BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
AR 614

In the Matter of	)	
	)	SUPPLEMENTAL COMMENTS OF
PUBLIC UTILITY COMMISSION OF	)	NORTHWEST AND
OREGON,	)	INTERMOUNTAIN POWER
	)	PRODUCERS COALITION ON LARGE
Investigation into the Treatment of New	)	NEW LOAD DIRECT ACCESS
Facility Direct Access Load	)	RULEMAKING
	)	
	)	

The Northwest and Intermountain Power Producers Coalition ("**NIPPC**") respectfully provides these Supplemental Comments for formal consideration in the proposed rulemaking on large new load direct access ("**NLDA**") initiated in this docket by Commission Order No. 18-175 ("**Proposed Rulemaking**"). NIPPC previously submitted comments in this docket on April 20, May 21, and June 18, 2018, and requests that all such comments be included for formal consideration as part of the Proposed Rulemaking. NIPPC does not repeat here comments previously filed, but does address specific issues raised by Portland General Electric Company ("**PGE**") and/or Pacific Power (collectively, the "**Utilities**") and Public Utility Commission of Oregon ("**Commission**") Staff in comments filed subsequent to NIPPC's prior comments as well as comments made during the June 21, 2018 hearing.

1. The Commission is Obligated to Follow the Statutory Mandate Set Forth in SB 1149.

NIPPC's proposals to implement NLDA are grounded in the Commission's statutory obligation to eliminate barriers to the development of a competitive retail market. Specifically, SB 1149 provides:

> SECTION 6. (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.

The basis behind the statute, laid out in its seven preambles could not be more clear:

> **Whereas** the continued competitiveness of the state′s economy requires that the Legislative Assembly consider national trends toward electric deregulation; and
>
> **Whereas** the divestiture or functional separation of electrical power generation from the distribution functions is the most effective means of stimulating competition, providing depth and liquidity to the wholesale market and facilitating the transition to a fully competitive market by alleviating horizontal and vertical monopoly market power and providing a more accurate estimation and mitigation of stranded costs; and
>
> **Whereas** price and service unbundling is the best way to identify the costs associated with generation, transmission and distribution of electricity services and is essential to the development of a competitive market; and
>
> **Whereas** restructuring of the electricity industry must be crafted in a way that retains the benefits of low-cost resources for consumers; and
>
> **Whereas** all Oregon retail electricity consumers should be provided fair, non-discriminatory access to competitive electricity options; and
>
> **Whereas** retail electricity consumers that want and have the technical capability should be allowed, either on their own or through aggregation, to take advantage of competitive electricity markets as soon as is practicable; and
>
> **Whereas** this state must adopt reasonable transition policies, including a portfolio access option and public purpose funding, that lead to a competitive electricity market that is accessible to and benefits all classes of electricity consumers; and
>
> **Whereas** this state must adopt adequate electricity consumer protections [.]

Any decisions in this rulemaking must be considered within the framework of the Commission's statutory obligations.

2. Imposing Transition Charges Without Cost Basis is Unjustified.

The Proposed Rule currently contains a "Transition Charge" equal to "25 percent of fixed generation costs."[1] At the June 18th hearing, Staff acknowledged that this charge was not cost based, and Staff could provide no explanation how or why the charge should be imposed on large load NLDA. Meanwhile, the Utilities and Staff have expressed vague and unspecified concerns about potential costs and risks from NLDA, but none that are actual costs or stand up to scrutiny.[2]

At the 10 average megawatt ("**aMW**") threshold, all participants agree that the Utilities have not planned for, nor have they incurred, any costs to serve new load.[3] Therefore, at the 10 aMW level (or at any level where the utility has clearly not planned for the load[4]), there are no costs resulting from a customer taking NLDA. Instead, remaining captive ratepayers will benefit from increased competition in the market that drives down costs, additional customers to contribute to transmission and distribution investments and costs, fewer risky utility investments, and a heathier economy. In addition, as discussed in Section 3 below, NLDA will provide substantial reliability benefits to the system, and any potential reliability risks are so speculative and so small that they cannot be the basis for a transition charge.

Requiring NLDA customers to pay "25 percent of fixed generation costs" for generation that they do not and will not use would constitute an impermissible cost shift from cost of service customers onto NLDA customers. Moreover, when a utility is in a capacity-short position, load moving to NLDA provides a substantial benefit to the system by reducing the need for new resource acquisitions. As previously noted, Direct Access transition charges are specifically

[1] Proposed Regulation 860-038-072091)(a).

