ITEM NO. RM1

PUBLIC UTILITY COMMISSION OF OREGON
AHD REPORT
PUBLIC MEETING DATE: September 13, 2018

REGULAR ___ CONSENT ___ RULEMAKING X EFFECTIVE DATE N/A

DATE: September 11, 2018

TO: Public Utility Commission

FROM: Nolan Moser

THROUGH: Diane Davis and Michael Grant

SUBJECT: OREGON PUBLIC UTILITY COMMISSION ADMINISTRATIVE HEARINGS DIVISION: (Docket No. AR 614) Rulemaking Related to a New Large Load Direct Access Program.

AHD RECOMMENDATION:

Adopt the proposed permanent rules as shown in Appendix A of attached draft order.

DISCUSSION:

This rulemaking follows from an investigation and the Commission's Order No. 18-031, which found that the Commission had the authority to develop an additional direct access program focused on new load.

A rulemaking hearing was held on June 21, 2018, and the comment period closed on August 1, 2018. Numerous comments were received from the public both at hearing and in writing. The attached draft order summarizes the concerns raised in comments and the proposed resolution of those concerns.

PROPOSED COMMISSION MOTION:

Adopt new permanent rules as set forth in Appendix A of the attached draft order.

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

AR 614

In the Matter of Rulemaking Related to a New Large Load Direct Access Program.	ORDER

DISPOSITION: NEW RULES ADOPTED

I. SUMMARY

In this order, we adopt rules for New Large Load Direct Access programs. These rules are the culmination of over a year of investigation and engagement between Staff and stakeholders. Below, we explain the process that has led to the development and adoption of these rules, discuss rule provisions that attracted significant comment or discussion from stakeholders, and provide our resolution of issues.

II. BACKGROUND

In Order No. 18-031, we concluded that this Commission has the authority to develop a direct access program focused on new load, and that it is was possible to create such a program without undue cost shifts. Following Commissioners' workshops, we formally opened this rulemaking at the May 22, 2018 Public Meeting. We discussed addressing this rulemaking in two phases. The first phase would focus on new loads that exceed 10 average megawatts. The second phase would address new direct access loads below 10 average megawatt.

On May 25, 2018, we filed a Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact for this rulemaking with the Secretary of State, and we provided notice to all interested persons on the service lists established under OAR 860-001-0030(1)(b) and to legislators specified in ORS 183.335(1)(d). Notice of the rulemaking was published in the June 2018 Oregon Bulletin, setting a hearing date of June 21, 2018, and a comment deadline of July 6, 2018. Staff held a workshop on June 14, 2018, at which Staff circulated a redline version of proposed rules that included changes designed to address significant issues. Prior to the hearing,

written comments on Staff's proposed rules were filed by Portland General Electric Company (PGE); the Alliance of Western Energy Consumers (AWEC); Calpine Energy Solutions, LLC, (Calpine Solutions); the Northwest Intermountain Power Producers Coalition (NIPPC); the Oregon Citizens' Utility Board (CUB); Vitesse, LLC; Shell Energy North America (US), L.P.; and PacifiCorp, dba Pacific Power.

The rulemaking hearing was held June 21, 2018. At the rulemaking hearing, Staff, PGE, PacifiCorp, Shell, Calpine, NIPPC, and Vitesse offered comments on the proposed rules. On July 3, 2018, the comment deadline was extended to August 1, 2018. At a July 17, 2018 Public Meeting we reviewed an Administrative Hearings Division (AHD) version of the New Large Load Direct Access proposed rules. Following the July 17, 2018 Public Meeting, Staff held a workshop on July 19, 2018, where PGE and PacifiCorp offered to provide more detailed comments on transmission issues and questions that had been raised in their previous comments. PGE and PacifiCorp filed joint comments on these transmission issues on July 26, 2018.

Written comments on the July 17, 2018 revised proposed rules were filed by AWEC, Shell Energy, Vitesse, Calpine Solutions, Staff, NIPPC, PacifiCorp, CUB, and PGE.

II. DISCUSSION

Below, we address significant issues we considered in adopting these rules. In this discussion, we summarize comments from stakeholders and Staff. We provide our decision and where appropriate issue clarification on some of the implications of the adopted rules.

