

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
AR 614**

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

The Northwest and Intermountain Power Producers Coalition (“**NIPPC**”) respectfully provides these Initial Comments to the May 17, 2018 “Staff Report on Draft Proposed Rules and Request to Issue Notice of Proposed Rulemaking for New Load Direct Access” (the “**Draft Rules**”).¹

1. **NIPPC Supports a Phased Approach to NLDA Rules for Limited Purposes.**

This rulemaking on New Load Direct Access (“**NLDA**”) was intended to be an expedited exercise that has already extended long beyond expectations. At the Oregon Public Utility Commission’s (the “**Commission**”) April 23, 2018 workshop, the Commission recommended that staff create one set of rules applicable to NLDA for customers with a very high bright line threshold of 10 average megawatts (“**aMW**”) that could be implemented swiftly, to be followed by additional rules that may be applicable to NLDA for customers at lower thresholds. The level of 10 aMW was selected because it was the absolute highest level proposed by any party, and significantly above the level of load for which the utilities plan. The level was not a compromise among positions espoused by various parties, nor based on fact, but rather simply the adoption of a threshold so high that no party could oppose it, for the sole purpose of facilitating at least some level of movement in this docket.

¹ NIPPC expressly notes that, due to the very short timeframe between submission of the Draft Rules and the Commission’s scheduled hearing to consider this matter, our comments are limited, and NIPPC reserves the right to submit additional comments at a future date.

As NIPPC has noted in prior comments, a 10 aMW threshold is so high that, standing alone, it would be akin to almost completely rejecting the NLDA program altogether. As data provided by the utilities (included as Attachments 1 and 2) indicates, there has been just a single load of that size requesting service from either utility, and only a handful of new loads of any significant size in recent years. From 2013-2017, PacifiCorp has not had a single request for new load between 1 and 10 MW, and has had just one request at a 10 MW peak level, but no requests for service at a 10 aMW level. From 2012-2017, Portland General has had 5 requests at a level between 1 and 5 aMW, one request for service by a new large customer at a level between 5 – 10 aMW, and one request for service at a level over 10 aMW. While it is possible that these numbers may grow with the adoption of an NLDA program, the fact remains that new loads at or above the 10 aMW level are exceedingly rare, if they occur at all.

As a matter of expediency, NIPPC supports a phased approach for initially creating regulations applicable to NLDA at the 10 aMW threshold,² and subsequently creating regulations applicable below that threshold, with two caveats:

- (a) The “bright line” 10 aMW threshold was selected in large part because it is above any level planned for by the utilities, meaning a rule could move forward without the need to address some of the more complex issues. As addressed in Section 2 below, Staff’s Draft Rules contain proposals that are not appropriate for this threshold level.
- (b) To the extent the Draft Rules are adopted, they should not be the starting point or create precedent for regulations applicable to NDLA loads that are smaller than the 10 aMW size. The point of the phased approach is expedition on a simplified scope. NIPPC supports getting “something” done at an early stage to provide a message to the market that Oregon may soon be open for business and to potentially capture a customer or two over the next few years. However, the regulations approved for this initial phase will not be appropriate for the next phase of the proceeding.

² NIPPC submits that a the 10 aMW threshold is too high, and that the first phase of this rulemaking should be based on a threshold of no higher than 5 aMW, based on existing data and information.

2. Changes to Draft Rules Required for the High Threshold

a. No Transition Charges Are Appropriate For The 10 aMW Threshold.

Section 860-038-0720 (1)(a) of the Draft Rule contemplates that utilities must charge a transition rate equal to 25 percent of “fixed generation costs” for five years. This is not appropriate for the 10 aMW threshold.

The major issue in this proceeding is whether transition charges should be applicable for new load when the utility has neither planned for the load nor incurred costs to provide service to such load. A number of parties to this proceeding have recommended that load at levels of 1 aMW or below should not be subject to transition charges if the utility has adequate notice and/or has not planned for that load and incurred costs in expectation of providing service. NIPPC acknowledges that there are open questions about the utilities’ specific planning with respect to lower thresholds, and there is a potential that utilities may incur some costs consistent with such plans. ***However, all parties concur that the utilities do not plan for new load at a threshold above 10 aMW.*** Given that the utilities do not plan for this load, there is no basis for imposing a transition cost. The Commissioners should direct Staff to remove this requirement from the Draft Rules.

Even if a basis existed to apply transition charges in situations where the utility has not planned for load, the seemingly random selection of a charge equal to “25% of fixed generation costs” is unsupported. Selecting a fee at this level, without any tie to actual or even theoretical costs and/or cost shifts, would amount to an arbitrary and capricious decision and cannot be sustained.

Imposition of transition charges at this threshold level is inconsistent with the Direct Access statutes. Oregon’s Direct Access statute only allows imposition of transition charges for recovery of “Uneconomic Utility Investment.”³ Uneconomic Utility Investment, in turn, is expressly defined in Oregon’s Direct Access statute, and only apply to *previously incurred* costs and otherwise unrecoverable investments made by the utility.⁴ Given the utilities do not plan for, or incur costs to provide service for, new load at the 10 aMW threshold level, no uneconomic

³ 757.600 (31).

⁴ 757.600 (35)

utility investment should ever result. Moreover, setting a mandatory level of transition charges with no basis in fact, nor reflecting any actual costs that may be incurred, inappropriately shifts costs to new customers, and is inconsistent with the Commission's statutory obligation to remove obstacles to the development of a competitive market.⁵

NIPPC requests that the Commission direct Staff to adopt rules that impose no transition charges on new loads of 10 aMW and above, consistent with its statutory obligations. Should the Commission nonetheless direct Staff to include some level of transition costs for NLDA at the 10 aMW threshold, any Order issued by the Commission should explain, in detail, the rationale for selection of the charge, how such charge relates to cost incurrence and cost responsibility principles, how such charge meets the Commission's mandate to eliminate barriers to the development of a competitive retail market, and how such charge prevents cost shifting from NLDA customers to existing customers.

b. The Commission Should Put Structure on Administrative Costs.