[2] The Utilities suggest that there is a need to balancing the risk of unwarranted cost shifting with the development of a competitive retail market but no one has identified any specific costs that would be shifted, nor even a general estimate of the level or type of costs that could be shifted. *See, e.g.*, PacifiCorp June 18 comments at 2, PGE June 18 comments at 3.

[3] It is debatable whether the Utilities could incur any costs planning for much smaller new loads, but that is not before the Commission at this juncture. At the 10 aMW level all parties agree that the utilities have not planned for, nor incurred any costs to serve, potential new load.

[4] NIPPC reiterates its previous comments that the Commission should allow load that is truly new and unplanned-for, and provides adequate notice that it does not desire utility service, to petition for large NLDA treatment even if it does not meet the 10 aMW threshold.

intended to go in both directions: NLDA should receive a transition credit from existing customers where necessary to ensure that direct access customers are not subsidizing cost of service customers. In PGE's VRET proposal in Docket UM 1953, PGE is proposing to offer a substantial energy and capacity credit to reflect the value brought to the system from purchase power agreements dedicated to serve a VRET customer. NLDA load will provide at least the same energy and capacity benefit to the system as PGE proposes for its VRET – there is no reason at all that it should be required to pay a surcharge.

Absent a specific basis for the proposed 25% charge, it is clearly an impermissible barrier to the development of a competitive retail market, that cannot legally be imposed, as the transition fee would be an impermissible subsidy of cost of service customers by Direct Access customers. The Utilities' existing customers do not have a property interest in the existing system, and are not entitled to a feudal-style fee for market entry by NLDA customers – again, that would create an impediment to the development of a competitive retail market and barred by law.

To the extent the Commission issues regulations imposing any transition charges on NLDA, NIPPC asks that it articulate the following: (1) What specific costs are such charges designed to recover? (2) What is the likelihood that such costs will be incurred? And (3) What is the relationship of the amount of the charge to the costs? If the Commission cannot articulate a basis for the transition charge, then imposition of the charge would be exceed the Commission's statutory authority because it is facially invalid, arbitrary and capricious, fails to substantive conformity with the governing Direct Access law, and would an impermissible barrier to the creation of a retail market.

3. Direct Access Reduces Reliability Concerns – Statements to the Contrary are Unfounded.

In an effort to place roadblocks on NLDA, the Utilities raise vague and unsupported arguments that allowing NLDA access would compromise reliability. [5] The Utilities claims are a red herring.

[5] Notably, not even the Utilities use these arguments to support the need for a transition charge. *See, e.g.,* **PGE** June 18, 2018 comments at 13, 14; Pacific Power's June 18, 2018 comments at 3.

NLDA will substantially increase system reliability. NLDA customers pay for a full share of the transmission and distribution system facilities, which makes the system more robust. NLDA's contributions to the transmission and distribution system allows the Utilities to spread those system costs over more customers, reducing the transmission and distribution costs to remaining cost of service customers. NLDA also brings more power supply and more power suppliers into Oregon; this diversification of generation resources substantially improves system reliability.

In contrast, the vaguely expressed concerns that NLDA could cause reliability issues are simply not borne out by facts. For example, PGE suggests that reliability concerns could occur if "all direct access customers return[] to the system at the same time."[6] NIPPC submits that the likelihood of this happening is so remote as to be non-existent – and, even if it did occur, it would not impact system reliability, as those customers returning to utility service are requires to pay market-based rates plus a very substantial adder to ensure there is no cost shifting and to ensure that the Utility can secure from the market the emergency supplies that might be necessary if such a situation did occur. But the fact is that no customer taking permanent direct access has ***ever*** returned to utility service in Oregon or under Puget Sound Energy's highly successful direct access program, let alone multiple customers returning at the same time.

The Commission cannot rely on vague and unsupported concerns as a basis for imposing costs on the Direct Access program. If the Commission cannot articulate an express rationale for the costs, such charges would clearly be "be barriers to the development of a competitive retail market structure." Charging NLDA customers a fee for an event that is unlikely to ever happen or cause any actual shift of costs would simply be a windfall to – and impermissible subsidization of – cost of service customers.

