Davison Van Cleve PC
Attorneys at Law
TEL (503) 241-7242 ● FAX (503) 241-8160 ● jog@dvclaw.com
Suite 450
1750 SW Harbor Way
Portland, OR 97201

November 14, 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 Opening 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.	))))))))	OPENING 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 Opening Brief with the Oregon Public Utility Commission ("Commission").

AWEC recommends that the Commission reject Portland General Electric Company's ("PGE" or "Company") proposed Schedule 689, included in its Advice No. 19-02, and require PGE to refile this tariff in a manner that is substantively identical to PacifiCorp's Schedule 293, which implements that utility's New Load Direct Access ("NLDA") program. Unlike PacifiCorp's NLDA tariff, PGE's includes provisions not required by the Commission's NLDA rules – namely PGE's proposed Resource Adequacy Charge ("RAD") and Resource Intermittency Charge ("RIC") – that would materially impact the cost of participation in PGE's NLDA program as well as the nature of direct access itself.

PGE has failed to support its newly proposed charges on legal, factual, and procedural grounds. Not only do the RIC and RAD discriminate against NLDA customers and

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

violate the direct access law, they are unjust and unreasonable. PGE has proposed the RAD without even knowing what rate for this charge will be and asks the Commission to implement a provisional charge. Moreover, the Company's basis for the RAD has shifted over the course of this proceeding – from ensuring "resource adequacy" to merely allocating the costs of "resource adequacy" – and is grounded on an assumption about the resource adequacy provided by short-term markets that is not shared by other utilities in the region. Indeed, approval of the RAD at a $0 charge in this proceeding (as PGE proposes) will do nothing to assuage PGE's resource adequacy concerns. Meanwhile, the RIC is unquestionably within the Federal Energy Regulatory Commission's ("FERC") exclusive jurisdiction to approve.

In addition to the many obvious legal problems with the RIC and RAD, their approval would also represent bad policy. PGE is subject to the same rules governing the NLDA program as PacifiCorp. It also participates in the same electricity markets and, consequently, is similarly exposed to, and invested in, the reliability of the electric grid. There is no reason to approve substantively different NLDA tariffs for these utilities. If, after a more comprehensive examination of PGE's resource adequacy concerns in UM 2024, the Commission determines to make changes to the NLDA program, it has the tools to do so at that time.

II. FACTS

PGE filed its NLDA tariff on February 5, 2019.[1/] The filing was required by new rules the Commission adopted in AR 614 that created the NLDA program.[2/] Under existing long-term direct access options, eligible customers may take direct access service by paying

1/ Docket No. ADV 919, PGE Adv. No. 19-02 (Feb. 5, 2019).
2/ Docket No. AR 614, Order No. 18-341 (Sept. 14, 2018).

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

transition adjustments that cover at least five years' worth of fixed generation costs on the premise that these payments will prevent unwarranted cost-shifting as a consequence of the customer's decision to take direct access service.[3/] Such payments, however, are not necessarily applicable to customers for which a utility has not planned, since if a utility has not invested to serve a customer, that customer cannot create the same stranded costs by electing an alternative service provider.[4/] Therefore, the Commission determined that a NLDA program was warranted that allowed new customers to go straight to direct access while paying a reduced transition adjustment of 20% of fixed generation costs for five years.[5/] The Commission found that a 20% transition charge was appropriate because "the fixed generation charge represents real costs and risks to the system but that these costs and risks have not been quantified …."[6/]

The Commission also included a number of safeguards on the program to ensure cost-of-service customers would not be harmed by the NLDA program. This included creating a 10 aMW size threshold for eligibility to participate, which both PGE and PacifiCorp agreed represented a size they would not normally plan for.[7/] It also included a soft cap on the program equal to 6% of a utility's weather-adjusted load to recognize that this is a new and untested program that could have unintended impacts;[8/] provisions to prevent NLDA customers from shifting load from a cost-of-service site to a NLDA site;[9/] and provisions to protect cost-of-

---

3/ Docket No. UE 335, Order No. 19-129 at 18-20 (Apr. 12, 2019); Docket No. UE 267, Order No. 15-060 at 6-7 (Feb. 24, 2015).
4/ Docket Nos. UM 1837/AR 614, Order No. 18-031, Appen. A at 3 (Jan 30, 2018).
5/ Order No. 18-341 at 3; OAR 860-038-0740(3)(a).
6/ Order No. 18-341 at 3.
7/ Docket No. UM 1837, PacifiCorp's Opening Comments at 3 (Nov. 22, 2017); PGE Reply Comments at 1 (Dec. 19, 2017).
8/ Order No. 18-341 at 7-8.
9/ OAR 860-038-0740(4).