Section 860-038-0720 (1)(b) of the proposed rules contemplate that utilities must charge "all costs" of administering the New Load Direct Access program to customers that take service under that program. NIPPC does not oppose inclusion in the NLDA rates of appropriate administrative costs and supports ensuring that captive customers do not pay for the costs of administering direct access programs. Any administrative costs should not be substantial, given that the utilities are already operating a Direct Access program. However, the Commission should make it clear that this provision should only include prudent, just and reasonable costs incurred directly for the NLDA program, subject to review and approval by the Commission, and ensure New Load Direct Access customers are not subsidizing other customers.

⁵ See 2017 ORS 757.646 (1): "The duties, functions and powers of the Public Utility Commission shall include developing policies to eliminate barriers to the development of a competitive retail market structure. The policies shall be designed to mitigate the vertical and horizontal market power of incumbent electric companies, prohibit preferential treatment, or the appearance of such treatment, of generation or market affiliates and determine the electricity services likely to be competitive. The commission may require an electric company acting as an electricity service supplier do so through an affiliate."

c. The Commission Should Reduce and Clarify the Notice Period

The Draft Rules specify that, for new load to be eligible for the NLDA Program, the customer must make a binding election at the earlier of either (i) one year prior to energizing the meter or (ii) the date of a binding written agreement with the utility to receive distribution services for eligible new load. NIPPC submits that one year prior to energizing the meter is unnecessarily long. Whatever term the Commission ultimately adopts, it should make clear that the timeframe is intended to track the date the customer starts full-scale operation at the site, and does not apply to test power, power used during facility construction, or similar power use not directly intended to be the new large load.

d. The Commission Should Adopt a “Safe Harbor” Approach With Opportunity For Customers to Demonstrate Eligibility.

NIPPC appreciates the goal of getting the NLDA program operating on a limited basis for a very high threshold in the near term, pending further development on terms applicable to lower thresholds. As noted above, all parties agree that the utilities do not plan for new load above 10 aMW, so no level of transition charges would be appropriate. All parties also agree that, with sufficient advance notice, a utility can adjust its planning to ensure it does not incur costs for new load regardless of the size of such load – it is the amount of notice, and size of load, that are still, open for discussion.

Whatever thresholds are ultimately adopted, the Commission should make it clear that they are “safe harbor” provisions that guarantee eligibility for New Load Direct Access treatment. At the same time, the Commission should allow for customers not meeting a given term of the safe harbor requirements to petition the Commission for New Load Direct Access treatment. For example, to the extent a prospective new load may only be anticipated to be 8 aMW, rather than 10 aMW, but is able to provide (for example) four years’ advance notice, it should be eligible to petition the Commission for NLDA treatment, and should be awarded NLDA status unless the utility can affirmatively demonstrate that it has incurred costs in anticipation of such load. A similar process is already in place in a variety of jurisdictions.

3. Conclusion

NIPPC encourages the Commission to swiftly move forward with the establishment of regulations for the NLDA program consistent with the comments above.

Respectfully submitted,

May 21, 2018

/s/ Irion Sanger/

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Of Attorneys for the Northwest and
Intermountain Power Producers Coalition

ATTACHMENT 1

Portland General Electric Data Response – New Large Customers by Year

Portland General Electric
 New Large Customers by Year

	AVG_2_HI 1-5 MW*	AVG_2_HI 5-10 MW*	AVG_2_HI Over 10 MW*	MWa 1-5 MWa*	MWa 5-10 MWa*	MWa Over 10 MWa*
2012	1	1	1	2		1
2013	4	1			1	
2014	1					
2015	9	1		3		
2016						
2017	3					

* Categorization based on customer deliveries data in 2017

ATTACHMENT 2

PacifiCorp Data Response – New Large Customers by Year

DAVIS Diane

From: KAUFMAN Lance
Sent: Thursday, January 18, 2018 9:12 AM
To: MOSER Sommer; DAVIS Diane
Subject: FW: UM 1837

Follow Up Flag: Follow up
Flag Status: Flagged

This one is pretty easy to summarize, I don't think sending the email adds info.

From: Siores, Natasha [mailto:Natasha.Siores@pacificorp.com]
Sent: Monday, December 18, 2017 11:42 AM
To: KAUFMAN Lance <ldkaufma@puc.state.or.us>
Subject: RE: UM 1837

Hi Lance,

Our folks put together the following. Please let me know if you need anything else. See you in this afternoon's workshop.

The following table lists the number of new customers in Oregon for each calendar year with a peak demand for the thresholds requested.

	1-5 MW	5-10 MW	over 10 MW
2013			
2014			
2015			1
2016			
2017			

From: KAUFMAN Lance [mailto:lance.kaufman@state.or.us]
Sent: Tuesday, December 12, 2017 9:48 AM
To: Siores, Natasha <Natasha.Siores@pacificorp.com>
Subject: [INTERNET] RE: UM 1837

**** STOP. THINK. External Email ****

Sorry, the last category should be "Over 10 MW" not "10 MW".

From: KAUFMAN Lance
Sent: Tuesday, December 12, 2017 9:45 AM
To: 'Siores, Natasha' <Natasha.Siores@pacificorp.com>
Subject: UM 1837