BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 614

In the Matter of In the Matter of the PUBLIC UTILITY COMMISSION OF OREGON, Rulemaking Related to a New Load Direct Access Program	Final Comments

Staff continues to support the creation of a New Load Direct Access (NLDA) program, and provides these final comments to set forth its recommendations and response to other parties' comments, as appropriate. This rulemaking represents the first phase of the New Load Direct Access program, with an anticipated second phase to address additional issues, including threshold customer size, at a later date. In general, Staff sees that substantial progress made by participants in developing rules that both protect cost of service (COS) customers and develop market options for utility customers. Staff's initial draft of these rules[1] was conservative, with substantial safeguards for COS customers. Staff appreciates and thanks the participants thoughts, comments, and willingness to work towards improving the rules. Through this process, Staff has considered comments from all participants and finds that certain refinements to the initially filed rules are appropriate. As will be discussed more fully below, Staff's comments address the following issues:

- Enrollment Limits
- Load Shifting Restrictions and Charges
- Transition Adjustments
- Threshold Customer Size
- Limitation of Coal Resources
- Notice Requirements
- Transmission
- Metering
- Jurisdictional Allocations

1

Enrollment limit

The draft rules set a total enrollment in the large new load direct access program equal to 12 percent of utility's 2017 weather normalized load. PGE and PacifiCorp raised concerns over the proposed enrolment limit related to potential undue cost-shifts and reliability concerns of a new program.[2] PGE proposes a combined enrollment limit, or cap, equal to 400 MWa that would be applicable to all permanent COS opt-out direct access schedules, regardless of which program the customer is participating in.[3] PacifiCorp proposes a combined cap consistent with the caps in place for its current direct access offerings, which is equal to approximately 12 percent of 2017 load.[4] AHD circulated potential revisions that included a cap that allows participation in the new load direct access program up to 6 percent of 2017 load, and has indicated that this amount is in addition to existing direct access caps.[5] At the July 17, 2018 Regular Public meeting, AHD also stated that it may be appropriate to maintain a single cap applicable to both existing and new load direct access.[6]

Staff agrees that limiting the size of the NLDA program to 6 percent of the utility's calendar year 2017 load appropriately balances risk and opportunity for this program. However, Staff continues to support separate caps for existing and new load direct access.

To illustrate the value of separate caps, consider the following potential outcome of a combined cap. PGE has 200 MWa of existing load that is interested in participating in direct access, but is unable to due to the enrollment limits on the existing direct access programs.[7] This load is currently unable to opt for long term direct access due to the current cap on PGE's direct access program. PGE currently has approximately 235 MWa of load enrolled in the existing load direct access programs, and a 300 MWa limit for existing programs. AHD's proposed increase would allow for a total participation across both programs equal to about 435 MWa. If the caps were combined, and the load elected to go to an existing direct access program, this would result in:

1. No room for substantial participation of new load in the new load direct access program,
2. No ability to evaluate the performance of NLDA program in five years; and
3. Loss of a substantial and significant portion of existing load.

This is a substantially different outcome from what might occur under separate caps.

One justification for a single cap was concern about treatment of customers that are migrated from the NLDA program to an existing DA program. Staff sees two appropriate alternatives to this concern that do not require combined caps:

1. Allow existing DA participation to exceed the cap in the event that a customer is transitioned from NLDA to existing load DA. Staff expects that few customers will be transitioned from the NLDA to the existing DA programs, and that this will have minimal impact on the existing DA programs.

---

[2] PGE's June 18, 2018 Comments at 13; PacifiCorp's June 18, 2018 Comments at 3.
[3] PGE's June 18, 2018 Comments at 12-14.
[4] PacifiCorp's June 18, 2018 Comments at 3.
[5] *See* July 17, 2018 Memorandum from Administrative Law Judge Moser.
[6] Accessed at http://oregonpuc.granicus.com/MediaPlayer.php?view_id=1&clip_id=316.
[7] *See* UE 335, AWEC/200, Mullins/45 and PGE/1303 Macfarlane-Goodspeed/9.

