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June 18, 2018

Public Utility Commission of Oregon
201 High Street, SE Suite 100
P.O. Box 1088
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Via: Email

**RE: Portland General Electric Comments in Advance of Commissioner Hearing June 21, 2018**

Filing Center;

Portland General Electric Company (PGE) respectfully submits these comments in advance of the Commissioner Hearing scheduled for June 21, 2018. These comments are intended to inform Commissioners and Staff prior to rules being adopted.

PGE looks forward to continued work with the Parties in the New Load Direct Access AR 614. Should you have any questions or comments regarding this filing, please contact me at (503) 464-8954.

Please direct all formal correspondence and requests to the following email address pge.opuc.filing@pgn.com

Sincerely,

Karla Wenzel
Manager, Pricing and Tariffs

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON.**

**AR 614**

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| In the Matter of<br><br>PUBLIC UTILITY COMMISSION OF OREGON,<br><br>Rulemaking: New Load Direct Access | **COMMENTS OF PORTLAND GENERAL ELECTRIC COMPANY** |

Portland General Electric Company (PGE) respectfully submits these comments in advance of the Commissioner hearing scheduled for June 21, 2018. PGE files these comments to propose modifications to the Draft Rules distributed by Staff in AR 614, New Load Direct Access (NLDA) on May 17, 2018 (Draft Rules). These comments will be followed by PGE's redlines to the Draft Rules.

PGE appreciates Staff's effort to craft Draft Rules to address legislative, Commissioner, and stakeholder interests, and reconcile divergent positions. Nevertheless, we are concerned about the rushed nature of this rulemaking when more time is typically taken in the informal process prior to filing proposed rules with the Secretary of State; in fact, strawman draft rules are frequently offered for consideration during the informal process, which was not the case here.[1] The Draft Rules include several aspects that were not discussed as part of the investigation into NLDA in UM 1837. There are other aspects that were discussed in UM 1837 that did not appear

[1] The first that stakeholders saw the rules was the Thursday before the Tuesday, May 17, 2018 public meeting when they were on the Commission's agenda.

in the Draft Rules. PGE understands the Commission's desire to quickly adopt rules for this new load direct access program, but cautions that swiftness should not be substituted for thoughtful consideration of the significant policy issues this new program presents.

The NLDA program rules can be designed with sufficiently clear and defined parameters in the OAR and allow electric companies to adopt reasonable conditions in electric company filed tariffs (tariff) that detail program offerings and prevent circumvention of the eligibility criteria. To this end, PGE requests that the Commission ensure the program rules:

- **Balance the development of a competitive market and unwarranted cost shifts to Cost-of-Service (COS) customers[2] by:**
    - **Adopting a clear and limited definition of new load that is eligible for the NLDA program,**
    - **Adopting eligibility criteria that prevents gaming,**
    - **Adopting a permanent combined program cap that includes both the NLDA and long term direct access (LTDA) programs,**
    - **Adopting early and binding notice and commitment requirements for new loads to inform electric company whether they will take COS supply or they will opt out of the company's COS supply,**
    - **When viewing development of a competitive market, consider a level playing field and the public policies advanced by electric company supply that the unregulated, competitive market players and subscribing customers should not be able to avoid.**
- **Allow for *electric companies* to develop in tariff (rather than in rules):**
    - **Verification and validation process to ensure the customer meets threshold size eligibility and consequences should the customer load not ramp up to the eligibility requirement within a specified time.**
    - **Sufficient notice to return to COS that mirrors LTDA requirements.**
- **Do not preclude electric companies from proposing a charge for being the Provider of Last Resort that would cover the risk and cost shifting to COS customers should**

[2] Senate Bill 1149 (Chapter 865 Oregon Laws 1999), Section 8 directs the Public Utility Commission to ensure that direct access programs not cause unwarranted cost shifting to other retail customers of the electric company.