Before the Commission implements any fee intended to address the vaguely stated reliability concerns, NIPPC believes that it must be able to address the following questions, and expressly state its rationale in any rulemaking: (1) whether any charge, limitation, or cap placed on the NLDA program is based on a legitimate and reasonable reliability concern; (2) whether

[6] PGE June 18, 2018 Comments at p 13.

there is a reasonable probability of specific and defined reliability issues occurring; (3) how the magnitude of any potential costs compares to the proposed fee; and (4) the degree to which diversification of generation and contributions to transmission and distribution systems made possible by NLDA would enhance system reliability

4. NLDA Customers Will Likely Choose 100 Percent Carbon Neutral Power – But the Commission Cannot Make That a Program Requirement.

NIPPC anticipates that a very sizeable portion of – if not all – demand for NLDA will be from customers desiring to purchase carbon-neutral power. However, that should not – and cannot – be a program requirement. Electricity Service Suppliers, like the Utilities, are subject to the RPS regulations. There is no need, nor basis, for imposing any further restrictions on the load they serve. Requiring NLDA customers to be served with a higher proportion of carbon-free energy than is required for customers being served by the Utilities would constitute an impermissible barrier to the development of a competitive retail market, contrary to the Commission's statutory obligations.

NIPPC further notes that PGE's suggestion that the Commission select just one aspect of proposed legislation in SB 979 (2017), the renewable power requirement, is disingenuous. While that bill's introduction and subsequent withdrawal by Senator Beyer as active legislation is what served as the catalyst for this proceeding, the fact is that it is not the law. As noted above, the Commission has an existing statutory obligation to eliminate barriers to the development of a competitive retail market, and cannot avoid that statutory requirement based on legislation that did not pass. Senator Beyer did discuss as one of the basis for SB 979 that "there is more interest in by number of customers and getting *some* green power," but he also went on to expressly note that it must be done in a manner that provides equal opportunity for the Utilities and third parties to operate on a level playing field:

> "I think we are open to it in a sense of providing equal opportunity for both the utilities and third parties to provide that coverage and the regulatory field should be pretty level—I hate to use that term—we've all heard me talk about what a level playing field looks like—but as level as we can get it."

Work session transcript, SB 978 & SB 979, April 17, 2017. Further, SB 979 contained a number of other proposed requirements, including making it applicable to *all* new load "at a new delivery point that was created through the development of commercial or industrial infrastructure" as well as *all* load at existing delivery points provided the new load exceeded 5 percent of the maximum load during the previous calendar year.[7] SB 979 also limited the Utilities from collecting transition charges of any kind unless the utility demonstrated diligent efforts to mitigate such charges. NIPPC welcomes consideration of these provisions, which are fully consistent with the Commission's obligations to remove barriers to development of a competitive retail market. The Commission should not, and cannot, impose barriers to the development of a competitive retail market based on one aspect of complex legislation that did not progress through the Legislature.

5. The Commission Should Not Impose a Restrictive Cap on NLDA Participation.

There is no basis for putting a restrictive cap on the NLDA program. No party has articulated any significant cost or reliability risk that would result from an uncapped program. The preamble to SB 1149 makes it clear that "*all*" Oregon retail electricity consumers should be provided fair, non-discriminatory access to competitive electricity options, not just the lucky few that get in an early queue. Consider, for example, the recently proposed 100-megawatt QTS data center contemplated to be built in Hillsboro. Placing a cap that would prevent other potential load from moving to Oregon and using exclusively carbon-free power as QTS plans to do.[8]

6. Conclusion

NIPPC encourages the Commission to move forward with a NLDA program designed to attract new industry to Oregon, and advance decarbonization of the power sector, and to do so consistent with its obligations to remove barriers to the development of a competitive retail market, without imposing unsupported and speculative transition fees. NIPPC further

[7] Proposed SB 979 (2017), Section 1, definition 22.
[8] *See, e.g.*, Danko, Pete (June 21, 2018) "Giant Hillsboro data center sees cheaper path to green power" *Portland Business Journal*, https://www.bizjournals.com/portland/news/2018/06/21/giant-hillsboro-data-center-sees-cheaper-path-to.html.

encourages the Commission to include within any NLDA regulations applicable to unplanned-for large load a mechanism for prospective customers to petition for inclusion for large NLDA treatment to the extent that they can demonstrate their load has not been included in a utility's planning.

Respectfully submitted, July 6, 2018

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