BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1837

In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Investigation into the Treatment of New Facility Direct Access Load.	Staff Reply Comments

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Executive Summary

This docket addresses the appropriate treatment of direct access transition adjustments for new nonresidential customer load. The briefing in this docket shows that parties generally agree that the Commission has the authority to reduce or eliminate transition charges for new direct access load, so long as the Commission concludes that doing so does not result in unwarranted cost shifting or unjust discrimination among customers. The Oregon Citizens' Utility Board (CUB) was the only party that argued that treating new loads differently than existing loads would violate non-discrimination statutes.[1] All parties, including CUB, agree that it is possible to design a direct access program for new load that minimizes cost shifts, and therefore allows for reduced transition charges.[2] However, parties disagree on the specific parameters of the program that are necessary to prevent cost shifting.

Staff has reviewed comments from other parties, and offers specific recommendations and considerations for the Commission to evaluate as it determines appropriate next steps following this investigation. Generally, Staff finds that new direct access programs for new non-residential load, as described below, is appropriate and therefore recommends that the Commission direct Portland General Electric (PGE) and PacifiCorp to file tariffs with proposed new load direct access (NLDA) programs, subject to direction by the Commission in this investigation, by April 1, 2018. Staff recommends that new direct access programs should be subject to the following conditions, which serve to limit unwarranted cost shifts to cost of service (COS) customers while maximizing the benefits to COS customers, direct access customers, and the competitive electricity market:

- NLDA program is applicable to new facilities at new sites. The forecasted demand at any single meter receiving service under the NLDA program must be at least 10 MW.

- The actual load of NLDA customer new facilities must meet the 10 MW size requirement within 24 months of receiving service. If the new load does not achieve the NLDA size conditions than the NLDA load should be placed on the existing LTDA program.

- NLDA program is also applicable to expansion of facilities at existing sites only if the new load is separately metered and is forecasted to exceed previous load by 10 MW. If a utility denies a NLDA applicant on the basis that the utility has planned for the new load, a utility officer must submit an attestation that the utility has acquired resources or purchased power based on knowledge that the

[1] CUB opening comments page 4.
[2] CUB acknowledges this possibility in CUB opening comments page 1 by stating "However, if the Commission finds it does have the authority to treat new customers differently from current customers, it may be possible to design a program that allows direct access in a manner that minimizes cost shifts and therefore allows for reduced transition charges."

specific facility expansion was going to take place. The utility must include sufficient reasonable conditions in the NLDA program to ensure that customers to not shift load or energy from existing facilities to the expanded facilities.

- NLDA program is applicable to existing facilities if the existing facility has not received any material electric service from utility for more than three years prior to notice, and the forecasted demand at the existing facilities is at least 10 MW.

- Utility shall include sufficient reasonable conditions, facility inspections, and load monitoring to ensure that customers participating in the NLDA program are not strategically changing behavior in order to circumvent the intent of the new load size conditions.

- Notification of enrolling in the NLDA program and opting out of COS rates must be given to utility simultaneously with the initial notification to utility of planned new load and must be given at least one year prior to energizing meter.

- Utility Provider of Last Resort obligations will be satisfied by the Utility's emergency default service rate, which is a market rate plus a 25 percent adder, and the Utility's standard offer service, which is a market rate.

- Customers enrolled in the NLDA program may return to cost of service rates under the same conditions as the LTDA programs of the respective utility.

- The generation source for NLDA Customers shall not be restricted.

- Participants in the NLDA program shall pay a transition charge which includes the following costs:

    - Compensate COS customers for marginal impact of new program on rates BPA charges to utility if deemed a new large single load; and

    - Compensates COS customers for optionality provided by new load DA program by charging 20 percent of long-term stranded cost charge for a period of five years.

- The NLDA program shall have the same total enrollment limit as the existing long term direct access (LTDA) limit or cap for first three years of program, with an evaluation of whether the cap should be expanded by the end of the third year. Load under NLDA program does not apply to the LTDA cap and load under the LTDA program does not apply to the NLDA cap.