**the ESS' fail, with little or no notice, to provide supply and the supply defaults to PGE to meet.**

Prior to the Commission's opening of this investigation into NLDA transition adjustments for new customer load at a new site (UM 1837), the 2017 Oregon legislature had considered SB 979, that would have allowed for a *renewable*[3] new commercial load direct access program. The Senate Committee on Business and Transportation held a work session on April 17, 2017 on SB 979 to receive public input. Committee Chair Beyer noted that SB 979's intent was to open the field a bit more to others providing electricity to customers *who might want green power*. Chair Beyer noted his desire to support economic development and stated on the record that if the Commission did not do something, the legislature would look at the issue again. He noted that there should be an equal opportunity for electric companies to provide a green option—that the playing field should be level. The issue, he opined, was transition adjustments – that the option should not have customers leaving the electric company and by leaving, throwing costs onto other customers. Soon after the legislative committee work session, at its May 16, 2017 public meeting, the Commission opened Docket No. UM 1837, to investigate questions related to the appropriate treatment of direct access transition adjustments for new commercial customer load at a new site.[4] Following the investigation, the Commission opened this "expedited" rulemaking docket in January 2018 to adopt policies applicable to NLDA programs. There was no requirement for the NLDA to be for renewable power; in the transfer

[3] The bill defined eligible renewable energy as a renewable energy source defined in ORS 469A.005. SB 979, Section 1 (16).

from the legislature to the Commission, the distinction that new commercial load direct access should be for the benefit of companies that wanted green power options, was lost.

While PGE understands the Commission's commitment to Chair Beyer, we ask about the nature of that commitment—was it intended to apply to NLDA *renewable* purchases? Was it aimed at meeting Chair Beyer's concern that the playing field be level to electric companies as well?; and to what degree does it allow cost shifting to customers remaining on the electric company's cost of service (COS) supply?

**Public Policy Considerations**

Oregon has set clear carbon emission reduction goals and this NLDA program should be offered in the context and only be considered for new load that helps meet Oregon's carbon reduction goals. PGE is diligently working to meet customers' demand for cleaner energy. While Staff recognizes that SB 979 was focused on NLDA for renewables, and that customers desire green energy options and could meet their needs if this option were premised on purchasing renewable energy, Staff expressed concern about direct access principles of promoting competition and customer choice generally. The Draft Rules do not reflect the requirement of renewable energy supply.

When the legislature and the Commission impose requirements on electric companies to effectuate public policy objectives and they are not imposed on ESSs or direct access customers, then the public policy objectives are diluted when customers choose direct access. All customers should be subject to these important state and federal policies including, for example, low income assistance, public purpose charges, the Renewable Portfolio Standard, the Public Utility Regulatory Policies Act (PURPA), and carbon regulation. These should be nonbypassable by

customers seeking their energy supply from the market. With regard to the state's policy on decarbonization and contrary to direction provided at the Commission workshop on April 23, 2018, the draft program rules fail to include the same no-coal-by-wire provisions contained in SB 1547.

Another example is the Commission's policy to promote increased demand response and the peak shaving obtained from customers. Demand response programs are offered to customers receiving electricity supply from PGE. Given that, demand response potential is reduced when customers choose another electricity supply option, and to place this in perspective, many of PGE's large industrial customers have selected LTDA. ESSs could offer demand response programs but are outside Commission authority in this regard and not required to offer them. This means that the state misses an opportunity to advance a policy objective and may also mean that remaining COS customers pay the costs of the mandated programs. Another example involves a policy that results in increased costs to remaining customers: Qualified Facilities (QF) that deliver energy to PGE's system based on prices that are not subject to competitive bidding. Because of state and regulatory policies, PGE customers are paying higher avoided costs for QF energy delivered. These costs are avoided by customers choosing direct access, shifting greater costs onto remaining customers.

