ITEM NO. RA4

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: June 16, 2020

REGULAR X **CONSENT** ____ **EFFECTIVE DATE** N/A

DATE: June 9, 2020

TO: Public Utility Commission

FROM: Scott Gibbens

THROUGH: Bryan Conway, Michael Dougherty, and John Crider **SIGNED**

SUBJECT: PORTLAND GENERAL ELECTRIC:
(Docket No. UE 358)
PGE NLDA Program Administration and Queue Issues.

STAFF RECOMMENDATION:

Staff recommends that the Commission direct Portland General Electric Company (PGE) to include in its tariff its queue management plan for its New Load Direct Access (NLDA) program.

DISCUSSION:

Issue

Whether the Commission should direct PGE to include in its tariff its queue management plan for its New Load Direct Access (NLDA) program.

Applicable Rule

ORS 757.205(2) states that a public utility must file with schedules showing all rates, tolls and charges all rules and regulations that in any manner affect the rates charged or to be charged for any service. ORS 756.040 requires the Commission to protect customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates, while balancing the interests of the utility investor and the consumer in establishing fair and reasonable rates.

OAR 860-038-0700 through OAR 860-038-0760, specify the requirements an electric company must adhere to in implementing a New Large Load Direct Access Program.

Analysis

Background

Commission Order No. 18-341 implemented rules regarding New Load Direct Access (NLDA) Programs following investigation of the issues in AR 614. As part of the Order, the Commission imposed a cap of six percent of weather normalized annual load in calendar year 2017.

PGE filed Advice No. 19-02 on February 5, 2019, to implement an NLDA program in compliance with the Commission's direction. Commission Order No. 19-103, submitted on March 22, 2019, suspended PGE's Advice Filing 19-02 and opened an investigation into issues related to NLDA docketed as UE 358. As a part of that Order, the Commission directed PGE to develop a non-binding queue that would allow customers to signify their interest in enrolling in PGE's pending NLDA program while parties investigated the issues.[1] Specifically, the Commission Ordered:

1. Portland General Electric is directed to develop a nonbinding queue for customers interested in the New Load Direct Access process during the pendency of the investigation.
2. Portland General Electric is directed to file in this docket no later than April 4, 2019, information describing the process for customer nonbinding queue participation.[2]

On April 4, 2019, PGE filed a letter outlining the Company's proposed process for establishing a customer queue in compliance with the Commission's order. The letter states that PGE would open enrollment to the queue on April 15, 2019, and would order customers in the queue based on the automatic time/date stamp of the email submitted by the customer indicating interest in signing up for the program.

On April 15, 2019, PGE received letters of interest from numerous customers expressing intent to sign up for the NLDA program. The total load of the customers was estimated to be many multiples the size of the cap for the program. This set up a scenario where some interested customers may require a waiver to the participation cap in order to enroll in the program.

On March 20, 2020, PGE filed a letter indicating steps it had taken to implement the enrollment process of the program following a meeting convened by Staff to discuss program implementation. In the letter, PGE defined the following:

[1] Order No. 19-103 at 1.
[2] Order No. 19-103 at 2.

1. The start of the one-year notification requirement, before a new load can be energized, began on April 15, 2019, with the creation of the current NLDA queue. Consequently, any load energized prior to April 15, 2020, is not be eligible for NLDA.

2. Once PGE tenders an NLDA contract, that customer will have ten (10) business days from the date of PGE's tender, to sign and return the contract to PGE, or the offer will be withdrawn.

3. Beyond the one-year notification period, a customer has up to one more year to energize the new service (for initial program participants, that's by April 15, 2021), or two years (for initial program participants, that's by April 15, 2022) if substation construction and/or substation upgrades, are required to provide the new service(the "Timely Energization Date"). Temporary power will not be considered "energization" for purposes of determining a Customer's Energization Date. Allowances will be made if delays in construction are outside the control of the customer, such as material delays, or other delays caused by PGE. Failure to meet the Timely Energization Date will result in automatic disenrollment from the NLDA program and termination of the New Large Load Cost of Service Opt-Out Agreement.

4. PGE will calculate, in demand (kW), the new load that is to be referenced in the NLDA Opt-Out Agreement ("Contracted Load") and used for purposes of determining any remaining capacity under the cap of the NLDA program, and such calculation will be based on the capacity of service the customer is currently requesting from PGE. PGE will design and construct facilities to serve the Contracted Load stated in the NLDA contract.

