BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1837
AR 614

In the Matter of	)	
	)	LIMITED REPLY 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 limited comments in reply to Portland General Electric Company's ("**PGE")** comments filed April 18, 2018 regarding New Load Direct Access ("**NLDA**"). NIPPC asks the Commission to take these comments into consideration in preparation for the Commissioner workshop scheduled for April 23, 2018.

I. The Commission must discount unsupported utility claims.

NIPPC submits that many of the positions taken by PGE in its April 18 Comments, and by both utilities throughout this proceeding, are based on claims with no support and which appear at odds with fact. The Commission has an affirmative statutory obligation to eliminate barriers to the development of a competitive retail market structures.[1] In issuing any new regulations related to NLDA, the Commission should strive to make the program as inclusive as possible, with minimum restrictions consistent with its regulatory responsibilities. The utilities have the burden to establish that any restrictions they seek on the program, whether in the regulations or within their tariffs, are *necessary* to protect against unwarranted cost shifting and outweigh the Commissions' statutory obligations to encourage the competitive retail market.

[1] *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."

NIPPC and others have sought cooperation from the utilities to provide informal discovery so that all parties could have a factual basis for further discussions, but the utilities have steadfastly refused to do so.[2]

Any recommendations for limitations on the NLDA program regulations proposed by the utilities based on concerns that they have not supported – when they hold the facts to do so – should be dismissed. For example, in its April 18 Comments, PGE reiterates its position that new load direct access should be limited to loads in excess of 10 average megawatt ("**aMW**"), despite the fact that the utilities have confirmed that their planning protocols do not include service to new loads in excess of 1 aMW absent certain kinds of notice that such new loads are actually going to materialize.[3] As far as NIPPC is aware, PGE has not had a single request for new service above 10 aMW *in the last decade*, and has had just a handful of requests above 1 aMW, let alone 5 aMW. ***Proposing a 10 aMW threshold would be akin to rejecting the NLDA program outright for PGE's customers***.

To the extent the utilities have factual proof of actual concerns, they could have provided such information. Because the utilities have elected not do so, the Commission should simply reject their positions and instead take action consistent with its obligation to insure the development of a competitive retail market and the clearly expressed desires of prospective customers for an NLDA service. Nor should the Commission feel compelled to "split the baby" and settle on a midground between the extreme positions taken by the utilities and positions that

[2] For example, NIPPC requested the following non-confidential information as part of the workshops in this proceeding. The utilities have refused to cooperate at all.

For each new commercial/industrial load within the past 10 years, please specify:

- The date the utility first became aware of the project.
- The date the customer executed binding agreements to pay for any design or other cost reimbursement agreements. If customer entered into more than one such agreement, please provide the dates for all.
- The date the customer initiated full service (not test service).
- The annual average mw use in the years following in-service.
- The highest MW use for three consecutive months in the years following in-service.

[3] *See*, *e.g.,* PacifiCorp's November 6, 2017 Workshop Presentation on Forecasting New Loads, included as Attachment 1 to NIPPC's Opening Comments, 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.

favor an open market, especially when the utilities have withheld key facts that are necessary to conclude that their proposals could be considered reasonable.

II. Specific Reply Comments.[4]

1. Definition of new load. In its April 18 Comments, PGE suggests that the NLDA program should be limited to new ***customers*** rather than new ***load***. To limit new load based on whether the prospective load is owned by an entity that also has other business in Oregon would skew business competition and not be appropriate. By way of example, if Intel is considering building a new major manufacturing facility in Oregon or in another jurisdiction, the fact that Intel is already a customer of PGE would be irrelevant to the question of whether PGE has incurred any stranded costs or whether there would be any unwarranted cost shifting by exempting Intel from paying exit fees for load that PGE has never served.

Even PGE seems to recognize that position its position is untenable, quickly pivoting to requesting that a customer be required to demonstrate investment in new assets, at a new location, and at a separate meter. NIPPC submits that load at a new location with a new meter should *per se* be considered new load and eligible for NLDA. NIPPC agrees, however, that new load at *existing* locations should be required to meet additional tests to unsure it is truly new, and not a result of market fluctuations. NIPPC has already set forth a specific proposal in this regard.[5]

[4] For the sake of brevity, NIPPC will not respond to all points raised in PGE's Comments, nor repeat the many comments previously filed in this proceeding but believes response to some of PGE's statements are necessary.

[5] *See* NIPPC's Reply Comments filed December 19, 2017, Docket UM 1837, which propose the following recommendations with respect to the size threshold for new load at existing locations. Note that NIPPC the 10 aMW threshold for new load at *existing* locations is intended as a temporary placeholder which will be reduced as the Commission and participants have experience with the program and can adopt their planning processes.