2. Require that customers transitioned off the NLDA program first transition to COS service. The benefit of this approach is that existing DA caps could be maintained. The risk associated with this approach is that NLDA customers may have ongoing energy service contracts and be liable for the terms of those contracts while also receiving COS energy.

Staff also anticipates developing rules for a new small load direct access program in the near future. It may be appropriate to have a single cap for new large and small load direct access, and a separate cap for existing load direct access. In the event that a new small load direct access program is developed, it is likely that any customers transitioned out of the new large load direct access program should be transitioned into the new small load direct access program. Therefore, separate caps may be the most manageable for NLDA programs, generally.

The draft rules also include language that would allow the caps to sunset after a period of five years. Some participants have raised concern regarding the sunset clause for the enrollment limit. Upon further reflection, Staff finds it appropriate to require the cap be revisited after utilities have operated the program for a number of years, and parties have had time to review the performance of the program. The burden should be on the utilities to perform analysis and evaluation of the program after five years, because utilities are in a unique position of access to data, have familiarity with customers, and have experience with operations that situates them particularly well to evaluate the need for program limits. Therefore, the Commission should adopt rules that require the utilities file a report discussing the need for the cap, and the Commission should indicate its intent to revisit the need for a cap at a later date.

In sum, Staff recommends that the rules implement a cap equal to six percent of 2017 load and that the cap be applicable to all new load direct access programs, but separate from limits to existing direct access. Staff further recommends that the Commission adopt rules that require utilities to file a report discussing the need for a NLDA cap within five years of implementation of the NLDA program.

Load shifting

The filed draft rules include stringent requirements to limit risk associated with load-shifting, which includes a load shortage charge. In comments and discussions with stakeholders, several parties raised concerns about load-shifting, including whether an Existing Load Shortage Transition Adjustment is necessary or appropriate, and if so, under what circumstances. Additionally, parties have raised questions and concerns about the procedure that would determine whether there is an existing load shortage.

In response to concerns about the circumstances that would warrant an Existing Load Shortage Transition Adjustment, AHD circulated language that would define load-shifting as activity undertaken "for the deliberate purpose of increasing load at locations participating in the New Load Direct Access Program from locations not subject to the New Load Direct Access Program."[8] Other participants have suggested that an affidavit approach may be administratively simpler than determining and administering a shortage charge.

[8] July 17, 2018 Memorandum from Administrative Law Judge Moser.

Staff finds that additional rule language that would further detail when an Existing Load Shortage Transition Charge would be most appropriate, and supports AHD's language defining load shifting. Utilities should monitor for load shifting regardless of the mechanism used to protect customers.

Load shifting is applicable to affiliate customers. The draft rules use a five percent interest as the threshold for affiliate status. However, based on feedback from stakeholders through this process, Staff supports modifying the definition of affiliated customer to require a controlling interest. Staff recommends basing the determination of line of business on three-digit NAICS code of the customer. If two customers can qualify for the same three-digit NAICS code, the customers should be considered to have the same line of business.

Transition Adjustments

AHD proposes to lower the transition adjustment from 25 percent of fixed generation costs to 20 percent of fixed generation cost for five years. Staff has performed some generic cost modeling related to the costs and risks identified by the Commission as the basis for this charge, and a 20 percent charge remains a reasonable representation of the charge necessary to fairly recover the costs associated with this program and to recover the benefits related to economic utility investments.

Threshold size

Generally, parties have supported the threshold size of 10 MWa or greater for NLDA program participation based on the conclusion that the utilities do not plan for load of this size in their normal planning processes. NIPPC has filed comments requesting that customers below the 10 MWa threshold be allowed to petition for service under the NLDA program if it can be demonstrated that the utility has not previously planned for the load.[9] Staff agrees that there may be new load customers with load less than 10 MWa that are similarly situated and have a similar impact on COS customers and rates as new loads greater than 10 MWa. However, in the interest of maintaining a bright line test which also precludes utilities from arguing that loads exceeding 10 MWa be excluded from the program, Staff recommends maintaining a bright line test of 10 MWa for this program. Staff notes that the second phase of the new load direct access rulemaking will examine loads smaller than 10 MWa, and that will be an appropriate phase for the Commission to contemplate treatment of borderline cases.

