and
- Requires that utilities file a plan to address the backlog of studies.¹³

Staff's proposals that a *CSP* QF be eligible to interconnect with ERIS and a cost sharing mechanism are appropriate to apply to *all* QFs and not simply for a time-and-capacity-limited pilot.

These proposals begin to address the interconnection cost issues and delay issues identified by Staff. However, as identified above and in the UM 2000 and UM 2001 comments referenced, there are further issues with delays in both the queue processing and construction, study accuracy, unreasonable utility behavior, third-party consultants, overbuilding of facilities, and more. These additional issues should be addressed in the near-term as recommended by Staff in the UM 2000 process. Since under current rules CSP projects must interconnect as a QF, any changes made to the QF interconnection process in UM 2000 would necessarily benefit the CSP, and thus that docket is an appropriate place to take up these issues.

¹³ Staff Draft Proposal at 13-14.

D. It Does Not Make Practical Sense to Treat CSP QFs Differently Than Other QFs

While Staff’s proposal is on the right track, it does not make practical sense to treat CSP QFs different from any other QFs. For example, Staff proposes a cost-sharing mechanism for distribution of system upgrade costs “between CSP projects,” where the first CSP QF triggering the upgrade would initially bear 100% of the cost, and subsequent CSP QFs benefitting from that upgrade will reimburse the first CSP QF for their shares of the upgrade. If a non-CSP QF enters the queue subsequent to a CSP QF that initially paid 100% of an upgrade, it is not clear whether the CSP QF would be reimbursed from the non-CSP QF. Likely not. Based on the language in Staff’s proposal, it appears it could only be reimbursed from other CSP QFs. Such a result would defeat the entire purpose of the cost share proposal, i.e., to mitigate the current practice of making one generator bear the cost of upgrades that benefit others. The CSP QF would bear the cost of an upgrade the non-CSP QF benefited from. Similarly, if a non-CSP QF initially bears 100% of an upgrade, and a CSP QF subsequently enters the queue, it appears that the CSP QF would receive a free ride and not have to reimburse the non-CSP QF for any of the upgrades. Given that the proposed solution is also, time and capacity limited, there may also not even be enough CSP QFs to share the cost of the upgrades.

Further, it is not clear how this cost share proposal would apply to a current QF with an executed interconnection agreement that plans to become a CSP project or a QF currently in the queue that plans to become a CSP project. Such QFs have already been studied under and/or been assessed interconnection costs based upon the existing process.

If the Commission adopts beneficial changes that apply only to new CSP interconnection applications submitted after the rule's adoption, then it will unduly disfavor early movers. To mitigate against that result, the Commission would need to adopt a process by which projects with executed interconnection agreements or projects currently in the queue can transition their project over to the CSP.

If not applied to all QFs, then Staff's proposal could further delay and add more expense and uncertainty to the interconnection process. Under the proposal, CSP QFs could execute an interconnection agreement and sit on it for 18 months or until they receive pre-certification. Then a CSP project could withdraw from the CSP at any time and execute a new interconnection agreement under the existing rules. Two problems arise with this scenario. First, other QF projects behind that CSP in the queue would be forced to wait in the queue for the CSP pre-certification. This would likely cause further delays for a number of projects. Second, it would cause more expense and uncertainty in the interconnection process. The current interconnection process requires that projects be studied under the assumption that all projects with interconnection agreements and all projects earlier in the queue have been constructed and are operating including any required upgrades. Under Staff's proposal, every project that enters the queue subsequent to a CSP would be studied based on the upgrades that will be required for that CSP, but once that project does not receive CSP pre-certification, then all those later-queued projects would need to be restudied. There would be no certainty as to the ultimate costs of interconnections based upon the studies, and the re-studies would require additional expense and cause additional delay.