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

service customers from cost increases created by a NLDA customer returning to bundled service.[10]

In response to the new rules, PGE filed the tariff at issue in this docket. In addition to including the elements required by the rules, PGE introduced two new charges, the RIC and RAD.[11] PacifiCorp's NLDA tariff, also filed to comply with the new rules, did not include either of these charges or anything similar.[12]

The RIC and RAD in PGE's tariff would apply only to NLDA customers, not long-term direct access customers.[13] As PGE originally described them, the RIC and RAD are designed to recover "the costs of assuring system reliability and promote resource adequacy through planning and procurement."[14] Essentially, according to PGE, the RIC recovers the costs of supplying capacity on a real-time basis when an electricity service supplier ("ESS") under-schedules, while the RAD recovers the cost of "secur[ing] additional resources to avoid adverse impacts to system reliability" in the event of a supply shortage.[15] PGE identified capacity retirements in the West and expressed concern that, without a mechanism like the RAD, it may be forced to implement curtailment protocols that would curtail both direct access and cost-of-service customers on a nondiscriminatory basis.[16]

It is notable that the justifications PGE gave above, at least with respect to the RAD, fundamentally changed over the course of this proceeding. In bench responses and at the

---

[10] OAR 860-038-0720(3).
[11] Adv. No. 19-02, Schedule 689, Original Sheet No. 689-3
[12] Docket No. ADV 900, PacifiCorp Adv. No. 18-010, Schedule 293 (Dec. 14, 2018).
[13] PGE/100, Sims-Tinker/8:18.
[14] Id. at 10:20-22.
[15] Id. at 16:1-3.
[16] Id. at 15:11-16:4.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

hearing, PGE made clear that the RAD is not primarily about maintaining system reliability, but about cost allocation.[17] PGE does not commit to acquiring any new capacity, let alone capacity that would be incremental to existing regional resources, for NLDA customers.[18] Rather, PGE now claims that direct access customers benefit from the Company's entire existing resource mix with respect to resource adequacy and, therefore, should be allocated a portion of those costs.[19] This position is based on PGE's understanding that direct access customers rely on the short-term market to meet their load, and that these types of market purchases do not provide resource adequacy.[20] Furthermore, the alleged subsidization of direct access customers for resource adequacy is disconnected from the regional reliability concerns PGE raises. Even if there were an oversupply of capacity in the region, the RAD would still be appropriate, PGE alleges, because direct access customers would still rely on PGE resources for resource adequacy.[21]

Because the RAD is a product of allocating the costs associated with resource adequacy from PGE's entire resource portfolio, and because PGE's current cost-of-service study does not account for "resource adequacy" separately, the Company does not know at this time what an appropriate charge for the RAD should be.[22] PGE states that it will determine this in a subsequent general rate case where it can identify resource adequacy costs and allocate them to customer classes through its marginal cost of service study.[23] In the meantime, PGE asks that the Commission approve a RAD charge of $0.[24]

---

[17] PGE Response to Bench Request 2, 5; Tr. at 14:4-17:23 (Tinker-Sims).
[18] AWEC/201, Mullins/3; Tr. at 17:14-23 (Tinker).
[19] Tr. at 17:4-23 (Tinker-Sims).
[20] Id. at 17:9-13 (Sims).
[21] Id. at 17:14-23 (Tinker).
[22] PGE/300, Sims-Tinker/19:14-23:16.
[23] Id. at 22:15-21.
[24] Adv. No. 19-02 at 6-7.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

