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November 26, 2019

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PORTLAND GENERAL ELECTRIC COMPANY,
Advice No. 19-02 (ADV 919) New Load Direct Access Program
Docket No. UE 358

Dear Filing Center:

Please find enclosed the Response Brief of the Alliance of Western Energy Consumers in the above-referenced docket.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UE 358

In the Matter of PORTLAND GENERAL ELECTRIC COMPANY, Advice No. 19-02 (ADV 919) New Load Direct Access Program.	)	RESPONSE BRIEF OF THE ALLIANCE OF WESTERN ENERGY CONSUMERS

I. INTRODUCTION

Pursuant to the Chief Administrative Law Judge's October 25, 2019 Ruling in the above-captioned docket, the Alliance of Western Energy Consumers ("AWEC") files this Response Brief with the Oregon Public Utility Commission ("Commission").

Portland General Electric Company's ("PGE" or "Company") entire case for the Resource Intermittency Charge ("RIC") and Resource Adequacy Charge ("RAD") is based on its assumptions that the short-term market provides no resource adequacy and that new load direct access ("NLDA") customers will rely exclusively on this market to meet their loads. The record does not demonstrate the veracity of the Company's conclusions in this regard. They are, in fact, disputed, both by parties to this case and implicitly by the actions of other regional utilities, which themselves rely on the short-term market for capacity. The Company's policy positions certainly are not strong enough to support the thin legal justifications it provides for the RIC and RAD in its Opening Brief. Nor does PGE provide any convincing argument that the urgency of its resource adequacy concerns justifies implementing the RIC and RAD in this docket. PGE

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itself is not seeking to promote the development of incremental capacity in the region, and approval of the RAD at $0, as PGE requests, will not in any way address its resource adequacy concerns.

AWEC agrees that resource adequacy is important, but PGE has litigated this case assuming, rather than demonstrating, that resource adequacy can only be provided by specific types of resources (and without explaining to what extent any particular resource provides this resource adequacy). Reality is likely more complicated than PGE suggests. If the Commission is to approve a resource adequacy charge for direct access customers, it should at least have clarity over what resource adequacy is and how it can be supplied. That is an issue squarely within the scope of the Commission's general direct access investigation, UM 2024. In the meantime, the Commission should reject the RIC and RAD because there is no urgency to their implementation and because one or both, among other things, are discriminatory, are outside of the Commission's jurisdiction to implement, violate the direct access law, and are unjust and unreasonable charges.

AWEC continues to recommend that PGE refile Schedule 689 in a manner that is substantively identical to PacifiCorp's Schedule 293, as PGE has failed to identify any distinguishing characteristics of its NLDA program that would justify material differences between PGE's and PacifiCorp's programs.

II. ARGUMENT

A. PGE's opening brief largely ignores the legal problems with the RIC and RAD and relies primarily on flawed policy arguments.

PGE spills much ink over the urgent need for the RIC and RAD, with its policy arguments summed up in the following sentences:

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> If the Commission does not approve PGE's proposal in this proceeding, cost-of-service customers will unfairly subsidize NLDA customers who will not contribute their fair share to resource adequacy. As a fundamental matter, all electrical loads impact system reliability and resource adequacy regardless of whether the load originates as a direct access or cost-of-service customer. All loads should therefore be allocated and pay their proportional costs associated with resource adequacy, which is exactly what PGE's proposals in this proceeding would do.[1/]

While AWEC, Staff, and Calpine Solutions all addressed these arguments in their respective opening briefs, it is worth unpacking these sentences to understand the basic and irreconcilable flaws with the RIC and RAD.

First, as it has done throughout this proceeding, PGE justifies the RIC and RAD on its bare assertion that "NLDA customers [] will not contribute their fair share to resource adequacy." This conclusion is based entirely on PGE's conviction that the short-term market does not provide resource adequacy and that all NLDA customers will necessarily rely solely on this short-term market.

The first assumption – that the short-term market does not provide resource adequacy – might be convincing if it were universally or even commonly held. But it is not. It is an assumption that AWEC and Calpine have contested in this proceeding,[2/] and is one that is not even shared by PGE's own investor-owned utility peers. Puget Sound Energy "relies heavily on the short-term market to meet … the peak capacity needs of [its] customers."[3/] While Puget has also identified risks associated with this reliance, it does not assert that these risks have anything to do with the market customers on its system (as Puget relies on the short-term market to meet

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1/ PGE Opening Brief at 5.
2/ AWEC/200, Mullins/8; Calpine Solutions/200, Bass/3-4.
3/ Exh. AWEC/303 at 9.