Coal Fired Resources

The draft rules do not include a restriction to the NLDA program based on resource choice, but whether a program restriction should exist has been discussed throughout this process. Staff continues to find that the Commission lacks the authority to further restrict ESS resources beyond what is currently included in statute, such as the Renewable Portfolio Standard.

AHD has proposed draft language that would restrict a customer's eligibility to participate in a program, rather than restrict an ESS's resource choice, based on compliance with ORS 757.518, which implements Senate Bill 1547 Section 1. Staff understands the intention with this section is to ensure that this program does not

---

[9] *See* NIPPC's July 6, 2018 Comments at footnote 4.

undermine the policy underlying Senate Bill 1547, Section 1, which seeks to eliminate coal-fired resources from allocations of Oregon's electricity. There are a number of technical considerations regarding Senate Bill 1547 that could inform the final language in this section. Generally, Staff is concerned that reference to ORS 757.518—which restricts the resources that may be included in a utility's rates—may not directly transfer to an optional program that would restrict a customer's ability to participate based on the underlying contracted resource(s). Staff understands the underlying intent to be that NLDA customers should be placed in parity with COS customers in terms of the inclusion of coal in their resource mix. In order to achieve this objective, should the Commission desire to restrict customer participation to those customers that are willing to choose service from an ESS that does not have coal-fired resources in its resource mix, Staff recommends that more generic language, rather than a reference to ORS 757.518 provisions, would provide more clarity. Should the Commission determine that keeping the reference to ORS 757.518 is necessary, Staff offers the following considerations and recommendations.

First, ORS 757.518(1)(b)(B) identifies an exclusion to the definition of coal fired resource, but does not include the definition of "coal-fired resource. The rules should reference ORS 757.518(1)(b) which includes both the definition and the exclusions.

Second, ORS 757.518(1)(b)(B) excludes certain wholesale power purchases. As an initial matter, the Commission has not yet determined how the wholesale power purchase restriction will to utilities. Consistency in how these statutory requirements are interpreted is necessary, and therefore Staff is concerned about defining and applying these terms in a NLDA program rulemaking, which may have broader consequences.

Third, Staff is concerned that in the interpretation of the wholesale market exception may have disparate consequences for utilities and ESSes. For example, Staff is not aware of any ESS providers participating in the energy imbalance market. If the wholesale market exception is interpreted to apply to energy imbalance markets, a utility may be able to claim an exception where an ESS could not In short, an ESS may have a more difficult time leveraging the ORS 757.518(1)(b)(B) exclusion than utilities. This means that the AHD proposal may result in greater restrictions on program participants than on COS customers.

Fourth, Staff notes that ORS 757.518 does not restrict coal from being in a utility's resource mix. It restricts the costs and benefits of coal from rates.

Finally, AHD's draft rules propose to enforce the requirements in this section in two ways—first, by requiring customers to provide, upon request, contracts or other materials necessary to investigate compliance with NLDA program requirements, and second, by instituting a reporting requirement on ESSes that contract with a customer participating in the NLDA program. With regard to the former, Staff does not believe the Commission has the authority to compel or otherwise require a customer to provide contracts or other information demonstrating compliance with programmatic requirements. However, Staff notes that in order for a customer to take service pursuant to a utility's tariff, it must meet the requirements of that tariff. Additional thought and process to address the underlying concern is necessary and appropriate, but should take place in the implementation of this program in utility-specific filings. With regard to ESS reporting, Staff notes that reporting would give the Commission comfort

that a program participant is in fact complying with programmatic requirements, but is unclear as to whether an ESS is able or willing to provide reports containing such information and on whether there are unintended consequences. Staff finds that tariff requirements, which is binding to both the customer and the utility, likely provides adequate assurance that program requirements are met. In utility-specific proceedings, the parties and Commission can address if additional information or process should be required in order to demonstrate compliance with the tariff provisions (or process if there is a question as to whether tariff requirements are being met).