The RIC is related to the RAD in that it is intended to recover capacity costs from direct access customers.[25/] While the RAD is supposedly a charge related to meeting peak capacity needs, however, PGE describes the RIC as intended to recover the costs associated with providing capacity to balance NLDA loads on an intra-hour basis when those loads exceed an ESS transmission schedule.[26/] Even though the RAD will be developed by allocating a portion of the capacity costs of all PGE resources to NLDA customers, PGE assures the Commission that the RIC will not double-count the RAD, though it does not explain how it will prevent double-counting since the RAD is currently unknown.[27/] Unlike the RAD, the RIC has a definite charge - $0.58/kW of monthly on-peak demand.[28/] The justification for the RIC is based on schedules PGE currently receives from ESSs for customers in the long-term direct access ("LTDA") program (as there are no NLDA customers yet).[29/] PGE would only assess the RIC in hours when an ESS under-schedules relative to actual NLDA customer load – NLDA customers would receive no capacity credit for ESS over-scheduling – and the RIC would be assessed against the NLDA customer, despite the fact that it is ESSs that are responsible for submitting the schedules on which assessment of the RIC would depend.[30/] Moreover, because ESSs submit a single schedule for all of the load they serve, assessment of the RIC would be unrelated to cost causation.[31/] If the ESS under-schedules, the RIC would be assessed to all NLDA customers regardless of which customer caused the under-schedule.[32/] Indeed, NLDA customers would be

---

25/ Id. at 7.
26/ PGE/200, Sims-Tinker/33:18-34:3.
27/ Tr. at 110:7-111:4 (Sims).
28/ Schedule 689, Original Sheet No. 689-3.
29/ PGE/100, Sims-Tinker/11:21-12:16.
30/ PGE/200, Sims-Tinker/38:18-21.
31/ AWEC/100, Mullins/16; Tr. at 36:1-19 (Tinker-Sims).
32/ AWEC/100, Mullins/16.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

assessed the RIC even if the cause of the under-schedule was a LTDA customer, because an ESS could serve both NLDA and LTDA customers.[33]

III. ARGUMENT

A. The RIC and the RAD unduly prejudice NLDA customers.

ORS 757.325(1) prohibits utilities from giving "undue or unreasonable preference or advantage to any particular person or … subject[ing] any particular person … to any undue or unreasonable prejudice or disadvantage in any respect." This statute does not, of course, prohibit *any* preferences for or prejudices against customers, only "undue or unreasonable" preferences and prejudices. Therefore, the Commission's discrimination and undue preference statutes require "equality of treatment among all customers," unless some distinguishing characteristics justify different treatment.[34] The Commission may create separate customer classes for similarly situated customers and allow different rates for these classes.[35] But rate schedules can only distinguish between customers if there are economic justifications for doing so,[36] and may not "discriminate between customers with substantially similar service characteristics."[37]

Here, there clearly are differences between NLDA customers and LTDA customers that justify different rate schedules for these two customer classes. NLDA customers are new, while LTDA customers are not. As the Commission found in AR 614, a new customer's decision to go straight to direct access has a fundamentally different impact on cost-

---

33/ Tr. at 36:1-19 (Tinker-Sims).

34/ Northwest Natural Gas Co., Docket DR 11, Order 93-1273, 1993 WL 417547 at *5 (Sept. 7, 1993); American Can v. Davis, 28 Or. App. 207, 226 (1977).

35/ ORS 757.230; Portland General Electric Company, Docket Nos. UE 101/DR 20, Order 97-408, 1997 WL 913205 at *5-*6 (Oct. 17, 1997).

36/ Order 97-408, 1997 WL 913205 at *5-*6.

37/ Pac. Power & Light, UE 170, Order 06-172, 11 (Apr. 12, 2006); Order 97-408, 1997 WL 913205 at *5-*6.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

of-service customers than a LTDA customer leaving cost-of-service for direct access. But these differences are not at issue when it comes to evaluating whether NLDA or LTDA customers are subsidized with respect to resource adequacy. As PGE conceded, once both sets of customers have gone through the five-year transition phase, they both, according to PGE, are being subsidized.[38/]

In DR 20, the Commission had occasion to consider its discrimination statutes within the context of direct access. In that docket, PacifiCorp requested a declaratory ruling that, among other things, the Commission's discrimination statutes did not apply to energy sales to direct access customers, who are making these purchases on the open, competitive market.[39/] The Commission issued the requested declaratory ruling, finding that each customer on direct access is effectively a class of one with respect to its energy purchases because those purchases are being made within a competitive market. The Commission found that its discrimination statutes only "prohibit[] discrimination within a customer class."[40/] Thus, because each customer is acting individually on the open market, each customer may lawfully pay different rates for their energy commodity.

This same logic would apply to resource adequacy *if* direct access customers acquire it in the open market. With the RIC and the RAD, however, PGE is proposing to supplant the competitive market for cost-of-service with respect to resource adequacy. All NLDA customers would have no choice but to pay the same cost-based charge for PGE resources that provide resource adequacy, a charge LTDA customers are not required to pay.