These conditions are intended to prevent unwarranted cost shifting among new load direct access customers and cost of service customers. The conditions also fairly allocate the benefits of existing economic utility investments.

Finally, Staff notes that there are additional legal considerations surrounding unjust discrimination. Generally, Staff finds that it is possible to design a NLDA program that would not result in unjust discrimination, but whether such a program would meet applicable legal standards is necessarily fact specific. Therefore, Staff recommends that the Commission direct PGE and PacifiCorp, if and when they file for approval of a NLDA program, to address this concern in their respective initial applications.

Cost Shifting

The legal briefing in this case establishes that parties generally agree that the Commission has the authority to reduce or eliminate transition charges for new direct access load,[3] so long as the Commission concludes that doing so does not result in unwarranted cost shifting or unjust discrimination among customers. Staff finds that the Commission may determine that a NLDA program does not result in unjust discrimination. The bulk of the content in the first round of comments explore how the NLDA program can minimize cost shifts to COS customers.

Parties present two alternative interpretations of what constitutes cost shifting. CUB proposes that cost shifting be judged by comparing COS rates with and without the NLDA program. Under this standard, the NLDA program must account for the economies of scale that would have occurred if the NLDA program did not exist. All other parties agree that NLDA customers should only be responsible for incremental system costs incurred by the utility to meet the load needs of the NLDA customers. This is evident by the planning focus of the non-CUB parties.

Staff disagrees with CUB's standard because it is not consistent with the definitions in Oregon's direct access statue. Transition charge means "a charge or fee that recovers all or a portion of an uneconomic utility investment."[4] Uneconomic utility investment means "all electric company investments, including plants and equipment and contractual or other legal obligations, properly dedicated to generation, conservation and workforce commitments, that were prudent at the time the obligations were assumed but the full costs of which are no longer recoverable as a direct result of [direct access programs.]"[5] If a utility did not rely on the future new load of a specific large customer when making investments, than a NLDA program would not render these investments uneconomic as defined by current Oregon law.

Size threshold

Parties take two generally opposing positions regarding minimum size requirements for NLDA participants. The Northwest and Intermountain Power Producers Coalition (NIPPC) and Calpine Energy Solutions, LLC (Calpine) propose that there be no size requirement. PacifiCorp, PGE, Industrial Customers of Northwest Utilities (ICNU) and

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[3] As stated above, CUB argues that the Commission does not have the discretion to eliminate transition charges altogether.
[4] ORS 757.600(31).
[5] ORS 757.600(35).

Staff generally support a size requirement. While proposed size thresholds vary, parties' proposals fall within a range of one to 15 MW. PacifiCorp and ICNU propose that the threshold be energy based rather than demand based.

After reviewing comments by all parties and considering the utility planning process, Staff supports a size threshold of 10 MW. This size threshold represents a mid-range between the current proposals. It also represents sufficiently large, discrete load additions that utilities can reasonably be expected to differentiate the treatment of these load additions in their planning and investment process. Utilities are capable of anticipating NLDA adoption rates based on forecasted market conditions, and appropriately exclude such loads from both short and long term forecasts when evaluating new investments. This is consistent with the first round comments by PacifiCorp and PGE regarding load forecasting, planning, and investment processes.

PGE indicates that planning and investing could be modified for large loads, bud did not propose a specific size threshold. Staff is generally familiar with both PGE and PacifiCorp's planning capabilities and is confident that both utilities have the ability to account for NLDA participation by loads larger than 10 MW. Staff supports a demand threshold rather than an energy threshold because current DA program requirements are based on demand, resources acquisitions are driven by capacity deficiencies, demand is more easily measured and forecasted than energy from facility design requirements, and a demand threshold will allow more low load factor customers to participate in the NLDA program. Low load factor customers tend to be more costly to serve and therefore should not be excluded from the NLDA program.