A. Fixed Generation Charge

1. Discussion

Staff originally proposed rules with a specific transition rate that includes a charge calculated as "25 percent of the fixed generation costs for five years." Electric companies supported the charge. Large customer and electricity service supplier (ESS) representatives opposed it, arguing that it is not cost-based and is duplicative of other charges. These customers universally requested that the charge be completely eliminated.

The AHD proposed rules of July 17 lowered this charge slightly, to 20 percent of fixed generation costs for five years. Staff and electric companies have provided justifications for the charge:

1. The opportunity costs associated with the program: new load presents important value to the system for optimization of generation development, purchases, and operation that is foregone when a large customer does not take generation service from the electric company.
2. The foregone electric company demand response program opportunities.
3. The actions taken by cost-of-service customers that create the possibility of the New Large Load Direct Access Program (NLDA) option, including procurement of reserves that, in part, serve the purpose of facilitating default service, if necessary.
4. The inherent risk to the system associated with the NLDA program.

These justifications have not been translated by Staff or the electric companies into a specific, calculated cost charge.

2. Resolution

In recognition that the fixed generation charge represents real costs and risks to the system but that these costs and risks have not been quantified, we adopt an initial charge at the 20 percent level, which is lower than that proposed by Staff. Additionally, we note that increasingly the legislature has placed mandates and responsibilities on electric companies for transforming the system. Many of the costs of these mandates and responsibilities for improvement and enhancement of the utility system are currently only recovered from cost-of-service customers. The 20 percent charge, in part, addresses the asymmetry associated with NLDA participants bypassing the costs of these improvements, which benefit the system as whole. If or when these cost and risks are more comprehensively calculated, then the charge can be adjusted to reflect such a calculation.

B. Load Shortage Provisions

1. Discussion

Staff's proposed load shortage provisions act to protect against a customer deliberately shifting load between an existing facility that is subject to cost-of-service rates, or higher direct access rates, to a new facility that is part of the NLDA program. Staff developed the provision to provide optionality to the customer. Staff's proposal does not prohibit load shifting but imposes a charge on the customer who shifts load.

The proposed rules did not distinguish between load shifting to avoid charges and reductions in load due to energy efficiency investments or business-related issues. Large customers argue that the provision will have perverse effects and act to discourage energy efficiency investment. The large customer and ESS representatives point out that since a five percent interest in a facility is

enough to trigger application of the rule, entities could get penalized for actions over which they have no control. Some stakeholders have proposed an affidavit-based system as an alternative.

The AHD revised draft include two changes to this provision. First, the revised proposed rule creates a rebuttable presumption for the participant and allows the participant to demonstrate to the electric company that its activity that triggers the charge is not load shifting activity, as defined in the rules. Second, the AHD revised draft rules change the definition of affiliated consumer, so that only those consumers that have a controlling interest in the affiliate where that affiliate is in the same line of business will be included in the load shortage provisions. Staff largely agrees with these changes, and suggests that we use the three-digit NAICS code of the consumer to determine the line of business.

2. Resolution

Based on comment from stakeholders and Staff, we make further revisions to this provision. The July 17 AHD draft did not make clear that it is the participant who must demonstrate that its activity did not constitute load shifting. We make changes to the rule to require that the participant demonstrate to the electric company that its change in load is not due to a load-shifting activity. Additionally, we adopt Staff's recommendation to use the three-digit NAICS code of the consumer to determine the line of business. If two consumers can qualify for the same three-digit NAICS code, the consumers will be considered to have the same line of business.

C. Customer Eligibility

1. Discussion

Staff's eligibility provisions require 10 average megawatts of new load, separate metering, early notification to the electric company that the consumer intends to participate in the program, and provisions that put the participant on alternative rates if the new load does not fully materialize or does not reach the 10 average megawatt level in a 12 month period within the first three years.

Electric companies argue that NLDA participants should be limited to 100 percent renewable options, that failure to require this would be inconsistent with the legislation that, in part, gave rise to this rulemaking and with the coal-by-wire provisions of Senate Bill 1547.