[38/] Tr. at 24:10-25:3 (Tinker-Sims).
[39/] Order No. 97-408, 1997 WL 913205 at *5 (Oct. 17, 1997).
[40/] Id.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

Unlike a LTDA customer, a NLDA customer could not shop for a different resource adequacy product (or at least if it did, it would not be relieved from paying the RIC and RAD as a consequence).

The RIC and RAD, therefore, prejudice NLDA customers relative to LTDA customers because they require NLDA customers to purchase a capacity product LTDA customers have no obligation to purchase. These charges "unduly" prejudice NLDA customers, in turn, because they are indistinguishable from LTDA customers for resource adequacy purposes. Both sets of customers, according to PGE, rely on the short-term market which, also according to PGE, does not provide resource adequacy. There is, therefore, no "reasonable" "economic justification" for imposing the RIC and RAD on NLDA customers and not on LTDA customers.

B. Implementation of the RIC and RAD in this docket will violate long-term direct access customers' due process rights.

PGE has not disputed that it intends to "examine the appropriateness of applying the RIC and RAD to the LTDA program."[41/] It also admits that it believes customers on the LTDA program are being subsidized with respect to resource adequacy to the extent they have gone through the five-year transition period.[42/] In fact, the basis for the RIC is the scheduling practices of ESSs serving customers on the LTDA program.[43/] Moreover, PGE's calculation of the RAD would be based on functionalizing the resource adequacy of its generation portfolio and allocating it to all customer classes, including direct access customers.[44/] PGE makes no

---

[41/] PGE/100, Sims-Tinker/9:1-2.
[42/] Tr. at 24:10-16 (Tinker).
[43/] PGE/100, Sims-Tinker/11:21-12:16.
[44/] Tr. at 15:2-16:3 (Tinker).

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

distinction here between customers on the NLDA program and customers on the LTDA program that would suggest LTDA customers should not be assigned the RAD.[45/]

Consequently, if the Commission approves the RIC and RAD, LTDA customers will have no basis to dispute imposition of these charges on them in a future proceeding based on distinguishing characteristics between NLDA and LTDA customers. The same reasons for applying the RIC and RAD to NLDA customers would dictate their application to LTDA customers. Yet, LTDA customers have not been afforded sufficient notice in this docket that their rights as direct access customers may be impacted. The Commission's own Internal Operating Guidelines note that the state's Administrative Procedures Act and related laws:

> [R]equire that fundamental rules be followed to ensure government accountability and fairness. These provisions are generally designed to ensure that persons affected by agency action (1) are given prior notice of the case; (2) have a fair opportunity to present evidence and argument on the issues raised; and (3) are able to respond to all evidence and argument offered by other parties.[46/]

This case fails all three requirements with respect to LTDA customers. Approval of the RIC and RAD, therefore, would violate LTDA customers' due process rights guaranteed under Oregon law.

C. The RAD violates the direct access law.

PGE does not dispute that the RAD would require NLDA customers to pay for PGE-owned resources, and confirmed at the hearing that the RAD would be determined by "evaluat[ing] the revenue requirement of resource adequacy costs in general and assign[ing] them or allocat[ing] them as appropriate across all customer classes, including a [NLDA] class as

---

45/ Id. at 24:10-16 (Tinker).
46/ Docket No. UM 1709, Order No. 14-358, App. A at 8 (Oct. 17, 2014).

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

well."[47] The direct access law, however, ensures nonresidential customers the "ability … to purchase electricity and certain ancillary services … directly from an entity *other than the distribution utility*."[48] "Electricity," in turn, is defined as "electric energy … or electric *capacity* … or both."[49] PGE confirmed that the RAD is a capacity product;[50] yet, this product would be offered by PGE on a cost-of-service – not a competitive – basis and in a manner that is non-avoidable.[51] This violates both the plain language of the direct access law – allowing customers to purchase capacity from an entity *other* than PGE – and also its intent, which is to "eliminate barriers to the development of a competitive retail market."[52] As the Commission has previously recognized, direct access customers participate in the open market, which is intended to provide optionality:

> One customer may want firm power, another may want interruptible, a third may want a 50-50 blend of firm and interruptible, and a fourth may want a different blend of firm and interruptible. Other customers may want to combine buying electricity with a purchase of natural gas or other energy services. Even customers who may want the same service may contract for that service at different times, when the market prices of those services are different. The possibilities are endless.[53]

The RAD restricts these possibilities with respect to resource adequacy to a single mandated charge, the antithesis of endless possibilities available on the open market.