5. Following the sixtieth (60) month after energization of the new service, PGE will evaluate the actual load factor (LF) of the customer and apply it to the Contracted Load reflected in the original contract, to calculate energy in MWa. The remaining energy (MWa), beyond that used by Customer, will be added back to the program as capacity available under the cap.

6. A customer has sixty (60) days, from receipt of notification of their ineligibility for NLDA, to file a waiver with the OPUC in accordance with OAR 860-001-0000 et seq.

In the letter, PGE noted Staff's position that it was PGE's program and PGE owns the discretion on how it administers the program, so long as it is reasonable and nondiscriminatory. Staff notes that this does not reflect Staff's only comments, which also included that PGE needed to update its tariff to include its queue management plan. PGE has declined to do so. With that said, Staff largely finds PGE’s program administration reasonable; however, the Commission may deem additional or alternative steps more proper.

To date, the Commission has received a total of three waivers or intent to file for a waiver of one or more NLDA eligibility requirements; however Staff notes that other customers may request waivers in the future and be placed at the end of the queue. The three waivers currently filed are docketed as UM 2062, UM 2070, and UM 2107. Docket UM 2107, a waiver request by Willamette Falls Paper Company, seeks a waiver of the energization requirement, and not of the participation cap. Docket UM 2070 and UM 2107 require additional investigation and analysis prior to Staff making a recommendation on whether a waiver would be appropriate. Due to the fact that a significant portion of the cap is already subscribed, it is very likely that any subsequent interested customers will require a waiver of the participation cap prior to enrollment in PGE’s NLDA program, regardless of the approval status of waivers ahead of them in the queue.

Staff’s purpose in bringing this issue before the Commission is two-fold. The first is to ensure that PGE’s queue management plan is included in its tariff. The second is to provide an update to the Commission regarding the status of PGE’s NLDA program and the enrollment queue.

Process for consideration of waiver requests

NLDA programs differ from standard Long Term Direct Access (LTDA) programs in that the load, if unplanned for, can go directly to direct access without the same potential for cost-shifting that may occur with LTDA. Because of this, the NLDA customers are afforded much smaller transition costs, and a more economical path to wholesale electricity prices. Because these customers have to have demand in excess of 10 aMW, the planning horizon to serve the load can be extensive, meaning that a customer’s ability to enroll in the NLDA program has meaningful implications for the customer, PGE, and PGE’s system before the actual energization date. Further, the administration of the queue on a first come, first-served basis can be at odds with both the customers’ intended energization date and the need for a timely waiver decision for that customer and all customers ahead of that customer in the queue. The Commission’s ability to quickly and efficiently determine the basis for a good cause waiver is important to ensure that all customers are afforded a fair opportunity to enroll in the program.

Staff believes that two approaches can be taken in order to alleviate the timing issue to a certain extent. The first is to ensure the cap waiver applications received by the Commission clearly articulate the merits for which the Commission’s judgement will be based on. This limits the need for extensive discovery, additional process to develop a record, and allows the Commission to make a decision with all of the information it needs. The second approach is to consider more extensive alternatives to the standard process which may make the decision criteria needed for the Commission and ultimately customers, available sooner.

Application Requirements for Waiver Considerations

The over-arching “good cause” standard is based on OAR 860-001-0000 (2) which states:

> For limited purposes in specific proceedings, the Commission or ALJ may modify or waive any of the rules in this division for good cause shown. A request for exemption must be made in writing, unless otherwise allowed by the Commission or ALJ.

In Order 18-341, the Commission adds additional clarification for what it would consider regarding a participation cap waiver, stating that:

> [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 system improvements that impose near-term costs to adapt the system to new utility and customer-sited technology intended to lead to long-term economic and environmental benefits for all customers. Such is the case with demand response, storage initiatives, electric vehicles, and other programing. If aspiring NLDA participants can support the system modernization efforts through committed private action, then that action may provide part of the good cause justification necessary to exceed the cap.[3]

The Commission states in its order that the costs or risks to COS customers should be insignificant, while the overall benefit to the system should be significant. This can be inferred to mean that the application should provide a net benefit or be in the public interest.

As stated above, ensuring that waiver applications thoroughly address these considerations in the initial application, supported by evidence and analysis, will ensure timely review.

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[3] Order 18-341 at 7-8.

