BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1837
AR 614

In the Matter of	)	
	)	COMMENTS OF NORTHWEST AND
PUBLIC UTILITY COMMISSION OF OREGON,	)	INTERMOUNTAIN POWER PRODUCERS
	)	COALITION
Investigation into the Treatment of New Facility Direct Access Load	)	
	)	
	)	

The Northwest and Intermountain Power Producers Coalition ("**NIPPC**") respectfully submits these limited Comments on the January 19, 2018 Staff Report in the above-captioned dockets. NIPPC supports Staff's recommendation that the Commission (1) issue an order finding the Commission has authority to create a direct access program applicable to new load with transition adjustment charges that differ from current direct access programs; and (2) open an expedited rulemaking to create rules related to a new load direct access ("NLDA") program.

As described below, NIPPC does not believe it is necessary for briefing to address further legal issues identified by Staff, and instead recommends that the Order instituting the Rulemaking should set forth resolution of certain issues, so that the Rulemaking can more expeditiously address the remaining details of the NLDA program.

1. Introduction.

This docket was opened more than six months ago, as a consequnece of the state Legislature's consideration of Senate Bill 979, which would have eliminated transition charges for new load that purchased renewable direct access. Senator Lee Beyer, Chair of the Business and Transportation Committee, determined – after speaking with Commission Staff and Commission Chair Lisa Hardie – that the Commission should be afforded the opportunity to

revisit direct access rules with respect to new loads before implementing new legislation on this issue.[1]

In moving forward with a rulemaking process, the Commission should facilitate expedited treatment of this docket. As addressed below, there are several issues raised in the Staff Report that can and should be addressed in an initial order, and removed from discussions going forward, as well as areas of agreement among all parties that can be addressed in an initial order and need not be subject to further proceedings.[2]

2. The Commission has clear authority to create a NLDA Program.

The Commission has the statutory authority to create an NLDA program. As noted in the Staff report, this issue has been extensively briefed, with Staff and all Parties (save the Citizens' Utility Board) uniformly agreeing that the Commission has such authority.[3] All information required for the Commission to make a determination on this topic is available and on the record, and the Commission should promptly issue an order confirming this conclusion. There is no reason for further delay or process on this issue.

---

[1] In the Senate Business and Transportation work session regarding Senate Bill 979, which would have eliminated transition charges for new load that purchased renewable direct access, Committee Chair Senator Lee Beyer stated that he spoke to both the Commission Staff and Commission Chair Hardie and reached the conclusion that the Commission should first be provided an opportunity re-visit direct access. Senator Beyer explained that since SB 1547 passed, things had:

> changed a lot, particularly as you are talking about new load where people [are] coming on and the Commission Chair has assured me that they see that change and want to encourage and be supportive for economic development and of people coming in who are willing to take a look at that and perhaps take a little more supportive look than they have in the past. I think that is good. What I told Commissioner Hardie is that we would let them do their job and if it seemed like they were not going on that way that we would be back in about 8 months and we would take another look at it. So I think the message we want to send to companies that are looking to Oregon as a place to do business and do green power is that we are indeed open for that.

Hearing on S.B. 979 Before the S. Comm. On Business and Transportation, 2017 Leg., 79th Sess. (Or. Apr. 9, 2017).

[2] For example, all parties appear to agree that utilities can meet their provider of last resort obligations for NLDA in the same manner as for existing direct access customers, through emergency default service and market-rate standard offer service, and can be eligible to return to standard, cost-of-service rates on the same timeframe as for existing direct access customers.

[3] NIPPC will not burden the record by restating these arguments, but incorporates its prior briefs by reference.

3. No briefing is necessary on the additional legal issues raised by Staff.

The Staff report identifies two additional legal issues that it recommends be briefed during a rulemaking process: (1) Whether the Commission has authority to discriminate based on customer resource choice; and (2) whether a utility can offer its own green energy option for customers. NIPPC submits that briefing on these topics is not necessary or appropriate, and would simply add further expense and delay to this already protracted proceeding.

With respect to the first topic, the Commission does not need to address whether the Commission has the authority to discriminate based on customer resource choice because there is no reason or basis to limit customer choice to any electric services they are allowed to purchase under the law; briefing the topic would be premature and a waste of resources.

With respect to the second topic, whether a utility can offer its own green energy option for customers, we refer the Commission to the results of Docket UM 1690 - Voluntary Renewable Energy Tariffs (VRET) for Non-Residential Customer. After extensive and drawn-out proceedings, workshops, and briefing over a two year period, the Commission issued an order allowing the utilities to offer a VRET subject to certain conditions, expressly including that it be comparable to service under the Direct Access regime created by SB 1149. Both utilities declined to develop VRET tariffs given the conditions imposed. The VRET option remains available to the utilities and there is no benefit to briefing these issues again in this docket. To be clear, the utilities can file a VRET at any time.