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the capacity needs of its cost-of-service customers), nor has it proposed anything like the RIC or RAD. Instead, Puget "comprehensively examined" the risks associated with relying on the short-term market in its 2017 integrated resource plan ("IRP") "and determined [them] to be manageable."[4/] Puget even proposed to further increase its reliance on the short-term market in its 2017 IRP by redirecting transmission rights from its wind facilities to the Mid-C market.[5/] As PGE conceded, if the Company enters into "medium-term structured capacity products via bilateral procurement options," the type of product PGE proposes to acquire to meet NLDA capacity,[6/] it will have no ability to require delivery from such a product and its remedy for failure to deliver would likely be limited to financial damages, the same remedy available under a firm liquidated damages contract that PGE asserts provides no resource adequacy.[7/]

The second assumption – that NLDA customers will rely exclusively on the short-term market – is necessarily speculative as no NLDA customers currently exist. Because these customers will purchase on the open market, they will have "endless" possibilities to meet their load.[8/] That necessarily includes possibilities that supply resource adequacy, however this term is understood.

Second, PGE argues that NLDA customers' failure to contribute to resource adequacy will occur "[i]f the Commission does not approve PGE's proposal in this proceeding." That is demonstrably false. Even if the Commission agreed with PGE's claims regarding direct

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4/ Id. at 19.
5/ Id. at 3.
6/ PGE Opening Br. at 4.
7/ Tr. at 107:18-109:2 (Sims).
8/ Portland General Electric Company, Docket Nos. UE 101/DR 20, Order No. 97-408, 1997 Ore. PUC LEXIS 250 at *17-*18 (Oct. 17, 1997).

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access and resource adequacy, the Commission's approval of the RAD at $0 in this proceeding will accomplish nothing. NLDA customers will not "contribute … to resource adequacy" here because they will not pay for anything.

Third, while AWEC agrees that "all electric loads impact system reliability" and should "pay their proportional costs associated with resource adequacy," that is emphatically *not* "exactly what PGE's proposals in this proceeding would do." Again, customers would pay nothing under the RAD, so if PGE believes that NLDA customers would not pay "proportional costs," its proposal does not address this concern. Further, long-term direct access ("LTDA") loads are a component of "all electric loads [that] impact system reliability" as well. If, as PGE seems to believe, these customers also do not "pay their proportional costs associated with resource adequacy," the RIC and RAD will not apply to these customers and, therefore, will not allocate proportional costs to "all loads."

These issues highlight the fundamental and irreconcilable issues with the RIC and RAD. These charges are at once too broad and too narrow – they apply indiscriminately to NLDA customers regardless of whether those customers acquire their own resource adequacy and yet do not apply to LTDA customers that identically "impact system reliability." The RIC and RAD are blunt instruments to address a concern PGE has not demonstrated exists.

B. The RIC and RAD are discriminatory.

As Staff and AWEC argued in their opening briefs, the RIC and RAD unduly prejudice NLDA customers because they would not apply to similarly situated LTDA customers.[9/] PGE counters that NLDA and LTDA customers are, in fact, distinguishable from a

[9/] AWEC Opening Br. at 7-9; Staff Opening Br. at 18-22.

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resource adequacy perspective "because NLDA includes load that was never planned for and therefore creates immediate reliability concerns, whereas LTDA customers started as PGE supply customers with PGE planning for them."[10/] This position is undermined by PGE's proposal to reduce the RAD during the five-year period during which NLDA customers would pay a 20% transition charge, which implicitly acknowledges that NLDA customers will contribute at least some amount to resource adequacy in the near term.

The Company's arguments are further undermined by its statements in its 2019 IRP that "[e]xcluding long-term opt-out direct access customers from PGE's capacity planning, while retaining the Provider of Last Resort (POLR) responsibility, shifts reliability risks from direct-access participants to cost-of-service supply customers."[11/] This statement is substantively indistinguishable from PGE's testimony in this docket on the impacts from NLDA customers: "If NLDA customers are not subject to reliability planning and do not fairly contribute towards the cost of resource adequacy, COS customers would unjustly bear the increased reliability risks and costs stemming from supply choices made by NLDA customers."[12/] Thus, if PGE believes that LTDA customers are different from NLDA customers because PGE previously planned for LTDA customers, it is odd that PGE would still request in its IRP to impose the exact same planning standards on LTDA customers as NLDA customers on the basis that LTDA customers increase reliability risks.