These on the ground concerns demonstrate that it is simply not practical or workable to apply Staff's proposal to only one sub-set of QFs and is likely to make some of the problems worse that the Commission seeks to address. While the QF Trade Associations sincerely appreciate Staff's work and creative solutions to the interconnection problems facing small non-utility power producers, the limitation to only CSP simply does not take into account how this seemingly simple solution would work in the real world. These issues could be avoided by simply adopting Staff's proposal for all QFs,

E. The Commission Should Change Its Interconnection Policies to Prevent Utilities from Discriminating Against QFs and Forcing QFs to Pay for Interconnection Costs that Benefit All Customers

It is critical that the Commission understand the status of the interconnection queues, the discriminatory behavior that has occurred, and ultimately the impact to the development of renewable resources in Oregon and the primary source of competition for the utilities. The QF Trade Associations remain concerned that there has been a lack of understanding or oversight of these issues by the Commission, and the utilities have been left to abuse the process.

Interconnection is at the heart of a successful independent power producer market, and PURPA in particular. FERC has recognized that it as a foundational element to a competitive generation market, explaining:

Interconnection plays a crucial role in bringing much-needed generation into the market to meet the growing needs of electricity customers. Further, relatively unencumbered entry into the market is necessary for competitive markets. However, requests for interconnection frequently result in complex, time consuming technical disputes about interconnection feasibility, cost, and cost responsibility. This delay undermines the ability of generators to compete in the market and provides an unfair advantage to

utilities that own both transmission and generation facilities.¹⁴

If not carefully regulated and monitored, incumbent monopolies will literally shut down their generation competitors through interconnection practices – as appears to be occurring with the delays in some of the Oregon utilities’ interconnection queues.

The current Oregon policy regarding network upgrades is likely the most important impediment to development of QFs in Oregon today. Thus, the way to solve many of Oregon’s interconnection issues is to simply make it clear that QFs should not be required to take NRIS to obtain a QF PPA and sell under PURPA or to conclude that QFs are eligible to receive refunds for the cost of Network Upgrades. These policies should be adopted because network upgrades benefit all system users and the utilities use the NRIS process to discriminate against independent power producers. The OPUC’s Order No. 10-132 does not specifically require QFs to take NRIS, but the utilities require it as a practical matter. In addition, the QF-Large Generation Interconnection Procedures (“QF-LGIP”) adopted in Order 10-132 do not offer ERIS as an option to QFs. The end result is that the utilities require Oregon QFs to use NRIS as a condition of selling their output under PURPA to interconnecting utility. That problem is compounded by the Oregon policy that the utilities may assign 100-percent of the Network Upgrade costs to the QF (unless the QF can demonstrate system wide benefits) without refunding such costs.

¹⁴ Standardization of Generator Interconnection Agreements & Procedures, Order No. 2003, 104 FERC ¶ 61,103, at P 11 (July 24, 2003).

In contrast, FERC's Large Generator Interconnection Procedures contained in the *pro forma* OATT require any generator (QF or non-QF) to be offered the option to interconnect with NRIS or ERIS, and allows for reimbursement of network upgrades.¹⁵ FERC determined that these options were necessary to prevent undue discrimination by monopoly utilities. While the Commission declined to follow FERC's approach a decade ago, Oregon's interconnection history since then has demonstrated that this Commission made a mistake when it declined to follow FERC's approach. Now is the time to remedy the situation, for all interconnecting generators.

F. The Utilities Should Not Be Allowed to Use the Interconnection Process to Discriminate Against QF Projects

There is no physical or practical difference between a QF project that is constructed as a CSP project and one that is not, and the Commission should not give the utilities the tools to discriminate against and between these QFs. The Oregon Legislature prohibited discriminatory behavior by public utilities and required the Commission to protect customers, enacting in law that:

No public utility shall make or give undue or unreasonable preference or advantage to any particular person or locality, or shall subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect.¹⁶

[T]he commission shall make use of the jurisdiction and powers of the office to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.¹⁷

¹⁵ FERC Large Generator Interconnection Procedures § 3.2; FERC Large Generator Interconnection Agreement § 4.1.

