

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

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

The Northwest and Intermountain Power Producers Coalition (“**NIPPC**”) respectfully provides these very brief answering comments in response to the July 26, 2018 comments filed by Portland General Electric Company (“**PGE**”) and/or Pacific Power (collectively, the “**Utilities**”) with respect to their new proposal that large new load direct access (“**NLDA**”) customers should not be entitled to the same nondiscriminatory access to transmission, distribution and ancillary services, as all other retail customers. As addressed below, NIPPC submits the Commission should reject the Utilities’ arguments because they come too late for consideration in this first phase of the new load direct access proceeding, are illegal, and are substantively incorrect.

With respect to timing, the Commission has determined to phase the consideration of NLDA to allow a program for “large” new loads to proceed expeditiously in the first phase of the docket, to be followed by a second phase that would address smaller new loads as well as other issues too complex to be handled in the “expedited” first phase of this administrative rulemaking. It is important to keep in mind that the original new load direct access case was opened in May 2017 and was expected to have resolved all issues and to be completed by the end of 2017. This “expedited” first phase was initiated in January 2018. Despite over a year and half of discussions, multiple rounds of comments and briefing, yet the Utilities did not raise the transmission issue for the first time until June 18, 2018 – and without any substantive discussion of their purported concerns. Now, just three business days before final comments in this docket are due to the Commission, the Utilities have for the very first time outlined their supposed basis underlying their concerns. It is simply too late to give these concerns any

credence. The Commission has phased this proceeding, and this issue can be addressed, if at all, in the next phase, but to do so now would be prejudicial to the parties.

With respect to the law, the Utilities' proposal is inconsistent with SB 1149's requirement that electricity service suppliers and retail electricity consumers be provided comparable access to transmission and distribution facilities. While not fully explained, the Utilities' proposal would essentially discriminate against new loads if they choose to take service from an electricity service supplier rather than PGE or PacifiCorp. If such new loads took service from the Utilities, they would be treated like all other loads in terms of transmission costs. However, if such new load elect to take service from an electricity service supplier, they would become "second class citizens" in terms of access to transmission.

This is illegal. ORS 757.637 requires the Utilities to provide comparable access to their transmission system. Specifically:

**ORS 757.637 Comparable access to transmission and distribution facilities.** To the extent permissible under federal law, the Public Utility Commission shall ensure that an electric company that offers direct access:

(1) Provides electricity service suppliers and retail electricity consumers access to its transmission facilities and distribution system comparable to that provided for its own use; and

(2) Provides electricity service suppliers and retail electricity consumers timely access to information about its transmission facilities and distribution system, metering and loads comparable to that provided to its own nondistribution divisions, affiliates and related parties.

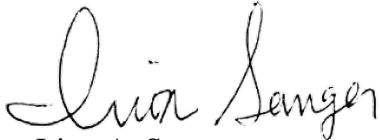
The idea behind this statute is that electricity service suppliers would compete with the Utilities on generation assets, but not be subject to any differential or discriminatory treatment in terms of access to transmission or distribution. The Commission should decline the Utilities' proposal that they be allowed to use their natural monopoly status over transmission and distribution assets as a bar to allowing new (or any other) loads to choose service from competitors in the generation sector – a sector in which the utilities no longer hold a natural monopoly.

With respect to substance, NIPPC submits that the Utilities are incorrect in their assertions, and are simply trying to throw one more “hail Mary” attempt to create yet another road block to competition. The basis of the Utilities’ argument appears to be that the utility “may” not have sufficient capacity to serve the new load, and may not have planned for such capacity. Whether this would be a significant issue if there was no cap on the amount of capacity that could move to the NLDA program is beyond the scope of this phase of the proceeding, but given the strict cap limits being proposed on the NLDA program, the Utilities’ concerns appear unwarranted. The same “issues” regarding availability and access to transmission exist regardless of whether the new load is served by the Utilities or an electricity service supplier.

Moreover, it appears clear that the Utilities are using their transmission assets to favor their own generation and monopoly status, and the Commission should be skeptical of any arguments they make on transmission issues. Again, it is beyond the scope of this phase of the NLDA proceeding to go into appropriate detail, but, based on demonstrations PGE made in its filings in the OPUC’s RFP docket, PGE has admitted that it is planning for a peak load of slightly less than 4,400 MW in 2027, but has reserved a total of 5,376 MW of transmission capacity. This already considerable reservation would grow to 6,051 MW if PGE’s 675 MW of deferred firm transmission rights on the BPA system are included. The 6,051 MW total is 1,651 MW above the 4,400 system peak PGE claims to be planning around – an excess approaching 40% of the projected peak load. A table summarizing PGE’s firm transmission rights are included as Exhibit A. This 1,651 MW is of the magnitude of 5 to 10 times greater than the various caps under consideration for NLDA. Similarly, while more complex, PacifiCorp has no problems ensuring that there is sufficient transmission capacity to serve new load when it wants to do so. For example, PacifiCorp has complained for years about transmission issues in Prineville that effectively prevented any new qualifying facility development, yet it suddenly found new transmission capacity when it wanted to provide Facebook with new contracts to keep Facebook from selecting an alternative supplier. Any of the Utilities allegations regarding transmission should be viewed in this broader context.

The Utilities' last-minute concerns that they do not have transmission capacity available to allow new load direct access customers non-discriminatory access simply does not hold up to scrutiny.

Respectfully submitted,



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  
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

**EXHIBIT A**

Current PGE Firm Resources Compared to Peak Load Requirements

|           |  |                            |   |
|-----------|--|----------------------------|---|
| <b>1</b>  | <b>Peak Load (inc. losses and reserves)</b>        | <b>4,400 MW</b>            | <b>Source: PGE Reply Comments in UM 1934</b>            |
|           | Physical Resources                                 |                            |   |
|           | In-system resources not requiring                  |                            |   |
| 2         | BPA transmission                                   | 1,550 MW                   | Source: Multiple sources including 2017 IRP             |
| 3         | Dispatchable Standby Generation                    | 100 MW                     | Source: 2017 IRP  |
| 4         | BPA transmissison for remote resources             | <u>2777</u> MW             | Source: Attachment A to PGE's Reply Comments in UM 1934 |
| <b>5</b>  | <b>Total Firm Physical Resources (lines 2+3+4)</b> | <b>4,427 MW</b>            |   |
|           | Plus Firm BPA transmission from                    |                            |   |
|           | "MID-C Remote" used to access                      |                            |   |
| 6         | market resources                                   | <u>949</u> MW              | Source: Attachment A to PGE's Reply Comments in UM 1934 |
|           | <b>Total Physical Resources plus Firm</b>          |                            |   |
|           | <b>Transmission Access to MIDC Market (Line</b>    |                            |   |
| <b>7</b>  | <b>5 plus Line 6)</b>                              | <b>5,376 MW</b>            |   |
|           | Firm BPA transmission rights                       |                            |   |
| 8         | currently deferred                                 | <u>675</u> MW              | Source: PGE Reply Comments in UM 1934 at page 4         |
|           | <b>Total Firm Resources Available to</b>           |                            |   |
| <b>9</b>  | <b>Meet Peak Load</b>                              | <b>6,051</b>               | <b>Line 7 plus Line 8</b>                               |
| <b>10</b> | <b>Firm Resources in Excess of 1-10 Peak Needs</b> | <b><u><u>1,651</u></u></b> | <b>Line 9 minus Line 1</b>                              |