Moreover, direct access customers trade the optionality available on the open market for the risk inherent in this optionality. When the Enbridge pipeline ruptured in October

---

[47] Tr. at 15:12-16 (Tinker).
[48] ORS 757.600(6) (emphasis added).
[49] ORS 757.600(14) (emphasis added).
[50] Tr. at 29:3-11 (Tinker).
[51] Id. at 50:14-22 (Sims).
[52] ORS 757.646(1).
[53] Order No. 97-408, 1997 Ore. PUC LEXIS 250 at *17-*18 (Oct. 17, 1997).

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

2018, direct access customers that relied primarily on the short-term market would have faced significantly increased costs. A direct access customer that hedged its electricity cost exposure would have experienced less volatility. Cost-of-service customers were fully protected from these increases by PGE's power cost adjustment mechanism. Customers that choose direct access take on this additional risk in part because they believe the associated optionality provides them with the greatest control over their electricity costs and, therefore, a better ability to compete in a global market. PGE's RIC and RAD blunt the optionality and risk that is fundamental to direct access by requiring NLDA customers to purchase cost-of-service capacity.

D. The RIC is subject to FERC's exclusive jurisdiction.

PGE characterizes the RIC as a charge to recover capacity associated with meeting intra-hour variations in direct access customer load. PGE concedes that the charge is determined based on differences between the transmission schedule an ESS submits for its direct access customers and actual hourly load.[54/]

As has long been recognized, FERC has exclusive jurisdiction over interstate transmission, including rates for such transmission service.[55/] FERC's regulation of transmission rates today is grounded in its Order 888, in which it adopted open access transmission requirements for public utilities and transmitting utilities.[56/] That order adopted a *pro forma* Open Access Transmission Tariff ("OATT") that all regulated utilities, including PGE, must file

---

54/ Tr. at 33:23-34:15 (Tinker-Sims).

55/ 16 U.S.C. § 824(a)-(b); Transmission Agency of Northern California v. Sierra Pac. Power Co., 295 F.3d 918, 931 (9th Cir. 2002).

56/ Promoting Wholesale Competition Through Open Access Transmission and Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 61 Fed. Reg. 21,540 (Apr. 24, 1996).

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

(with modifications from the *pro forma* version as appropriate to each utility).[57] Each OATT establishes the rates that any user of a utility's transmission system, including the utility itself, must pay for transmission capacity. These rates include those necessary for PGE to perform its obligations as a Balancing Authority Area ("BAA"), including energy imbalance charges and other ancillary services. As the OATT explains, "[a]ncillary services [including energy imbalance service] are needed with transmission service to maintain reliability within and among the Control Areas affected by the transmission service."[58] Ancillary services are, therefore, an integral and required component of transmission service under the OATT.

The OATT includes seven different ancillary services that a transmission customer, including ESSs, must purchase from PGE or self-supply, each of which "are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of [PGE's] Transmission System …."[59] These are: (1) Scheduling, System Control and Dispatch Service; (2) Reactive Supply and Voltage Control from Generation or Other Sources Service; (3) Regulation and Frequency Response Service; (4) Energy Imbalance Service; (5) Operating Reserve – Spinning Reserve Service; (6) Operating Reserve – Supplemental Reserve Service; and (7) Generator Imbalance Service.[60]

Despite the OATT's requirements for ancillary services, PGE makes two arguments in favor of the RIC: first, that none of these ancillary services recovers the capacity

---

[57] Id. at 21,541.
[58] PGE OATT § 3.
[59] Id. at § 1.2.
[60] Id. at §§ 3.1-3.7.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

costs PGE incurs associated with energy imbalances; and second, that, in any event, the RIC is not FERC-jurisdictional.

