BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1837

In the Matter of	)
	)
PUBLIC UTILITY COMMISSION OF OREGON,	)
	)
Investigation into the Treatment of New Facility Direct Access Load.	)

OPENING COMMENTS OF THE

OREGON CITIZENS' UTILITY BOARD

CUB EST. 1984

November 22, 2017

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In these Comments CUB will utilize the 14 questions Staff sent to parties to help organize comments.

1. Should the Commission exercise its discretion and consider reduced or eliminated transition charges for new load?

This is what this docket is doing: considering reduced or eliminated transition charges for new load. In order to answer it in the affirmative, the Commission must ensure that (1) it has the legal authority to treat new customers differently from existing customers; and (2) there are no unwarranted cost shifts to other customers. CUB believes that the Commission does not have the legal authority to discriminate between new and current utility customers and allowing new facilities to move to direct access will likely cause unwarranted cost. However, if the Commission finds it does have the authority to treat new customers differently from current customers, it may be possible to design a program that allows direct access in a manner that minimizes cost shifts and therefore allows for reduced transition charges.

2. What constitutes new customer load, and what actions can invalidate new customer status?

This is a complicated question. There are different ways to define "new customers", and each definition comes with difficulties.

The Load of a New Customer.

One obvious definition of new customer load is "the load of a new customer." But this creates significant problems:

- New customers can be created in existing facilities. A utility customer represents the name on the bill and the customer account number. A company can change its name and create a new customer. An existing facility can change occupants and create a new customer. In these cases, the new customer does not represent new load on the system. Allowing new customers to go to direct access without paying transition charges would create a path for existing load to go to direct access leaving behind stranded costs for other customers to pay.
- New facilities can be created to serve existing customers. An existing customer might develop a new facility, putting new load on the system but not creating a new customer.

Unplanned Load.

An alternative is to focus on new load that the utility did not plan to serve. Current direct access rules tie elimination of transition charges to customers who the utility no longer plans for. Similarly here, the reduction or elimination of transition charges could be allowed for new load that the utility did not include in its resource planning. Utilities use economic models to project load growth and have separate forecasts for residential, commercial, and industrial customers. In addition to relying on forecasting models, utilities are in contact with existing and potential large industrial customers who work with the utility on their future plans. This suggests that there might be a way to carve out new large industrial customers who identify early that they plan to take direct access and allow the utility to not plan for them.

There are several problems with this, however:

- Utilities are already planning for significant industrial load growth. PGE expects the industrial share of it overall load to grow from 23% in 2015 to 26% in 2025 and 30% by 2040[1]. This means that within the planning time horizon, utilities are already planning to serve this load. While this may be outside of the typical 5-year action plan, it is within the planning horizon and utilities are taking action to meet that load. REC banking for future RPS compliance reflects utility investments to meet this load.
- Because direct access customers continue to pay charges for the distribution and transmission system, much of the transition charges relate to the fixed cost of generation. But generation is not built for a particular customer or type of customer, it is built in order to meet the energy and capacity needs of the system. This suggests that the unplanned load should be defined based on the utility's overall load forecast. If the utility has less load on its system than it planned for, then there is no unplanned load regardless of the utilities' forecasts for individual customers or classes.
- Utility loads typically rise and fall based on economic conditions. During a recession, a utility will typically have less load than it planned to serve. PacifiCorp saw an average 6% decline in load when comparing the 4 years

[1] PGE 2016 IRP, page 105.

after the Great Recession to the 4 years before the Great Recession.[2] Defining new load as load that is outside of what the utility planned to serve could mean that this option is not available for several years after a recession.

New facility.

Another suggestion is that new customer load is tied to a facility that is new to the system. But there are problems with this option as well:

- This creates the need to define a "new facility". A brand new plant or building can be a new facility. But what if an entity repurposes an old facility. Would it be considered a new facility if it was completely gutted and rebuilt? What if it is used for a completely different purpose? What if it has been abandoned for several years?
- It creates a fairness issue. If a big box retailer is going to open a new store and it had a choice between building a new facility or purchasing a building that has closed, is there a good reason to treat these options differently.
- This would not eliminate stranded costs being placed on other customers, as this load may well have been planned for and the costs associated with meeting that expected load will need to be paid by remaining customers.

3. What types of new customer direct access loads can utilities accurately plan for?

In many respects this is an empirical question that requires looking back at IRPs to examine load forecasts by rate class. However, CUB is not convinced that this is an exercise that provides valuable information. The fixed generation costs associated with producing energy and capacity can be used to serve any class of customers. If the utility over-forecasts load, it will have resources that it developed to meet expected or planned load that are currently available for new customers. If it under-forecasts for one class but over-forecasts for another rate class, the forecasting errors may offset.

4. Do utilities currently have investments or costs rendered un-economic as a result of new direct access customers?

Within a regulated utility, it is not clear what "un-economic" means. Rate recovery has little to do with whether a cost is "economic". Once a capital investment has been determined to be prudent (which is not the same as a determination that it is economic), it is placed in rates and a utility gets to recover that cost and earn a return. There is no basis for a future action to "render" that investment uneconomic. It gets recovered from the utility's customers.

CUB believes that the focus should be on whether costs will be shifted to other customers in a way that will increase rates of other customers. This can happen with new direct access customers because the fixed costs of a generating asset will be spread among a smaller load. But

[2] Oregon Utility Statistics: http://www.puc.state.or.us/docs/statbook2012.pdf

this increase in assigned fixed generation costs will not necessary raise rates – that depends on how the value of the additional generation as compared to the wholesale market. If the generation investment is largely amortized, then it might be below the wholesale market and provide a benefit to remaining customers.