> (1) All load at a **new meter** that required execution of an Electric Service Requirements Agreement ("**ESRA**") or similar written commitment; and
>
> (2) the portion of load at an **existing or upsized meter** where the increase in load is serving new commercial or industrial infrastructure added behind the meter; and is **the larger of** (a) 10 aMW or (b) 20 percent above the highest two-month period of use during the prior three years.

2. Threshold Size of New Load. As discussed in the introduction, PGE has proposed, without basis or support, a threshold for new load that is so high that it would it would completely vitiate the NLDA program. Load that is new, and at a new location – and for which the utilities have proper prior notice (as discussed below) -- should qualify for the program regardless of size.

With respect to establishing regulations, absent factual evidence to the contrary, the threshold should be as low as possible in keeping with the Commissions statutory obligation to remove barriers to a competitive market. NIPPC submits that the appropriate threshold should be no higher than 30 kW, which is the threshold PGE recently proposed for eligibility for its Voluntary Renewable Energy Tariff filed in filed in Docket UM 1690. The Commission's Order in the VRET docket specifies as an express condition that a utility's VRET proposal must mirror the terms and conditions available under direct access, including the timing and frequency of offerings, as well as transition costs.[6] The Order further provides that, to the extent a utility proposes terms for a VRET that differ from current direct access provisions, it must propose changes to their direct access programs to match those changes. Given PGE has proposed the 30kW threshold for its own VRET, that same threshold must be applicable to NLDA.

At the very highest, the threshold for new load at a new location should not be more than 1 aMW, as the utilities' planning protocols use that threshold for some purposes, as noted above.[7] But in no case should the Commission adopt artificially high threshold in the regulations based on unsupported claims by the utilities. The utilities have chosen not to provide historic data showing levels of new load that would have qualified for NLDA had it been available in the past decade. This is likely because the aggregate amounts, even assuming adoption of a very low threshold, is likely to be fairly small, and will not cause significant changes in the utilities forecasts or planning.

3. Notice and Commitment Provisions. NIPPC agrees with PGE's position that customers desiring NLDA treatment must provide notice of their intent to take NLDA service prior to energization of facilities, but believes the notice period should be specific and fairly short. PGE

[6] *See* Order Nos 14-405 and 16-251.
[7] *See* Fn. 2, *supra.*

does not provide a specific proposal, but suggests such notice be in conjunction with various existing utility planning processes, some of which can be quite long. And, while PGE raises the specter of concern, it provides no data that would indicate the concerns are valid.

NIPPC notes that the utilities have clearly indicated that they do not plan for new load until such load executes binding cost reimbursement agreements and recommends that notice need not be provided any time prior to that point. NIPPC also notes that the utilities apparently update their planning processes on 6-month intervals. As such, NIPPC recommends the Commission adopt a rule specifying that load must make a binding election to receive NLDA service, rather than cost-of-service rates, by the later of six months prior to anticipated initiation of service or the date on which the customer executes a binding cost reimbursement agreement.

4. Program Participation Cap. No cap is appropriate for new load direct access, and no cap should be included in any regulations promulgated by the Commission. If any cap is adopted, it should be done with reference to the specific utility situations through tariff proceedings, rather than locked in through regulation. However, the Commission should clarify in this rulemaking proceeding that the existing program caps will not be applicable to NLDA.

PGE submits that the NLDA program should be included under its existing Direct Access cap of 300 MWa. As the Staff Report in this proceeding 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".[8] The existing program caps were designed to protect against many 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. PGE's own argument proves the point: in support of placing NLDA under the existing cap, PGE states that "Many of PGE' s large customers who are interested in participating in DA have already opted out of COS during one of our previous offerings and room remains under the participation cap." But prior choices made by existing customers have nothing to do with new load. Moreover, one of the major reasons room remains under the existing cap is because of the very high transition costs imposed on standard Direct

[8] Staff Report at 8.

Access customers leaving the system. To the extent NLDA is not subject to transition charges (or subject to significantly lower transition charges), more customers may be inclined to take advantage of the program.

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. 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.

III. Conclusion

NIPPC encourages the Commission to swiftly move forward with the establishment of regulations for the NLDA program. Consistent with its statutory obligations to eliminate barriers to the development of a competitive retail market structures, the Commission should strive to make the program as inclusive as possible, with minimum restrictions on participation.

Respectfully submitted, April 20, 2018

/Irion Sanger/S/___
Irion A. Sanger
Sanger Law, PC
1117 SE 53rd Avenue
Portland, OR 97215
Telephone: 503-756-7533
Fax: 503-334-2235
irion@sanger-law.com

/Carl Fink/S/
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