The obvious response to the first argument is that, while a number of the ancillary services charges in the OATT plainly recover capacity costs,[61/] if PGE truly believes it is being uncompensated for the transmission service it provides under the OATT, it can always petition FERC to implement a new charge. FERC, in fact, has said as much. In Order 890-B, FERC "made clear that it will consider on a case-by-case basis proposals to adopt enhanced imbalance penalties subject to a showing that they are necessary under the circumstances."[62/] PGE, however, admits that it has not made any such request.[63/]

Meanwhile, PGE offers no serious rebuttal to the argument that the RIC is a charge for the transmission service PGE provides under its OATT and, therefore, is FERC-jurisdictional. PGE concedes that the RIC is dependent upon the hourly transmission schedules an ESS submits under the OATT.[64/] The RIC is a charge for under-scheduling; it cannot be assessed against a NLDA customer unless this customer consumes more energy in an hour than its ESS schedules on its behalf. It is fundamentally a transmission service PGE provides as part of its BAA obligations. PGE's only response to this is that "the ESS scheduling requirements are governed by Rule K of PGE's retail tariff, as approved by the Commission."[65/] This is

---

[61/] Spinning Reserve Service and Supplemental Reserve Service, for instance, are "needed to serve load immediately in the event of a system contingency." PGE OATT, Schedules 5, 6. Generator Imbalance Service "is provided when a difference occurs between the output of a generator … located in the Transmission Provider's Control Area and the resource component of the Transmission Customer Base Schedule from that generator … over a single hour." Id., Schedule 10.

[62/] Preventing Undue Discrimination and Preference in Transmission Service, Order 890-B, 123 F.E.R.C. P 61,299, 63,025 (June 23, 2008).

[63/] Tr. at 8:1-17 (Sims).

[64/] Id. at 33:23-34:15 (Tinker-Sims).

[65/] PGE/300, Sims-Tinker/32:13-14.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

irrelevant. Rule K does provide certain "ESS Scheduling Responsibilities," but so does PGE's OATT.[66] Material here is that Rule K does not specify any rates an ESS or its customers pay and, as PGE conceded, the RIC is a rate.[67] The only Commission-jurisdictional tariff PGE files that addresses rates ESSs pay is Schedule 600. While this schedule includes charges for various administrative tasks PGE performs, like application processing, all charges in this Schedule related to transmission service reference PGE's OATT.[68] There is simply no doubt that the RIC is a FERC-jurisdictional charge and, therefore, that the Commission lacks authority to implement it.

E. The RIC and RAD are unjust and unreasonable charges.

1. PGE has asked the Commission to approve an unknown charge for the RAD.

The Commission has a statutory obligation to ensure that "the charges made by any public utility for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited."[69] PGE has set the charge for the RAD at $0 in Schedule 689 as a temporary placeholder until it allocates resource adequacy costs in its next general rate case. The Company admitted at the hearing that it does not believe $0 to be just and reasonable for the RAD.[70] Consequently, PGE has presented the Commission with a choice: (1) approve a charge at a level the applicant itself asserts is unjust and unreasonable; or (2) accept PGE's position that $0 is simply a placeholder

---

[66] Exh. AWEC/305 at 17-18; PGE OATT, Attachment N (Retail Network Integration Transmission Service Provided for Oregon Retail Direct Access Customers).
[67] Tr. at 33:14-16 (Tinker).
[68] Exh. AWEC/306.
[69] ORS 757.020; see also, ORS 756.040(1).
[70] Tr. at 32:7-19 (Sims).

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

and, therefore, approve an unknown charge. Neither option meets the requirements of ORS 757.020 that all charges "shall be just and reasonable." If the Commission does not know what the charge for the RAD will be, surely it cannot then find that such a charge is just and reasonable.

It is worth noting that the conundrum PGE has put the Commission in here is entirely avoidable. As Commissioner Tawney appeared to recognize at the hearing, approving the RAD as part of PGE's NLDA tariff filing is pointless.[71/] At $0, the RAD will not alleviate the regional capacity concerns PGE raises, nor will it remedy any alleged subsidy direct access customers supposedly enjoy with respect to resource adequacy. If the Commission believes there is any potential value to the RAD (which AWEC disputes), it makes far more sense for PGE to include it for consideration in its next general rate case where an actual charge would be developed and the RAD can then be evaluated on its full merits.[72/]

2. The RIC and RAD double-charge direct access customers.

Both the RIC and the RAD will, or have the potential to, double-charge NLDA customers, for both interdependent and separate reasons. First, the RIC and RAD may duplicate each other. The justification PGE provides for the RIC is that the Company is using its *own resources* to provide capacity to direct access customers to meet intra-hour deviations in actual load from scheduled load.[73/] Yet, PGE simultaneously asserts that the rate it will develop for the RAD will be based on functionalizing a portion of each resource in its fleet as "resource

---

71/ Tr. at 94:23-95:9 (Comm. Tawney).