Some new facilities do not achieve targeted operating levels immediately after commencing operations. Staff recommends allowing customers a 24 month ramping period to before testing whether actual operations meet NLDA size conditions. If the new load does not achieve the NLDA size conditions than the NLDA load should be placed on the existing LTDA program and pay the 5 year COS opt-out transition charges for a full five years.

Accordingly, Staff proposes the following condition:

- NLDA program is applicable to new facilities at new sites. The forecasted demand at any single meter receiving service under the NLDA program must be at least 10 MW.

- The actual load of NLDA customer new facilities must meet the 10 MW size requirement within 24 months of receiving service. If the new load does not achieve the NLDA size conditions than the NLDA load should be placed on the existing LTDA program.

New Load at Existing Facilities

The intention of placing a large size threshold on the NLDA program is to enable utilities to exclude NLDA from the planning and investment process, which allows these customers to participate in direct access without rendering investments uneconomic. If customers circumvent this intention by shifting load from existing facilities to new facilities, it is possible that the NLDA would result in uneconomic investments, and consequently could result in unwarranted cost shifts. In order to keep the transition charges of the NLDA program below those of the existing DA program, customers should be prevented from shifting load from existing facilities to new facilities. For this reason, utilities should be required to carefully monitor the loads of large customers to ensure that new facility load is, in fact, new load. Staff's proposed conditions are intended to limit such shifting; however, Staff anticipates that the utilities will include additional reasonable conditions in the NLDA program as needed to prevent gaming.

Accordingly, Staff proposes the following conditions:

- NLDA program is also applicable to expansion of facilities at existing sites only if the new load is separately metered and is forecasted to exceed previous load by 10 MW. If a utility denies a NLDA applicant on the basis that the utility has planned for the new load, a utility officer must submit an attestation that the utility has acquired resources or purchased power based on knowledge that the specific facility expansion was going to take place. The utility must include sufficient reasonable conditions in the NLDA program to ensure that customers to not shift load or energy from existing facilities to the expanded facilities.

- NLDA program is applicable to existing facilities if the existing facility has not received any material electric service from utility for more than three years prior to notice, and the forecasted demand at the existing facilities is at least 10 MW.

- Utility shall include sufficient reasonable conditions, facility inspections, and load monitoring to ensure that customers participating in the NLDA program are not strategically changing behavior in order to circumvent the intent of the new load size conditions.

Eliminate Planning Requirements for NLDA Customers

If customers notify a utility of plans for new load without also indicating an intention to receive direct access, the customer should be excluded from the NLDA program. Without simultaneous notification of NLDA participation, it is possible that the utility would include the new load in its planning process.

Furthermore, in order to justify excluding the NLDA load from the planning process, NLDA customers should opt out of COS rates.

Accordingly, Staff proposes the following conditions:

- Notification of enrolling in the NLDA program and opting out of COS rates must be given to utility simultaneously with the initial notification to utility of planned new load and must be given at least one year prior to energizing meter.

Provider of Last Resort Requirements

Both PGE and PacifiCorp raised concerns that provider of last resort (POLR) requirements could impose a cost on COS customers. PGE claims that POLR requirements, combined with failure to plan for capacity needs of NLDA customers, could increase costs to COS customers in the event that direct access customers require generation services from the utility.[6] NIPPC and Calpine propose that POLR obligations be met with market purchases.

Both utilities offer an emergency service rate which is a market based rate plus a 25 percent cost adder. Neither utility explains why the existing default (emergency and standard offer) service is not sufficient to recoup the costs and risks associated with POLR requirements. The treatment of POLR requirements for the existing LTDA program were addressed by the Commission in Order No. 00-596 and Order No. 00-702. Staff finds that this treatment remains viable for the NLDA program.

- Utility Provider of Last Resort obligations will be satisfied by the Utility's emergency default service rate, which is a market rate plus a 25 percent adder, and the Utility's standard offer service, which is a market rate.

Return to COS Rates

The existing LTDA programs impose similar planning requirements on utilities as the proposed NLDA program. The LTDA programs also allow direct access customers to return to COS rates after a sufficient notice period. Because the planning requirements for LTDA are similar to those of the NLDA program, and the conditions for return to COS rates under the LTDA program account for the planning needs of utilities, it is appropriate for the NLDA program to adopt the same conditions for return to COS rates.