ESS and large customer representatives argue against the separate meter provision. They also encouraged Staff to include language that did not make de-enrollment in the program automatic, but instead required electric companies to petition the Commission for approval to de-enroll and allow the subject participant to make a showing that the failure to reach the 10 average megawatt

threshold was not in their control, or due to a permissible exception. NIPPC argues for the ability of consumers below 10 average megawatts to demonstrate to the Commission that the electric company did not plan for their load, and that they should be eligible for the program on a case-by-case basis.

The AHD revised draft rules limit resource supply options under the NLDA program after January 1, 2030, to non-coal-fired resources, and place the obligation to adhere to this requirement on the participant. The AHD revised draft rules also provide for a potential penalty for a participant and its supplying ESS for violating this provision and allow for the Commission to request and receive any information necessary to verify a participant's resource supply.

AWEC questioned the Commission's legal authority to implement such a rule, insofar as it was imposed on the ESS under SB 1547 authority. ESS representatives also questioned provisions that require the production of contracts to examine resources as part of enforcement of this provision.

2. Resolution

We make changes to these provisions to simplify terms and clarify obligations. First, we find that each customer eligible for this program must be located in a distinct electric company service territory. In Oregon, there is an obligation and a right for each of these electric companies to serve such customers. We also impose the coal-by-wire restriction on the NLDA participants in order to better align the program with the state's overall objective for a decarbonized energy system. We are under no statutory obligation to create an additional direct access program. The additional ability to choose a supplier other than the incumbent electric company through this discretionary NLDA program can be subject to terms and conditions imposed by this Commission. Accordingly, we may limit customer access to the NLDA program with charges and other conditions as we determine appropriate.

Second, we find that the revised proposed rules introduce too much complication regarding the enforcement of this provision. Specifically, we find that it is ultimately burdensome for Staff to proactively investigate contracts and resource origins as part of this provision. Accordingly, the rule we adopt requires that the customer provide a signed affidavit, which formally represents that the customer is and will remain in compliance with the coal prohibition.

Additionally, we add clarifying language to the 10 average megawatt eligibility provisions to reflect our determination that in order to be eligible for the program, a new load must reach the 10 average megawatt threshold over a 12 month period in the first three years of enrollment in the program, and we place the burden for demonstrating that this requirement is met on the participant. We also adopt compromised metering language that is a product of stakeholder

discussion in workshops and is supported by ESS providers, large customer representatives, and electric companies.

Finally, we make clear that these rules are intended to leave room for the legislature to provide guidance and direction to us on major energy policy questions. Our determination to harmonize the coal-by-wire requirements of Senate Bill 1547 with NLDA rules could have been extended, as utilities requested, to include 100 percent renewable, or in the alternative, carbon-free supply requirements. However, while the legislature is actively considering important energy policy questions and in the context of our report to the legislature prompted by Senate Bill 978, we determine that it is premature for us to advance major policy changes associated with the decarbonization of the utility system in this program.

D. Default Supply and Return to Cost of Service

1. Discussion

Initial proposed rules included language that recovers incremental costs associated with the movement of a NLDA participant to cost-of-service rates, to default supply, or to alternative supply. This proposal was triggered upon a one tenth of one percent impact to cost-of-service customers. Electric companies supported the charge. ESS providers and large customers oppose it, arguing there is unlikely to be any impact, because transition to cost-of-service rates will take years. They also object to the provision because it represents an undefined value that the customer cannot know when signing an initial contract.

The AHD revised draft rules retain the charge, but do not define it and leave it to the electric company to determine through a tariff, which would be regularly updated. In this way, the electric company could let the program begin, and when an appreciable number of NLDA participants are in the program, the electric company can more accurately assess the potential cost to the system of a single or widespread return, in a number of scenarios. Then we would consider a tariff, updated annually, which would account for this potential cost, and the potential cost can be assessed on a forward-looking basis to NLDA participants returning to cost-of-service rates.

2. Resolution

We make no substantive changes and adopt the AHD revised draft rule.