72/ If, however, the Commission agrees with AWEC that there are fundamental legal obstacles to the RAD, including that it violates the direct access law, then AWEC encourages the Commission to make that finding in this case to avoid re-litigation of a charge in a subsequent rate case that is legally barred.

73/ PGE/100, Sims-Tinker/13:3-5.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

adequacy" and allocating the cost of this function to all rate classes, including the NLDA class.[74/] This creates a clear potential for the RIC and RAD to duplicate, or at least overlap with, each other, as both charges are based on the cost of PGE resources. The Company's written testimony that there is no double counting because RAD capacity (peaking) is different from RIC capacity (flexible) is plainly incorrect because the RAD charge will incorporate all PGE resources, including those, such as Port Westward 2, that are flexible enough to qualify as RIC-eligible capacity.[75/] Further, while PGE claims that it has "proposed [the RIC and RAD] in such a way that they are distinctive and would not be duplicative," it is impossible to ensure that this is the case because there is no charge yet developed for the RAD.[76/] PGE has not identified how it will avoid duplication of these charges.

Second, as mentioned above, the RIC duplicates ancillary services charges PGE already collects from direct access customers (through their ESSs) under its OATT. PGE argues that energy imbalance and regulation and frequency response services do not compensate the Company for intra-hour capacity, but says nothing of the other ancillary services, such as operating reserves, transmission customers must purchase to ensure PGE recovers the cost of complying with its BAA obligations.[77/] The full suite of ancillary services transmission customers must pay are specifically designed to compensate PGE for the balancing services it performs, including holding capacity in reserve.

74/ Tr. at 14:4-16:3 (Tinker).
75/ PGE/200, Sims-Tinker/33:18-34:19; Tr. at 109:18-21 (Sims).
76/ Tr. at 110:22-23 (Sims).
77/ PGE/200, Sims-Tinker/35:1-36:2.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

Third, the RAD imposes a non-avoidable, one-size-fits-all resource adequacy charge on NLDA customers when PGE admits that these customers can acquire resource adequacy themselves on the open market. Indeed, a critical threshold issue supporting PGE's proposals is that direct access customers do not currently acquire resource adequacy. PGE, however, simply assumes that all direct access customers purchase exclusively on the short-term market, without demonstrating that this is true for every customer. Moreover, the Commission has never found that reliance on the short-term market does not provide resource adequacy. PGE's assertion that it does not is merely its opinion stated in conclusory fashion throughout this proceeding.[78/] That opinion, however, is not shared by all utilities, including regulated investor-owned utilities ("IOUs") with reliability obligations similar to PGE. Puget Sound Energy, for instance, relies on the short-term spot market for approximately 1,500 MW of capacity to meet its load – nearly three times the amount of capacity PGE claims it would need to provide resource adequacy to LTDA and NLDA customers if both programs were fully subscribed.[79/] PGE's position on resource adequacy would mean that its fellow regulated IOUs are potentially failing to comply with their reliability obligations and threatening the capacity position of the Northwest. This is a bold position to take, and one that should be thoroughly evaluated before the Commission accepts it as truth.

But even if the Commission were to conclude that short-term markets do not provide resource adequacy, direct access customers have options on the open market to rectify

---

78/ PGE/100, Sims-Tinker/11:6-19.

79/ AWEC/303 at 9, 13; Tr. at 19:16-20:3 (Sims); Docket No. LC 73, PGE 2019 Integrated Resource Plan at 125 (Jul. 2019) (showing 526 MW of capacity need associated with fully subscribed direct access programs).

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

this. As PGE conceded, a direct access customer could enter into a long-term PPA for the output from a physical resource and this would provide resource adequacy.[80/] Such a customer, however, would have no opportunity to avoid the RAD, thus requiring it to pay twice for resource adequacy.[81/] That is not just and reasonable.

F. The Commission included safeguards in the NLDA rules that address PGE's concerns.

While PGE appears to have partially abandoned its concerns over the Northwest's capacity position as a justification for the RAD,[82/] it nevertheless continues to invoke this issue as an emergent one the Commission should address immediately and that will be exacerbated if additional direct access load is allowed through the NLDA program.[83/] PGE's position is disingenuous and ignores the safeguards the Commission included in its NLDA rules that will mitigate any potential reliability impact from the NLDA program.