Once a NLDA customer provides notice of returning to COS rates, the utility is obligated to begin planning and investing for the customer. For this reason, once a NLDA customer provides notice for returning to COS rates, that customer no longer qualifies as new load, and cannot participate in the NLDA program beyond the COS rate notification period.

Accordingly, Staff proposes the following condition:

- Customers enrolled in the NLDA program may return to cost of service rates under the same conditions as the LTDA programs of the respective utility.

[6] PGE opening comments page 9 and 10.

Cost Allocation

PacifiCorp's current cost-allocation methodology applicable to Oregon, the 2017 Protocol, specifies the allocation treatment of Oregon's existing Direct Access programs. Load associated with the five year cost of service opt-out, or LTDA, is included as Oregon load for allocation purposes during the load's first ten years in the LTDA program. This agreement is reasonable because it matches the time period the ten year period of transition costs and credits for the 5 year cost of service opt-out program. If the Oregon allocation factors included LTDA load for longer than 10 years, there would be incremental costs allocated to COS customers without the offsetting benefit of the COS credit. COS customers would be harmed by the LTDA program because after ten years, they would be allocated additional costs without receiving the offsetting transition adjustment from LTDA customers.

The 2017 Protocol only addresses the allocation treatment of the existing direct access programs. There is no language in the 2017 Protocol that specifies the allocation treatment of a NLDA program.

The 2017 Protocol was adopted by the Commission in Order No. 16-319. In that Order, the Commission contemplated whether the 2017 Protocol should be modified in anticipation of changes to Direct Access programs. However, Staff argued that the 2017 Protocol did not limit the Commission's authority over Direct Access cost-allocations. The Commission agreed with Staff and chose to not make anticipatory findings regarding future Direct Access changes. In Docket UM 1837, parties have supported changes to the Direct Access programs.

The allocation treatment of the NLDA program will affect whether the program creates undue cost shifts, and therefore, prior to a determination about a program for PacifiCorp, cost-allocation issues would need to be addressed. Staff notes that in order to avoid undue cost shifts, the allocation treatment of the NLDA program should be consistent with the program's transition charges and credits. Staff is a signatory to the 2017 Protocol, and while the 2017 Protocol contemplates changes to Oregon's Direct Access program and changes to the allocation of Direct Access load, Staff has not yet determined the extent to which Staff can recommend how NLDA load be allocated and recognizes that there are two currently active dockets addressing PacifiCorp's cost-allocation methodologies. For this reason Staff does not make specific recommendations regarding the allocation treatment of NLDA. However, Staff understands that the Commission does have the authority to specify the allocation treatment of the NLDA program.

Staff further notes, however, that one allocation treatment for the NLDA program that would address Staff's concern is to exclude all NLDA load from PacifiCorp's Oregon cost allocation factors. The conditions of the NLDA program are such that the utilities can avoid making generation investments to serve the program participates. For this reason, load associated with NLDA program should not render investments uneconomic and therefore there is no basis for NLDA load to increase Oregon's allocation of generation costs.

At first blush, it may seem that modifying the NLDA transition charges in order to address allocation related cost shifts may remedy the issue, but this is challenging for two reasons. First, the 2017 Protocol does not provide a default allocation procedure for new Direct Access programs. Because there default allocation procedure, there is no way to calculate a consistent transition charge. Second, there is a circular relationship between the allocation treatment of NLDA load and the transition charges for the NLDA program. Because of this circular relationship, any level of transition charge for the NLDA program could be justified.

In sum, Staff proposes no conditions related to the allocation treatment of the NLDA program, but notes that the allocation treatment of the NLDA program must be addressed before a final determination can be made about the fairness of any specific NLDA program for PacifiCorp.