PGE further argues that, if the Commission agrees with AWEC and Staff that the RIC and RAD discriminate against NLDA customers because they would not apply to similarly

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[10/] PGE Opening Br. at 7-8.
[11/] Docket No. LC 73, PGE 2019 IRP at 124 (July 19, 2019).
[12/] PGE/100, Sims-Tinker/4:7-10.

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situated LTDA customers, it should further find that "the current structure unfairly discriminates against PGE's cost-of-service customers because resource adequacy is a service PGE is obligated to provide to *all* customers regardless of their energy supplier."[13/] There are several problems with this unsupported argument that direct access and cost-of-service customers are similarly situated. First, because, as PGE itself admits, resource adequacy is a capacity product, the direct access law specifically absolves PGE of any obligation to provide resource adequacy to "*all* customers regardless of their energy supplier." The direct access law provides that all nonresidential customers "shall be allowed direct access," and this "means the ability of a retail electricity consumer to purchase electricity [defined to include capacity] … directly from an entity other than [PGE]."[14/] The direct access law, in other words, creates a statutory distinction between direct access and cost-of-service customers for purposes of resource adequacy that justifies differing treatment between these two customer classes. That same law, however, makes no such distinction between direct access customers that used to be PGE bundled service customers (LTDA) and those that never were (NLDA).

Second, even if the Commission agreed with PGE's position that cost-of-service customers currently are being discriminated against, the Company offers no proposal to rectify it. PGE's argument amounts to a "whataboutism."[15/] The RIC and RAD might unduly prejudice NLDA customers relative to LTDA customers, PGE says, but what about cost-of-service customers? Addressing unlawful discrimination between NLDA and LTDA customers by rejecting the RIC and RAD does nothing to address PGE's concerns about cost-of-service

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13/ PGE Opening Br. at 8 (emphasis in original).
14/ ORS 757.601(1), 600(6) & 600(14).
15/ https://en.wikipedia.org/wiki/Whataboutism.

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customers. The alternative would be to impose the RIC and RAD on both NLDA and LTDA customers, but this option is precluded by the stipulation PGE agreed to, and the Commission approved, in UE 335 that locks the LTDA program in place through 2021 ("LTDA Stipulation").[16/] The Company's arguments regarding cost-of-service customers merely distract from the issues before the Commission in this proceeding, which are whether PGE's NLDA tariff is just and reasonable and lawful.

C. PGE affirms the due process concerns AWEC raises for LTDA customers, and its proposals in this case undermine the LTDA Stipulation it signed.

In testimony and its opening brief, AWEC argued that approval of the RIC and RAD would violate LTDA customers' due process rights because there is no rational justification not to apply these charges to LTDA customers if they first are applied to NLDA customers.[17/] Staff agrees.[18/] PGE affirms this concern in its opening brief, openly admitting that "PGE believes that these charges should apply to LTDA customers in the future …."[19/] The only thing preventing PGE from applying these charges to LTDA customers is the LTDA Stipulation.

Indeed, PGE's proposal for the RIC and RAD in this docket could be seen as an attempted end-around this stipulation; PGE is proposing charges that it will need little factual justification to apply to LTDA customers if these charges are authorized for NLDA customers. If PGE felt that the RIC and RAD "should apply … to LTDA customers," it should have pursued

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16/ Docket No. UM 335, Order No. 19-129, Appen. B at 2-3, ¶ 6 (Apr. 12, 2019).
17/ AWEC Opening Br. at 9-10.
18/ Staff Opening Br. at 21.
19/ PGE Opening Br. at 10.

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these charges in UE 335 rather than signing a stipulation that specifically prevents it from imposing such charges on LTDA customers in the near term.

PGE's agreement to the LTDA Stipulation is particularly surprising given its arguments now that the Commission "should not approve PGE's NLDA program unless it also addresses the statutory prohibition against unwarranted cost-shifting to remaining cost-of-service customers."[20/] If PGE believes the RIC and RAD are necessary to prevent "unwarranted cost-shifting" prohibited by the direct access law, and also believes these same charges "should apply … to LTDA customers," it is perplexing that PGE would agree to the LTDA Stipulation that did not include these charges or anything similar. One would expect that if an NLDA program without the RIC and RAD violates the direct access law, so does the LTDA program. The Company cannot have it both ways – assert that the Commission would be violating the direct access law without imposing resource adequacy charges on NLDA customers, but implicitly agree, by signing the LTDA Stipulation, that the lack of such charges in the LTDA program does not violate the same law.