E. Program Cap

1. Discussion

Staff's initial proposed rules included a NLDA program cap of 12 percent of weather normalized annual load in calendar year 2017, and made the program separate from the existing direct access programs. The electric companies argue that the existing direct access cap should be the total cap for both programs. Staff's initial proposed rules also automatically lift the cap after five years of program, and require periodic check-ins with the Commission. ESS representatives and large customers desire fewer restrictions on the program; some argue that no cap is necessary because the rationale of a NLDA program is that electric companies have not planned at all for these loads. The electric companies oppose the so-called cap sunset, and instead advocate for a required check-in.

The AHD revised draft rules provide for a smaller cap than originally proposed by adding six percent of eligibility for the NLDA program to the existing direct access cap. At the July 17, 2018 Public Meeting, it was proposed that the caps be merged, and that this be explained in the order.

2. Resolution

We adopt a six percent cap, but based on the input from stakeholders, find that this cap should be separate from the current direct access cap. We also remove cap level language from the rule. We find that should we desire to extend the cap into the future, or change it, it is more appropriate to do so through order rather than formal rulemaking. Accordingly, we adopt the cap in this order and require that the cap be described in electric company individual tariffs. We eliminate the sunset provision, though we commit to a wholesale review of cap questions after four years, with a decision on whether or not to adjust the cap to be made shortly thereafter. We anticipate this will allow us to be more responsive to the future concerns of electric companies and stakeholders. We also adopt language in rule that addresses situations when a participant is no longer eligible for the new large load direct access program, and when there is no available capacity in existing direct access programing to accommodate that customer.

Finally, we note that we will consider requests from customers to exceed the cap, upon application and a finding of good cause. In this way, if we later determine that an individual application to exceed the cap poses no significant risk or costs to cost-of-service customers and presents significant benefits to the system, we may allow such an expansion. Under this standard, a waiver to the cap may be appropriate if an individual application advances the goals reflected in state policy through elements such as carbon-free generation resources, value-added grid services, and support for system capacity needs or through other means. Part of our

justification for limiting the size of this program is the reality that cost-of-service customers are increasingly relied upon to finance important system improvements, in our effort to decarbonize the system and support it with utility and customer-sited resources. Such is the case with demand response, storage initiatives, and other programing. If aspiring NLDA participants can support the system and the decarbonization effort through committed private action, then that action may provide part of the good cause justification necessary to exceed the cap.

F. Transmission

1. Discussion

Both PGE and PacifiCorp argue in comments that NLDA program rules should include provisions that account for the unique impacts and costs that large customers supplied through ESS providers create. ESS providers and large customer representatives oppose the electric company language, arguing in part that transmission issues and questions were not adequately vetted in this proceeding. Staff observes that there will be no significant impact to the electric companies if we do not address these questions in rules, because the electric companies have indicated they will enforce their existing transmission tariffs as they deem appropriate.

2. Resolution

We take no action on transmission issues in the rules at this time. We find these questions sufficiently complicated as to require further examination and development. We express our intent to ensure that transmission charges and requirements apply equally to new large load direct access customers and costs-of-service customers, but plan to address this issue through individual tariff filings. Accordingly, it is appropriate for electric companies to address transmission issues in their NLDA program tariffs.

III. ORDER

IT IS ORDERED that:

1. OAR 860-038-0700 through 860-038-0760 are adopted as set forth in Appendix A to this order.

2. Each electric company subject to these rules must make six percent of its weather normalized annual load in calendar year 2017 available to New Large Load Direct Access Program and must describe this cap in its applicable tariff.

3. No later than the fourth calendar year that the New Large Load Direct Access program has been in place, Staff must file with the Commission a recommendation on the size of the program, after which the Commission may open an investigation to review the size of the program.

4. The new rules become effective upon filing with the Secretary of State.

Made, entered, and effective _____.

Megan W. Decker
Chair

Stephen M. Bloom
Commissioner

Letha Tawney
Commissioner

A person may petition the Public Utility Commission of Oregon for the amendment or repeal of a rule under ORS 183.390. A person may petition the Oregon Court of Appeals to determine the validity of a rule under ORS 183.400.

860-038-0700
Definitions for New Large Load Direct Access Program

(1) Unless otherwise defined in section (2), the definitions set forth in OAR 860-038-0005 are applicable to New Large Load Direct Access Programs.