Generation Source

Several parties have proposed that the NLDA program require customers purchase renewable energy.[7] However, parties have not identified a relationship between renewable energy and cost shifting impacts of NLDA. Staff finds that the generation source has no impact on whether the utility has planned for new load, and that limiting the generation source to renewable energy is not contemplated by SB 1149. Limiting the generation source does not affect the potential costs or risks to COS customers. Therefore, all generation sources should be available to NLDA customers.

Accordingly, Staff proposes the following condition:

- The generation source for NLDA Customers shall not be restricted.

Reduced Transition Adjustments

All parties agree that if NLDA conditions sufficiently limit cost shifting, transition adjustments for NLDA customers should be lower than the existing LTDA program. Staff has proposed conditions intended to limit costs associated with uneconomic investments. However, the NLDA program may expose COS customers to additional costs and risks. For example, the NLDA program may create administrative costs or increase load forecasting uncertainty. In addition, Staff and PGE have noted that the NLDA program will provide optionality to large new load customers. The NLDA program provides new load customer the option of choosing direct access when market prices are low, or cost of service rates when market prices are high.

[7] PGE opening comments page 11.

The ability for the utility to provide NLDA customers with this option is one benefit that arises from economic utility investments. As such, the value of this benefit is appropriately included as a transition credit under ORS 757.600(32). This adjustment differs from existing transition credits however, because without the credit, the full economic benefit of the option is captured by the NLDA customers rather than COS customers. Therefore it the credit transfers the benefit from NLDA customers to COS and appears as a charge to NLDA customers. The sharing of this benefit with COS customers is reasonable because COS customers experience some increased risk with the NLDA program, and because the COS customers pay existing generation, and therefore the existence of the NLDA option. Staff recommends that NLDA customers pay an option fee to compensate for the risks of the NLDA program and for the value of the option provided by COS customers. This option fee should consist of a reduced transition adjustment equal to 20 percent of the annual long term stranded costs of the utility at the time of enrollment. The option fee should be paid for five years. The size and length of the option fee strikes a reasonable balance between the low incremental cost that NLDA customers place on the existing system and the economic benefit that the existing system provides to NLDA customers.

Staff is also concerned that customers participating in the NLDA program may be subject to Bonneville Power Association's New Large Single Load policy. This creates an additional risk that the NLDA program may affect value of BPS's residential exchange program. Residential customers should be held harmless for any impact that NLDA load has on the residential exchange program.

Accordingly, Staff proposes the following condition:

- Participants in the NLDA program shall pay a transition charge which includes the following costs:
    - Compensate COS customers for marginal impact of new program on rates BPA charges to utility if deemed a new large single load; and
    - Compensates COS customers for optionality provided by new load DA program by charging 20 percent of long-term stranded cost charge for a period of five years.

Limit COS Exposure During Trial Period

Staff recognizes that the NLDA program is innovative and may require changes in the future to limit unwarranted cost shifts to COS customers. In order to limit the COS customer risk exposure, Staff recommends that total NLDA participation be limited to a 300 MWa cap for PGE and a 175 MWa cap for PacifiCorp. These caps are the same size as the current LTDA caps for the respective utilities. Staff recommends that the total load in each program be calculated separately, such that the load in the LTDA program does not count towards the NLDA. Calculating the caps separately prevent competition between existing facilities and new facilities for direct access service.

Accordingly, Staff recommends the following condition:

- The NLDA program shall have the same total enrollment limit as the existing long term direct access (LTDA) limit or cap for first three years of program, with an evaluation of whether the cap should be expanded by the end of the third year. Load under NLDA program does not apply to the LTDA cap and load under the LTDA program does not apply to the NLDA cap.

Utility Participation in Competitive Markets

In its opening round of comments, PacifiCorp proposes that utilities be allowed to compete with Electricity Service Suppliers (ESS) for NLDA load on an equal footing. The participation of utilities in competitive markets is outside the scope of this investigation. If utilities wish to compete with ESSs, the utilities should petition the Commission to initiate a proceeding investigating that question.

This concludes Staff's Reply Comments.

Dated at Salem, Oregon, this 19th of December, 2017.

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