**Unwarranted Cost shifts**

The different treatment for new customer load must account for, and balance, the potential to result in unwarranted cost shifts to remaining COS customers. When a load does not take service from the electric company, there are fewer kWh over which to spread fixed costs and COS customers lose the benefit of lowering the average COS. Transition adjustments are

aimed at making the remaining COS customers whole. PGE supports the idea that there may be new loads that are large and discrete enough that PGE does not, in its usual course, plan to meet those loads with supply service. As was discussed in UM 1837, electric companies plan for new customer loads based on a number of planning processes to meet customers' distribution and energy needs. This may include information provided by the customer in the context of a request for service and general service area load forecasts. PGE's load forecast is developed with regression models that are estimated at a sector level, based on the customer's primary function, i.e. metals, high tech, healthcare. Industry trends captured and embedded in these trends are both increasing load from new and/or existing customers and decreasing load from customers who have reduced operations or closed. New loads of a sizeable magnitude, like 10 MWa, could be considered incremental to the regression based forecast if they deviate significantly from sector level historical trends.

It is important to recognize that as costs of doing business increase over time, PGE depends on increased loads to absorb what would otherwise result in price increases to customers from increased costs. Simply, when costs increase, being able to spread those costs over more kWh may prevent the need to raise prices or if increasing prices is unavoidable, having more system load reduces the impact of such increases. This is one form of cost shift from participating customers to COS customers.

Given that allowing new customer loads to choose direct access increases the potential for cost shifting to existing COS customers, there should be a NLDA participation cap. PGE proposes a combined cap that includes the electric company's LTDA program as well as NLDA program. The program participation cap is further discussed below.

**Definition of New Large Load**

The definition of New Large Load in proposed OAR 860-038-0700(2)(h) should be limited to new load at a new single site that meets the threshold size eligibility requirement. New customer load at a new site should be just that and not include existing customer load growth (which is included in PGE's planning). If existing load growth is eligible, the customer will be incented to not discuss growth plans with the company or delay such discussions, and could lead to the lack of planning and system impacts when load is brought on the system. The different treatment for new customer load at a new site, must account for, and balance, the potential risk of unwarranted cost shifting to the electric company's remaining COS customers.

The proposed definition of new large load goes well beyond Staff's own recommendation in opening comments, which stated eligibility should be limited to customers who could demonstrate: "investment in new assets, at a new location….This would reduce the ability to game the system, and limit the participants to load is which is truly "new."[5] The proposed definition of New Large Load not only includes new facilities, but encompasses load growth for existing customers and expansions of an existing facility. While PGE appreciates that the definition includes the "expected" threshold size of 10 MWa per year, the extension of the definition to include load growth for existing customers and expansions at existing facilities goes well beyond what is reasonable to ensure unwarranted cost shifts do not occur. While it might be reasonable for a new load to be physically nearby an existing facility, the New Large Load definition should limit eligible load to: a new load at a new single site, 10 MWa or greater load, metered separately, and otherwise meeting eligibility requirements. PGE is concerned that the definition of New Large Load as proposed could be interpreted to allow for aggregation of load

[5] UM 1837, Staff Opening Comments, P.12

at multiple sites in order to achieve the 10 MWa size threshold, which is clearly not the intent of the proceeding. For this reason, PGE suggests the following for the definition of New Large Load (h) "means new load at a new single site." Additionally, (B) of the definition of New Large Load, should be modified to read, "Will result in a ten or more average megawatt increase in energy delivered to a consumer in any consecutive 12 month period during the first two years after the meter's energization."

**Transition Adjustments for New Large Load**

PGE is supportive of a different level of transition adjustment for NLDA customers, as long as it can be demonstrated these new customer loads do not impose the same risks as the existing DA customers. Otherwise, the existing LTDA transition adjustment should also be applied to NLDA customers. The transition adjustment method should not be contained in OAR but rather in the electric company tariff offering.

**New Large Load Eligibility Requirements**

In proposed OAR 860-038-0730, new large load eligibility is further detailed. PGE supports the level of detail to add clarity. PGE supports the requirement that loads be separately metered. PGE does not support Staff's recent amendment allowing the customer to demonstrate an alternative method of measuring New Large Loads with accuracy. The longstanding approach to determining the measure of load is by a meter.[6] Adding the ability for the customer to demonstrate something different adds complexity and confusion. Does the customer's

[6] See OAR 860-023-0010

alternative means have to be accepted by the electric company? What if the electric company disagrees with the customer's alternative means?