(2) As used in the New Large Load Direct Access Program rules:

(a) "Average Historic Cost-of-Service Load" means the average monthly Cost-of-Service Eligible Load during the 60 month period beginning five years prior to the date a consumer gives binding notice of participation in the New Large Load Direct Access Program.

(b) "Cost-of-Service Eligible Load" means the load of a consumer that is eligible for a cost-of-service rate.

(c) "Incremental Demand Side Management" means the effective net impact of energy efficiency measures and demand response implemented at a facility after a consumer gives binding notice of participation in the New Large Load Direct Access Program.

(d) "New Large Load Direct Access Program" means a direct access program offering by an electric utility that meets the requirements set forth in OAR 860-038-0700 through 860-038-0760.

(e) "New Large Load Direct Access Service Transition Rate" means a rate that is applied to load served under the New Large Load Direct Access Program.

Stat. Auth.: ORS Ch. 183, 756, 757
Stats. Implemented: 756.040, 757.600 through 757.667
Hist.: NEW

860-038-0710
Requirement to Enable a New Large Load Direct Access Program

(1) An electric company that enables direct access service must enable a New Large Load Direct Access Program for New Large Load consumers, subject to the requirements set forth in rules governing New Large Load Direct Access Programs. 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 consumer.

(2) For purposes of these rules, "New Large Load" means any load associated with a new facility, an existing facility, or an expansion of an existing facility, which:

(a) Has never been contracted for or committed to in writing by a cost-of-service consumer with an electric company; and

(b) Is expected to result in a 10 average megawatt or more increase in the consumer's power requirements during the first three years after new operations begin.

Stat. Auth.: ORS Ch. 183, 756, 757
Stats. Implemented: 756.040, 757.600 through 757.667
Hist.: NEW

860-038-0720
Nonresidential Standard Offer, Default Supply and Return to Cost of Service

(1) New Large Load Direct Access Program participants are subject to the requirements set forth in OAR 860-038-0250 and OAR 860-038-0280, except as set forth in section (3) of this rule.

(2) A New Large Load Direct Access Program participant may return to cost-of-service rates under the same rates and terms of service as the electric company's current cost-of-service opt-out offers for direct access service consumers, except as set forth in section (3).

(3) To mitigate the rate impact to existing cost-of service customers, an electric company must request Commission approval of a forward-looking rate adder applicable to New Large Load Direct Access Program participants returning to cost-of-service rates or rates under OAR 860-038-0250 and 860-038-0280 when the electric company forecasts that:

(a) The return to rates under OAR 860-038-0250 and 860-038-0280 for an individual or group of New Large Load Direct Access Program participants will result in a significant increase to existing cost-of-service rate; or

(b) The return to a cost-of-service rate for an individual or group of New Large Load Direct Access Program participants will result in a significant increase to existing cost of service rate.

(4) The Commission will consider the rate adder under Section (3) of this rule as part of a tariff filing.

(5) The electric company must file annual tariff updates that justify any rate adder developed according to this rule or any updates to the approved rate adder.

Stat. Auth.: ORS Ch. 183, 756, 757
Stats. Implemented: 756.040, 757.600 through 757.667
Hist.: NEW

860-038-0730
New Large Load Eligibility Requirements

(1) A New Large Load Direct Access Program is only available for consumers contracting for energy resources that do not include any allocation of coal-fired resources as defined in ORS 757.518 (1)(b)(B) after January 1, 2030. For the purposes of this rule, "coal-fired resource" does not include a facility generating electricity that is included as part of a limited duration wholesale power purchase made by an Energy Service Supplier for immediate delivery to retail electricity consumers that are located in this state for which the source of the power is not known.

(2) Prior to taking service under the program, New Large Load Direct Access participants must sign and provide to the electric company an affidavit representing that the participant's energy supply will not include any allocation of coal-fired resources consistent with the requirements of section (1).

(a) Prior to providing service, the electric company must provide a copy of the affidavit provided by a New Large Load Direct Access participant to the Commission.

(b) New Large Load Direct Access participants that are found in violation of the provisions of section (2) of this rule will be enrolled in the general cost-of-service opt out program in the next direct access enrollment window.