Direct Access was developed in a manner to be agnostic as to whether stranded assets raised or lowered the bills of other customers. Transition Adjustments can be either a charge or a credit depending on the circumstances. The goal was to hold non-direct access customers harmless.

5. Can utilities plan in a manner that allows new customer direct access without adverse impacts on cost-of-service customers?

No. Whether other customers are harmed or benefited has more to do with market conditions as compared to the utility's resources than it does with planning. If market prices are lower than a utility's cost of generation (fixed and variable cost), then new customer direct access has a harmful effect on customers. If market prices are higher than the utility's cost of generation, then new direct access provides a benefit.

In addition, if new customer direct access is allowed without transition charges, and a customer who otherwise would have utilized current direct access takes this new service, then other customers are harmed because transition charges that would have been paid by the direct access customers are no longer being paid.

6. Can utilities treat new customers differently from existing customers without discriminating?

CUB previously answered this question through the submission of a legal brief. As stated in that brief, CUB believes the Commission cannot treat new customers differently from existing customers without violating non-discriminatory and preferential statutes.

7. Do transition adjustment charges mitigate risk to utilities and cost-of-service customers associated with the Provider of Last Resort requirements?

There are two issues with Provider of Last Resort (POLR) obligations. First, is the question of whether the utility has inherent costs associated with this regardless of whether such service is actually provided – whether knowing that it might have to provide POLR service requires the utility to incur any costs or plan for those circumstances. Second, is the question of whether providing POLR service incurs additional costs. Transition costs which cover the first item are clearly appropriate. The second item will depend on whether POLR can be provided in such a manner that ensures that cost-of-service customers are unaffected.

8. What parameters can be placed on the type of new load receiving altered transition adjustment treatment to minimize cost shifting?

Minimizing cost shifting can reduce the need for transition charges. Some of the cost shifting is related to market conditions and cannot be eliminated. However, there may be some ways to design a program which reduce the risk of cost shifting. For example, limiting the ability of a direct access customer to return to cost-of-service rates can help protect remaining customers. It may be possible to minimize cost shifting by allowing for reduced transition charges.

9. What are the consequences of modifying transition adjustments for new customers on cost-of-service customers?

It will cause higher rates. Assuming that some of the new customer load on "modified" transition adjustments would otherwise pay full transition adjustments inherently means higher rates for cost-of-service customers.

10. What provider of last resort obligations should be imposed on the utility for new direct access load?

The POLR obligation must balance two things:

- Minimizing cost impacts on other customers by preventing these customers from coming back to cost-of-service rates.
- Maintaining a reliable grid. If the direct access provider stops providing service, then the utility's system will be unbalanced and the utility will have to take action in order to ensure that cost-of-service customers do not see outages.

The first factor can be accomplished by simply prohibiting the customer from coming back to cost of service rates and requiring them to pay the full cost of providing them POLR service. The second factor is more difficult. It is unclear whether having to plan to offer emergency POLR service requires some level of planning and some costs. In addition, the utility will have to undergo this cost, no matter how expensive it is. During the Western Power crisis, the cost was extremely high. As the utility is trying to balance its system it does not color code electrons. It is not difficult to imagine that high costs to meet the POLR service would be challenged by the POLR customer.

11. In the event that new direct access load wants to return to cost of service rates, how should that be structured?

It should not. A customer who has been paying no transition charges, or reduced transition charges based on the assumption that they will not come back to the system and force the utility to incur costs, should not be allowed to return to cost-of-service.

As an alternative, it may be possible to design a system where a customer could give 2 or more years notice (allowing the utility to plan for the load) and mechanisms could be put in place to ensure that their return to cost-of-service did not impact existing customers (for example certain low cost resources such as hydro are retained by existing cost-of-service customers).

12. Are there benefits to Cost of Service customers from Direct Access customers paying distribution charges?

Yes, but not enough to offset the potential costs. First, unlike residential or small commercial customers, most direct access customers do not utilize much of the shared distribution system. Second, current direct access rules are based on holding cost-of-service customers harmless. If these benefits outweighed the costs, then direct access customers would be receiving a transition credit.

The principle is that non-direct access customers should be held harmless. CUB believes that this should include both costs and benefits and, depending on the circumstances, could lead to a transition charge or a transition credit.

13. Should the source of energy (green energy vs thermal/market) be considered in a potential new program for new load and Direct Access?

Yes. Oregon has set clear goals to reduce carbon emissions. This program should be in that context and should only be considered for new load that is helping to meet Oregon's carbon reduction goals. Because it is unlikely that we can fully insulate cost-of-service customers from the costs associated with new direct access, it should be limited to circumstances where the direct access is consistent with Oregon forward-looking energy policy.

14. Should a new program for new direct access load be included in the current program caps for existing direct access programs?

CUB believes that there should be a cap for direct access load included in this new program. This can be accomplished by containing this program under the existing cap or by creating a new cap. A cap is necessary because, as much as we want to minimize cost shifting, that analysis will be based on forecasts and projections that could be wrong. It is better to establish the program on a reasonable scale and expand it later after more information is gained (and adjustments made to the program) then to begin a wide open program and have to manage unintended consequences.

Dated this 22nd day of November, 2017.

Respectfully submitted,

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