The customer applying for NLDA should be required to make a binding declaration of their intent. This declaration should be required early in the planning process to minimize cost shifts. This requirement for an early and binding notification should be included in the OARs. The customer's notification to PGE that they intend to opt out of COS would mean that PGE does not plan for the energy needs associated with the customer's new load. PGE is concerned that customers could delay notification of new load for distribution purposes to preserve the option to choose DA or COS. The customer should be required to declare their intent at the time the customer provides load planning information for distribution planning purposes. This would allow PGE to either include or exclude the load from the supply planning process as appropriate.

Currently, as a condition of choosing DA, the customer waives the right, granted under state law, to receive electricity at COS pricing. Similarly, as a condition of NLDA, a customer who chooses NLDA should be required to waive their right to COS pricing, at the time the customer notifies PGE that they will opt for DA. Such notice can be provided in conjunction with existing electric company distribution planning, and should be no less than one year prior to the energization of the NLDA customer's meter. Thus, the early and binding notice and commitment must be tied to existing processes; otherwise, a new customer load could delay notification and compromise distribution and transmission planning and the electric company's ability to meet the customer's needs.

Once the customer, applying for NLDA, declares their intent to opt-out of COS, they should be subject to the same return provisions as the current LTDA program, which is currently

three years notice to PGE. The return provisions should be included in the electric company tariff, not the OAR.

In section (1) (b) the rules state that to be eligible, the customer must opt out of COS supply from the electric company. How a customer opts out is different than the long term direct access program which sets forth calendar windows and a standard process for opting out. The specifics of how a customer would opt out would be provided in the electric company tariff. With regard to the rules, PGE suggests that (c) be added to (d) as (c) appears to describe how a customer would opt out of COS supply—that the customer provide a binding, written, notice to the electric company of the customer's intent to not receive service for new large load from the electric company. The timing of the notice should be: at the first time when the electric company starts planning for the distribution infrastructure for the load or upon transmission planning for the load, whichever date is earlier. Distribution capacity upgrades to serve loads in excess of 10MW typically require 12-18 months for planning, design, and construction. Loads well in excess of 10MW may require transmission capacity upgrades which can take anywhere from 12 – 120 months, depending on the extent of the upgrade needed. Staff has proposed an edit to the rules that allow notification to occur one year before the expected start date of the incremental load. This "expected start date" is only in the minds of the customer and not objectively knowable. PGE does not support this approach. To the extent too much is left to the discretion of the opting customer in terms of timing of notice, a free option may be created, and risks shifted onto existing COS customers.

PGE proposes to give the NLDA customer two years to achieve ten MWa, barring causes outside of the customer's control. Staff suggests exceptions for equipment failure, energy efficiency, and load curtailment or load control. Those exceptions should not be permitted.

Given two years, the customer should be able to demonstrate reaching ten MWa. Otherwise, a customer whose load did not materialize, for whatever reason, may later claim they didn't reach ten MWa due to those exceptions. It will be impossible to verify the veracity of the claim. If the customer does not achieve ten MWa, they are then enrolled in the existing program, subject to five years of transition adjustments under the existing program, commencing at the time they are moved into the program.

**Energy Delivery and Planning Requirements**

Additional OARs should be adopted specifying the terms and conditions by which a customer's transaction with an ESS would qualify for direct access. These terms and conditions should include: the firmness of the power supply (resource), the firmness of the transmission, demonstration of resource adequacy and demonstration the load is included in a long-term plan, similar to the integrated resource planning (IRP) process the electric company would otherwise undertake. Unlike PGE, neither the customer nor the ESSs have to demonstrate resource adequacy. The proposed NLDA significantly increases the loads that may go direct access. If there is insufficient energy provided by the ESS to meet its committed customer metered load – whether because of inaccurate scheduling or a lack of an energy market in the region, PGE must provide both the capacity and energy to meet the direct access customers' metered load needs. It should be noted that the ESS is not providing incremental resources for PGE to use to meet system energy and capacity needs. This is in contrast to the policy direction that the State of California has taken. In 2005, the California legislature passed Assembly Bill 380,[7] which required each load serving entity to maintain physical generating capacity adequate to meet load

[7] http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200520060AB380

requirements including peak demand, and planning and operating reserves that may be necessary to provide reliable electric service. The California PUC was directed to implement and enforce the same resource adequacy requirements, renewable portfolio requirements for all load serving entities, ESS and electric companies alike.

