

ENTERED **MAY 23 2018**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 614

In the Matter of

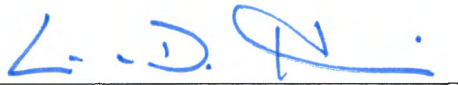
Rulemaking Related to a New Load Direct
Access Program.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

This order memorializes our decision, made and effective at our May 22, 2018 Regular Public Meeting, to adopt Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

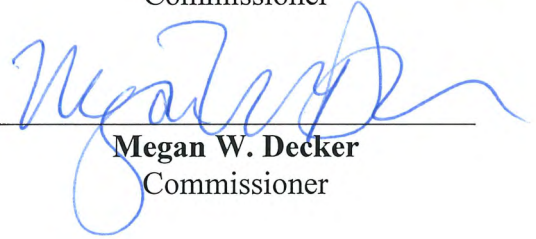
Dated this 23 day of May, 2018, at Salem, Oregon.



Lisa D. Hardie
Chair



Stephen M. Bloom
Commissioner



Megan W. Decker
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

ORDER NO. 18 175

ITEM NO. RM 1

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT

PUBLIC MEETING DATE: May 22, 2018

REGULAR ☒ CONSENT ☐ EFFECTIVE DATE N/A

DATE: May 17, 2018

TO: Public Utility Commission

FROM: Lance Kaufman LK

THROUGH: Jc JE Jason Eisdorfer and John Crider

SUBJECT: OREGON PUBLIC UTILITY COMMISSION STAFF: (Docket No. AR 614)
Staff Report on Draft Proposed Rules and Request to Issue Notice of
Proposed Rulemaking for New Load Direct Access.

STAFF RECOMMENDATION:

Staff recommends that the Commission approve issuance of a notice of proposed rulemaking on new load direct access as set forth in Attachment 1.

DISCUSSION:

Issue

Whether to approve issuance of a notice of proposed rulemaking on new load direct access as set forth in Attachment 1.

Applicable Law

Under ORS 756.060, the Commission may adopt reasonable and proper rules relative to all statutes administered by the Commission.

Analysis

Background

At its January 30, 2018 public meeting, the Commission concluded that it has authority to create a direct access program applicable to new load and the Commission opened an expedited rulemaking proceeding on new load direct access.¹ The Commission also

¹ January 30, 2018 public meeting; decision memorialized in OPUC Order No. 18-031.

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directed parties to address two outstanding legal issues regarding resource choice and utility participation.²

At the kickoff AR 614 workshop on March 1, 2018, participants agreed to wait to address resource choice and utility participation until more detailed proposals were brought forward by proponents of including those issues in the current phase of the AR 614 rulemaking.

The Commission held a workshop on April 23, 2018, in which the Commissioners, Staff and stakeholders participated. At the workshop, the Commissioners provided the following general guidance and discussion points:

- a. The existing provisions addressing provider of last resort obligations for direct access customers are a reasonable starting place for draft rules.
- b. The risk of unintended consequences and undue cost shifts:
 - i. Decreases for load that is distinguished as separate and incremental to load included in the utility's planning and resource acquisition decisions; and
 - ii. Decreases as size of new load increase.
- c. Longer binding notice requirements may mitigate risks associated with loads that are not clearly incremental to the utility's planning and resource acquisition process.
- d. Loads larger than 10 average megawatts provide a bright line delineation between loads that are clearly incremental to the utility's planning process and loads that may require more complex standards to prevent undue cost shifts.
- e. The new load direct access service should not be limited to new customers.
- f. The Commission should be updated periodically on the utilization of the program and the impact of the program on other customers.
- g. As a new program, the new load direct access program should have enrolment limits to guard against negative unintended consequences. The enrolment limits should be independent of enrolment in other direct access programs.
- h. Customers should be protected from negative impacts of new load direct access customers switching to cost of service.
- i. The rules should include mechanisms to contemplate participation by new load that is below 10 MWa.

² *Id.*

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Current Proposed Rulemaking

Staff attaches to this report an initial set of proposed rules, consistent with the guidance of the April 23, 2018 Commission workshop, with one exception. Staff proposes to split the rulemaking process into two phases. Phase 1 rules would address loads of 10 MWa or greater, and will allow Staff and stakeholders to move forward in an expedited fashion. Staff proposes that Phase 2 rules would address a new load direct access program for loads below 10 MWa. Because utilities may plan for loads that are relatively smaller in scale differently than loads 10 MWa or above, there are additional issues that would need to be addressed for relatively smaller participating loads to ensure that there is no unwarranted cost-shifting. For this reason, Staff has concluded that it is not possible to develop rules for this load size on an expedited basis. Therefore, Staff proposes to continue the informal rulemaking process for loads below 10 MWa, with a goal of creating rules addressing loads below 10 MWa by January 1, 2019.

Summary of Proposed Draft Rules

OAR 860-038-0700 defines terms applicable to New Load Direct Access.

OAR 860-038-0710 requires electric utilities to offer a New Load Direct Access program.