Notice Requirements

Vitesse has filled comments requesting that the notice requirements be modified to allow New Large Loads to qualify for the NLDA program with short notice, if agreed to by the utility. Staff is concerned that this language may undermine the utility's planning process and may result in the utility acquiring resources to serve new large load, which could result in additional costs to COS customers in the event that the customer enrolls in the NLDA program. The language proposed by Vitesse is not necessary for the development of the NLDA program, and may shift some risk onto cost of service customers. Therefore Staff does not support the Vitesse proposal.

Transmission

Both PGE and PacifiCorp propose language to clarify the treatment of transmission rates. At the July 17, 2018, public meeting AHD recommended that the treatment of transmission rates be delayed for consideration in a later rulemaking. Participants discussed the transmission issues at the July 19, 2018, participant workshop. The utilities clarified their concerns and proposal. Staff asked the utilities to clarify the impact of AHD's proposal to wait until a future rulemaking to address this issue. The utilities indicate that the potential risk with this approach would be that a customer may file a complaint with the Commission. There does not appear to be a risk to COS customers, or to DA customers, if the Commission were to address this issue in a later phase of the rulemaking. However, during the July 19, 2018 workshop, it appeared that all participants agreed that transmission rates should be non-discriminatory. Staff supports AHD's proposal to address this issue in a future phase.

Metering

AHD's proposed draft includes 860-038-0730(1)(a), which requires participants be separately metered or demonstrate an alternative means of measuring New Large Load with comparable accuracy. PGE opposes the exception to metering. The primary supporter of the metering exception was AWEC. Participants discussed the metering issue at the July 19, 2018, participant workshop. Staff asked AWEC to provide additional detail on potential alternative means, including clarification of process and a determination of accuracy. Staff has some concern that, depending on how it is implemented, the metering exception may result in comingling of planned for growth of existing load and unplanned new large load. AWEC notified Staff on July 30, 2018 of a potential compromise that requires mutual agreement by the customer and the utility. Staff proposed some additional changes (noted in bold) to arrive at the following recommendation for 860-038-0730(1)(a):

The New Large Load must be separately metered or **be measured** based on a determination that **has comparable accuracy** and is mutually agreeable between the electric company and the customer.

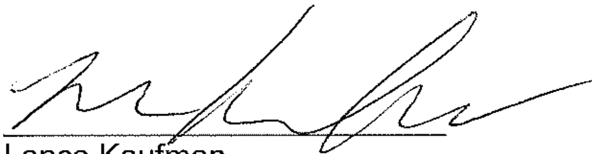
Jurisdictional issue

The originally proposed draft rules included 860-038-0760 which addressed jurisdictional allocations. PacifiCorp filed comments opposing the draft rule for jurisdictional allocations, arguing that jurisdictional allocations are only applicable to one utility and that the issues are more appropriately addressed in a tariff filing. Staff believes that without this language the rules will not guard customers against cost shifting. The rules should be internally consistent, and it is not consistent to allow NLDA to have a reduced transition charge, but to allow jurisdictional allocations that increase Oregon's allocation of generation costs as a direct result of NLDA participation. Staff strongly objects to rules that do not address jurisdictional allocations. Staff continues to find the original language appropriate, however Staff is open to adopting more general language to satisfy the concerns raised by PacifiCorp. For example rule 860-038-0760 could be revised to:

"Jurisdictional cost allocation shall treat NLDA load in a manner that prevents NLDA load from shifting costs to COS customers."

This concludes Staff's comments on Docket No. AR 614.

Dated at Salem, Oregon, this 1 day of August, 2018



Lance Kaufman
Senior Economist
Energy, Rates, Finance and Audits Division