Given that the ESSs do not have similar requirements in Oregon, COS customers bear the operational risk of resource inadequacy, regardless of which direct access program (LTDA or NLDA) the customer has opted to receive deliveries from an ESS under. For this reason, it is appropriate to have a combined program cap that encompasses both LTDA and NLDA.

**Program Participation Cap**

The draft rules propose a temporary five year cap for NLDA equal to 12% of PGE's calendar year 2017 load; equating to a NLDA program cap of 300 MWa. PGE proposes the Commission adopt a permanent, combined direct access program cap, which includes customers enrolled in the LTDA and NLDA programs. PGE proposes a combined permanent program cap of 400 MWa. As of this time, PGE has approximately 235 MWa of load that has permanently opted out of COS during one of our previous 16 offerings, the majority of which have been served via direct access since January of 2010. Thus, from a regional perspective, the amount of unplanned load ostensibly met with market based purchases by ESSs has grown substantially. SB 1149 directs the Commission to balance the development of a competitive market while avoiding undue cost shifts to COS customers. The Commission's historical decisions, including approval of the current cap on LTDA, should be interpreted as balancing these competing objectives.

The current LTDA cap of 300 MWa equates to approximately 12% of PGE's total system load (calendar year 2017); increasing to 400 MWa, to accommodate NLDA enrollments, equates to about 18%. This is in contrast to the Draft Rules that propose a separate and distinct NLDA cap from the existing LTDA program, a full 24% of PGE's total load could opt out of COS. A combined cap is more reasonable as both programs will be managed together and customers may be moved from the NLDA to the LTDA program. It avoids having to answer the question of what happens if the LTDA cap is full and a NLDA customer does not meet the 10 MWa threshold and is supposed to move to the LTDA program but there is no room under the LTDA program cap. A combined permanent cap provides a simpler and more manageable approach.

As was noted in the Commissioner workshop on NLDA, this is an untested new program and should be gradual with regular check-ins. The current Draft Rules presume the appropriateness of lifting the NLDA participation cap altogether; this , in the proposed rules, is premature and contrary to Commission direction that this program be implemented gradually with check-ins. Setting a combined LTDA and NLDA program cap of 400 MWa allows an increase in the existing cap for the new load program and mitigates unforeseen challenges in planning, potential negative impacts on remaining customers, and increased operational uncertainty around the electric company's ability to perform provider of last resort requirements. If the amount of emergency default capacity that PGE is required to provide grows significantly, PGE is uncertain that it will be able to meet the emergency need, as PGE would not have previously secured the generation or transmission capacity necessary to serve NLDA/LTDA access customers. Adverse market conditions could result in all direct access customers returning to the system at the same time, which can impact the reliability of the system. Hence,

PGE recommends a permanent combined cap of 400 MWa to be applied to the total combined load of NLDA and PGE's existing long-term DA.

## Provider of Last Resort (POLR)

While PGE does not support a separate participation cap for NLDA, should the Commission approve a separate cap, PGE may need to reexamine its IRP. Currently, PGE does not plan for direct access load on either a capacity or energy basis. If the amount of emergency default capacity that PGE is required to provide, were to grow to 600 MWa[8] ~24% of our total load, it would exacerbate the operational uncertainty of meeting the emergency energy needs through market purchases. Should an event occur that causes an ESS to default on its supply obligation to LTDA and NLDA customers, thereby causing the DA customers to require emergency default service from PGE, it could be significant enough in size that market purchases are not available to meet the increased demand and require PGE to curtail *all* customers As described above, the ESS is not providing incremental resources for PGE to use to meet system energy and capacity needs, and is not required to demonstrate resource adequacy. Nor is there a requirement for the customer to demonstrate it is being sourced from a firm resource with firm transmission. For this reason, PGE will be developing a form of reliability charge for LTDA and NLDA customers. The OARs should not preclude electric companies from proposing a provider of last resort charge.