D. The Commission should not approve a contingent charge.

As AWEC argued in its Opening Brief, approval of a RAD charge of $0 in this proceeding would result in the Commission approving a charge the amount of which is currently unknown.[21/] PGE argues that this is preferable to waiting to approve the RAD until PGE determines its amount in a subsequent general rate case on the basis that "it would be fundamentally unfair and misleading to avoid providing customers information regarding all

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[20/] Id. at 12-13.
[21/] AWEC Opening Br. at 15-16.

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charges that will be applied should they enroll in NLDA."[22/] But telling NLDA customers that they will need to pay a RAD without identifying how much it will be is hardly useful information and is itself "fundamentally unfair and misleading."

It is, at this time, impossible to say whether PGE's indicative charge of $9.00/kW of on-peak demand, included in its initial filing, is even in the ballpark.[23/] The Company asserts that it has provided the Commission and stakeholders with information "regarding how the RAD would be calculated in a future general rate case," but this information is so high-level that it provides no useful information to help estimate what the RAD might be.[24/] The Company states that "resource adequacy is a service supplied through the provision of capacity," that "firm capacity from physical resources should be functionalized to resource adequacy," that "each resource's contribution is unique and dependent on the resource's characteristics," and that "each class's or schedule's need is unique and dependent on the characteristics of that class or schedule."[25/] Capacity is already functionalized to individual classes as a component of generation, however.[26/] PGE offers no explanation of how it plans to subdivide that capacity into resource adequacy on the one hand and whatever else capacity provides on the other. Having a clear understanding of what resource adequacy is and how it can be provided, of course, is crucial to this exercise, but PGE offers no evidence on this issue, and there is likely to be disagreement over it. As Bradley Mullins testifies, "[w]ith respect to production costs, there is no subset of costs that can necessarily be functionalized as generic resource adequacy, and PGE

22/ PGE Opening Br. at 14.
23/ PGE Adv. No. 19-02 at 7.
24/ PGE Opening Br. at 15.
25/ PGE Opening Br. at 15.
26/ Docket No. UE 335, Exh. PGE/1304, Macfarlane-Goodspeed/3.

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proposes no methodology for performing this functionalization. The reasonableness of this approach, therefore, is dubious, and certainly cannot be adequately evaluated in this docket."[27/] There is, in short, no way to know in this proceeding what the RAD charge will be, or whether it could ever be convincingly determined, so informing NLDA customers now that they will eventually pay such a charge is hardly helpful information.

For this reason, approving a RAD charge of $0 is fundamentally different than the Annual Update Tariff ("AUT"), PGE's annual power cost forecasting mechanism, that the Company alleges is analogous.[28/] In the AUT, PGE provides an initial forecast of next year's power costs in its application, usually filed on April 1st.[29/] That forecast is then updated throughout the course of the proceeding until it is finally determined on or about November 15th of each year.[30/] The Commission does not approve, or take any action, on PGE's initial forecast, even though, unlike the RAD, it is an actual forecast of costs. Rather, the Commission only acts at the end of the proceeding when all issues among the parties are resolved through settlement or are fully and finally litigated.[31/] Contested issues in these cases are over how PGE models a particular input to the forecast, which the Commission resolves in the AUT proceeding. Here, by contrast, PGE is asking the Commission to approve a charge without resolving, or even understanding, how the charge will be modeled. Moreover, PGE's power cost forecasts are based on established and accepted modeling techniques and, in fact, the Company is only

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27/ AWEC/200, Mullins/13.
28/ PGE Opening Br. at 14.
29/ See, e.g., Docket No. UE 359.
30/ Id., PGE Compliance Filing (Nov. 15, 2019).
31/ Id., Order No. 19-329 (Oct. 3, 2019).

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allowed to make the updates that are specifically authorized by its Schedule 125.[32/] That is a far cry from asking the Commission to approve a charge that will be established based on a to-be-determined methodology that, as far as at least AWEC and PGE are aware, no other utility anywhere has ever used.[33/]

Furthermore, PGE's concern with transparency for NLDA customers here is unconvincing given its admission that it plans to propose the RIC and RAD for LTDA customers eventually as well. LTDA customers had no warning that such charges might eventually apply to them when they joined that program. The fact is that programs and charges change all the time – it is impossible to give customers perfect foresight of every cost they might eventually incur, and it would likely be bad policy to prevent changes to a program forever. AWEC fully expects that the outcome of the Commission's investigation into direct access in UM 2024 will result in changes to PGE's direct access programs. Whatever those changes end up being, current direct access customers do not have notice of them today. That is not a bad thing, it is simply a consequence of the fact that circumstances change over time and programs should accordingly adapt. If those program changes include the RIC and RAD, they should be based on known and measurable costs, not speculation.