PGE's position is disingenuous because, as it sounds the alarm over the reliability of the region potentially being compromised as early as next year,[84/] it is simultaneously pursuing an integrated resource plan that proposes to meet the Company's capacity deficit primarily, if not entirely, with existing capacity in the region.[85/] If PGE were truly concerned about the lack of such capacity, it would presumably propose at a minimum to add new capacity resources in the near term as a first option.

80/ AWEC/201, Mullins/1.
81/ PGE/200, Sims-Tinker/26:1-28:2.
82/ Tr. at 17:4-13 (Sims).
83/ Id. at 95:10-96:21.
84/ Id. at 96:16-19.
85/ Id. at 106:18-107:13.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

Meanwhile, PGE's concerns are mitigated by the cap the Commission placed on the NLDA program, limiting it to approximately 118 aMWs for PGE, less than half the size of the LTDA program. The Commission imposed this cap in part to ensure that the NLDA program "pose[d] no significant cost or risk to cost-of-service customers …."[86] PGE's concerns are also mitigated over the next five years by the 20% transition charge a NLDA customer will pay. The Commission specifically required this charge to account for "real costs to the system, but that these costs and risks have not been quantified."[87] PGE itself implicitly admits that a 20% transition charge recovers, at least in part, resource adequacy costs because its proposal reduces the full RAD charge by 20% when NLDA customers are paying the NLDA transition charge.[88] Consequently, even if the Commission agreed with PGE that the concepts underlying the RIC and RAD are justifiable on some level, the Commission has already provided sufficient safeguards at least in the near term to allow it to investigate and determine a more appropriate method of ensuring resource adequacy from direct access customers without harming cost-of-service customers.

G. Approval of the RIC and RAD will harm the Commission's investigation in UM 2024.

As a compromise proposal, PGE testifies that it would support the Commission imposing the RIC and RAD on a temporary basis while it considers direct access resource adequacy issues more broadly in its general direct access investigation, UM 2024.[89] PGE testifies that the RIC and RAD payments could be "fully or partially" offset by a to-be-

---

86/ Docket No. AR 614, Order No. 18-341 at 7.
87/ Id. at 3.
88/ PGE/100, Sims-Tinker/18:2-4.
89/ PGE/300, Sims-Tinker/9:9-10:4.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

determined demand response program that it will "consider … in a subsequent NLDA compliance or demand response tariff filing."[90] AWEC also strongly opposes this alternative.

As demonstrated above and in Mr. Mullins' testimony, the RIC and RAD are either unlawful, extra-jurisdictional, or both. Temporary approval does not resolve these concerns – these charges either are lawful and within the Commission's authority to impose or they are not. They cannot be lawful only on a temporary basis, even if they could be fully offset by voluntary participation in a currently nonexistent demand response program, the parameters of which the parties do not agree on. Additionally, resource adequacy for direct access customers is intertwined with other direct access issues, such as an appropriate transition charge amount, whether direct access causes unwarranted cost-shifting, and others. By approving PGE's proposal for direct access resource adequacy without first considering other alternatives (including whether direct access customers already acquire resource adequacy), it will bias discussions and positions on other issues to be investigated in UM 2024, and will give PGE no incentive to work constructively and diligently toward the development of workable and sensible long-term direct access programs. The Commission and all parties will be better served investigating resource adequacy as one component of a comprehensive and holistic investigation of long-term direct access.

IV. CONCLUSION

For the foregoing reasons, AWEC recommends that the Commission reject PGE's proposed RIC and RAD charges. The Commission should direct PGE to refile Schedule 689 in a manner that mirrors PacifiCorp's NLDA tariff. If any issues remain once PGE makes this

---

[90] Id. at 9:15-10:1.

DAVISON VAN CLEVE, P.C.
1750 SW Harbor Way, Suite 450
Portland, OR 97209
Telephone (503) 241-7242

compliance filing, they should be minor enough to allow for resolution through informal process and adoption of the tariff at an open meeting, as occurred with PacifiCorp's NLDA tariff.

Dated this 14th day of November, 2019.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Tyler C. Pepple
Tyler C. Pepple
1750 SW Harbor Way, Suite 450
Portland, Oregon 97201
(503) 241-7242
tcp@dvclaw.com
Of Attorneys for the Alliance of
Western Energy Consumers