## Transmission and Distribution Service

[8] Proposed OAR 860-038 -0750 includes a NLDA program cap not to exceed 12% of the electric company's weather normalized load in calendar year 2017. This is about 300 MWa and additive to PGE's tariffed long term direct access program participation cap of 300 MWa in Schedule 485.

There are other risks beyond securing default generating resources that must be addressed. Unlike a COS customer switching to LTDA, new load imposes unanticipated burdens on the distribution and transmission system. An unplanned, New Large Load may be located in an area without sufficient distribution or transmission infrastructure. NLDA customers may take future capacity from COS customers or socialize the costs of system upgrades, or both. Absent proper considerations, this could lead to unwarranted cost shifting and transfer of an unfair benefit to New Large Load.

More specifically, PGE is concerned that current transmission programs for Oregon direct access customers are based on the premise that those customers were previously included in the electric companies' loads when determining transmission capacity under Federal Energy Regulatory Commission (FERC) open access rules. NLDA did not exist and it was not anticipated that customers could go direct access without ever being part of the electric companies'' loads for transmission capacity planning and open access. While it may be appropriate to mandate the transfer of capacity to direct access customers transitioning from current cost-of-service to direct access, the same is not true for NLDA. The new load would not have been included in the electric companies' load and resource reservations required under FERC open access. To comply with FERC regulations, NLDA customers must arrange transmission service under the standard Open Access Transmission Tariff (OATT) provisions for network service; they are not eligible for the Oregon-specific direct access arrangement that anticipates a transition from bundled cost-of-service to wholesale delivery.

PGE recommends a new section to exempt new large load direct access customers from OAR 860-038-0590 and, instead, require compliance with the FERC-approved OATT for new network transmission customers. New large load direct access customers are wholesale

customers of delivery services. As such, delivery service is subject to federal jurisdiction and oversight.[9] FERC has mandated open access to electric companies'' transmission systems, thus FERC oversight does not present a barrier to Oregon direct access. FERC's established open access policy, and electric companies' established processes to arrange for delivery, provides an acceptable way to address new loads that does not adversely affect the utility or its costs-of-service customers.[10] Absent this change, the new large load direct access customer would receive transmission capacity that has not been reserved, which could subject the utility to violation of FERC regulations and exposure to substantial penalties.

## Conclusion

While we have expressed our concerns that the process is being driven too swiftly, PGE is confident the Commission can adopt program rules for a NLDA program designed with sufficiently clear and defined parameters to protect COS customers from unwarranted cost shifts. Careful consideration of the issues describe in these comments, is needed to ensure the NLDA program can be successful without unwarranted cost-shifting and other adverse impacts. In summary, PGE recommends the following:

- Consideration of public policies advanced through the electric companies and ensuring that the objectives and participation is nonbypassable should customers elect direct access.

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[9] *New York v. FERC*, 535 U.S. 1 (2002).

[10] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,781 (1996), ("[I]f unbundled retail transmission in interstate commerce by a public utility occurs voluntarily or as a result of a state retail wheeling program, this Commission has exclusive jurisdiction over the rates, terms, and conditions of such transmission….").

- Include no coal by wire provision in rules.
- A permanent combined participation cap that includes both the NLDA and LTDA programs.
- A definition of New Large Load limited to new load at a new single site, which is separately metered, resulting in an increase of energy deliveries of at least 10 MWa.
- New Large Loads electing this option providing early and binding notice.
- Not preclude the electric company from proposing a POLR charge.
- The addition of a section of rules to require direct access customer transactions to be supported by a firm resource, firm transmission, demonstration of resource adequacy and demonstration the New Large Load is accounted for in a long-term plan.
- The addition of a new section of rules to require compliance with the FERC-approved OATT for requesting new transmission service.

DATED June 18, 2018.

Respectfully submitted,

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