OAR 860-038-0720 sets forth the method of calculating rates for new load direct access service. The rate includes a transition adjustment that returns a portion of the benefit of economic utility investments to cost-of-service customers, recovers administrative costs, and accounts for load shifting from cost-of-service eligible loads.

OAR 860-038-0730 limits eligibility to incremental loads greater than ten MWa, requires notice for participation, requires participants opt out of cost of service rates, and sets notice requirements.

OAR 860-038-0740 sets forth how utilities can provide and charge for supply services to New Load Direct Access customers.

OAR 860-038-0750 identifies enrolment limits of similar magnitude as enrollment limits of existing long term direct access programs and establishes reporting requirements.

OAR 860-038-0760 addresses the treatment of New Load Direct Access load in jurisdictional allocations.

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Conclusion

After the April 23, 2018 workshop, Staff drafted proposed rules inclusive of the Commission's direction and guidance. Staff recommends that the Commission approve the issuance of a notice of proposed rulemaking for new load direct access, using the draft proposed rules in Attachment 1.

PROPOSED COMMISSION MOTION:

Approve issuance of a notice of proposed rulemaking on new load direct access as set forth in Attachment 1.

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AR 614 May 22 Public Meeting Memo Attachment 1***New Large Load Direct Access Program Rules*** (section of Division 38 rules)**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) "Affiliated Consumer" means a consumer, five percent or more of the voting shares of which are held by another consumer.

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

(c) "Cost of Service Site" means a Site that receives or has received energy in the last 5 years that is eligible for a cost of service rate.

(d) "Existing Consumer" means a consumer that is or has been a cost-of-service consumer of an electric company within the prior five calendar year period.

(e) "Existing Load Shortage" means the larger of zero or a consumer's Historic Cost of Service Load less Cost of Service Eligible Load during the previous 12 months.

(f) "Existing Load Shortage Transition Adjustment" means 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.

(g) "Historic Cost of Service Load" means the highest Cost of Service Eligible load during any 12 month period from the present to five years prior to a consumer requesting participation in the New Large Load Direct Access Program.

(h) "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) Will result in an increase in power requirements of a consumer of ten average megawatts or more in any consecutive 12 month period.

(i) "New Large Load Direct Access Program" means a direct access program offering by an electric utility that meets the requirements set forth in the New Large Load Direct Access Program section of the Division 38 rules.

(j) "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.

860-038-0710**Requirement to Offer a New Load Direct Access Program**

An electric company must offer a New Load Direct Access Program to New Large Load cost-of-service consumers, subject to the requirements set forth in this New Large Load Direct Access Program section of the Division 38 rules.

860-038-0720**Transition Rates**

(1) In addition to all other charges applicable to a New Large Load, an electric company must charge applicable New Large Load consumers a New Large Load Direct Access Service Transition Rate that recovers the following:

- (a) 25 percent of the fixed generation costs for five years; and
- (b) All costs of administering the New Load Direct Access Program.

(2) Consumers 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 consumer and the Existing Load Shortage of all of the consumer's Affiliated Consumers. This Adjustment is calculated and billed for on a monthly basis by scaling the Existing Load Shortage into a daily amount, and multiplying by the number of days in the consumer's billing cycle.

860-038-0730

New Large Load Eligibility Requirements

(1) Only New Large Loads that meet the following requirements are eligible to participate in the New Large Load Direct Access Program:

- (a) Load must be separately metered.
- (b) For New Large Loads, the load must be incremental to the Historic Cost of Service Load at that Site.
- (c) Load must have opted out of cost-of-service rates.
- (d) 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 to receive distribution service for eligible new load, or
 - (B) One year prior to energizing the meter.

(2) Subsection (1)(c) is waived for eligible New Large Load that has entered into a written agreement with an electric company prior to August 31, 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) If the actual load of a facility served under the New Large Load Direct Access Program is less than ten average megawatts per year in the second or third year of receiving service and the shortfall in load is not 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 consumer, the consumer must be enrolled in the general cost-of-service opt-out program in the following direct access enrollment window.

860-038-0740

Nonresidential Standard Offer, Default Supply and Return to Cost of Service

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

(2) New Large Load Direct Access Program consumer 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, except as set forth in section (3).

(3) If the New Large Load Direct Access Program consumer's rates under OAR 860-038-0250, OAR 860-025-0280 or return to a cost-of-service rate results in an increase to existing cost-of-service rates of more than one tenth of one percent within any one year, the electric company must charge the current or former New Load Direct Access consumer a rate adder is appropriate to mitigate the rate impact to cost-of-service rates.

860-038-0750**New Large Load Direct Access Program Caps**

(1) The total annual load of New Large Load and Affiliated New Large Single Load may not exceed 12 percent of the electric company's weather normalized annual load in calendar year 2017.

(2) Section (1) of this rule sunsets following the fifth calendar year that the New Large Load Direct Access Program has been in place.

(3) 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 MWa, 50 MWa, 100 MWa and 80 percent of the enrolment limit.

860-038-0760 – Jurisdictional Allocations

For an electric company with service territory outside of Oregon, jurisdictional allocation of transmission costs and generation costs may not be affected by New Large Load Direct Access Program participants.