



Oregon Citizens' Utility Board

610 SW Broadway, Suite 400
Portland, OR 97205

(503) 227-1984
www.oregoncub.org

Via Electronic Filing

Chair Hardie
Commissioner Bloom
Commissioner Decker
201 High St. SE, Suite 100
Salem, OR 97301

Re: In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Investigation into the Treatment of New Facility Direct Access Load; **Docket UM 1837**

According to the Staff memo circulated to parties on January 22, 2018, there are two issues before the Commission at its January 30th Public Meeting relating to AR 614/UM 1837:

1. Whether the Commission has authority to create a direct access program applicable to new load with transition adjustment charges that differ from current direct access programs.
2. Whether the Commission should open an expedited rulemaking to adopt rules related to a new load direct access program.

Staff correctly states CUB's position that the Commission does not have the legal authority to eliminate transition charges for new commercial customers, because Oregon law forbids utilities from giving preferential treatment or discriminating among members of the same customer class. CUB urges the Commission to make a legal determination on this threshold issue, based on the briefs submitted by the parties. CUB is concerned Staff is predetermining a legal outcome, because all parties agree except for CUB. As the Commission is aware, the law should be determined after a thorough review of the statutes and supporting authority, not by consensus of the parties.

If the Commission finds that it has the legal authority, then CUB has no objections to the Commission opening an expedited rulemaking. However, CUB is concerned there is no reference in the rulemaking to provide guidance for the appropriate determination of transition charges.

Staff's memo anticipates transition charges may be required. For example, Staff calls for conditions in NDAL tariffs designed to limit the size of the transition adjustment necessary for the NLDA participants. In addition, Staff states transition adjustments will be lower than they are in the existing direct access program.

CUB generally agrees with these points. PGE's IRP's Renewable Glide Path assumed significant new large customer growth during and beyond the five-year action plan, and new renewable resources are being procured to meet this future load. This load is included in planning, and costs are being incurred to service this load. While it is likely distinctions can be developed to allow the utility to remove future large load from future planning processes, it will be impossible to go back in time and remove load from planning processes that have already occurred. Therefore, it seems likely some level of transition charges will be required, but those will be less than the transition charges associated with current direct access programs. However, it is not clear how the development of transition charges relates to this rulemaking.

Staff lists and discusses five areas of continued disagreement:

1. Threshold size;
2. Relationship between NLDA enrolment limit and existing direct access enrolment limits;
3. Limits to generation sources for NLDA;
4. Planning vs. resource acquisition basis for denying NLDA applicants; and
5. Utility participation in NLDA programs.

CUB's concern is solving these remaining issues does not provide guidance to the development of transition charges, which is likely to be the biggest area of disagreement relating to the development of this program. Opening an expedited rulemaking suggests time is of the

essence. If we are ignoring critical issues that will hold up development of a program in the future, then this may not expedite development of an actual proposal.

Currently, OAR 860-038-0160 - Transition Costs and Credits, states each Oregon retail electricity consumer of an electric company “will receive a transition credit or pay a transition charge equal to 100 percent of the net value of the Oregon share of all economic utility investments and all uneconomic utility investments of the electric company.” The current rules were developed to give guidance to the current program, not this new program, and they may not be the appropriate guidance for a new direct access program.

Signed this 24th of January, 2018.

Bob Jenks, Executive Director



Oregon Citizens' Utility Board
610 SW Broadway, Ste. 400
Portland, OR 97205
T | 503.227.1984 x 15