E. The RIC and RAD violate the direct access law.

AWEC, Staff, and Calpine all argued that the RIC and RAD violate the direct access law by forcing NLDA customers to purchase capacity from PGE.[34/] The Company asserts that its proposal does not violate the direct access law because this law "provides the

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[32/] PGE Schedule 125, Sheet No. 125-1.
[33/] Tr. at 39:20-40:15.
[34/] AWEC Opening Br. at 10-12; Staff Opening Br. at 13-14; Calpine Opening Br. at 7-9.

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Commission with the discretion to implement direct access policies consistent with the directive to maintain safe, reliable service, while also balancing other statutory considerations of unwarranted cost-shifting."[35/]

The direct access law undoubtedly gives the Commission discretion in many areas of implementation, but this is not one of them. The RIC and RAD would impose nonavoidable capacity charges on direct access customers. Staff articulated best why this violates the direct access law: "While Staff agrees with PGE that Oregon direct access law does not prohibit a direct access customer 'from paying for capacity resources procured by the distribution utility,' it does provide direct access customers have the *right* to purchase both energy and capacity from a provider other than the incumbent utility."[36/] PGE's proposal deprives NLDA customers of this statutorily-granted right "to purchase electricity and certain ancillary services … directly from an entity other than the distribution utility," and therefore violates the direct access law.[37/]

F. The Commission has the authority under existing law to impose resource adequacy requirements on ESSs.

A further justification PGE invokes for the RAD is that "the Commission has limited authority over the standards for certification of ESSs in Oregon."[38/] The necessary implication here is that the Commission should approve the RAD because it cannot require ESSs to procure their own resource adequacy for direct access customers. PGE offers spare legal analysis supporting this position.

35/ PGE Opening Br. at 17.
36/ Staff Opening Br. at 13 (emphasis in original).
37/ ORS 757.600(6).
38/ PGE Opening Br. at 20.

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In fact, the Commission likely has broader authority over ESSs than PGE implies. ORS 757.649 provides the Commission with the authority to certify and decertify ESSs, and no ESS may operate in Oregon without a Commission certification.[39/] The statute specifies only that the Commission, "by rule, shall establish standards for certification of persons or other entities as electricity service suppliers in this state."[40/] The statute goes on to identify standards that the Commission "shall, *at a minimum*, address."[41/] By its terms, therefore, the listed standards in the statute are only the minimum amount the Commission may require of an ESS for certification. Nothing in the direct access law prohibits the Commission from modifying its existing ESS certification rules, codified at OAR 860-038-0400, to require that ESSs adhere to a resource adequacy standard, and provide sufficient information for the Commission to ensure adherence to such a standard, as a condition of certification.

G. The Commission should decline PGE's request to modify the Integrated Resource Planning guidelines in this docket.

In the introduction to its opening brief, but without further explanation or justification, PGE "requests that the Commission clarify the language from integrated resource planning (IRP) guideline 9 and allow PGE to include new load direct access loads into its planning process to ensure reliability and sufficient system capacity."[42/] The Commission should decline this invitation, as it is plainly outside of the scope of this docket. PGE has made the same request in its 2019 IRP, and that is the appropriate docket to address this issue.

39/ ORS 757.649(1)(a).
40/ Id.
41/ Id. (emphasis added).
42/ PGE Opening Br. at 1.

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The Company also uses the resource acquisition process to justify its position that the RIC and RAD should be approved immediately in this proceeding and not delayed pending the outcome of UM 2024. It states that, upon approval of these charges, PGE would acquire "medium-term structured capacity products via bilateral procurement options," and that "[t]his timing supports the need to approve PGE's proposals in this proceeding without waiting until the conclusion of a protracted generic investigation."[43/] That is simply inaccurate. As PGE explained at the hearing, the RAD will not be based on the cost of acquiring new capacity to meet direct access loads; it will be based on a marginal cost-of-service model that functionalizes *all* capacity – not just incremental capacity – to resource adequacy and allocates it to (almost) all customer classes, including the NLDA class (but not including the LTDA class).[44/] Thus, approval of the RAD will not result in PGE acquiring new capacity to meet direct access load. That will only happen if the Commission acknowledges PGE's proposal in its 2019 IRP to plan for direct access loads. Again, this issue is outside of the scope of this docket, and in no way justifies approving the RAD in this proceeding.