It is particularly inappropriate to address these issues in this proceeding because the scope of the proceeding was limited to only the question about whether new loads should be exempt or pay lower transition charges. NIPPC has a long list of direct access-related issues that it believes should be addressed – such as a requirement that a utility use diligent efforts to reduce uneconomic utility investments prior to being allowed to collect transition charges -- but it (like the other parties) agreed to a more limited scope of this proceeding. The Commission's rulemaking should be narrow and expedited, and not burdened with unrelated proposals that the utilities can make at any time in a different administrative proceeding.

4. The Commission should direct the Utilities to provide information necessary to inform its decisions.

As noted in the Staff Report, NIPPC and other parties remain concerned that a rulemaking proceeding may not allow parties to access important utility data necessary for an informed discussion.[4] By way of example, in pleadings and workshops in this docket, the utilities have argued for extremely high load thresholds for a customer to qualify for participation in the NLDA program, such as 10 MWa. However, the utilities have refused to provide any data to allow other participants to discern the impact of a given threshold on a potential program. Without this historic data, it is impossible to determine how many customers would qualify for the NLDA program at a 10 MWa level, 5 MWa, 2 MWa or 1 MWa level. NIPPC understands that type of data is readily available to the utilities, can be provided in aggregate form without releasing any confidential information, and is necessary to evaluate the program. The utilities also have ready access to additional data that could be helpful to the Commission's analysis of any rulemaking proceeding. For example, PacifiCorp has indicated that it does not plan for new load until the customer executes a binding Master Electric Service Agreement or similar document.[5] Does this normally occur three months before the in-service date? Two years before the in-service date? Access to this type of information is critical for the Commission to adopt meaningful program rules. Although rulemaking proceedings do not typically provide for discovery, the Commission should inform the utilities that it expects them to provide the information upon request, and assume failure to do so is an implicit assumption that any concern about thresholds beyond 1 MWa are the product of protecting the utility's market share rather than valid concerns over adoption of an NLDA program.

[4] Staff Report at 9.

[5] *See*, *e.g.,* PacifiCorp's November 6, 2017 workshop presentation on Forecasting New Loads, included as Attachment 1, page 3 of 6, specifying that PacifiCorp generally completes an Engineering Services Study Agreement, an Engineering Material Procurement Agreement, and a Master Electric Service Agreement prior to initiating any work on new load interconnections.

5. The Commission should specify that NLDA will not be subject to existing Direct Access program caps.

The Staff Report notes that a key area of disagreement among the parties to this proceeding is whether the NLDA enrollment should be subject to existing Direct Access program caps. This issue has been well briefed earlier in this proceeding, and the Commission has all information necessary to make a determination at this stage without the need for further due process in a rulemaking. The existing program caps were designed to protect against a large number of existing customers moving off the utilities' systems, especially all at once, and have no applicability to load that would qualify under a NLDA program, where the load was never previously served by the utility. Essentially, the current caps were designed to address an entirely different problem. In addition, existing cost-of-service customers' rights to select Direct Access should not be further limited by allowing Exempt New Load to "use up" their limited remaining available opportunities to elect to permanently select Direct Access. As the Staff Report notes, PGE is already near its enrollment limit for existing Direct Access, and including NLDA within the existing enrollment "would not allow for meaningful participation".[6] There is no basis to apply the existing caps to the new program, and the Commission should take the opportunity to address this issue now, and remove it from contention.

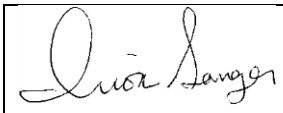
6. Conclusion

For the reasons described above, NIPPC supports the Staff's recommendation to (1) issue an order finding the Commission has authority to create a direct access program applicable to new load with transition adjustment charges that differ from current direct access programs; and (2) open a rulemaking to create rules for a NLDA program on an expedited basis. To facilitate expedition of the rulemaking process, the Commission's order instituting the rulemaking should resolve issues where sufficient briefing already exists and/or the best policy decision is already readily apparent, reject proposals to brief topics that are not necessary for finalization of the

[6] Staff Report at 8.

rulemaking, and ensure the utilities make appropriate information available on a timely basis to facilitate reasoned decision making.

Respectfully submitted, January 24, 2017

 Irion A. Sanger Sidney Villanueva Sanger Law, PC 1117 SE 53rd Avenue Portland, OR 97215 Telephone: 503-756-7533 Fax: 503-334-2235 irion@sanger-law.com	 Carl Fink Blue Planet Energy Law Suite 200, 628 SW Chestnut Street Portland, OR 97219 971.266.8940 CMFink@Blueplanetlaw.com Of Attorneys for the Northwest and Intermountain Power Producers Coalition