¹⁶ ORS 757.325.

¹⁷ ORS 756.040.

It would be undue and unreasonable for otherwise-identical QFs to be treated differently simply because one participates in the CSP, especially in light of the fact that CSP projects can decide not to continue as part of the CSP and simply sell to the utility as a QF without making any changes to its facility. CSP projects generally are required to be solar, located in the service territory of an Oregon electric company, and have a nameplate capacity of three megawatts or less.¹⁸ Further, in order for the sale of the unsubscribed portion to be subject to the Commission's jurisdiction, the CSP project must be a QF.¹⁹

However, under Staff's Draft Proposal, such a QF would seem to suddenly become subject to additional interconnection costs when it drops out of the CSP. Such a result would be odd, unworkable, and discriminatory.

There are a number of QFs that meet the aforementioned criteria, and even more that are different resource types but may have exactly the same impact on the utility's transmission or distribution systems. QFs of all resource types face the same barriers identified by Staff. For example, there is a small 900 kW low head, fish friendly hydropower project that would have been developed on irrigation district canals if it were not for excessive interconnection costs.²⁰ Also as a more direct comparison of different resource types facing the same issues, PacifiCorp produced interconnection studies for a 2 megawatt hydropower QF and a 2 megawatt solar QF that included similar

¹⁸ OAR 860-088-0070.

¹⁹ Staff Draft Proposal at Attachment A Department of Justice Interoffice Memo re CSP Projects as QFs.

²⁰ *In Re PacifiCorp Schedule 37 Updates Avoided Costs Purchases from 10 MW or Less*, Docket No. UM 1729, Natel Energy's Comments (June 1, 2018).

requirement. In each study, PacifiCorp allocated costs to the respective QF necessary to construct an 80-90 mile transmission line or acquire third-party transmission. The fact that one QF is hydroelectric and the other solar is irrelevant to the actual interconnection costs at issue.

Because these impacts to the utility's systems are the same for all QFs, there is no reason to discriminate against any QF or in favor of any QF. The primary distinction between a CSP QF and other QFs is that the CSP is a newly enacted program with broad support. By taking up Staff's proposed interconnection solutions for only the CSP projects, the Commission sends a message to the QF industry that it favors community solar over PURPA, and favors solar over small scale wind, solar and biomass. Both statutes direct the Commission to incentivize, promote, and encourage the development of their respective projects, direct the Commission to ensure that owners of the projects bear the costs, and direct the Commission to create a program or a settled and uniform institutional climate. Yet, despite these similar statutory directives, the Commission will clearly say that PURPA is disfavored if it adopts more favorable interconnection rules for community solar.

G. At the Very Least, Any Project Eligible for the Community Solar Program Should be Entitled the Same Treatment as a Community Solar Project

If the Commission adopts Staff's Draft Proposal to make interconnection changes in this docket for the CSP QFs, then the Commission should, at a minimum, adopt these changes for all QFs that are *eligible* to be CSP projects, not only the ones that *actually are* CSP projects. The Commission can make this minor change to Staff's proposal by simply listing eligibility criteria in its new rule within the Small Generator

Interconnection rules specifying that any solar QF located in the service territory of an Oregon electric company with a nameplate capacity of three megawatts or less is eligible for the CSP-specific interconnection terms adopted within that rule. By making this minor revision to Staff's proposal, the Commission would avoid the absurd result where projects switching between CSP and non-CSP status also switch between being responsible for or not responsible for certain upgrade costs.

III. CONCLUSION

For the foregoing reasons, the QF Trade Associations recommend that the Commission not enable utility discrimination and adopt broadly applicable QF interconnection solutions.

Dated this 24th day of July 2019.

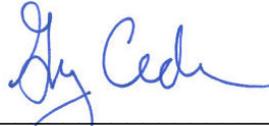
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