H. The Commission should not accept Staff's and Calpine's alternative proposals to implement the RIC and RAD in conjunction with a demand response program, and should rule on the legality of the RIC and RAD in this proceeding.

Both Staff and Calpine argue forcefully – and accurately – against the legality of both the RIC and RAD. Both parties also, however, imply that the Commission could approve these charges if NLDA customers are allowed to offset them, either partially or totally. Staff states that "if the Commission determines that the risk to COS customers is too great and that

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43/ PGE Opening Br. at 4.
44/ Tr. at 14:13-17:23.

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PGE's NLDA program cannot be implemented without the RIC and the RAD at least on an interim basis, Staff recommends the Commission adopt PGE's NLDA program as proposed with customers retaining the option to mitigate the charges under certain conditions."[45/] Similarly, Calpine states that "if the Commission determines to implement the RAD charge pending the outcome of Docket No. UM 2024, the Commission should require PGE to offer a load curtailment program to NLDA customers that is reasonably tailored to address capacity costs such customers impose."[46/]

It is unclear how these parties can argue that the RIC and RAD are illegal but also claim that the Commission could implement them anyway under the right circumstances. Even mitigated, the RIC and RAD would still be discriminatory because NLDA customers would be required to participate in a demand response program to offset these charges that LTDA customers have no obligation to join; the RIC would still be a FERC-jurisdictional charge; and implementation of both charges would still compromise LTDA customers' due process rights. Neither Staff nor Calpine argues otherwise. The Commission's "general grants of authority … do not empower PGE to charge or [the Commission] to approve rates of a kind that are specifically contrary to [law]."[47/] That is the case with the RIC and RAD, regardless of whether they are paired with a demand response program or not. With their mitigation proposals, Staff and Calpine are doing nothing more than putting lipstick on a pig.

For the same reason, AWEC encourages the Commission to rule on the legality of the RIC and RAD in this proceeding. Staff's primary recommendation appears to be that the

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[45/] Staff Opening Br. at 12.
[46/] Calpine Opening Br. at 16.
[47/] Citizens' Util. Bd. v. Oregon Public Utility Comm'n, 154 Ore. App. 702, 716-17 (1998).

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Commission implement PGE's NLDA program without the RIC and RAD, but also to decline to rule on the legality of these charges. That would be a mistake. The parties to this proceeding have expended significant effort and developed a robust record on which the Commission can make a legal finding on the RIC and RAD. If the Commission declines to do this, there is no reason to believe PGE will not pursue these charges again, either in UM 2024, its next general rate case, or both. This will require parties to expend resources relitigating these issues. The Commission, therefore, will likely need to make a legal ruling sooner or later. If the Commission agrees with AWEC, Staff, and Calpine that these charges are legally precluded, there is no benefit to deferring that finding.

I. The Commission should refrain from adopting a prescriptive approach to measuring the maximum size of a NLDA customer for purposes of managing PGE's participation cap.

Calpine argues that the "[m]easurement of space remaining under the 119-aMW program cap should be based on the customer's binding financial commitment to distribution facilities."[48/] Calpine takes issue with PGE's apparent position that the Company intends to measure a customer's allocation of space under the cap based on the design plans for distribution facilities serving the customer rather than what the customer ultimately financially commits to.

From AWEC's perspective, Calpine's proposal is superior to PGE's, but AWEC would advocate for a more flexible approach than either Calpine or PGE proposes. AWEC's concern is that very large customers – those eligible for the NLDA program – often have dedicated substations. It may not be immediately clear what the capacity of such a substation should be assumed to be for purposes of the NLDA cap. For instance, a substation may be

48/ Calpine Opening Br. at 30.

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initially designed with two transformers, but be able to accommodate two additional transformers to increase the substation's capacity if needed. Should this substation be assumed to have a capacity as initially designed with two transformers, or should the measurement be its entire potential capacity with four transformers? AWEC recommends that the Commission avoid making bright-line determinations about how such distribution facilities should be evaluated for purposes of measuring room under the NLDA cap. These nuances are better addressed on a case-by-case basis, first between PGE and the customer, and if agreement is not reached, then by the Commission.

III. CONCLUSION

For the foregoing reasons, the Commission should reject the RIC and RAD and require PGE to file a new Schedule 689 that is substantively identical to PacifiCorp's Schedule 293 to ensure equality of treatment for customers participating in these utilities' respective NLDA programs.

Dated this 26th day of November, 2019.

Respectfully submitted,

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