(3) For at least one period of 12 consecutive months within the first 36 months of receiving service, the actual load of a facility served under the New Large Load Direct Access Program must meet or exceed 10 average megawatts, unless the shortfall in load below that threshold is attributable to equipment failure, energy efficiency, load curtailment or load control, or other causes outside the control of the New Large Load Direct Access Program participant.

Stat. Auth.: ORS Ch. 183, 756 757
Stats. Implemented: ORS 756.040, 757.600 through 757.667
Hist.: NEW

860-038-0740
New Large Load Program Enrollment and Rates

(1) Each New Large Load consumer must notify the electric company of its intent to enroll in the New Large Load Direct Access Program and opt out of cost-of-service rates at the earlier of either:

(a) A binding written agreement with the utility for eligible new load, or

(b) One year prior to the expected starting date of the incremental load.

(2) Section (1) is waived for the eligible New Large Load consumer that has entered into a written agreement with an electric company prior to September 30, 2018, indicating its intent to receive distribution service from an electric company and for which the electric company has not planned to provide generation supply service.

(3) An electric company must charge New Large Load Direct Access participants a New Large Load Direct Access Service Transition Rate that recovers the following:

(a) 20 percent of the fixed generation costs for five years; and

(b) All reasonable costs of administering the New Large Load Direct Access Program.

(4) Participants receiving service under the New Large Load Direct Access program must also pay an Existing Load Shortage Transition Adjustment on the sum of the Existing Load Shortage for the participant and the Existing Load Shortage of all of the participant's affiliated consumers.

(a) For purposes of this rule, "affiliated consumer" means a consumer, a controlling interest which is held by another consumer, engaged in the same line of business as the holder of the controlling interest.

(b) For the purposes of this rule, "Existing Load Shortage" means the larger of zero or a consumer's Average Historic Cost-of-Service Load plus Incremental Demand Side Management less the average Cost-of-Service Eligible Load during the previous 60 months.

(c) The Existing Load Shortage Transition Adjustment is a charge or credit equal to:

(A) 75 percent of fixed generation costs plus net variable power cost transition adjustments during the first five years after enrollment in the New Large Load Direct Access Program; and

(B) 100 percent of fixed generation costs plus net variable power cost transition adjustments after the first five years of enrollment in the New Large Load Direct Access program.

(5) A participant may be exempted from charges made under section (4) if the participant can demonstrate that the change in load in question is not due to load shifting activity. For purposes of this rule, "load shifting" means the relocation of facilities, equipment, processes, manufacturing, employees or any economic activity for the deliberate purpose of increasing load at locations participating in the New Large Load Direct Access Program from locations not subject to the New Large Load Direct Access Program. The electric company tariff must include provisions detailing procedures and requirements for a participant to make this demonstration.

Stat. Auth.: ORS Ch. 183, 756, 757
Stats. Implemented: 756.040, 757.600 through 757.667
Hist.: NEW

OAR 860-038-0750
De-Enrollment Due to Failure to Meet Load Standard

(1) If the actual load of a facility served under the New Large Load Direct Access Program fails to meet the requirements outlined in OAR 860-038-0730(1) and the electric company elects to de-enroll the participant, the electric company must provide written notification to the New Large Load participant and the Commission of its proposal to move the participant to the appropriate cost-of-service rate schedule.

(a) Within 60 days of notification, the participant may provide a written response to the electric company and the Commission to demonstrate that its reduction in load to less than 10 average megawatts was the result of equipment failure, energy efficiency, load curtailment or load control, or other causes outside the control of the New Large Load Direct Access Program participant.

(b) The electric company may not transition a participant to a new rate structure under this provision before 90 days has passed since the notice from the electric company.

Stat. Auth.: ORS Ch. 183, 756, 757
Stats. Implemented: 756.040, 757.600 through 757.667
Hist.: NEW

860-038-0760
Reporting

Each electric company must file a status report to the Commission within two months of total enrollment in New Large Load Direct Access Programs reaching 25 average megawatts, 50 average megawatts, 100 average megawatts, and 80 percent of any enrollment limit adopted by the Commission.

Stat. Auth.: ORS Ch. 183, 756, 757
Stats. Implemented: 756.040, 757.600 through 757.667
Hist.: NEW