Cost-shifting and risk to COS customers
As noted before, the theoretical argument for NLDA programs in general is based in the fact that customers bring new, unplanned for load to the system. Because it is unplanned for, the risk of sunk costs is reduced or eliminated. In consideration of unknown risks, however, the Commission adopted a requirement that NLDA customers pay a 20 percent transition charge for 60 months in order to account for unidentified and unintended costs. In Order No. 20-002 the Commission identified one such cost as being associated with resource adequacy (RA) costs. This is particularly important because the Commission has yet to decide on RA concerns as it relates to direct access in UM 2024. It may be beneficial for waiver applicants to address RA in their waiver requests in order for the Commission to determine that the Customer does not pose significant costs or risks to COS customers. The Commission states as much in Order 20-002, “We would expect to consider an NLDA customer’s contribution to RA in evaluating any waiver request.” Lastly, Staff notes that the Commission may determine that the potential risk to COS customers is correlated with the size of the NLDA program. This means that the Commission may approve one request and deny another simply because it considered one first.

Benefit to system
The system benefit the Commission notes would likely be a knock-on effect or something that benefits the system generally and not PGE COS customers specifically. For example, an applicant should expect to be fairly compensated for any demand response it provides but the system benefit may result in more reliable or cheaper power for everyone. Further capacity in the form of physical generation or long-term contract may not only provide resource adequacy for the customer, but excess generation may further increase capacity in the region. Value added grid services could include back-up power capability and reliability in the narrow sense of managing more and more intermittent power sources on the system. Specifically, utilizing battery back-ups, diesel generators, or gas generators, that can it be incorporated with the system to provide benefits. This can reduce the need for duplicative resources and lower the overall cost for the system.

Alternative Approaches
Under the standard approach, Staff would receive a waiver request, review and analyze its contents, and take the matter to a public meeting as soon as practicable. However, this may not be the most efficient approach to ensure timely participation in PGE’s NLDA program. As such, Staff believes that the Commission has a few different options should it choose to take a more proactive approach to the waiver process.

- Efficiency in waiver requests.

- Re-ordering based on readiness or other criteria.
- Consider currently pending waivers concurrently.

Efficiency in waiver requests
One of the goals of this memo is to encourage efficiency in the waiver request process. Staff's hope is that highlighting the standards that the Commission will consider will result in more complete initial applications. The Commission could aim to further this result by elaborating on its expectations. One such option would be to adopt timelines for the filing of waiver requests and for Staff and Interested Party reviews. The Commission could also clarify expectations for when it expects to see Staff's recommendations at a public meeting regarding waiver requests. One recommended step is to have each customer begin the process to file their completed application as soon as it becomes apparent that they will need a waiver allowing the Commission to move quickly between waivers.

Re-ordering based on readiness or other criteria
Although different from the initial set up of the queue, in directing PGE to make appropriate filings to include its queue management plan in its tariff, the Commission could also consider whether the queue should be managed based on energization dates, rather than the order in which customers expressed interest. Although for a different issue, FERC recently approved most of PacifiCorp's proposed changes to its interconnection queue to be first-ready, first-served as opposed to first-come, first-served. This could alleviate some of the concern of the timing of the regulatory process interfering with customer participation. However, Staff does not recommend this approach. Currently there are only two customers awaiting waiver determinations related to the participation cap who have not energized. Changing to energization may be seen as preferential bias of one customer over another, and customers may argue that they would have made different choices or timely filed had this been the case from the beginning. Further, with only two waivers related to the participation cap, an extreme measure like this may be unnecessary.

Consider the waivers in parallel
For the customers currently in the queue, establishing a deadline for supplemental waiver requests and reviewing multiple waivers at the same time may make the process quicker. Although the Commission must make a determination on each waiver individually, the reviews could largely overlap once completed applications are filed, which would lead to timely information for those customers seeking to participate in the NLDA program and preserve the appropriate queue order as determined by the Commission.

Conclusion

Staff's goal with this memo is two-fold. First, to ensure that the rights and obligations of both PGE and potential and current NLDA-customers are clearly set forth in PGE's tariff, consistent with the requirements of ORS 757.205(2). Second, Staff would like to see PGE's NLDA program move forward by providing customers in the queue with certainty about their ability to participate in a timely fashion. Staff's recommendation in this case addresses the first issue, and Staff believes that a status update and Commission consideration of additional options, if appropriate, may help to achieve Staff's second goal.

PROPOSED COMMISSION MOTION:

Direct PGE to include in its tariff its queue management plan for its NLDA program.

UE 358.